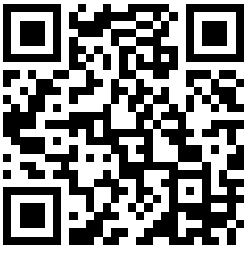

The green bag

Horace Williams Fuller, Sydney Russell Wrightington,
Arthur Weightman Spencer, Thomas Tileston Baldwin

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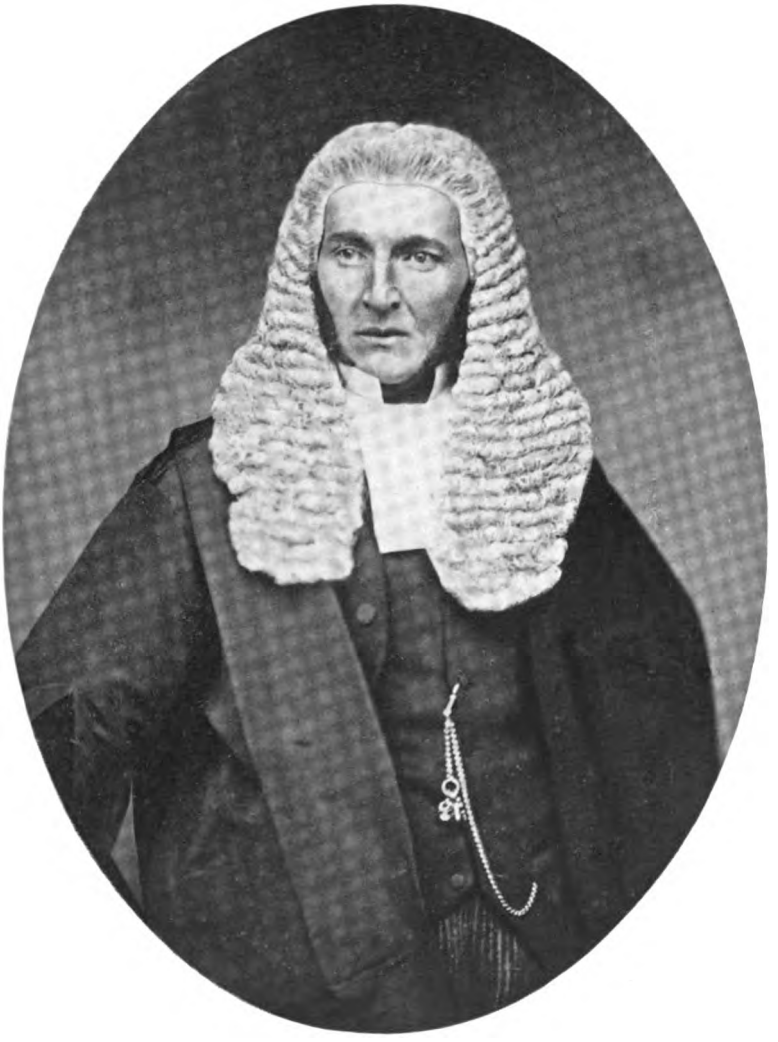
INDEX TO VOLUME VI.

(The leading articles appear in small capitals.)



Lawrie

The Green Bag.

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EARL CAIRNS.

A CHARACTER SKETCH.

THE external facts in Lord Cairns's career may be summarily disposed of. Most educated men are familiar with his story. Hugh McCalmont Cairns was the son of a captain in the Irish army and was born at Cultva, County Down, in 1819. He was carefully educated first at Belfast Academy and afterwards at Trinity College, Dublin, where he graduated with first-class honors in 1838. His father originally designed him for the church, but by the wise advice of his college tutor and in accordance with his own wishes, he was sent to England to prepare for the Irish bar. He was called to the bar of the Middle Temple in January, 1844, but migrated to Lincoln's Inn. Cairns at first intended to return to Ireland, but on the suggestion of Mr. Richard Malins, afterwards a vice-chancellor, in whose chambers he had read, he determined to remain in London and fight his way through the crowd of junior barristers who were struggling to impress their personality on the legal life of the metropolis. Although without influence other than that of his own transcendent ability, Cairns rose rapidly through the customary grades of distinction to the highest legal and political eminence.

In July, 1852, he entered Parliament as member for Belfast. Four years later he was raised to the dignity of one of "Her Majesty's Counsel, learned in the law." In 1858 he became Solicitor-General and delivered his memorable speech in the House of Commons upon Mr. Cardwell's motion to censure the conduct of Lord Ellenborough in India, which Disraeli characterized in his official letter to the Queen as one of the greatest orations ever made in Parliament. In 1886 Cairns was raised to the Attorney-Generalship, and on the retirement of Sir I. Knight Bruce he became a Lord Justice of Appeal. In February, 1867, he was created a Privy Councillor, and entered the House of Lords as Baron Cairns of Garmoyle. In February, 1868, M. Disraeli became Prime Minister, and passing over Lord Chelmsford, in the words of the latter, "with less courtesy than if he had been a butler," he promoted Cairns to the Lord Chancellorship. From that date till the defeat of the Beaconsfield government in 1880, Cairns (on whom, by the way, an earldom was conferred in 1878) was, after the Prime Minister, the leader of the Conservative party in the House of Lords, and his speeches on the Triple Alliance, the unconstitutional appointment of Sir Robert Collier to a seat in the Judicial Committee of the Privy Council, and the autocratic suppression of the rebellion of Langalibalele by the late Sir Benjamin Pine, deserve and will repay perusal as models of nervous eloquence and critical ability. On the death of Lord Beaconsfield, Cairns's accession to the vacant leadership was fervently desired by a section of the Conservative party, which, while fully admitting the great intellectual power of the Marquis of Salisbury, feared his rashness

and distrusted his statesmanship. But years and health were on Lord Salisbury's side, and Cairns retired definitely from public life. He died at Bournemouth on April 2, 1885.

Earl Cairns was the most distinguished and not the least earnest of our great religious Chancellors. A stern Protestant in his views of ecclesiastical polity, he disliked with all the strength of his upright, austere nature, the excessive tolerance of modern politico-protestant thought. He labored faithfully to spread the growth of religious teaching, lent the aid of his voice and his purse to Dr. Barnardo's Homes, frequently presided at religious meetings at Exeter Hall, and was a Sunday-school teacher up to practically the end of his long career. Mr. Gladstone is believed to have expressed the opinion that Sir George Jessel, the late Master of the Roll, was "the greatest legal genius of the century." But there are few lawyers who would endorse this verdict. Sir George Jessel undoubtedly possessed a legal intellect of the highest order. He disposed of the most complex legal problems with the ease and vigor, although not without some of the coarseness, of a huge mastiff worrying an insignificant terrier. But he lacked what Cairns possessed, the cultured imagination and the vein of poetry which are essential to the exercise of the highest genius in the juridical art. In Cairns's best judgments Burke's idea that "all human law is properly declaratory" is realized. They are not so much ratiocinations as illuminations. Disregarding the slow, syllogistic processes by which ordinary judges arrive at their decisions, he goes straight to his mark, with the swift, strong, subtle instinct of a woman for truth, and when the conclusion is reached, one feels as if the last word on the subject had been spoken. And yet Cairns's mind was severely logical — he had attained that perfect mental discipline which enables a man to "follow without reflecting upon the rule." In spite of these great intellectual gifts, it is practically certain that the circumstances which prevented Cairns from succeeding to the authority of Lord Beaconsfield were of good omen for the Conservative party. His austerity, his stern self-repression, would have been fatal obstacles to his success, and he never displayed either the faculty for evoking popular enthusiasm or the capacity for leadership which the responsibilities of office have developed in his successor. By his professional brethren Cairns was, and still is, regarded with almost superstitious veneration, but without any of the perfect love which was poured without measure on the erring head of Cockburn. Lord Coleridge has told us that he had a strong, rich vein of humor. But its pulsations were carefully concealed, and according to the traditions of the temple, a curious fancy for immaculate bands and tie in court, and for a flower in his coat at evening parties, was the only human weakness that the great Lord Chancellor displayed.

LEX.

GERMAN JURISTS AND POETS.

I.

By Arthur Hermann.

THIS sketch was suggested by the English and American "Anthologies" in recent issues of the GREEN BAG. For reasons presently to be explained it must resolve itself into a conglomeration of short biographies of German jurists who have mounted old Pegasus rather than into a collection of their productions. To the American reader the German judiciary is well-nigh a *terra incognita*. Its study for practical purposes is little short of being useless, so far as application to our every-day practice is concerned. Multifarious reasons tend to show the wide difference between German and American modes of practice. I am not now speaking of the historical aspect of the laws of both countries; their common roots in the civil law and its influence upon our American law being familiar to every lawyer. Besides the historical aspect there remain the philosophical, the dogmatic, and the political, from which jurisprudence may be treated. The political aspect alone furnishes ample material to illustrate the difference in practice, and in fact in the spirit, of the laws of both countries. I take a few random examples. Germany has a uniform penal code. Its salient features are: 1, Want of casuistry and enumeration and description of cases; 2, Want of scientific theoretical construction of terms; 3, Unusual latitude in the discretion of the judge to determine the measure of the punishment or fine; 4, Absence of regulations for the carrying out of the judicial sentence. This code, modified in 1876, has been in force since its adoption shortly after the union of the German federal states under the Empire in 1871. A comparison of that code with the penal code of New York, or with provisions in our state statutes covering its *materia*, will readily demonstrate the difference. The superiority, or at least particularity, of our system in regard to the power of every judge to decide upon the constitutionality of a law, in contradistinction to other systems where the judge's discretionary powers are limited to the volume of the sentence, is too well known to need elaboration. In Prussia, through Frederick the Great, the independence of judges from the government was conceded. "Es giebt noch Richter in Berlin,"[1] or, according to another version: "Ja, wenn nur das Kammergericht in Berlin nicht wäre!"[2] ejaculated the fearless miller in Sanssouci when commanded by His Majesty to remove the annoying windmill from the precincts of the royal castle. The liberty of the press was vouchsafed by that great reconstructor of the kingdom of Prussia, in a marginal note to a petition: "Man soll die Gazetten nicht geniren."[3] *In theorem* the king and emperor is still "the first servant of the state," as old Frederick put it; but *in praxi* the courts are

[1] "There are still judges in Berlin."

[2] "Yes, if it were not for the Chancery Court in Berlin."

[3] "Don't annoy the Gazettes." This important utterance of Frederick the Great is contained in a letter which Count Podewitz wrote to the Secretary (Minister) von Thulmeyer, the passage in question being as follows: "Se. Majestät erwiderten aber, dass Gazetten, wenn sie interessant sein sollten, nicht genirt werden müssen." (I. D. E. Preuss. Friedrich der Grosse. Eine Lebensgeschichte, Vol. III., p. 251.) It is worthy of note that the letter dates June 5, 1740, a few days only after that original and great monarch came to the throne. Lord Erskine delivered his great speech in the trial against John Stockdale for libel on the House of Commons (22 State Trials, 237) — generally regarded as the birthday of the liberty of the English press — on February 15, 1788. Another historical word of the Prussian king may here find a place: "In meinem Staate kann jeder nach seiner Façon selig werden" ("Within my kingdom every one may go to heaven after his own fashion.") This was uttered on June 22, 1740, hence over thirty years before the same principle was adopted in our Constitution.

ever and anon kept busy with prosecutions of "offences against the majesty,"[1] and the inveterate German patriot deems it a poor freedom where under our government every bootblack may call with impunity the head of the government an ass. With the exception of a few southern states, the nature of a government libel in Germany is determined by a bench of five judges without a jury. The judges being appointed and promoted by the government, the radical difference between the liberty of our press — sometimes, indeed, verging on wantonness — and that of Germany is obvious. Blackstone complains that "every man of superior fortune thinks himself *born* a legislator,"[2] and Mr. v. Holst thinks that with us "the equality of all men became so perverted, in the minds of the masses, into the equal capacity of all men to decide on political questions of every kind";[3] yet it strikes me that the American would justly resent the outright denial of his capability to judge in high matters of the state. In Germany this right, or rather fitness, was plainly denied in an answer by the Prussian minister Von Rochow upon a petition protesting against the arbitrary repeal of the constitution of Hanover by its king in 1837. The petitioner was instructed that "it does not behoove the subject to measure the actions of His Majesty by the *narrow conceptions* of his (the subject's) views."[4]

Only a few years ago a large daily in Berlin, the *Berliner Volkszeitung*, was suspended without "due process of law." It might be said that this was done by virtue of a power vested in the police through laws passed by the *Reichstag*. But that is not the question. The construction of that law and its immediate enforcement were left to the police, and not to the courts. Post-mortem apology even cannot resuscitate the dead. Add to the incapacity of the judge to pass on the constitutionality of a law, the fact that in Germany every judge holds his office at the pleasure of the government — grounds for removal of obstinate judges from their offices or from posts of greater responsibility have never been wanting — and the difference between our present judicial system and that of modern Germany becomes more striking. The promotion of judges, finally, depends on *Anciennetät*, i. e. the time of service. Little room is left for distinction and reward, except when coupled with long service. An incident such as Mr. Hornblower's nomination to the Supreme bench of this country would be simply impossible in Germany. The great freedom and possibility of locomotion in the United States, its varied and in many instances unparalleled enterprises, in contrast to the "conservative progress" of the Germans, lend to the material brought before the respective courts a very different character. Again, the great body of men serving in the German army is outside the pale of the civil law, solely amenable to the *Militärstrafgesetz*. Judge John F. Dillon has much to say of the excellence of the municipal government in Prussia,[1] and Mr. Brice depicts for our detestation the municipal corruption of our large cities.[2] But there is one phase of "self government" Mr. Dillon has not touched upon. The choice of a *Bürgermeister* in Prussia is left to the city council, the government reserving the right *der Bestätigung* (approval of the choice). A case came under the writer's observation, where a city council selected a man whose political affiliations were not in concert with those of the government. The choice was rejected. A re-election led to the same result. Finally the government appointed a "Commissarius" to take charge

[1] Not exactly a "*crimen majestatis*," but technically called a "Majestätsbeleidigung."

[2] Blackstone, Commentaries, Book I., p. 9.

[3] Von Holst, Constitutional History of the United States, vol. I., p. 74.

[4] "Es ziemt dem Unterthanen nicht, die Handlungen des Staatsoberhauptes an den Massstab seiner beschränkten Einsicht anzulegen." (Büchmann, Geflügelte Worte, 17. Auflage, p. 433.)

[1] Dillon, Municipal Corporations, vol. I., p. 14.

[2] Brice, American Commonwealth, vol. II., p. 158.

of the affairs of the town. The Prussian cities Königsberg and Posen had similar experiences. Would a Republican town relish the appointment of a Democratic mayor by Mr. Cleveland? I say nothing of the constitutional questions which would arise under such circumstances. Such measures, combined with the unnatural suppression of public opinion, prepare a ready soil for socialistic agitation, as seen in the fact that during the suppression of the socialistic press that party gained more strength than at the time they were allowed to vent their eccentric ideas.

Germany has, strictly speaking, no common law. The local law has all been codified; and the influence which the "Humanists" attained over the "letter of the law" during the second part of the last century, and which led to the disregard of the written law providing for torture, etc., was early in the beginning of this century crystallized in the *Allgemeines Preussisches Landrecht*, the Bavarian Penal Code, and other penal codes which became afterwards the basis of the uniform Penal Code previously mentioned. The ancient notion of a "common German law" (*Gemeines Recht*) was superseded by the Code, so that even in the instruction at the universities the fiction of a common law was abandoned. It is curious and interesting to observe that, while in the United States from some quarters the civil law is lauded to the skies, coupled with the pious wish that "the tongue should have been palsied"[1] that pronounced institutions growing up under the English common law "as a plan of freedom," some of the German thoughtful writers deplore the disuse of the traditional institutions and customs of the ancient Teutons, roasting — to express it in classical language — the venerable Roman jurists to their heart's content. Victor von Scheffel, the poet and jurist, of whom I shall speak later, has this to say about his studies in the Roman law:[1]

"Also ward ich ein Juriste,
Kaufte mir ein grosses Tintfass,
Kauft' mir eine Ledermappe
Und ein schweres Corpus Juris
Und sass eifrig in dem Hörsaal,
Wo mit mumiengelbem Antlitz
Samuel Brunnquell, der Professor,
Uns das röm'sche Recht docirt';
Römisch Recht, gedenk' ich deiner,
Liegts wie Alpdruck auf dem Herzen
Liegts wie Mühlstein mir im Magen,
Ist der Kopf wie brettvernagelt;
Ein Geflunker musst' ich hören,
Wie sie einst auf röm'schem Forum
Kläffend mit einander zankten,
Wie Herr Gaius Diess behauptet
Und Herr Ulpianus Jenes,
Wie dann Spätre dreingepfuschet,
Bis der Kaiser Justinianus
Er, der Pfuscher allergrösster,
All' mit einem Fusstritt heimschickt."

To call the emperor Justinian "*der Pfuscher allergrösster*," — bungler *magnificissimus*, so to speak — is certainly audacious and original. But the courageous poet goes on to dwell upon the uselessness of the study of the law of the Romans, sighing for "the own common right," sprung up among the glens of his native land:

"Und ich wollt' mich thöricht fragen:
'Sind verdammt wir immerdar den
Grossen Knochen zu benagen,
Den als Abfall ihres Mahles
Uns die Römer hingeworfen?
Soll nicht auch der deutschen Erde
Eignen Rechtes Blum' entsprossen
Waldesduftig, schlicht, kein üppig
Wuchernd Schlinggewächs des Südens?
Traurig Loos der Epigonen!
Müssen sitzen, müssen schwitzen,
Hin und her die Fäden zerren
Eines wüstverschlungnen Knäuels,
Giebts kein Schwert und andre Lösung?

The wish of the poet has not yet been realized. No Alexander has come to cut the Gordian knot of the foreign system of the civil law, and no Blackstone has yet

[1] Martin F. Morris, Washington, D. C., The Contest between the Civil and the Common Laws. (Pamphlet.)

[1] Victor von Scheffel, Der Trompeter von Säkkingen, pp. 40, 41.

dared to collect the common law of Germany, although very recently the study "*des deutschen Rechts*" has experienced a new impulse in some of the German universities. In the case of V. v. Scheffel an additional reason for his incapability of grasping the sterile principles of the Roman law must be sought in his poetical turn of mind, of which he speaks so pleasantly that I cannot withstand the temptation of quoting a few lines more from the same book:

"Oftmals sass ich bei der Lampe,
Sass ich brütend ob dem Codex,
Lass die Gloss und den Cujacius,
Bis mich Kopf und Haupthaar schmerzten.
Doch dei Fleiss blieb ohne Segen.
Lustig flogen die Gedanken
Von den Lettern in die Weite
Zu des strengen Herrn Cujacius
Schöner Tochter, die dereinstmals
Glücklicher Pariser Jugend
Vom Catheder ihres Vaters
Hefte süss melodisch vortrug.
Statt Usucapion und Erbrecht,
Statt Novella hundertachtzehn
Schaut' ein schwarzgelocktes Mägdlein
Grüssend aus dem Corpus Juris.

Cujacius' pretty daughter sealed his doom.

The German jurists find more leisure to do literary work than our American lawyers and judges. Tradition precludes the entering upon business enterprises, and judges are very seldom found to change their vocation. Those who have quitted practice in order to embark in politics as members of the opposition, as Eugen Richter, are the rare exception. More common is the preliminary theoretical study of jurisprudence with a view of entering the "*Staatsdienst*," the civil service. Most of the heads of great municipalities, even, are jurists.

To the American reader such jurists as have been prominent in the world of letters are undoubtedly of greater interest than local celebrities who occasionally penned a poetical line. This consideration chiefly influenced the writer in making his selections.

Goethe as poet towers above the score or more who have studied the pandects and achieved fame in literature. His intellectual bent was in any other scientific line rather than in that of jurisprudence. He studied it in Leipsic and Strassburg merely to please his father, obtaining from the latter university the degree of *doctor juris*. Although in one of his letters to Fräulein von Klettenberg he says: "Jurisprudence begins to please me very much. Thus it is with all things as with Merseburg beer; the first time we shudder at it, and having drunk a week, we cannot do without it,"[1] his instructor, Professor Böhme, had given up all hopes "of making him another Heineccius." To be sure, he discharged afterwards the duties as president of the Council of the small duchy of Saxe-Weimar to the full satisfaction of all concerned; yet he was never after legal facts and principles:

"Ein schöner Wahn, der mich entzückt,
Wiegt eine Wahrheit auf, die mich zu Boden drückt."[2]

was his motto. And then, he had too many other mistresses, studying alchemy, medicine, philosophy and theology besides jurisprudence. His experience at the *Kammergericht* at Wetzlar, where he went to "learn the practice," was anything but encouraging to a man of genius. "Imagine a German chancery.[3] In no country known to me chancery moves with railway speed, and in Germany even the railways are slow. Such a chaotic accumulation as this Wetzlar Kammergericht presented was perhaps never seen before. Twenty thousand cases lay undecided on Goethe's arrival, and there were but seventeen lawyers to dispose of them. About sixty was the utmost they could get through in a year, and every year brought more than double that number to swell the heap. Some cases had lingered

[1] Lewes, Life of Goethe, vol. I., p. 59.

[2] Delusion sweet, caressing,
Outweighs a truth oppressing.

[3] I quote from Mr. Lewes' book (vol. I., p. 70), still the best Goethe biography extant.

through a century and a half and still seemed far from decision. This was not the place to impress the sincere and eminently practical mind of Goethe with a high idea of jurisprudence." We have some difficulty to reconcile the theme of his dissertation "that it is the duty of every law-maker to establish a certain religious worship binding upon clergy and laity" and the contents of a letter by Kestner to the effect that "he (Goethe) does not go to church or to sacrament, and seldom prays. For, says he, I am not hypocrite enough for that." Upon the whole, he strove after truth, yet valued the feeling of truth rather than the demonstration. His peculiar trait was submission to constant teaching.

"A Quidnunc boasting, said: 'I follow none,
I owe my wisdom to myself alone;
To neither ancient nor to modern sage
Am I indebted for a single page.'
To place this boasting in its proper light:
The Quidnunc is — a fool in his own right."

The next best known German poet, trained theoretically in the study of law, is Heinrich Heine, the vacillating satirist. After his studies in Bonn, Berlin and Göttingen, graduating from the latter university, he lived in Hamburg, Berlin and Munich, and after 1830 almost exclusively in Paris, where he drew an annuity from the government, and became greatly estranged from his native country. Dissipations of the most extraordinary kind caused his confinement to his bed during twelve years, until in 1856 death released him from his unendurable pains. His prose writings are anything but deep; rather loose sketches replete with acrimonious allusions and biting sarcasm. He never entered upon the practice of law, and his chief delight during his studies seems to have been to deride the merry doings of his fellow-students. Their "Comment" he declares as properly belonging to the "*legibus barbarorum*." He scornfully complains of his studies: "Ich war die ganze Zeit nicht aus dem Pandectenstalle herausgekommen. Römische Casuisten hatten mir den Geist wie mit einem grauen Spinnweb überzogen, mein Herz war wie eingeklemmt zwischen den eisernen Paragraphen selbsüchtiger Rechtssysteme, beständig klang es mir noch in den Ohren wie Tribonian, Justinian, Hergomenian und Dummerjahn,[1] und ein zärtliches Liebespaar das unter einem Baume sass, hielt ich gar für ein Corpus Juris."[2] He is nevertheless one of the favorite poets, especially among women, owing perhaps to his trifling disregard of women's virtues, as some one has pointed out. The empress of Austria is said to be especially fond of Heine. His style may be imitated more readily in French than in English, for which language he had little taste, deriding constantly its barbarous pronunciation, and making epigrams on the "large feet of the English ladies." Just now a great part of his correspondence has been published, and the popularity of Heine is certainly as great as that of any other German poet.

Johann Ludwig Uhland is the most conspicuous representative of the so-called Swabian School of poets. Born in 1787 at Tübingen, he commenced the study of jurisprudence when still in his teens, and became a doctor of law in 1810. After a sojourn through France he settled in Stuttgart, where he was employed in the *Justizministerium*. When in 1815 the king of Würtemberg attempted to change the constitution, Uhland manfully took sides with the people, his patriotic songs kindling the flame of liberty which was to break forth thirty years later. From 1829 to 1833 he was a professor of the German language and literature in the university of Tübingen, and a member of its philosophical faculty. During twenty years, from 1819 to 1839, as

[1] The word means literally "foolish John" (dunce). The last syllable in "Justinian" and the other law dignitaries mentioned sounds (in German) exactly like the last syllable in "Dummerjahn," hence the effect of the play upon words.

[2] Harzreise, p. 7.

member of the *Ständeversammlung* and the *Kammer*, he was one of the staunchest "constitutional opponents." In 1848 he came again into prominence as a member of the *Deutsche Nationalversammlung*. He died in 1862. A monument, designed by Kietz, was erected to him in 1873; but his memory is imperishably engraved in the hearts of the German people. As patriot he is among the best of his nation, as lyric poet he is almost without a peer. His ballads and romances are unequalled for a rare facility to sketch life-characters in a few well-rounded sentences. With all his predilections for the lost grandeur of the heroic German age, he was never found to belittle the achievements of his own time. Although partly belonging to the Romantic School, his lucid manner of presentation, substantial knowledge, and patriotic candor favorably contrast with the false sentimentality and vagueness of expression of that school. What a world of hope lies in this prophecy:

> "Wo immer müde Fechter
> Sinken nach hartem Strauss:
> Es kommen neue Geschlechter
> Und fechtens ehrlich aus."

Friedrich Rückert is best known as the interpreter of oriental legends and poetry, of which he presented a considerable number in the acceptable dress of German blank verse. He was born in 1788 in Schweinfurt and studied law at Würtzburg and Heidelberg. Later he confined himself almost entirely to oriental philology, of which science he subsequently became professor at Erlangen, and in 1841 at Berlin. In 1849 he retired from academic teaching and followed exclusively literary pursuits. Of his works there are many, the poetical works alone comprising twelve volumes. Although he only died in 1866, the prevailing modern taste regards his poetry as somewhat antiquated. He is certainly not appreciated as his fine wit and faultless diction deserve.

There was a time in Germany when it was thought unbecoming for a man of genius to lead an orderly domestic life. A sort of strolling aimlessness was the sign of the times at the close of the last and the beginning of this century. This perverted sentiment, so masterly portrayed in Goethe's "Wilhelm Meister," affected the moral vertebræ of many men that were neither geniuses nor of an exceptionally bad disposition. The poet Carl von Holtei was one of the victims of those times. In 1797, in the stately city of Breslau, he first saw the light of the world. With youthful enthusiasm he enlisted in the Prussian army in the year when the battle of Leipsic was fought. After Napoleon's banishment he went home to study law. His restless nature soon drove him to the stage, which later on he deserted as actor, occupying a post as secretary of the city theatre in Breslau. He married the actress Louise Rogée and went later to Berlin. His young wife dying shortly after marriage, he married again, when he lost his second wife in 1838. During several decades of his life he was travelling over Germany and a part of Russia as leader of an itinerant theatrical troupe, so common in those days. In 1870 he went back to Breslau, where he found an asylum in the cloister of the order *Barmherzige Brüder*. He died in 1880. A romantic look-out in Breslau is named after him the "Holtei-Höhe," where a simple monument was erected to his memory in 1882. He published in 1826 his poems, and followed with a great number of pieces for the stage, among which the drama "*Lorbeerbaum und Bettelstab*" is still on the *repertoire* of the royal as well as the provincial stages.

DENNIS'S CASE.[1]

By Francis Dana.

A CREDITOR who clung to every claim,
Keen for his debts as Shylock late of Venice,
Once sued a debtor whose unlucky name
Was Dennis.

And when upon the contract suit he'd licked him,
And on a debtor's hearing had him bested,
He took a precept out and had his victim
Arrested.

Dennis applied for the Poor Debtor's Oath,
His countenance with pearls of woe bedizened:
The court found "fraud" and had him (very loath)
Imprisoned.

And shut him up behind an iron grating
And gave him thirty days by way of sentence,—
An ample term — it seemed — for cultivating
Repentance.

When thirty weary days had worn away,
Dennis addressed his jailer: "Am I through, sir?"
And felt surprised to hear that worthy say:
"*Not you*, sir!

"Debtors for *fraud* and *contumacy* both
"Must stay in jail (the Statute leaves no doubt of it)
"Until they can, by offering the oath,
"Get out of it.[2]

[1] 110 Mass. 18. [2] G. S. 124, § 14.

"Further enacted, that, whenever he
"(The Debtor Poor) shall be of *fraud* convicted,
"Forever from that oath that man must be
"Restricted!"[1]

It seemed the Legislature was to blame,—
The act produced a consequence infernal,
Whereby poor Dennis' punishment became
Eternal.

For years poor Dennis could not be extracted,
For years the Creditor, obliged to feed him,
Paid for his board: A law was then enacted
That freed him.[2]

Yet still we celebrate his woful fame,
And when inevitable sorrows menace
Some luckless wight, men whisper that "His name
Is Dennis!"

[1] G. S. 124, § 34. [2] St. 1872, C. 281, §§ 2 and 3.

OLD-WORLD TRIALS.

II.

REG. *v.* NEWMAN.[1]

IN the autumn of 1851, Giovanni Giacinto Achilli, some time a monk of the Dominican Order and a priest of the Roman Catholic Church, but at the time in question a convert to the Protestant faith and minister of an Italian Protestant church near Golden Square, London, was attending public meetings for the purpose of denouncing the Roman Catholic Church in general and the Inquisition in particular. At or about the same time, Dr. John Henry Newman, then a priest, afterwards — as everybody is aware — a cardinal of the great ecclesiastical organization that Dr. Achilli attacked, was delivering a course of lectures in the Oratory of St. Philip Néri, Birmingham, on "The Present Position of Catholics in England." The professed object of these remarkable lectures (which were subsequently published) was to sweep away the film of prejudice and misconception through which the average Englishman regarded the sayings and doings of his Catholic brother. In other words, Dr. Newman attempted, with great ability, ingenuity and rhetorical power, to account for our national aversion towards Catholicism on purely historical grounds, without for a moment admitting its justice or propriety. Dr. Achilli's alleged disclosures were obviously calculated to deprive this 'special plea' of much of its force, and he was naturally and properly regarded by the Catholic community as a renegade and a dangerous foe. Now Achilli's reputation was not, unhappily, above suspicion. In June, 1850, there had been published in the *Dublin Review* a sketch of his career, in which he was charged roundly and circumstantially with the grossest immoralities, and was challenged to an inquiry. For fifteen months he took no other notice of this libel than to deny its truth in general terms. The charges were soon, however, reiterated in a form that could not be ignored. In his fifth lecture (on "The Logical Inconsistency of the Protestant View"), Dr. Newman gave vent to them again in the following philippic: "And in the midst of outrages such as these, my Brothers of the Oratory, wiping its mouth and clasping its hands and turning up its eyes, it (i. e. the Protestant public) trudges to the Town Hall to hear Dr. Achilli expose the Inquisition. Ah! Dr. Achilli, I might have spoken of him last week had time admitted of it. The Protestant world flocks to hear him because he has something to tell of the Catholic Church. He has something to tell it is true; he *has* a scandal to reveal; he *has* an argument to exhibit. It is a simple one and a powerful one as far as it goes, and it is *one*. That one argument is himself; it is his presence which is the triumph of Protestants; it is the sight of him which is a Catholic's confusion . . . He feels the force of the argument and he shows himself to the multitude that is gazing on him. 'Mothers of families,' he seems to say, 'gentle maidens,' 'innocent children,' look at me, for I am worth looking at. You do not see such a sight every day. Can any church live over the imputation of such a birth as I am?" Then followed a specific enumeration of the immoralities of which Achilli was alleged to have been guilty.

[1] *Achilli v. Newman.* A Full and Authentic Report of the above prosecution for libel, trial before Lord Campbell and a special jury, in the Court of Queen's Bench, Westminster, June, 1852. With introductory remarks. By the editor of "The Confessional Unmasked." London. W. Strange, 8 Amen Corner.

The libel concluded thus: "Yes, you are an incontrovertible proof that priests may fall and friars break their vows. You are your own witness, but while you *need* not go out of yourself for your argument, neither are you *able*. With you the argument begins, with you too it ends. The beginning and the ending, you are both. When you have shown yourself you have done your worst and your all: You leave your sting in the wound; you cannot lay the golden eggs, for you are already dead." When Dr. Newman's lecture was published, Dr. Achilli obtained leave from the Court of Queen's Bench to file a criminal information against the publishers Messrs. Burns & Lambert. Newman at once admitted, however, that he was the author of the libel, and his name was, by leave of the Court, substituted for that of the original defendants. Prior to the statute 6 & 7 Vict. c. 96 s. 6 there existed a strange anomaly in the English law of libel. If the party libelled proceeded by *action* it was competent to the defendant to plead that the alleged libel was true; and if this plea was established, it constituted a complete justification. On the other hand, if the party libelled chose to proceed *criminally by indictment or information*, the plea of justification was inadmissible. The ground for such proceeding was that the publication of a libel tended to produce a breach of the peace, and it was obvious that this result was not less likely to follow where the libel was true than where it was false. This gave rise to the common saying, "The greater the truth, the greater the libel." In 1843, however, at the instance of Lord Campbell, who himself presided at the trial of Dr. Newman, an act was passed (6 & 7 Vict. c. 96) enabling the defendant in a criminal prosecution for libel to plead *justification*, i. e. that the libel was true in substance and in fact, *and* that its promulgation was for the public benefit. Newman availed himself of this privilege, set up a plea of justification, containing twenty-three distinct charges against the prosecutor, gave ample particulars and undertook to prove them. The case came on for trial before Lord Campbell and a special jury on June 21, 1852. The Attorney-General (Sir Frederick Thesiger), the Solicitor-General, and Mr. T. F. Ellis, joint author of the famous *Ellis and Blackburn Reports*, appeared for the Crown, Sir. A. E. Cockburn, Mr. Serjeant Wilkins, Mr. (afterward Lord) Bramwall, Mr. Addison and Mr. Badeley for the defendant. The Attorney-General opened the case for the prosecutor in a short and colorless address, in which he pledged himself to call Dr. Achilli as a witness after the evidence for the defendant had been given. Cockburn then opened the case for the defendant in his best style. His address is a masterpiece of persuasive exposition and deserves the careful perusal of every student of law. An imposing body of evidence was then produced. Some of the defendant's charges were left entirely unsupported. Others were not proved. But several of the gravest of them were backed up by witnesses whose testimony appears to us to have remained quite unshaken by cross-examination. Eleana Giustini, née Valente, swore that Achilli had seduced her in the Dominican Convent at Viterbo. It was, however, elicited from her in cross-examination (*a*) that for twenty years she had concealed this alleged fact from every one but her confessor, and (*b*), that her curate had earnestly advised her to come to England "for the glory of God and the honor of Holy Mother Church." Sophia Maria Balisano, née Principe, and her mother Gaetana Principe, had a similar story to tell. Neither of these witnesses was broken down in cross-examination, and it was clear that complaints against Achilli had been made by them at the time. Then there was a good deal of evidence as to a suspicious meeting in the dark between Dr. Achilli and the wife of a tailor at Corfu. But it fell short of proof, in spite of some unfortunate contradictions in the stories about it

told respectively by Achilli and the lady in question. Three English servant girls, whom the prosecutor was said to have seduced, were next examined, and a decree of the Inquisition at Rome depriving Achilli of all ecclesiastical functions forever, on the alleged ground of his confession of rape and fornication, was held by Lord Campbell to be admissible. Dr. Achilli stood the ordeal of examination and cross-examination with courage and ability; he denied each and every one of the allegations against him, and seems to have impressed the jury favorably. Cockburn summed up the case for the defendant with much force and skill. His peroration is worth transcribing: "These halls, in which this inquiry is now taking place, have not to-day for the first time witnessed the miscarriage of justice in cases of religious quarrels; there remain, unhappily for our fame, upon the pages of history some unfortunate transactions which have taken place in this great hall, which is associated, I grieve to say, with the dark as well as with the more glorious epochs of our history. Here then have taken place judicial proceedings over which the historian would gladly draw an impenetrable veil, were it not that history, by holding up its beacon light over the errors of the past, should warn us against the evils of the future; and though the days, thank God, are now past when human life was sacrificed to religious bigotry and passion, yet there have been times when juries — aye, juries taken from the intelligent community of this city, and when even judges have lent themselves to judicial murders, for they were neither more nor less, on the score of religious zeal. These are indeed different times, and this is a trifling cause compared with those. But that same feeling which then deadened men's hearts and consciences to the higher motives by which they should have been guided and directed, may . . . creep with that insensible subtlety with which they do creep around men's minds and understanding, and may shut your eyes to the sight of truth and your minds to the light of reason . . . I ask you to give the case a calm and dispassionate consideration, and if you do so I entertain the strongest confidence that your verdict will be in my favor."

Sir Frederick Thesiger's reply — long, elaborate and minute — was worthy of the occasion, but presents no passages that lend themselves readily to quotation. After a careful summing-up the jury found that none of the charges of immorality had been proved. A rule *nisi* for a new trial was subsequently obtained. But it was eventually discharged on the ground that, even if Dr. Newman succeeded in proving some of the charges, there were others he could not prove, and that thus the only defence competent under Lord Campbell's act, viz. *a complete justification of every part of the libel*, could not be established. A modified penalty of £100 was imposed. LEX.

LEGAL REMINISCENCES.

V.

L. E. CHITTENDEN.

ARE THE MORALS OF THE BAR RETROGRADING? A recent professional experience has forced this inquiry upon me in a very impressive way. These are the facts involved:

A poor man consulted a young lawyer upon a claim against a municipal corporation. After examination of the records and authorities, the lawyer advised him that he had a good claim for over $2000.

The corporation would not pay, and the client had no money. He offered the lawyer half the recovery if he would prosecute the suit. Such a contract was authorized and protected by a special section of the code; it was reduced to writing, signed, and notice of it given to the counsel for the corporation, with further notice to make no settlement without the attorney's privity.

When the action was at issue, the attorney moved to place it on the "short cause" calendar. The defendant's attorney asked for a short adjournment of the motion, for his personal convenience, which the attorney for the plaintiff granted.

The defendant's attorney utilized the time so obtained by a settlement with the plaintiff in person, and by the tempting offer of about one-third of the claim in cash, obtained from the plaintiff a discharge of the claim and action. This was done behind the back of the plaintiff's attorney, whose office was only a few blocks away, with full knowledge of the attorney's contract and lien.

Defendant's attorney pleaded its discharge, and the plaintiff's moved the court for leave to prosecute the suit for his own benefit. Although vehemently opposed, leave was granted. The counsel for the corporation appealed from the order to the general term and then to the court of appeals, where it was affirmed.

After all these exercises and the recognition of the claim by the settlement and payment, the same attorney tried to defend at the circuit on the ground that the plaintiff never had any claim. The jury made short work of his defence, and asked a further instruction which implied that they would have rendered a verdict for the full half of the original demand if the court had not held that the recovery was limited to one-half the amount of the settlement, to which the plaintiff had agreed.

During the trial I could not avoid asking myself what would have happened forty years ago to an attorney who had settled a suit with a party behind the back and without the knowledge of his attorney? Would such conduct have escaped the condemnation of the court, and the censure of, if not expulsion from the bar? I think not. True, I never knew of such a case, and a precedent could not be established until a case existed. The nearest approach to it, which I recall, was where an attorney claimed a continuance over the term, on the ground that he was negotiating with the party for a settlement without the knowledge of the attorney. The attorney who was ignored was the late Judge Smalley, and Judge Collamer was the presiding justice. Between them, they cured that attorney of his bad habit, and I thought at the time, made him regret that he ever was born. If there was any lesson thoroughly taught by the example of our leaders or the traditions of the bar, it was that all communications to the adverse party in a litigation must be had with his attorney, and that any attempt to deprive that attorney of his compensation, or any interference with his relations to his client, was unprofessional and dishonorable.

If I were to counsel my younger brethren touching the practices which I condemn, I think I would follow the example of a friend who announced as the subject of his next lecture to a large class of law students, "Demurrers to Bills in Equity." His lecture was brief: "If you are ever tempted to demur to a bill in Equity," he said, "don't you do it." And I say, "If you are ever tempted to deal with an adversary client behind the back of his attorney, don't you do it!"

The reported cases show that these violations of the canons of our profession are more numerous than they once were. One would hope that they proceed from ignorance rather than conscious intention. It would require a full measure of proof to convince me that any sound lawyer would deliberately sanction them. For as our country increases in years, wealth, and I fear in corruption, the lawyer has many reasons

to be proud of his calling. Lifting our eyes to a survey of the whole horizon of active life, and we see no art, trade, business or profession which maintains higher standards for the conduct of its members than the law. There are cynics, I know, and some of them in high places, who profess to entertain low opinions of the morals of the bar. Perhaps these critics are confirmed in their opinions because lawyers never contradict them. Yet these critical gentlemen will admit that the acts which have conferred the highest honors upon the late President Harrison and President Cleveland have been the high character of their judicial nominations. Of these none have been more honorable or more fit to be made than the very latest. It meets the approbation of the bar *because* Mr. Hornblower is an able lawyer, a courteous gentleman and a man of clean reputation.

In this connection I might also refer to one of the most striking object-lessons of the century, just now presented to the public view. A nomination to a high judicial office is tendered in payment of a political debt. Grave charges have been preferred against the candidate, which called for investigation. The bar condemns no man unheard. It submitted these charges to a tribunal of a number of its best and most competent members —men of unimpeachable integrity, purity of character and high judicial qualifications. After an investigation which omitted no material fact or circumstance and included the best attempt at exculpation which the accused could make, that committee with no dissenting voice, were constrained to declare him guilty of an act which the common judgment of men and the law of the land denounce as a high crime. He left them no vestige of ground for excuse. With incredible fatuity he proclaimed that he performed the act with deliberation. The report of that committee permanently fixes his *status* with the bar. Politicians may pay the wages of his crime with a judicial nomination — men who profess to obey the commandments may palter with their consciences to excuse him — a majority of the voters may elect him, but in such unworthy performances they can have no assistance from the reputable members of the legal profession. Instead of it their voices and their votes will be given against him. Without distinction of party interest, or any thing in the heavens above or the waters under the earth, the influence of the bar will be exerted for the honor of the state and the purity of its judiciary.

The foregoing was written two weeks in advance of the verdict. I let it stand as a proof that the bar can be counted upon to maintain the purity of our judiciary. The election has been made. By a majority of more than one hundred thousand votes, the competitor of the candidate who defied the opinion of the bar and the public has been elected. In his fall that candidate is now charged with the defeat of every other nominee on his ticket. Whether this charge be true or not, neither he nor any other overzealous partisan will repeat his error. A powerful object-lesson has been set before all politicians. Hereafter all judicial candidates in the Empire State will be men entitled to the confidence of the people and the support of the bar. The vicious notion, that character and moral principle no longer count in politics, has received its quietus. Finally and better than all the rest, we have another assurance that "a government of the people, for the people, by the people has not perished from the earth."

THE SUPREME COURT OF VERMONT.

II.

By Russell S. Taft.

THE early Vermonters strongly supported the Declaration of Independence, especially the charge in it against King George the Third, "For transporting us beyond seas to be tried for pretended offences." They opposed, with arms, the extraordinary act of the New York Legislature providing that the courts in Albany County should have jurisdiction of crimes committed in Charlotte County, that vast stretch of country bordering on both sides of Lake Champlain, extending north to the Canadian line. They were early and firmly impressed with the idea that they ought to be tried for their offences in the vicinage, and by impartial men, for they remonstrated against the election of the "Friends of Ministerial Tirrany and Usurpation," as they "could perceive no difference between being halled to Great Britain for Tryal or being Tryed by these tools amongst ourselves." So earnest were they in this belief, that it found embodiment in the first constitution, and the provision has been continued since, and still is the organic law of the land, in that article which reads: "Courts of justice shall be maintained in every county." The only purpose for which a county in Vermont was ever organized was to serve as a district in which courts might be held. The ever present justice of the peace is a justice not for the State, but "within and for the county," and as such he has exercised jurisdiction in the prosecution of inferior crimes, misdemeanors, and petty civil causes, since the organization of the State government, but his jurisdiction has been limited by the confines of his county. When courts were established at the first session of the Legislature in March, 1778, it was provided that there should be in every county a county court, and by that name it has become and now is the only court for the trial of questions of fact in all important cases cognizable at common law. The first act constituting them is not in existence; but it is evident they were established, from the titles of votes passed, one of which reads as follows: "Voted, that the report by the committee relative to providing attorneys for the county courts, regulating their fees, etc., be accepted." At the June session it was voted that the special courts were not deemed county courts, etc. County courts were not organized, however, until 1781. The Superior Court, from 1778 to 1782, and the Supreme Court since the latter date, were required to meet in each county.

The Supreme Court may be said to date from the year 1782. The highest court, prior to that date, although it is sometimes called the Supreme Court in the records, was styled, in the act establishing it, the Superior Court. When, in 1782, the Legislature deemed it essential to exactly limit and define the different powers of the several courts of justice, the highest court was styled the Supreme Court, and such has been its title since. It was provided that it should be held and kept annually in each county by one chief judge and four other judges. The act took effect in the autumn of 1782, and since that time jurisdiction of all matters of litigation of a general character, including the prosecution of crimes and divorce, has been vested in the county and Supreme courts. The judicial officers of the Supreme Court have always been styled the Chief Judge and assistant judges, except in the act of 1824, in which they

were called justices. The powers given the Supreme Court, in the act creating it, were, that the judges "shall have cognizance of all pleas of the State, criminal actions and causes, and whatsoever relates to the conservation of the peace and punishment of offenders, whether the same be brought in to said court by appeal or by any original process, according to law, and also of civil causes or actions between party and party, and between this State and any of its subjects, whether they do concern the realty and relate to any right of freehold and inheritance, or whether the same do concern the personalty and relate to matters of debt, contract, damage or personal injury, and also all mixed actions which concern both realty and personalty brought before them by appeal, review, writ of error, or in any legal way whatsoever." The county courts were given jurisdiction of all criminal matters of every name and nature, except of such offences as were cognizable only in the Supreme Court. The jurisdiction, therefore, of the county court was substantially the same as that of the Supreme Court. The latter was given appellate jurisdiction of matters in the county courts.

PETER OLCOTT.

It is evident that the greater part of the litigation for many years was in the Supreme Court. Writs of error could be brought in that court only. As the law stood at first, in causes brought in the county court, four jury trials might be had, two in that court, and, on appeal, two in the Supreme Court, a review being permitted in both courts. The judges of the Superior Court had been elected annually in October, and the act creating the Supreme Court provided that the judges should be elected by the Legislature at the same time, by ballot. At the first election in October, 1782, Moses Robinson was elected Chief Judge, and Paul Spooner, John Fasset, Jr., and Jonas Fay were elected assistants; they were then serving as judges in the Superior Court. John Throop, who was then serving as one of the Superior Court judges, was omitted, and Peter Olcott elected fourth assistant. Our judicial system was derived, substantially, from Connecticut, and in that colony the judges were not permitted to give their opinion to the jury, in the first instance, even in matters of law; and when the jury had returned a verdict, each judge advised them in favor of or against the verdict, as was agreeable to his individual opinion, and the views of a majority of the judges prevailed. I infer that this was the custom in the early days of Vermont; the jury decided all questions, with the advice of the judges upon questions of law; the duty of the Court seems to have been to preserve order in the court-room and see that the parties had fair play, or, as it was sometimes termed, that they "were on an evener." This may have been the reason why so many of the early

judges were selected from military life. Questions of law and fact came to be separated, and in 1797 an act required that each judge of the Supreme Court should make his opinion in writing and the clerk should record it.

THE JUDGES.

MOSES ROBINSON.—One of the first immigrants to Bennington was Samuel Robinson, who came from Hardwick, Mass., in 1761, and with him came his two sons, Moses and Jonathan, who both became Chief Judges of the Supreme Court; the former also became governor and represented the State in the Senate. At the time of the organization of the Superior Court, in 1778, Moses, then in his thirty-eighth year, was selected as its Chief Judge; he acted as such until the organization of the Supreme Court, when he was elected Chief Judge of that court. He was elected town clerk of Bennington at the first meeting in 1762, and continued as such for twenty years; he commanded a regiment of militia, was with it at Mt. Independence, opposite Ticonderoga, on its evacuation by Gen. St. Clair; was early a member of the Council of Safety; and served as Chief Judge of the Supreme Court until October, 1784. The docket of the court shows that he was absent from midwinter, 1783–4, until the following October, for what reason I am unable to learn. He was not elected in October, 1784, and Paul Spooner, who presided during his absence the preceding year, was elected Chief, and Nathaniel Niles added to the bench. Why Judge Robinson retired, for it was no doubt voluntary, it is difficult at this day to determine. He was re-elected in October, 1785, and continued in service as chief of the court until 1789, when he was elected governor, by the Legislature, there having been no choice at the polls. In 1790 Dartmouth College conferred upon him the honorary degree of A.M.

He served as one of the agents of Vermont in the adjustment of the controversy with New York, and in 1791 was elected one of the first senators in Congress. He was a warm political friend of Jefferson and Madison, and united with them in their favorable views of the French revolution; was opposed to Jay's treaty with England, voting against its ratification, and was instrumental in procuring its condemnation by a Bennington town and county meeting, in connection with similar demonstrations in other parts of the country, to induce Congress to withhold the necessary appropriations for carrying the treaty into effect.

He was visited by Mr. Jefferson and Mr. Madison in June, 1791, they spending the Sabbath with him at his home in Bennington; he induced them to attend church, being a religious man and scrupulously exact in the performance of his sacred duties; and proud of the singing of the choir, after the services were over he insisted upon having their opinion upon its merits and especially how it compared with church music in larger places; both were obliged to confess that they were not competent judges of the matter, neither of them having attended church before in several years.

Finding himself in the minority in respect to his political views, he resigned the senatorship in October, 1796; he represented Bennington in the General Assembly in 1802, and was not afterwards in public life.

PAUL SPOONER came to Vermont in 1768, when twenty-two years of age, and purchased a farm in Hartland; he was a physician, having obtained his education before he came, and it is written of him, "He is believed to have been well educated and to have had a good professional reputation." He first appeared in Vermont history as a delegate from Hertford (now Hartland) in a convention at Westminster, in October, 1774, called to condemn the obnoxious measures of Great Britain; was one of the committee upon resolutions passed by the

convention. He was a delegate to and secretary of a convention of Whigs at Westminster in 1775, and in that year was chosen one of three delegates to represent Cumberland County in the New York Provincial Congress, and was re-elected the following year. He was chosen sheriff of Cumberland County, under the New York government, but declined, as a week before he had been appointed one of the Vermont Council of Safety, to which position he was re-elected five times. In 1782, he was elected Lieutenant Governor, and held that position until 1787; in 1780 and 1782 he was appointed agent from Vermont to Congress.

He had served as one of the Superior Court judges, and upon the organization of the Supreme Court, was elected first assistant, and served until 1789; in 1784 he was elected Chief Judge, and served one year; the following year, the former Chief Judge, Robinson, was elected, and Spooner resumed his place as first assistant; in 1781 and 1782 he was judge of the Probate Court, in the district of Windsor.

JACOB COLLAMER.

The following is a good example of the respect shown him: The Rev. Elisha Hutchinson was preaching in Hartland, and in the midst of his discourse, Mr. Spooner entered; the Rev. Elisha informed his audience that he had "got about half through his sermon, but as Governor Spooner had come to hear it, he would begin it again." Then, turning to a woman who sat near him, he said, "My good woman, get out of that chair and let Governor Spooner have a seat, if you please."

In the notices of Judge Spooner, it is stated that he removed to Hardwick, Vt., and held various offices in and after the year 1795, but this is an error,—it was his son Paul who went to Hardwick. Judge Spooner died the 4th day of September, 1789, while serving as one of the judges, the first one who died in office. He was forty-three years of age at the time of his death.

JOHN FASSET, JR., came to Bennington with his father, Deacon, Judge and Captain Fasset, in 1761. He was a member of the militia company of which his father was captain, organized in Bennington in 1764; was lieutenant in Col. Warner's regiment in 1775. He kept an accurate daily journal from the time he left Bennington until the regiment was disbanded there, in December of that year.

At that time there was no Catholic church in New England, and the record in his journal for Sunday, 15th October, when in camp at La Prairie, opposite Montreal, was: "Went to mass in the forenoon; I saw the strangest thing that ever I saw in my life — their ceremonies are beyond what I can express —they had six candles burning all y^e^ time." A week later his record is: "Went to mass with Col. Warner, Col. Brush, Major Safford, Adjutant Wallbridge and sundry others." He was captain, with Matthew Lyon as

lieutenant, in Col. Warner's continental regiment, and in the summer of 1776 was stationed in command of a few men at a block fort in Jericho, on the Winooski. The fort was abandoned upon the approach of the British army from Canada. It was alleged by the officers that the men deserted, but charges were made that the desertion of the men was by collusion with the officers, and Fasset and Lyon were arrested at New Haven on their way south, for deserting the post, and taken to Ticonderoga, where they were tried by a court-martial. They were found guilty, deprived of their commissions and rendered ineligible to reappointment in the Continental service. The latter part of the sentence General Gates annulled, saying that if anybody was d—d fool enough to appoint such cowards, they might. The sentence was subsequently reversed by General St. Clair. Lyon subsequently rendered efficient service in the Continental army. It was with reference to this affair that he was taunted by Griswold of Connecticut, when they had an encounter in the House of Representatives at Washington.

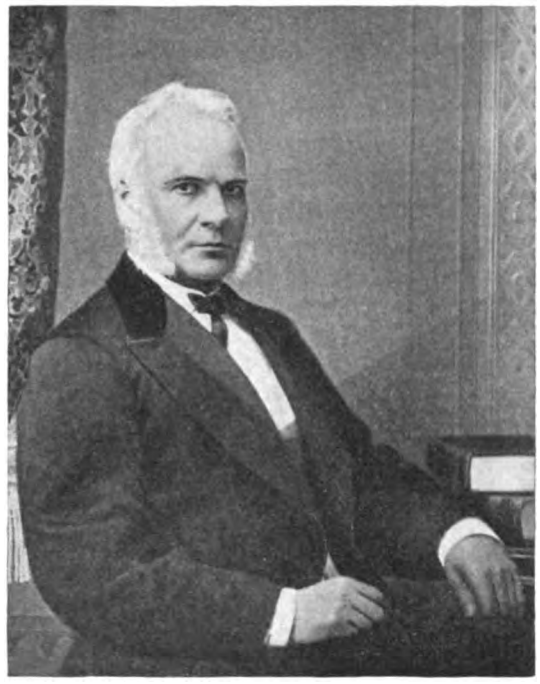
Fasset never re-entered military, but became prominent in civil life; in 1777 he was one of the Committee of Safety in the town of Bennington; with Matthew Lyon and Thomas Chittenden, then president of the Council of Safety, he moved to Arlington, until that time a hotbed of Tories, and took possession of the confiscated property in that town. In January, 1778, he was appointed Commissioner of Confiscation and served during the war. In 1781 he was one of the committee to issue bills of credit, then authorized by Vermont. He represented Arlington in the House, at the October session, in 1778, 1779 and 1782; in 1784 he removed to Cambridge, of which town he was one of the proprietors, and represented it in 1787, 1788, 1790, 1791 and 1797. His wife was Hannah, the daughter of Deacon Joseph Safford, the first treasurer of the town of Bennington. In 1780 and 1781 he was a member of the Board of War; in January, 1782, one of the committee of the council "to make a draft of the political affairs of this State"; he was one of the eight persons who had knowledge of the correspondence with General Haldimand, relative to Vermont's becoming a British province. He was the first town clerk of Cambridge, its representative in the convention of 1791, which voted to join the Union, and in the Constitutional Convention in 1793; he was elected a member of the Governor's Council from 1779 to 1794, inclusive, but did not always take his seat. During several of those years he held a seat in the House of Representatives, serving some of the time in the House and some of the time in the Council.

He was included in the first list of justices of the peace; was judge of both special courts in 1778, and judge of the Superior Court in 1778 to 1782, inclusive. He was the only judge of the Superior Court elected in the first instance at each of the four elections, and served during the existence of that court. When the Supreme Court was established, in 1782, he was elected one of the assistant judges, and continued in that court, by annual elections, until October, 1786; in October 1787, the county of Chittenden was formed and Fasset was elected Chief Judge of the county court, and presided as such until October, 1794. His was a singular instance of holding the position of councilor, a member of the House, and judge of the highest court in the State, at the same time, and for many years.

I find no instance of his having accepted any official position after 1794, except to represent Cambridge in the House in 1797. At the time he retired as Chief Judge of the Chittenden county court, in 1794, he had been in the judicial service of the State from the first, except one year; until 1786, in the highest court in the State, and after 1787, as Chief Judge of the Chittenden county court. He was then fifty-one years

of age, the last twenty of which he had passed in active, unintermittent toil to establish the infant commonwealth, which he served so faithfully and so well.

His official life, in its usefulness, its character and in its varied forms, was not excelled, if indeed it was equalled, by that of any of his co-patriots. The latter part of his life he lived quietly in Cambridge, and died in 1803. One of his sons, Elias, was at the Bar, but entered the regular army. His son, Dr. John Fasset, was surgeon of the Vermont regiment which marched to Plattsburgh in 1814, in spite of the proclamation of Governor Chittenden.



LUKE P. POLAND.

JONAS FAY.—One of the early settlers at Bennington was Stephen Fay, who came with his family from Hardwick, Mass., and kept the Catamount Tavern, the early council chamber of Vermont. His eldest son, Jonas, was a physician and occupied a prominent position among the settlers on the New Hampshire grants, and in the organization of the State government. At the age of nineteen he served in the French war at Fort Edward and Lake George as clerk of a company of Massachusetts troops. In 1772, he and his father were appointed agents to inform Tryon, Governor of New York, of the grounds of the complaints of the settlers against the government of that province, and was clerk of the convention of settlers in March, 1774, that resolved to defend by force Allen, Warner, and others who were threatened with outlawry and death by the provincial Assembly, and as clerk certified its proceedings for publication.

He was surgeon in the expedition under Allen, at the capture of Ticonderoga, and held the like position in Col. Warner's regiment of that year; was clerk of the Dorset convention in 1776, and member of the convention which declared Vermont independent, and chairman of the committee to draw up the declaration and petition to Congress, of which he was author. He was a member of the Governor's Council from its organization until 1785, judge of the Superior Court the last year of its existence, and of the Supreme Court during its first year. He served as Judge of Probate for five years. He attended the Continental Congress at Philadelphia, under appointment by Vermont from 1777 until 1782.

He was a man of extensive and general information, bold and stubborn in his opinions, which he maintained with vigor and ability. He was an experienced draftsman of public papers, and one of the best writers of the day. Conjointly with Ethan Allen, he published a pamphlet at Hartford, Conn., upon the New Hampshire and New York controversy, as to their respective claims to the Vermont territory. He was on terms of intimacy with, and enjoyed the confidence of, Governor Chittenden and the other founders of the State.

He had great admiration for the Allen brothers, and named his twin sons Ethan Allen and Heman Allen. The latter graduated at West Point, and entered the regular army.

Judge Fay resided for a few years in Charlotte, afterwards in Pawlet, but returned to Bennington and remained there until his death.

PETER OLCOTT came from Bolton, Conn., in 1773 and became active in both civil and military life. He was a member of the Vermont Court of Confiscation, for eastern Vermont, and of the court for the banishment of Tories; was a delegate from Norwich in the convention of 1777. He commanded a regiment of militia summoned for the relief of Bennington, and was employed in other military services in that region; was a member of the Governor's Council many years, and Lieutenant Governor from 1790 to 1793. He was elected judge of the Supreme Court upon its organization and served until 1785.

His descendants became prominent and influential citizens of New Hampshire, and some of them emigrated to Louisiana.

Helen, daughter of his son, Mills Olcott, was the wife of Rufus Choate.

At the end of the first year Judge Fay retired; location undoubtedly had its effect in causing this change; as the court was then constituted, two of the judges, Robinson and Fay, lived in Bennington, Fasset in the near town of Arlington, and the other two judges were near neighbors in Hartland and Norwich, on the east side of the State.

Rutland County was becoming populous and an important part of the new commonwealth, and a successor to Judge Fay was taken from that county, in the person of

THOMAS PORTER of Tinmouth. His first ancestor in this country was of the same name, Thomas Porter, who emigrated from England in 1640 and was an original proprietor of Farmington, Conn. The stability of the family is shown by the fact that a lineal descendant, Thomas L., is now clerk of the same town. Judge Porter was born in that town, but removed to Cornwall, Conn.; in both of these towns he held many local offices, civil and military. He served in the British army at Lake George as early as 1755. He came to Vermont in his 45th year and settled in Tinmouth; was a farmer and soon became influential in public affairs, and was in the Revolutionary army for three years after his settlement in Tinmouth. He represented the town in the General Assembly, was elected Speaker of the House in his first term, and re-elected in 1781 and 1782; in the latter year he was elected member of the Council and served until 1795. His legislative career in his native and adopted States covered a period of thirty-five years. He died at Granville, New York, in May, 1833, and had he lived until the following February, would have been a centenarian. His son Ebenezer was highly distinguished as a professor and president of Andover Theological Seminary.

When Chief Judge Robinson retired in October, 1784, there was selected in his place

NATHANIEL NILES, of Rhode Island birth. He began a collegiate course at Harvard, but completed it at Princeton, then New Jersey College; he taught in New York City, was a student in law, medicine, and theology, but followed the latter profession. He preached for a time at Norwich and Torrington, Conn., and in 1779 settled in West Fairlee, Vt. He invented the process of making bar iron by water power, and for a time manufactured wool cards, such as our grandmothers used in making rolls for the old-fashioned wool spinning-wheels.

He was a poet, writing pieces set to music and sung in New England churches, one of which became noted as a war song of the soldiers. Many of his religious discourses

were published; his services as a clergyman were scarcely ever interrupted; for twelve years he preached in private dwellings. He was constantly in the service of the public; was town representative, member of the Council and of constitutional conventions, and one of Vermont's first representatives in Congress. He served as judge until 1788, and was succeeded by one of Vermont's most noted men, Stephen Row Bradley. When, in January, 1791, Noah Smith resigned as one of the judges, Mr. Niles was elected in his place, but declined; after his declination Elijah Paine was chosen. The ability of this man as a judge can readily be seen by the fact that he was chosen to succeed Noah Smith, and that Stephen Row Bradley and Elijah Paine were, at different times, chosen to succeed him, they being three of the ablest men ever in Vermont.

JOHN PIERPOINT.

The first judge with a legal education was NATHANIEL CHIPMAN. John Chipman the first of the name in America, came in 1630; his wife, Mary, was the daughter of John Howland, one of the pilgrims of 1620. Nathaniel was the great grandson of John and the son of Samuel, a blacksmith and farmer. He remained at home until his twenty-first year, when he began his college preparatory studies with the minister of the parish; after nine months' study, he entered Yale College in 1773; in the spring of 1777, he left college and entered the army with a lieutenant's commission; his degree was conferred upon him in his absence. He became in college complete master of Latin, Greek, and Hebrew. He was with the army at Valley Forge, and at the battle of Monmouth in June, 1778; immediately after the battle he was found reading Pindar. At Camp Fredericksburg, in the following October, he resigned his commission; his wages, being his only means, were not sufficient to support him in service. He spent the following winter in Salisbury, Conn., pursuing his legal studies. In the following March, he wrote to a friend, "I have been dubbed an attorney, and propose in a few days to take up my abode in the State of Vermont," and adds, "One thing, however, we must both forget our diffidence, it has no place at the Bar. Ha! ha! ha! I cannot but laugh to think what a flash we shall make when we come to be members of Congress; then again, I am vexed when I think how many steps there are which we must mount to that pinnacle of happiness. Let's see, attorney, then a selectman, a huffing justice, a deputy, an assistant and member of Congress."

Until the latter part of his life, five to six hours' sleep was all that he required; he read all the novels that came in his way and read them with uncommon rapidity, and pursued his classical reading until his death.

Leaving Connecticut, he reached his father's house in Tinmouth, Vt., on the 10th of April and began practice. He intended

to settle in Bennington, where, he writes in the preceding January, "I shall indeed be *rara avis in terris*, for there is not an attorney in the State. Think, Fitch, think what a figure I shall make, when I become the oracle of law to the State of Vermont." There were lawyers in Vermont at that time, but none save adherents of New York, who regarded the State courts as usurpations.

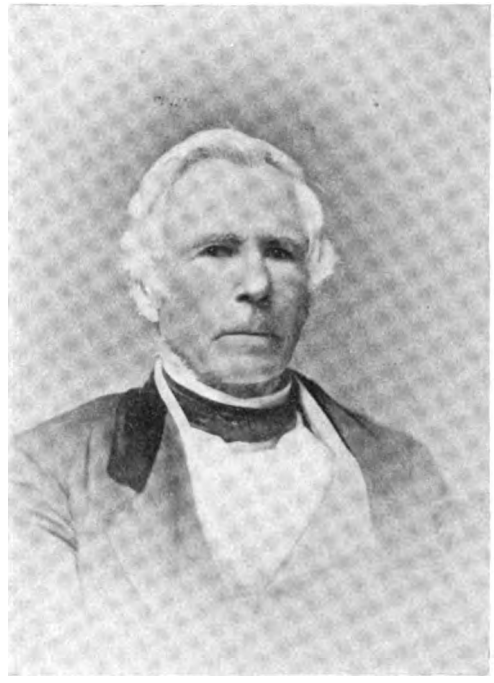
In May, 1779, Stephen Row Bradley and Noah Smith were admitted as attorneys, and in the succeeding month, "at the Superior Court holden in Rutland, in the county of Rutland, on the second Thursday of June, A.D., 1779, Nathaniel Chipman was appointed attorney at law, sworn and licensed to plead at the Bar in the State Court." In a decade after the above letter, he was Chief Judge of the State, and, in fact, the oracle of law therein. He was appointed the first State's attorney for Rutland County and retained the office for several years; he removed to Rutland, which had been selected as the permanent shire town. He often represented his town in the General Assembly and constitutional conventions; was one of the commissioners to adjust the difficulties between Vermont and New York; a member of the convention which ratified the United States Constitution, and one of the committee to revise the Statute laws in 1797, which is the best compilation of our early legislation. He was a member of the Council of Censors in 1813; in 1815 he was chosen Professor of Law in Middlebury College; at the incorporation of this institution he was placed at the head of its board of trustees, and so continued till his death. The degree of Doctor of Laws was conferred upon him by Dartmouth College. During the last ten years of his life he lived somewhat secluded at Tinmouth, with few companions except his books, which he studied daily until a short time prior to his death. He outlived nearly one-half of his successors in the legal profession. A physician in Colorado writes that, after the death of Judge Chipman, his library was a wonder to the boys in the neighborhood, as when produced for appraisal, it measured exactly one cord, — eight feet long, four feet wide and four feet high.

Judge Chipman was constantly engaged in business enterprises, — farming, manufacture of iron, etc., but his absence from home, in his professional and judicial duties, produced the usual results, and his ventures were generally unsuccessful. His son, Henry, was United States district judge in the territory of Michigan, and his grandson, the late John Logan Chipman, was for a long time judge of the Superior Court in Detroit and a late member of Congress.

In 1786, Judges Fasset and Porter were dropped from the list of judges, and in their places were elected Mr. Chipman and Luke Knowlton. Mr. Chipman's first year of service was with four laymen; at the end of it the two new members were dropped, the Bench being reduced from five members to three. In 1789, Chief Judge Robinson was elected Governor; Paul Spooner died just prior to the election, leaving Judge Niles, who declined a re-election; Judge Chipman was chosen Chief, Noah Smith and Samuel Knight assistants. He served as Chief two years, and upon the organization of the United States' courts in Vermont, was appointed by President Washington district judge. At the end of his second year in the latter office, he resigned, as there was but little business in the court and the compensation small. He resumed practice and continued in it until 1796, when Chief Judge Isaac Tichenor was elected United States senator, and Mr. Chipman was again chosen Chief, Judges Woodbridge and Hall remaining as assistants. He served one year, when in October, 1797, he was elected United States senator, at the end of which term he again resumed practice, removing to Tinmouth. He represented Tinmouth in 1806, 1807, 1808, 1809 and 1811; and in 1813, when the Legislature was Federal by one or

two votes, was again elected Chief Judge by a majority of seventeen, and served two years. He was a Federal of the school of Washington, Hamilton, etc. He was elected judge at four different times, and served but six years only, his last election being twenty-eight years subsequent to his first election.

His record is known to the whole State; of his character and attainments as a lawyer and a jurist, it is unnecessary to speak. His reputation as a lawyer, his elevation at so many different times to the highest judicial station, the character of his legal works, all unite in representing him as the head of his profession and well justify the encomium recently bestowed upon him by Chief Judge Williams, in "15 Vt. 353," as "This distinguished and able judge, lawyer, and statesman, who has done so much to give stability of form and substance to our laws and civil and political institutions, and who, in that way, gave a higher character to our State than any other man whatever, and who, in connection with another eminent lawyer, reported the system of laws in 1797 which was adopted and which is probably equal, if not superior, to any body of statute laws which has ever been passed in this country."



ASAHEL PECK.

On the twenty-fourth day of February, 1787, Moses Robinson, Chief Judge of the court, ordered a special session to be held, reciting that it was represented to him that there were two "criminals" confined in the jail in Bennington, that had made sundry attempts to break the said prison; that it was uncertain whether they could be kept until the stated session in August; that it was for the good of society that prisoners charged with any offence should have speedy trial, and with the advice of the two other judges present, Chipman and Knowlton, he appointed Tuesday, the twenty-sixth inst. (twenty-seventh), as the day of opening said court for the purpose of trying said prisoners. The trial was held on the twenty-seventh day, and in the first case, The Freemen of the State *v.* Samuel Sherman, the respondent pleaded not guilty, but was convicted; among the petit jurors returned were Nathaniel Fillmore, grandfather of the President of that name, Timothy Follet, father of Timothy who was elected judge of the Supreme Court in 1845, but declined, and David Fay, who served as judge of the same court in 1809 to 1813.

The judgment of the Court is recorded as follows: "That he, the prisoner, be taken from this place to a place of confinement, that he be taken between the hours of two and three, this first day of March, to the sign board, or some other convenient place, and have his right ear cut off and to be branded with the capital letter 'C' on a hot iron, and to be committed to the work house, there to be confined till the day of his death." Such was the penalty for counter-

feiting in those days, and such the rapid transit in administering criminal law. The criminal — as the Chief Judge termed him before the trial — petitioned the Legislature then in session to release him from punishment, and on March 2 he was relieved from being "croped"; the other part of the sentence was ordered executed the same day. One week was sufficient for the whole transaction. The respondent, who was, I think, a post rider between Bennington and Albany, had no cause to complain of the law's delay.

The other case *v.* Benj. Glazier, the plea and verdict was "Not guilty," but the judgment was, "That he pay cost of prosecution and stand committed till judgment be complied with." This was under the early statute which compelled the respondent, although innocent, to pay the costs of prosecution, if there was reasonable ground for instituting the proceedings. On March 1, the Court adjourned without day.

LUKE KNOWLTON early acquired an interest in the town of Newfane, and became an inhabitant therein in 1772. He came from Shrewsbury, Mass.; in 1774, he was chosen clerk of the town, and held the position for sixteen years. In the controversy between New York and Vermont, he was one of the New York adherents, holding his title to lands in the town under the New York charter. In March, 1775, he was one of the court faction in the affray at the court house in Westminster. He represented Newfane in most of the conventions in Cumberland County, and was a member of the Cumberland County Committee of Safety from June, 1776, to June, 1777. He was appointed a justice of the peace under the New York government, April 14, 1782.

He represented Cumberland County as agent in the interest of New York, in September, 1780, and was recommended by Governor Clinton. In the early part of the war, until probably later than 1780, he undoubtedly acted in the interests of New York. He was sent to Congress in 1780 as agent for the party opposed to the independence of Vermont, but soon after that time his interest in New York ceased, and it is claimed that he became an adherent of Great Britain.

But little is known of his conduct in this respect; I am inclined to think that at that time he became interested in the independence of Vermont, but engaged in negotiations with Haldimand and the British agents in reference to Vermont's becoming a British province, but it was no doubt for the purpose of preserving the independence of the State and protecting its people from the ravages of war, and that he did this in concert with Chittenden, Allen and other leading Vermonters. He was acting apparently in connection with Samuel Wells, the stern old loyalist, but his subsequent conduct proved his hearty adherence to the American cause, and his true devotion to the best interests of Vermont.

After his abandonment of the New York cause, and his negotiations with the British, Congress ordered his arrest in consequence of a "dangerous correspondence and intercourse with the enemy." This order of Congress was made Nov. 27, 1782, and, taking the advice of Ethan Allen and others, he fled from the State and remained absent a year. Knowlton returned home and was residing there, when a party of New Yorkers, headed by Francis Prouty, armed with "clubs, swords, pistols and bayonets," assailed his house at two o'clock, A.M., in November, 1783, took him prisoner, conveyed him to Massachusetts and there left him. The assaulting party were indicted, and Prouty was tried in February, 1784, the five judges of the Supreme Court being present; he was indicted for burglary; the docket entry of the verdict reads thus: "In this case the jury find that the prisoner did break and enter the house of Luke Knowlton, Esq., in the night season, and did

take and carry away the said Luke Knowlton, and, if the breaking a house and taking and carrying away a person, as aforesaid, amounts to burglary, we say he is guilty, if not, we say he is not guilty." The judgment of a Court composed of a doctor and a few farmers was "Not guilty." Could Coke or Kent have done better?

He soon became prominent in the affairs of the State, but it was some time before the people became satisfied of his hearty devotion to Vermont. When appointed one of the county judges, the people petitioned the government to retain his commission, but it was issued, and the State afterwards had no one more loyal to her interests than Mr. Knowlton. He represented Newfane in 1784, 1785, 1786, 1788, 1789 and 1792, was a member of the Governor's Council from 1789 to 1800, inclusive, and a member of the Constitutional Convention of 1793. In 1786 he was elected judge of the Supreme Court and served one year, but was omitted in the list at the end of that time, when the number of judges was reduced from five to three, but at the same time he was elected Chief Judge of the county court, and served until 1794; he was afterwards elected county judge, and served one year, beginning in October, 1802.

HOMER E. ROYCE.

Mr. Graham, in speaking of Newfane, says: "This town owes its consequence in a great measure to Mr. Luke Knowlton, the leading character and a man of great ambition and enterprise, of few words, but possessed of the keenest perception and an intuitive knowledge of human nature, of which he is a perfect judge." He was called by the populace, "Saint Luke"; but little is known of the life of Mr. Knowlton, except what has been above stated. The materials for an accurate biography of him have to a great extent been lost. The village in which he resided, Newfane Hill, long the county seat of Windham County, containing the court house, jail, academy, tavern, stores and other buildings, has gone to decay, and from the spot which marks its site no buildings are to be seen, except upon the surrounding hills, far distant. The cemetery alone is left, and in it stands the tombstone which records the death of "Luke Knowlton, a Judge of the Supreme Court, on the twelfth day of December, 1810." The 'Washingtonian' of the thirty-first day of that month records his death as follows: "Died, at Newfane, Luke Knowlton, Esq., aged 72, one of the first settlers, and most useful citizen of Vermont."

STEPHEN ROW BRADLEY. One of Cromwell's men, Stephen Bradley, came to New Haven, Conn., about the year 1650; his son, Moses, married Mary Row, and their son, Stephen Row Bradley, graduated at Yale in 1775 and commanded the Cheshire volunteers in the Continental service in January, 1776. He was adjutant and soon

after aide to General Wooster, and was present when that general was slain at Danbury, in April, 1777. In 1778 he served as commissary and held a major's commission in the regiment; he studied law under Tapping Reeve, at Litchfield, Conn., came to Vermont and was admitted to the Bar, May 26, 1779, at Westminster, and was appointed clerk of the court. In June, 1780, he was State's attorney for Cumberland County; he was one of the agents that presented the cause of Vermont to Congress and attended that body in behalf of Vermont, and was active in its service. He represented Westminster in the General Assembly for many years; was clerk of the House, and its Speaker for ten years; was register of the Probate Court and judge of the county court. In 1788 he was elected judge of the Supreme Court and served one year; he was one of the commissioners who settled the controversy with New York, and a delegate in the Convention in 1791, which adopted the United States' Constitution. He was elected United States senator at the first election and drew the short term of four years, serving till 1795, when Elijah Paine succeeded him, but at the end of Mr. Paine's term, in 1801, Mr. Bradley was again elected and continued senator until 1813. He was elected five time president *pro tem.* of the United States Senate.

In January, 1808, he summoned the convention of congressmen which met and nominated Mr. Madison for the Presidency; at that time, he was the leading Republican senator from New England, but was earnestly opposed to the war with Great Britain, and counselled Mr. Madison against it. It was his dissatisfaction with the national policy of the party that caused him, in March, 1813, at the close of his congressional labors, to withdraw from public life.

He has been described by some as an erratic man, but by those who knew him best as "a lawyer of distinguished abilities, and a good orator." "Few men," says Graham, in his sketch of Vermont, "have more companionable talents, a greater share of social cheerfulness, a more inexhaustible fund of wit, or a larger proportion of unaffected urbanity." A writer of the day says, he was distinguished for political sagacity, a large acquaintance with mankind, and an extensive range of historical information.

He was placed upon committees in the Senate to whom was referred the most important and delicate questions. He was the author of that part of the existing Constitution which requires that the Vice-President, like the President, shall be chosen by a majority of the electoral votes. He was the tutor, in the law, of Jeremiah Mason, the greatest lawyer that ever lived in New England, who, after his studies with Mr. Bradley, was admitted to the Bar in Windham County in June, 1791, and remained with him for some months. After Mr. Bradley's retirement from politics, he resided in Westminster until 1818, when he removed to the opposite side of the river, in Walpole, N. H. Mr. Goodrich, famous as "Peter Parley," was a son-in-law of Mr. Bradley. He was highly regarded by Mr. Jefferson and received many marks of personal esteem from that distinguished statesman.

It was his desire to continue the Republican succession in the Presidency, which caused his activity in bringing about the nomination of Mr. Madison. The circular which he issued, calling the convention of the Republican members of Congress, was so mandatory in style that it was denounced as a usurpation of power, and was particularly offensive to the New York members, only one of whom attended. There were ninety-four members present, and the result of the nomination of Mr. Madison clearly shows the political foresight and sagacity of Mr. Bradley. He served but one year as judge; his colleagues were both laymen; no case before the court has been reported.

He evidently did not desire to continue in judicial life, as he undoubtedly could have done, for it was at the close of his term that the Bench were chosen wholly from the profession, and he was soon after elected United States senator.

NOAH SMITH was born in Suffield, Conn. He graduated at Yale College in the summer of 1778, with a class many of whom became distinguished men, among them Noah Webster, the lexicographer, and others mentioned in the memoir of Mr. Webster, in his unabridged dictionary.

After graduation he came to Vermont and delivered an address at the first celebration of the battle of Bennington. He was admitted to the Bar, May 26, 1779, at Westminster, with Stephen R. Bradley, these being the first admissions to the Bar of Vermont. Mr. Smith was appointed State's attorney *pro tem.* for the county of Cumberland. In June of the same year, he was appointed to the same office in Bennington County, and held the office for several years; was clerk of the County Court in 1781–4; in 1788 was elected representative from the town of Johnson, the only instance, with possibly one exception, of the election of a non-resident to represent a town in the General Assembly. His right to a seat was negatived by a vote of twenty-four ayes to forty-three noes, for what reason does not appear.

H. HENRY POWERS.

On the first day of September, 1787, the freemen of Johnson again made choice of him to represent them, and his right to a seat was not questioned. At the session, he was elected judge of the Supreme Court, and served until the twenty-fourth day of January, 1791. In expectation that the State would soon be admitted to the Union, the Legislature, in January, 1791, elected two U. S. senators; the Governor and Council voted for Moses Robinson and Nathaniel Niles; Mr. Smith was nominated by the House as one of the two to be elected, but upon the union of the two Houses, Moses Robinson and Stephen R. Bradley were chosen. On the twenty-fourth of the month, Mr. Smith resigned as judge, stating "that the peculiar situation of my private affairs, connected with my late election as senator, renders it impracticable for me any longer to serve the State as judge."

Question was made with reference to the legality of the election, as it was held in January before the act admitting the State into the Union took effect. I infer Mr. Smith intended to contest the legality of the election, as he visited Philadelphia, the then capital, soon after, but upon being appointed supervisor of excise for Vermont, Judge Chipman wrote, after hearing of his appointment that, if so, "I fancy the business of senators is settled." He performed the duties of excise commissioner for several years, continuing at the same time the practice of his profession.

In 1798 his brother Israel had served as Chief Judge one year. His political opinions were such that the Legislature, at what has become famous as the "Vergennes Slaughter-House," refused to re-elect him, but promoted Judge Woodbridge and elected Noah Smith as the third member of the court. He served until 1801 and was then supplanted by a brother Federalist, his classmate, Stephen Jacob.

Soon after he retired from the Bench, he became interested in lands in the town of Milton, and removed there with his family. He built a church there and presented it to the Congregational society, of which his wife Chloe Burrall and children were members. His business matters were unsuccessful; his lands in Milton passed from him in some way, and he was confined in the jail at Burlington upon a large debt in favor of the Vermont State Bank. His wife died in Burlington, in 1810; and in 1811, being then in confinement, the Legislature passed an act for his relief, the preamble reciting that "for some time he had been in a state of mental derangement, almost wholly lost his reason, and it is thought that change of air and the use of medicinal springs are the most probable means of restoring him his reason." The act released and discharged him from confinement and freed him from arrest for five years from the date of his release. Seth Storrs of Middlebury was a judgment debtor with him; he was imprisoned in the Addison County jail, and was required to release to the bank all legal advantages which might result to him by reason of Smith's discharge from confinement.

Before the expiration of the five years, Smith was released by death. The County paper, under date of Dec. 31, 1812, records under the head of deaths, "In Milton, on the twenty-third inst., the Hon. Noah Smith."

Two of his sons, Albert and Henry, became doctors of divinity; the latter married Abby, daughter of Joshua Bates, the president of Middlebury College, and was president of Marietta College, in Ohio; at the time of his death he was professor in Lane Theological Seminary, Cincinnati.

Mr. Smith was elected a member of the Governor's Council in 1798, but resigned when elected judge. Mr. Graham, in his sketch of Vermont, says that Mr. Smith "is an excellent character, and has pursued the practice of his profession in Vermont with reputation and success. He is also the collector of excise for the district of Vermont, under the Federal government, and is, in every situation and relative connection of life, the gentleman, the scholar, and the friend." He adds that "Mr. Dewey and Mr. Smith have very elegant wood houses."

SAMUEL KNIGHT was at Brattleboro as early as Oct. 28, 1762, but probably came there to reside in 1767. He had a large farm, upon which he resided with his family, between Brattleboro and West Brattleboro, and occupied it until his death in 1804.

He was commissioned an attorney in "His Majesty's courts of record" in Cumberland County, June 23, 1772. His commission was signed by Gov. William Tryon and noted by the Inferior Court of common pleas, in Cumberland County, Sept. 8, 1772. He was then forty-two years of age.

Where he obtained his education is unknown. It is probable that he studied with Charles Phelps of Marlboro and his son Solomon. He was a man of learning, but not collegiate. In February, 1774, he was appointed a commissioner to administer oaths of office, the only position he ever held under New York. He was regarded as an unpopular New Yorker, and professionally was at Westminster court-house, at the time of the riot, in March, 1775. It does not appear that he was personally engaged in the assault upon the Whigs; nevertheless, the coroner's jury named him as among the murderers of William French. He escaped arrest by crossing the river to New Hamp-

shire and going to Massachusetts; he did not return to Brattleboro for a year.

He took an active part in the revolutionary struggle, and favored New York as late as 1778, but becoming convinced that New York could not maintain her claim to the Vermont territory, he submitted to the authority of the State, and was commissioned a justice of the peace in 1781.

This appointment was remonstrated against by Leonard Spaulding and others, and the appointment was suspended for a time; but his conduct was reviewed at the fall session of the Legislature, and his appointment confirmed by a regularly executed commission. He was prominently mentioned in 1793, in connection with the appointment of United States district judge upon the resignation of Mr. Chipman. Matthew Lyon then wrote of him: "However he got his education, he has it in such a degree, both universally and professionally, as would do honor to a gentleman in the most enlightened country." Judge Wheeler of Brattleboro writes of him: "His reputation as it has come down by tradition is that of a man of learning, accomplishments and, professionally, of strict integrity."

WHEELOCK G. VEAZEY.

He was probably buried in the old cemetary at Centerville, in Brattleboro, but nothing marks his grave, and its location is unknown.

His descendants still live in Brattleboro and Dummerston; a great-grandson, Henry G. Knight, admitted to the Bar in 1891, is the first of his descendants to follow the law.

He represented Brattleboro in the Assembly in 1781, 1783, 1784 and 1785, and was Chief Judge of the Windham County court in 1786, and perhaps earlier, and after his service as judge of the Supreme Court, was again elected Chief Judge of the county court in 1794, 1795, and in 1801. He was elected second assistant in 1789 and Chief Judge in 1791, serving until 1794.

Citing Dr. Graham again, he wrote of Knight that "He was bred to the law; as a gentleman of great abilities, he has rendered to his fellow citizens many essential services, but I am sorry to add, they have by no means been recompensed as they ought to be. To Mr. Knight that celebrated line of Pope may be truly applied, 'An honest man's the noblest work of God.'"

ELIJAH PAINE was a son of Seth Paine of Brooklyn, Conn. He commenced his studies preparatory to entrance at Harvard University, but abandoned them in 1776, for several months, to take up arms in behalf of his country. He graduated at that University in 1781, studied law and removed to Windsor, Vt., in 1784, but soon left it and began a settlement at Williamstown, in the midst of an extensive wilderness. He was engaged during his life in great business enterprises, constructing turnpikes, erecting

mills for grain and lumber, and was active in introducing merino sheep into this State. In 1786 he was a member of the first convention to revise the constitution of the State, and was its secretary. In 1787 he was elected a member of the House and so continued until 1791; in January of that year, Noah Smith having resigned as judge of the Supreme Court, Mr. Paine was elected on the twenty-seventh day of January, 1791, and held this position until his election as senator, in the fall of 1794. He was one of the commissioners to settle the controversy with New York, and a member of the Council of Censors in 1792. At the election of judges in October, 1791, he addressed a letter to the General Assembly in which he says that he did not accept the appointment with a view of gain, and adds, "You will, however, give me leave to discern that the pay of your judges bears but a small proportion to the pay received by judges of any of the other States, when the ability of the States is compared, and were the State still in debt for the expenses of the late war, I would with pleasure live on my own property and serve my country without reward, but the State is now in a great measure free from debt. Altho' I know the Legislature will not waste the property of the citizens, I am confident they would wish to make their servants a reasonable compensation; if, upon deliberation on the subject, they shall think proper to make any addition to the pay of the Court, it will be gratefully received; if, on the other hand, they should think the present pay adequate to the service, I shall with pleasure acquiesce and serve the State to the best of my abilities.

At this election, Samuel Knight, who had served for two years prior, was elected Chief Judge, and Isaac Tichenor, added in place of Judge Chipman, then appointed United States district judge.

Judge Paine served until October, 1794, and on the fourteenth day of that month was elected United States senator; he was re-elected in October, 1800, but resigned the position the following year to become United States judge in the district of Vermont, under an appointment from President Adams. He continued judge in that court for a period of more than forty years, resigning in April, 1842, a few weeks before his death. He was honored with the degree of Doctor of Laws by the University of Vermont and Harvard University. He was a member of several learned societies for the advancement of arts and sciences. He pronounced the first oration before the Phi Beta Kappa society of Harvard University, and was elected its president in 1789.

He was of commanding personal appearance, with a well proportioned frame and a corresponding vigor of mind. His son, Charles Paine, was Governor of Vermont in 1841–3; his son, Martyn, became celebrated in the medical profession, and his son Elijah equally as well known in the law.

ISAAC TICHENOR was a Jersey man, graduated at Princeton College in 1775, and while studying law was appointed to the commissary department in the Continental army and assigned to duty in New England. In June, 1777, he came to Bennington, and from that year his residence was maintained there, except when absent on official duties. After the war, he began his professional business there. Was a member of the Legislature, except one year, either in the House or Council, from October, 1781, until his election as judge of the Supreme Court in 1791. He was elected in October, 1796, United States senator; in 1797, there was no choice of governor by the people, and Mr. Tichenor was elected by the Legislature, resigning the office of senator. He was re-elected by the people and served until the election in 1807, when he was defeated by Israel Smith; in 1808 he was again elected by the people, but retired at the end of that year.

He held many important commissions before Vermont was admitted as a State, and

in connection with its admission as agent and delegate to Congress, and was one of the commissioners to settle the controversy with New York. For thirty years he was constantly engaged in the service of the public; as described by Hiland Hall, "He was a man of good private character and highly respectable talents, of accomplished manners and insinuating address; his fascinating personal qualities acquired for him, at an early day, the sobriquet of 'Jersey Slick,' by which he was long designated in familiar conversation. He was a Federal in politics, and his popularity was such that he was elected Governor several successive years, when his party had become the minority one. He left no descendants.

It was inconvenient for the Court to have but one clerk, rendering it necessary for him to attend every session of the court in every county; an act was passed in November, 1792, making it the duty of the Court to appoint one clerk of the court in each of the counties.

In 1794 it was found that the time limited for the sitting of the court, of but one week in each county, was insufficient for completing the business, and the times and places for the annual sessions were changed, so as to allow a longer time in most instances.

ENOCH WOODBRIDGE, a native of Berkshire Co., Mass., graduated at Yale in 1774. He served in the commissary department of the Continental service during the Revolution. At the close of the war he became a resident at Vergennes, of which city he was the first mayor, and represented it in the Assembly from 1791 until his election as judge in 1794, and was again chosen representative at the first election after his judicial services ended. He was a delegate in the Constitutional Convention of 1793.

He accepted the election as judge in 1794 in a letter in which he writes to the Speaker of the Assembly, "I feel, sir, as if the lives, liberties, and properties of my fellow citizens were in some degree committed to my charge; I feel it, sir, as a heavy charge, but hope, by the aid of Divine Providence and good counsel of my fellow citizens, I may be enabled to discharge the duties of the office to general satisfaction."

He continued judge until 1801, serving the last three years as Chief.

LOT HALL.—Of the early days of this judge but little is known; he was apparently a good scholar and one who made good use of the opportunities offered him. He was born in the Cape Cod country, and was an earnest and enthusiastic patriot at the very beginning of the struggle of the colonies with the mother country. South Carolina, attempting to make her maritime position secure, early endeavored to protect herself by armed vessels: in May, 1776, young Hall, with enlistment orders from Lieutenant Payne, who was in command of a gun-ship lying at Charleston in that state, enlisted twenty-nine men and a boy, in Barnstable County, Mass., to take to Charleston. At Stonington, Conn., he purchased six small cannon, and at Providence obtained a schooner of about fifty tons and sailed for his cannon, but his vessel proving unserviceable, he procured another called the Eagle, and immediately fitted her out with provisions and stores, and with Lieutenant Payne in command, Hall acting as lieutenant, put to sea in June, intending to go to Charleston and join the Randolph, commanded by Captain Cochrane.

At the beginning of the expedition, three prizes were taken, the Venus, Caledonia and another, name unknown; these were taken to Boston, and as the Eagle was convoying her prizes, she captured the ship Spears, from the Bay of Honduras bound for Glasgow. The Spears was short of provisions and they transferred to her all the provisions on board both the Eagle and the vessels in convoy, and Lieutenant Hall, as prize master, took command of the Spears, with orders to keep company with the Eagle; the latter reached Boston, but the vessels were sepa-

rated "by a hard wind of rain and foggy weather." The prisoners mutinied and Hall's men were so few in number that they were overpowered, and the then masters of the vessel set sail for Glasgow and arrived safely at that port. The following spring Captain Lamont of the Spears, who had been taken to Boston on the Eagle, arrived in Glasgow and Hall was discharged. But he had no way of returning home; he went to Ireland, where he "found the people very kind and civil as well as warmly attached to the American cause." Upon their learning his circumstances and condition, they provided for him "in a genteel manner" until the following August, when he left for Chesapeake Bay, by way of Barbadoes, Antigua and St. Eustatia. When within Cape Charles and Cape Henry, the vessel was captured by a British man-of-war lying in Hampton Roads, and he was held a captive for ten days on the St. Albans, suffering "everything that British insolence and cruelty could inflict, short of actual violence."

Patrick Henry, Governor of Virginia, procured his exchange, provided him with a horse and money, and he set out on his journey home, which he reached Feb. 22, 1778. Years after his death, Congress awarded his descendants remuneration for his services.

He began to study law in 1782 in the office of Shearjashub Bourne at Barnstable; he removed to Bennington, Vt.; the following year, he was at Westminster and established his residence there. He obtained an extensive legal practice and had an excellent reputation. He represented Westminster in the Assembly, 1788, 1791, 1792 and 1808; he was presidential elector in 1792, voting for Washington and Adams. He was a member of the corporation of Middlebury College from its incorporation until his death, and was a member of the third Council of Censors.

In 1794, he was elected judge of the Supreme Court and discharged the duties with great fidelity and credit until 1801. He was noted for his instructions to grand juries, which were often published and highly commended by the press.

In 1786 he married Mary Homer of Boston, an orphan fifteen years of age. A very romantic newspaper account of the courtship and marriage appeared in December, 1789, and has been republished occasionally by the press, the last time as late as 1845.

While attending the Assembly as a member in 1808, he was seized with a violent catarrhal affection which caused his death the ensuing year.

Dr. Graham, to whom we are indebted for much relating to the early judges, says of Mr. Hall in his sketch of Vermont, "He is one of the judges of the Supreme Court, which office he fills in such a manner as to reflect honor even on so important a station. His memory is so wonderfully tenacious as to make him master of every subject he reads or hears and to enable him to recapitulate them without the slightest hesitation or previous study."

In James *v.* Smith, I. Tyler, 135, Judge Hall, in disposing of a question before him said, "If the construction of the statute advocated by Mr. Smith be correct, I have misled many an honest man."

No substantial change was made in the jurisdiction of the courts until the revision of the statutes, made by Judge Chipman and Samuel Hitchcock in 1796–1797, when the county court was given jurisdiction of all matters civil and criminal, except such as were made cognizable in the Supreme Court, and to the latter court was given jurisdiction of all crimes and misdemeanors described in an act for the punishment of capital and other high crimes and misdemeanors; this included substantially all the serious crimes, and all causes where the punishment extended to loss of life, limb or disfranchisement, and civil actions wherein the State was a party.

This change gave the jurisdiction of substantially all criminal cases to the Supreme

Court, and all civil causes to the county court with a right of appeal to the Supreme Court.

ISRAEL SMITH, a younger brother of Noah, graduated at Yale College in 1781. Two years afterwards he became a resident of Rupert, and was admitted to the Bar in this State. He represented that town in the Assembly for several years and in the Convention of 1791, which acted upon the question of joining the Union. He was one of the commissioners named to settle the controversy with New York, and was the youngest member of that body. Upon the admission of the State, he was chosen to represent the Southwestern District in Vermont, and was re-elected in 1793 and again in 1795.

At the first elections, there was but little division among the people politically, but during his last term in Congress he voted against making appropriations to carry Jay's Treaty with Great Britain into effect, and became identified with the rising Republican party. This displeased a majority of his constituents, and he failed of a re-election in the spring of 1797; and in the following October, the politics of the State having changed, he was elected Chief Judge of the Supreme Court. At the next election, the Legislature was controlled by Federalists, and at the "Vergennes Slaughter House," so termed, he was not re-elected. This must have been the sole cause of his removal, for the historian Thompson wrote that "He was a man of uncorrupted integrity and virtue, was dropped on account of his attachment to the Republican party, and another chosen Chief Judge in his stead." And Dr. Williams, who was familiar with the history of that day, in speaking of the same event, says, "The Chief Judge was a man of confessedly pure morals, undeviating justice and uncorrupted integrity, and had discharged the duties of his office without the suspicion of corruption. He was an admirer of the principles on which the French revolution had been founded, and carried republican sentiments to their full extent, but was unblamed and uncensured in every part of his private and judicial conduct."

His brother Noah, an intense Federalist, was at that time added to the Bench as third member of the Court.

In 1801, when the Republicans had control of the Legislature, he was again elected Chief Judge, but declined and was again sent to Congress, and at the close of his term in 1803, was elected United States senator. He faithfully executed all trusts reposed in him and acquired an honorable reputation for himself and State.

He was on terms of intimacy with President Jefferson, and so favorably regarded by him, that it was reported and confidently expected by his friends, as announced in the press, that he was to have a place in Jefferson's Cabinet, as Attorney General.

In 1807, he resigned the senatorship and accepted the office of Governor. He called the attention of the Legislature to the criminal jurisprudence of the State, and it was upon his suggestion that the old system of punishment was abolished and the present penitentiary system adopted, and the construction of the State prison secured. It is said that the anticipated cost of the prison was regarded as a great burden, and because of the Governor's connection with the matter, the popular Isaac Tichenor, who had been Governor ten years prior to that time, was again elected.

After his election as Governor, his health began to decline, and during the two succeeding years, his physical constitution became much impaired and his mental powers could not withstand the wasting of their tenement, and he died at Rutland in the fifty-second year of his age.

He early took rank as one of the distinguished lawyers of that day. He was called "The handsome Judge"; was of great candor and integrity, and at his death "all united in deploring the loss of a dignified statesman and much esteemed man."

THE PARLIAMENTS OF JAMES I. AND THE PLANTATION OF AMERICA.

By Alexander Brown, D.C.L.

THE first parliament of James I. existed for nearly seven years (March 19, 1604, to February 9, 1611). There were five sessions: 1604, 1605–6, 1606–7, and two in 1610 — amounting in all to about sixteen months.

The second session began Nov. 5, 1605, — the day of the celebrated gunpowder plot treason. On Nov. 9 Parliament was adjourned to Jan. 21, 1606. On their reassembling a bill was at once passed making Nov. 5 ("Gunpowder plot day") "a day of thanksgiving forever." The session was largely devoted to measures and Acts in the interest of England at that time, in favor of the reformed religion and against the church of Rome. It was during this period of excitement, and under the same influences, that the national movement for securing a lot or portion in the New World for the English race and religion — *the beginning of this nation* — was taking definite shape in England. And although it was not deemed best for the colonial charters, etc., to be publicly, officially, confirmed by Parliament at this time, many of the ideas of the parliamentary Acts were embodied in the said charters, etc., for the plantations, and the movement was personally endorsed by many members of that body.

"The Reasons to move the High Court of Parliament to raise a stocke for the maintaininge of a Collonie in Virginia." — The project of Thomas and Edward Hayes, submitted to the Earl of Salisbury in 1606, "for planting of Christianity amongst heathens. . . . So remote from the course of your great affairs as America is from England," in which they proposed a motion for laying the matter before Parliament. — The petition of Sir Thomas Gates, Sir George Somers, Rev. Richard Hakluyt and others (of the eight names given, six had been sea captains, and one was then a member of Parliament), for license to plant colonies in "that part of America commonly called Virginia," — and the charter of April 10, 1606, — were all written prior to the adjournment (May 27, 1606) of the second session of Parliament.

The charter, an important instrument, was drafted by celebrated lawyers. The first draft annexed to the petition was by the Lord Chief Justice of England, Sir John Popham. The warrant for the charter was issued by the Secretary of State (Robert Cecil, Earl of Salisbury); the charter was prepared by the Attorney-General, Sir Edward Coke, and the Solicitor-General, Sir John Dodderidge, and it was passed under the seal by Lord Chancellor Egerton. It claimed for the Crown of England the whole of North America between 34° and 45° north latitude, and it authorized the plantation of several English colonies therein, "which may, by the providence of Almighty God, hereafter tend to the glory of his divine Majesty in propagating of Christian religion," etc. The patron of the Northern Colony was the Lord Chief Justice of England, and the Secretary of State was the patron of the Southern Colony.

His Majesty's Instructions for the Government of the Colonies, Nov. 20, 1606. — The Orders and Advice of the Council for Virginia of Dec. 10, 1606, and the Ordinance and Constitution of March 9, 1607, were issued during the third session (18th Nov., 1606–4th July, 1607); and a majority of His Majesty's Council for Virginia named in the first and last of these instruments were members of the House of Commons.

Virginia was already an important factor

in English politics. On Feb. 17, 1607, replying to Nicholas Fuller, Esq. (Barrister of Gray's Inn, Champion for the Puritans, and afterwards a member of the Virginia Company of London), in the debate in Parliament on the union with Scotland, Sir Francis Bacon denied that the Scots would overrun England; "but if the land was too little the sea was open. Commerce would give support to thousands. Ireland was waiting for colonists to till it, and the solitude of Virginia was crying aloud for inhabitants."

Captain Henry Challons, on board The Richard, left England for North Virginia in August, 1606; was captured in the West Indies in November, and taken to Spain. Daniel Tucker, one of the officials of this vessel, made his escape to England, and on Feb. 4, 1607, wrote a relation of the capture to Sir Ferdinando Gorges, who sent it to Cecil, Secretary of State, and the matter was looked after at once. On Feb. 26 this matter, with others of the like character, was brought before the House of Commons in a petition addressed "to the King's most excellent Majesty, the Lords Spiritual and Temporal, and the rest of this honourable Court." The petitioners complained *first* "of the wrongs in fact," secondly "of the wrongs in law," and thirdly they desired the remedy by "letters of marque" to the value of their loss under the authority of the statute in that kind issued in the time of Henry V. On Feb. 28 the petition was referred to a committee (Parliament was not in session from 31st March to 17th April inclusive), who on May 13 made their report, and Sir Edwin Sandys (a leading member of the House of Commons, and of His Majesty's Council for Virginia) made a speech thereon. Three days thereafter (May 16) the Commons asked the House of Lords "for a conference (of committees) touching joining in petition to his Majesty for redress of Spanish wrongs," and "expressing the desire of the House to that purpose." The Lords consented, and on June 15 they proposed that the conference should take place the same afternoon. This was agreed to, and during this conference the Earls of Salisbury and of Northampton made speeches, which were reported on June 17 by Sir Francis Bacon to the House of Commons.

The Earl of Salisbury (Secretary of State) divided "the wrongs in fact" into three: first the trade to Spain, second the trade to the West Indies, and third the trade to the Levant. As to the trade to the West Indies, Bacon reported his speech as follows:

"For the Trade to the [West] Indies, his Lordship did discover unto us the state of it to be thus: — The policy of Spain doth keep that treasury of theirs [the Spanish West Indies, which according to their claim included Virginia] under such lock and key as a vigilant dragon keepeth his golden fleece. Yet His Majesty [James I.] in the conclusion of the last treaty [1604–5] would not agree to any article excluding his subjects from that trade, nor acknowledge any right to Spain either by the donative of the Pope, whose authority he disclaimeth, or by the title of a dispersed occupation of certain territories in the name of the rest; but stood firm to reserve that point in full question to further times. So as it is left by the treaty in suspense, neither debarred nor permitted, the tenderness and point of honour whereof was such, as they that went thither must run their own peril. But if His Majesty would descend to a course of intreaty for the release of the arrests in those parts, and *so confess an exclusion*, and quit the point of honour, His Majesty mought have them forthwith released," etc., etc.

The controversy over this petition and these prisoners, over the English settlement in territory claimed by Spain, over the terms of the Treaty of 1604–5, and over the other national questions involved, was also carried on before the Privy Councils of England and of Spain. It was evident that the English could only secure "a lot or portion in the New World" through the means of a determined military

or legal contest — by war, or by diplomacy, and they resolved to make a resolute effort on the diplomatic plan.

Parliament was not in session in January, 1609, when the petition for the special charter was issued, nor in May, when the charter was sealed to the Virginia Company of London; but that instrument was prepared under the special supervision of Sir Thomas Smith and Sir Edwin Sandys, and drafted by Sir Henry Hobart, attorney-general, and Sir Francis Bacon, solicitor-general, all of whom were then members of Parliament. The Secretary of State, the diplomatic head of the English government, was at the head of this company, and the government itself was immediately behind it — the company being in fact a diplomatic agent of the government in the matter. Twenty-one members of the House of Lords, and at least one hundred and fifty members of the House of Commons were members of this company; "being a greater union of Nobles and Commons than ever concurred in the kingdom to such an undertaking"; and of the fifty-two members of His Majesty's "careful and understanding" Council for the Company, fourteen were members of the House of Lords, a majority of the remainder were members of the House of Commons, and the rest were leading men of affairs of that remarkable period.

The movement was taken well in hand. The whole enterprise was under "the support of the Royal authority," and each portion thereof was under the supervision of men especially fitted for that purpose. The national, diplomatic, and legal questions involved, at home and abroad, were "under the provident and good direction" of statesmen, diplomats, politicians and lawyers. Men of affairs had charge of the business portion, sending out planters, supplies, etc., to the colony; the voyages were under the command of old sailors "well practiced on the Atlantic in forepast times"; and the colony was placed under the government of an old soldier, trained up in the Netherlands, "armed with the power of a viceroy and assisted with some sufficient counsel."

The next session of Parliament began Feb. 9, 1610. On Feb. 21 the Rev. Wm. Crashaw, preacher at the *Inner Temple*, London, delivered a sermon before Lord De la Warr and others, "at the said Lord Generall his leave taking of England his Native countrey and departure for Virginia." This sermon was published in March by L. D. (Rev. Lancelot Dawes?) and dedicated "To The Thrice Honorable, Grave, Religious, the Lords, Knights, Burgesses, now happily assembled in Parliament: L. D. humbly considering the union of their interest in all endeavours for the common good, together with the zealous, costly, care of many of them, to advance the propagation of the Gospell; Doth consecrate this sermon, spoken and published for incouragement of Planters in Virginia." — And L. D. took the pains to write to the printer, charging him particularly that the "*Dedication to the Parliament*" must "*be fairely prefixed to the Booke.*"

On Feb. 14, 1610, when the debate on the question "whether the seat in Parliament of Sir George Somers should be made vacant," took place, many in England thought that Somers had perished at sea in the tempest of 1609, and I am not certain whether his seat was declared vacant because he had gone to Virginia, as sometimes said, or because it was thought that he was dead. The following entry is from the roll of that Parliament: —

"Lyme. — Geo. Somers, Kt.
John Hassard, gent., *in their places, deceased,*
Francis Russel, Kt. } 1610."
Geo. Jeffrys, Esq. }

This Parliament was finally dissolved on Feb. 9, 1611.

In February, 1614, the Council of State determined that it was expedient to call a

second Parliament with as little delay as possible. Among the "Bills to be drawn by his Majesty's most gracious direction for the good and comfort of his people, upon certain of the propositions exhibited to his Majesty and to be offered to the next Parliament," was "*An Act for the better plantation of Virginia and supply thereof.*"

Parliament met on Tuesday, April 5, 1614. "The House consisted of about 472, of whom 300 were not in the last Parliament, whereof many are young." Many of the House of Lords, and about one hundred and forty members of this House of Commons were also members of the Virginia Company of London. In opening Parliament, the King made a long speech "consisting of three principal parts wherein all his care lay, — to continue to his subjects, *bona animi, bona corporis, et bona fortunæ*, by maintaining religion, preserving of peace, and seeking their prosperity, by increasing of trades and traffics."

As Bacon outlines the times, "the state was then environed with envious foreigners; there were encroachments on matters of trade; religion was a matter of controversy, and to look a year before him would trouble the best watchman in Europe."

The great trading companies of England were "upon the question" with Spain, France and Holland. Lieut. Wm. Turner with the Jesuits from North Virginia, Sir Thomas Gates with Sieur de la Motte from South Virginia, and Captain La Saussaye from France, all reached the neighborhood of London about April, 1614. The English-American enterprise was "between two fires," France and Spain; serious complaints from these nations were then before the English Privy Council. The colony of Virginia was in jeopardy, and many of the company wished to yield up their old patents, and to have the colony openly attached to the crown and placed more immediately under the protection of the Parliament.

On April 20, Sir Thomas Smith, M. P. for Sandwich (a member of his Majesty's Council for Virginia, and for the Virginia Company of London), stated to the House of Commons, "that if he, as the Governor of the Company, could influence the members, the patent should be brought in." "Serjeant (Sir Henry) Montague, M. P. for London (another member of his Majesty's Council for Virginia, and afterwards Lord Chief Justice), declared that the patent was against law," and Robert Middleton, Esq., another M. P. for London (a member of the Virginia Company), stated that the Company "were willing to yield up their patent, that it had not been their intention to use it otherwise than for the good *of all parties* [i. e. of the enterprise], confessed that there had been some miscarriages, and wished that this patent may be damned, and an act of Parliament passed for the government of the colony," etc. "After considerable discussion it was ordered by the House of Commons that the patent should be brought in."

On this day (April 20) Parliament took their holiday, meeting again on Monday, May 2. On May 12, the Council for Virginia presented a petition for aid, which was read, and the next Monday, the 16th, at nine o'clock in the morning, was designated as the time to hear the case; but on the 16th Christopher Brooke, Esq., M. P. for York (a distinguished lawyer, a member of His Majesty's Council for the Virginia Company of London, and one of the attorneys for that company), moved that the Virginia business should be taken up the next day (17th) at seven o'clock.

On the 17th the Earl of Southampton, Lord Sheffield, and Lord De la Warr, members of the House of Lords, and also members of His Majesty's Council for the Virginia Company of London, "came in to countenance the cause of that company before the House of Commons."

The celebrated lawyer, Richard Martin.

Esq. (a member of the Virginia Council, a member of The Mermaid's Club, and "one of the highest wits of our age and his nation"), was employed "as a Counsaillor to plead for some course to be held [by Parliament] for the upholding of Virginia."

The Commons Journal, under May 17 and 18, 1614, contains an interesting outline of Martin's speech and the subsequent proceedings thereon, which is too long for insertion here. A portion of his argument was in reply to the main objection that, "if the Virginia business was openly undertaken by the crown and Parliament, it might result in a war with Spain." It was an able and eloquent speech, but unfortunately, Martin, who was not then a member of Parliament, got himself into hot water by giving the numerous young members a little fatherly advice. This caused a wrangle; but the Speaker, Sir Randolph Crewe (afterwards Lord Chief Justice of the King's bench), assured the friends of the Virginia business that "the remembrances of the Plantation were well accepted and looked upon with eyes of our love."

Some time after, "this young House of Commons," regardless of Martin's advice, got themselves into hot water by quarreling with "the old House of Lords," and the King dissolved the Parliament (June 7) before it had passed a single measure — the Virginia business, or any other.

It was more than six years before James I. called another Parliament. In the meantime the colony in Virginia had been "made good," had a Parliament of its own; and the Spanish government had been induced to relinquish their positive claims to America north of 34° north latitude, and, virtually, to yield to the claims of England. The foundation for an English Protesant nation in the New World had been laid.

About the first of November, 1620, James I. determined to call his third Parliament, which finally met on Jan. 30, 1621. On Feb. 3, Lord Chancellor Bacon, replying in Parliament to the new Speaker, Serjeant (Sir Thomas) Richardson, and referring to the reign of James I, said:

"Time is the only commender and encomiastique worthy of his Majesty and his government. Why time? For that in the revolution of so many years and ages as have passed over this Kingdom, notwithstanding, many noble and excellent effects were never produced until His Majesty's days, but have been reserved as proper and peculiar unto them . . . They be in number *eight.*"

. . . . . .

"*Thirdly*, This Kingdom now first in His Majesty's times hath gotten a lot or portion in the New World, by the plantation of Virginia and the Summer Islands. And certainly it is with the kingdoms on earth as it is in the kingdom of heaven. Sometimes a grain of mustard seed proves a great tree. *Who can tell?*"

Whatever turn subsequent events may have taken, and however we may regard the destinies which have shaped our ends *since*, there can be no doubt as to the *unique* importance of the founding, establishing, securing, of the first English colony in the New World.

It was not merely "the planting of a nation" in a country already conceded to England, but in a country stoutly claimed by Spain on the strong grounds of prior discovery, of actual survey, and of actual prior settlement even within the Chesapeake Bay — as well as by donation from the Pope.

It was not merely the planting of a colony by a private company, or by individual enterprise. It was an affair between great nations, involving great national, territorial, commercial and religious interests and questions. "James I. claimed to be Head and Protectour of the Protestant faith; as the Spaniard did of the Roman."

It was not merely the founding of a colony. It was "the foundation that made one of none, resembling the creation of the world, which was *de nihilo ad quid*," — it

was the foundation upon which a New Nation in the New World was built.

It was one of the most momentous strokes of national policy in the annals of the world, resulting in the acquisition by England of a large portion of the Spanish claims in North America, without breaking the treaty and without firing a gun. And the victory *on the vital national issues* — on which the beginning of this nation really depended — was won by British statesmen, diplomats, politicians and lawyers.

NOTE. — The case had been on the docket — contested sometimes, but not decided — for more than one hundred years. The discovery by Cabot furnished the base of the case for England, while the base of the Spanish claim was the discovery by Columbus. Hence as a nation we trace back to Cabot and not to Columbus. Yet the name of Columbus is engrafted on more than one hundred places scattered all over the land which was acquired by our forefathers *vs.* the Spanish claim for his discovery. While Cabot, who furnished *the basis for our prime right and title to this land*, is almost unknown in the land. And this is only one of many illustrations given by the world as to the truth of the Biblical saying: "*A prophet is never without honor save in his own country*," for by the same token the name of Columbus is almost unknown in the Spanish American countries, which really trace back to his discovery.

LONDON LEGAL LETTER.

LONDON, Dec. 6, 1893.

WHAT we call the "Rule Committee" of judges of the Supreme Court have now passed several of the rules which have been under consideration since the Council of Judges issued their report on the working of the judicature acts. As had been anticipated, these new rules introduce the system of trial without pleading; they of course do not abolish pleading, but plaintiffs may endorse their writs of summons with a statement sufficient to give notice of the nature of their claim or of the relief or remedy required in the action, and the writ in such cases will further bear that if the defendant appears, the plaintiff intends to proceed to trial without pleadings. Liberty is reserved to the defendant to take the opinion of the judge whether there should be pleadings or no. It is clear enough that this scheme might revolutionize our legal procedure, but the general opinion of the profession seems to be that matters will be left very much where they are at present, as in the immense majority of cases where the plaintiff intimates his intention to proceed without pleadings, pleadings on the defendant's application will be ordered by the judge. Our whole system of procedure is at present in a more or less chaotic condition; further experiments and prolonged experience are required to educe harmony and symmetry.

Mr. Crump, the indefatigable editor of the "Law Times," is still contending manfully for his scheme of establishing a Bar Association. He introduced a discussion on the subject at the Hardwicke Debating Society lately, and last week in replying to the toast of the bar at the quarterly dinner of the British Empire Club, he delivered himself of an eloquent apologia on behalf of his cherished idea.

Within the past year or two there has been a marked revival throughout London of local parliaments. These institutions are simply debating societies, organized on the model of the House of Commons; in the seventies they were so popular that even small provincial towns considered their municipal life incomplete without one, but the debating public in time were surfeited with these mock legislatures, and they almost entirely died out. The instinctive love of controversy, however, which distinguishes lawyers, whether barristers or solicitors, has re-established in various parts of the metropolis extremely successful parliaments. The most notable are those in Haddington, Kensington and Chelsea, where, when members of our profession do not actually predominate in numbers, they are the mainstay and inspiring

influence of the discussions. Many a youthful barrister spends his evenings at a local parliament in the fond hope that some of his fellow members who belong to the lower branch of his profession may be led captive by his eloquence and give practical proof of their admiration by affording him the opportunity of earning fame and riches in another sphere. I do not think these dreams are often realized.

I fancy a phenomenon familiar in our own courts is also observable in yours; I refer to the fact that certain branches of law, after occasioning constant litigation for a decade or even much longer period, gradually cease to figure for one reason or another among contentious matter. To give an instance, the law of bills of exchange was during the greater part of this century a source of immense profit to practitioners; then came the Bills of Exchange Act of 1882, which codified and elucidated this important branch of mercantile law, and left but scanty opportunities for subsequent litigation on the subject in cases other than those turning on mere questions of fact. For some years there has been an enormous growth in the number of cases of libel and slander dealt with by the court. This is due obviously to the extraordinary development of journalistic enterprise and the adoption by so many periodicals of the highly spiced personal paragraph, and other features of what is styled the new journalism, following, as we are always told, in this respect, American models. I make this statement, as you will readily understand, entirely without prejudice. The great subject of the future is undoubtedly local government. So many acts of the highest importance and novelty have lately been passed and are in process of enactment that the amount of consequential litigation is almost incalculable. Keep your eye on local government, would be my carefully considered advice to the budding Demosthenes.

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The Lawyer's Easy Chair.

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

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS.

DRUNKENNESS AS AN EXCUSE FOR CRIME. — We had supposed that there was no essential difference on this subject between England and America. The "London Law Journal" however recently said: —

"In the United States more effect is given than in England to the plea of drunkenness as a defense to a charge of crime; but while in theory it is here no excuse at all, there is undoubtedly a tendency among juries and even judges to give some effect to the plea; and Sir James Stephen, in Regina *v.* Davis, 14 Cox Cr. Cas. 563, and Regina *v.* Doherty, 16 Cox Cr. 306, has ruled that *delirium tremens* may be treated as insanity, and that ordinary drunkenness may be such as to negative formation of the intent necessary to constitute a particular criminal offense.

"If this is good law, some, if not all, drunkards are put into the position of lunatics under the old law, and are exempt from conviction, but have the advantage over lunatics that they are not subject to detention during Her Majesty's pleasure. It would be a salutary amendment of the law to provide that where a drunken man does an act which would be crime in a sober man, he should, if acquitted on the ground of drunkenness, be subjected to some form of penal treatment for qualifying himself for acquittal by recourse to drink."

The doctrine of the two cases cited above is undoubtedly the law in this country, and very bad law it is. Why should a man be held less guilty because he has deliberately put himself into a state of mind in which he is unable to form the intent technically required? He is not excused from the penalty of rape, for example, when he is ignorant that the victim is under ten years of age, and she consents; and this is very wholesome law. It is grossly immoral to hold that a man may escape the gallows because he has made himself so drunk that he cannot remember and observe the statutory distinction between the first and the second degree of murder. But this is not by any means so immoral as to hold that he may go scot-free because he has, by a long course of vicious and voluntary self-indulgence, disabled himself not only from observing legal distinctions, but from knowing what he is doing and fulfilling his duty to society, and thus by reason of years of bad conduct he becomes an object of mercy. A man who never did a wrong thing in his life, may subject himself to capital punishment by a moment's vicious indulgence of passion and a moment's premeditated design to take human life. But if he has been a drunkard for years and falls into *delirium tremens* in consequence, why, forsooth, that is a "disease" that excuses the poor man from any liability to punishment for taking his neighbor's or his keeper's life! We would like to see this monstrous inconsistency corrected by statute, to abolish this premium put on drunkenness, and to make of no effect the common plea, "so drunk he didn't know what he was about." Society now practically says to the citizen, "Get drunk only occasionally, or perhaps quite unintentionally, and we will punish you for offences against the law; but if you will only get drunk often enough and deep enough, and do it with design or recklessly, so that you become crazy by reason of this vicious indulgence, and we will let you off altogether."

AN ARTISTIC LAWYER. —We have recently chronicled some literary ventures on the part of lawyers, American and English, and now there comes to our notice, through the "London Law Journal," an account of artistic as well as literary efforts on the part of a leading London barrister, Mr. Lockwood, Q. C. The "Journal" says: —

"The little sketch in this week's 'Punch' signed 'F. L.,' and entitled 'Cold but In-vig-orating,' is from the facile pen of Mr. Lockwood, Q.C. Some further specimens of his skill as a draughtsman will, we understand, appear in the Christmas number of the 'Idler.' Members of the Bar will shortly have an opportunity of hearing the lecture on 'The Law and the Lawyers in Pickwick,' which Mr. Lockwood delivered at York more than a year ago. The Attorney-General has induced him to repeat it for the benefit of the Hackney Reform Club."

We fear that some abominable pun lurks in the title of that sketch. It has been rumored that the learned barrister indulges his facile pencil in court at the expense of his brethren and everybody else, and we have even entertained the hope that he could be persuaded to make a tour in this country and repeat his Pickwick lecture. Perhaps Sir Richard Webster would consent to accompany him and sing a song or two, as he is rumored to be an accomplished singer, and possibly the Lord Chancellor would also favor us

with a dance — England once had a dancing chancellor. Really, the London bar must be more chary of reading our bar lectures on professional dignity!

A PRACTICAL TEST IN EVIDENCE. — A very pleasing addition to our recent collection on this topic is afforded by the following from the "London Law Journal": —

"It is refreshing to find a magistrate so confident in his judgment that he defies a whole body of experts and ignores a threat of appeal. In sentencing a cabman to fourteen days' imprisonment for driving a horse in an unfit state, Mr. Shiel, who had inspected the animal, declared that he would not believe the whole veterinary college if they swore that the horse was in a capable condition. This observation was made in the course of the evidence given by a member of that body. Mr. Shiel had seen the horse, and that was enough for him. There was good reason for this confidence, for Mr. Shiel is one of the best horsemen in the legal world, a great part of his leisure being spent in the hunting field."

It really does a humane lawyer's heart good to learn that cab-horses have some rights that courts are bound to respect in spite of the insensibility of experts and veterinary surgeons. Cab-horses are better used in London, however, than in Paris, where their treatment is a disgrace to a civilized people, to say nothing of a nation that prides itself on its "politeness."

A PLUMBER'S RIGHTS. — Has a plumber any rights which a white man is bound to respect? It would seem so from the following paragraph from the "London Law Journal": —

"Has a plumber a right to wear his cap in one's house? This was the point submitted to the Highgate justices by an ex-Fellow of Balliol. The plumber and his son came to the ex-Fellow's house to clear away a stoppage in the bath. Arrived at the scene of operations they kept on their caps, as is the use of British workmen. The householder lectured the parent plumber on the bad example he was setting his son in not teaching him to take his cap off in a gentleman's house. The parent replied by setting up the custom of the trade to work covered. The plea was overruled, and the father plumber's cap thrown out of window by the indignant ex-Fellow. Then the parties aggrieved adjourned to the open air (it was drizzling), and went — the plumber capless and the ex-Fellow carrying the plumber's cap — to seek counsel and advice of the nearest policeman, who referred them to the justices. The ex-Fellow says that he was on the way called by the plumber 'a thick-headed old fogey.' Yet the justices fined him 10*s.* for his manner of giving a lesson in manners, and gave him no redress for this very unacademical language."

It would seem that the plumber "sized-up" the ex-Fellow very accurately. The latter should consult Mr. Burnand's "Happy Thoughts" for a repartee to a plumber.

HARVARD LAW SCHOOL. —We were about to write a very deleterious paragraph on the rumored decision of this celebrated institution not to admit any to study nor confer its degree on any but graduates of colleges. We are glad to learn that our incipient indignation at this asinine proposal was wasted, and that the idea is scouted in the current number of the "Harvard Law Review," the official organ of the school. We are still in the dark however on one point, and we wish the "Review" would enlighten us. It says: —

"Any man who passes a satisfactory examination in simple Latin or French and in Blackstone's Commentaries, can enter the school, now as heretofore. All such students will be given the regular degree, after three years' residence, and the passing of the requisite legal examinations, if they attain a mark within five per cent of that required for the honor degree; *i. e.*, if they attain what is often technically spoken of as 'creditable standing.'"

Exactly what is "required for the honor degree"? When we are informed of that, we may have something further to say. Meantime we will say that it seems to us that the New York rule, requiring the student, before he enters on his term of legal study, to pass the "Regents' examination" is sufficiently strict, inasmuch as it is probable that not more than one practicing lawyer in ten in the United States could pass it off-hand, even if his salvation depended on it.

A CORRECTION. — In the "Michigan Law Journal" Mr. Hyde publishes an article against general codification of the common law, very labored and very inconclusive, consisting chiefly in "You can't do it, you know." The "Journal" editorially says of it: —

"Mr. Hyde has chosen his subject unfortunately, for the question, 'Can the Common Law be Codified?' is practically answered by the fact that the common law has been codified, not only substantially so in England, but in two-thirds of the United States."

Now we have been suspected of a sympathy with the cause of general codification, but candor compels us to dissent from this editorial statement, which is a repetition of an erroneous assertion which that journal has made before this. The common law has *not* been substantially codified in England, nor in two-thirds of these States, nor in any States but California, Georgia and North Dakota, as we recollect the matter. There are codes, more or less extensive, of *procedure*, differing from the common law procedure, in some twenty-six States, but this is a very different thing from codification of the principles of the common law.

THE UNIVERSITY LAW REVIEW. — It is the present fashion for every prominent law school to issue a monthly or quarterly law journal of its own. The "Harvard Law Review" is easily the best of these, and the "Yale" is a good second. Now there comes "The University Law Review," a monthly, in the interests of the University of the City of New York, conducted by Austin Abbott, Dean of the Law School. Whatever Mr. Abbott fathers is sure to be commendable in purpose and highly respectable in execution. This opening number is very promising, the notes of cases being of remarkable interest and value.

WEST VIRGINIA BAR ASSOCIATION. — The address to this body, by the president, Mr. R. T. Barton, at its fifth annual meeting, in April last, on "The Punishment of Crime," is at hand and is a valuable production. If in speaking of the numbers that have attended the meetings the president includes only lawyers, this association is a wondrous exception, for he speaks of 257 in 1888, and of 439 in 1892, as having "gathered together." If these figures mean lawyers, the rest of the State must have been very peaceable for one or two days. Mr. Barton gives one piece of information which will probably be new to most of our readers as it is to us. Speaking of the "bier test," or compelling the suspected murderer to touch the corpse of the victim, which it was believed would bleed if he was guilty, he says:—

"The records of Accomac County, Va., show that the test was applied in the case of Paul Carter in 1680; so in Boyer County, New Jersey, in 1767, in the case of a slave suspected of murder, and evidence that such a test had been successfully applied was admitted, with other evidence, in the prosecution of a man named Gette in Pennsylvania as late as 1833. In the preliminary proceedings, but not under judicial sanction, this test was applied in Pennsylvania in one case in 1860; at Verdiersville, in Virginia in 1868, and at Lebanon, Illinois, in 1869."

Mr. Barton's paper contains valuable and convenient statistics of crime and punishment in this country in recent years. He observes that Blackstone's enumeration of capital offences at one hundred and sixty is exaggerated, because it makes a distinct offence, for example, of killing the particular species of game under a statute punishing the killing of game. Another paper read on the same occasion is "Extrinsic Evidence in respect to Written Instruments," by Prof. Charles A. Graves, of Washington and Lee University Law School. This is a learned and judicious monograph, especially addressed to the subject of wills. It will prove of permanent value, not only by reason of its excellent selection of and comment upon cases, but by reason of the writer's independent and vigorous views of the subject on principle. He gives the foolish and pedantic old notion of Lord Bacon about the distinction between patent and latent ambiguity the *coup de grace*, although perhaps it scarcely needed it, for if not extinct it never would have had any more standing in modern courts unless "holpen" by statute. We heartily commend this paper to all legal scholars.

NOTES OF CASES.

INJUNCTION AGAINST PUBLICATION OF BIOGRAPHY. — In Corliss *v.* E. W. Walker Co., August, 1893, United States Circuit Court, D. Mass. (57 Fed. Rep. 434), it was held that the publication and selling of a biography of a deceased person, who had become famous during his lifetime as an inventor, could not be restrained by injunction, upon the suit of his widow and children. But it was held that the publication of a picture, intended to accompany the biography, and which had been taken from a portrait and photograph of the deceased, would be restrained, it appearing that respondent had not observed the conditions upon which the painting and photograph were obtained. The court distinguished Schuyler *v.* Curtis, 15. N.Y. Supp. 787, where the erection of a statue of a private person was restrained. The court held that it had no jurisdiction here because there was no injury to property. It also holds, very unnecessarily, that it had no jurisdiction to restrain a libel (citing Boston Diatite Co. *v.* Florence Manuf. Co. 114 Mass. 69; Brandreth *v.* Lance, 8 Paige, 24; Assurance Co. *v.* Knott, 10 Ch. App. 142) because there was no pretence that the publication was libellous. On the other point Pollard *v.* Photographic Co. 40 Ch. Div. 345, was cited.

USING A PERSON'S BODY AS A SHIELD. — Russell Sage, the notorious "put and call" broker of New York, has successfully defended a recent suit for breach of promise brought by an old servant in his family, but he is still in trouble with a person of the other sex. The facts were that a man called on Sage and handed him a letter threatening that if he did not immediately hand over to him a large sum of money, he would blow him up with dynamite which he had there in his satchel. At this point the plaintiff, Laidlaw, entered, and Sage left the vicinity of the other man, went up to the plaintiff, still watching the other, took his left hand in both of his, and gently turned him between the first visitor and Sage, all the time talking in an expostulatory tone to the crank, and just then the crank exploded a bomb,

was himself blown to pieces, and Mr. Laidlaw was laid low and severely injured. He insisted that this was a species of "put" that Sage had no right to indulge in, and sued for damages. The complaint was dismissed at the trial, on the ground that the burden was on the plaintiff to show that without Sage's act he would not have been injured. This is now reversed by the general term, Van Brunt, P. J., observing:—

"If Sage had been acting innocently, if it could not be found from the evidence that he intentionally placed this man between himself and the expected danger, this rule might apply. But where his very act of placing the plaintiff in the position mentioned may have been a wrong toward the plaintiff, and was done by defendant with the intent of shielding himself from injury, we fail to conceive why the burden of proof is not upon the defendant, rather than upon the plaintiff, to show that without defendant's act the plaintiff would have been equally injured. And it seems to us that there is where the fallacy of the defendant's argument lies. In all the cases cited the party proceeded against was doing a lawful act, or was attempting to protect his property or person in a lawful manner, and injury resulted.

We are of opinion (therefore), in view of the fact that from this evidence the jury might find that the defendant used this plaintiff as a shield against apprehended danger of which he knew the plaintiff to be ignorant, that a dismissal of the complaint cannot be sustained."

We are of opinion that Sage's lawyers have neglected to plead their strongest defence, namely, contributory negligence. When any man finds Russell Sage taking his hand in both of his, it is his duty to run. It might have been different with the woman.

INDIVIDUAL LYNCHING. — Under the title, "A Possible Check to Individual Lynching," the "New York Law Journal" gives the text of a decision of the Georgia Supreme Court, the point of which is stated by the court as follows:—

"If a husband, knowing of his wife's criminal infidelity, deliberately lays a trap for her paramour by pretending to him and her that he (the husband) is going on a journey, when it is his purpose not to go, but to conceal himself and lie in wait at or near his home, for the purpose of killing the paramour in case he should be caught in the guilty act, at the same time expecting and designing so to catch him, the paramour has a right to defend himself against a deadly assault made by the husband under such circumstances, though the assault be made while the guilty act is in progress; and if the husband be killed as matter of necessity, to prevent his assault from resulting in death, the homicide is justifiable."

It had previously been held in Reed *v.* State, 11 Tex. Ct. App. 509; 40 Am. Rep. 795, that where adultery is only a misdemeanor, the paramour, resisting an attack made upon him by the husband, and killing him to save his own life, is guilty only of manslaughter. The Georgia decision is good law, sound sense, and pure morals. The Georgia decision concludes:—

"An examination of those authorities will show that, at common law, it was manslaughter for a husband to kill an adulterer, even when caught in the very act of illicit intercourse with the slayer's wife; and it is only by virtue of section 4334 of our Code, which follows the sections defining justifiable homicide, and declares that 'all other instances which stand upon the same footing of reason and justice as those enumerated shall be justifiable homicide,' that the killing of an adulterer by the husband is ever rendered completely justifiable. But for this section, the common law rule would now be of force in this State."

We quite agree with the "Journal" when it says:

"It is to be regretted that the common law rule was not allowed to stand. It is much more excusable to inflict a violent death as punishment for rape than for adultery. Yet the more refined and better educated classes, both North and South, have recently been profoundly disturbed by the numerous lynchings of persons guilty of the former offense. The essential doctrine of Lynch law is that some offenses are punishable by death at the hands of the official hangman after trial by jury, and other offenses are punishable by death through private enterprise, and without any trial at all. The slaying of a would-be adulterer by a husband is, according to the principles underlying civilized society, justifiable only for the protection of the wife from sexual intercourse to which she is not a consenting party, and in case the continuation of an assault cannot be prevented with safety to both husband and wife without force which may result in the death of the person committing it. The present decision is, however, to be welcomed because it refuses to further extend the authorized sphere of individual Lynch law."

PHOTOGRAPHS.— Our readers may add to this heading in the articles on "Practical Tests in Evidence," the case of Cooper *v.* St. Paul City Ry. Co., Minnesota Supreme Court, August, 1893, an action for personal injuries by negligence. The court said:—

"For some months prior to the trial the plaintiff had resided in Chicago, Ill., and his testimony was taken by deposition. It was claimed that his physical condition was such that he could not be present at the trial. Against the objections of defendant's counsel, a photograph, which, according to the testimony, had been taken a few days before the trial, and was 'a true and correct picture and representation of those parts of Mr. Cooper's body that it purports to show,' was received in evidence. This ruling is specified as error. We are assured by counsel, in their brief, that the expression upon the face of a lost soul, as portrayed by the combined imaginations of Doré and Dante, would be extremely jovial in comparison with that depicted upon plaintiff's face in this work of art. We are not prepared to disagree with counsel in this contention,

or their further claim that the expression upon a man's face may be easily changed or distorted, and rendered very misleading, when brought before a camera. But the portrait in question has not been forwarded on this appeal, and we have no means of knowing whether it purported to represent anything more than those parts of plaintiff's body which could not have been affected by temporary effort or exertion, or, if the whole figure did appear, that the facial expression was of the hideous character so graphically described by the able counsel for defendant, and could have had the effect upon the jury they insist it had. In Albert *v.* Railway Co. 118 N. Y. 77, it was held that a photograph of a plaintiff — his physician testifying that it was taken in his presence, and correctly represented the plaintiff's limbs — was properly admitted in evidence for the purpose of showing the manner in which these limbs were contracted, as the result of alleged injuries. It was said to be competent on the same principle as a map or diagram. We believe this to be a correct rule, and it has not been shown here that the court below was not strictly within it when making the ruling complained of. See on the general subject, an article in 31 Cent. Law J. 416."

LIABILITY OF CITY FOR ABATING A NUISANCE.— Orlando *v.* Pragg (Florida Supreme Court), 19 Lawy. Rep. Ann. 196, is rather amusing. It was an action against a city for breaking up the plaintiff's shop and destroying his property. "It appears that he kept a kind of curiosity shop and museum; that in the front shop he kept various fancy wares, jewelry, shells, stuffed animals, etc., and in the yard in the rear he had animals of various kinds, among others water-turkeys, coons, snakes, alligators, turtles, snipes, chickens, owls, lot of shells, etc." Also sea-fowl and a fox. That the city marshal came there, with policeman and carts, "and carried away all the animals, shells, etc., which witness had in the yard, and took them out of the city limits, and turned them loose" — shells and all. He recovered none, except some of the shells, which it seems he overtook. He had a judgment for $300. One defence was that his shop and yard were a deleterious public nuisance, complained of by neighbors, which he had been duly and reasonably notified to abate, and that the proceeding in question was taken at the official direction of the county board of health. This defence was proved and not contradicted, and the appellate court reversed the judgment. So this Old Curiosity Shop is scattered, and Sol Gills is without remedy.

BILLS OF LADING — "EXCESS AND DEFICIENCY CLAUSE." — An example of polite over-ruling is afforded in a recent New York case. In Abbe *v.* Eaton, 51 New York, 410, a bill of lading contained this clause: "All damages caused by boat or carrier, or deficiency of cargo from quantity as herein specified, to be paid by the carrier and deducted from the freight, and any excess on the cargo to be paid for to the carrier by the consignee." Held, that if the carrier delivered all that he received, his liability was discharged. This was an action by the carrier for freight on a cargo of corn against the consignee, and the defendant set up a shortage of seventy-one bushels. The decision was in the commission of appeals, Earl, Com., observing: "Here is an agreement that the carrier will be bound by the quantity specified, or that the bill of lading shall furnish the only evidence of the quantity. Such an agreement might doubtless be made by a carrier, but the language used would have to be quite clear and explicit to preclude the carrier from showing by parol a mistake in the quantity." Citing Meyer *v.* Peck, 28 N. Y. 590. But in Rhodes *v.* Newhall, 126 N. Y. 574, precisely such an action as Abbe *v.* Eaton, and where there was a precisely similar provision in the bill of lading, and a shortage of 827 bushels, exactly the contrary was held, and the carrier was held responsible for the quanity recited in the bill of lading, although he delivered all that he received. The court said of Abbe *v.* Eaton and Meyer *v.* Peck:—

"The rule acted upon in those cases, as stated in the head note of Meyer *v.* Peck, is that an *ordinary* bill of lading is not conclusive, as between the original parties, either as to the shipment of goods or the quantity; as to those matters it operates merely as a receipt, and is open to explanation on the trial by parol evidence."

But as we have seen, the bills in those cases were not "ordinary" bills, but were just like that in this case. This case must therefore necessarily over-rule those cases in spite of the attempt or pretence to distinguish them. It is a little singular that Earl, Com., who was a member of the court in the last case, did not dissent. The doctrine of Abbe *v.* Eaton was disapproved by Judge Wallace in Merrick *v.* Certain Bushels of Wheat, 3 Fed. Rep. 340, and it may be that the later doctrine is the better as applied to disputes between carrier and consignee, but a very pretty question lately arises as to its applicability as between carrier and consignor. Would this provision estop the carrier from setting up a mistake as against the consignor? This seems an undecided question, but if any of our readers know of any decision on the point we will thank them for a direction to it.

BURIAL — EASEMENT OF. — A novel point was established by the Kentucky Court of Appeals, in Hook *v.* Joyce, 21 Lawy. Rep. Ann. 96, namely, that an easement in a lot of land for burial may be acquired by prescription and adverse possession for

the statutory period. The action was ejectment to recover a lot in a cemetery. This point was concisely laid down, and the court concluded as follows:

"But the question arises, what is the nature and extent of the adverse possession required in order to ultimately ripen into a title to an easement of a burial lot? It seems to us burial of the dead body is the only possession, where claimed and known, necessary to ultimately create complete ownership of the easement, so as to render it inheritable. And as long as it is inclosed as a burial place, or even, without inclosure, as long as gravestones stand marking the place as burial ground, the possession is, from the nature of the case, necessarily, and therefore in legal contemplation, actual, adverse and notorious. Moreover, there cannot be an actual ouster of possession by an intruder, or running of the statute of limitation in his favor, while such gravestones stand there, indicating by inscription the previous burial of another. It appears that appellee does not now nor has he resided in Paducah for many years. But non-residence does not divest an heir-at-law of such easement; the gravestones of his parents being, as long as they stand, conclusive of his claim of ownership as well as right of entry. The last instruction seems to require as evidence of adverse possession some visible acts of ownership by the claimant in the preservation and use of the ground for burial purposes; and in that respect it was rather prejudicial to appellee."

MARRIAGE — ESTATE BY ENTIRETIES — DIVORCE.— The Supreme Court of Tennessee decides in Hopson *v.* Fowlkes, 23 S. W. Rep. 55, that where land is owned by husband and wife by entireties and they are afterwards divorced, they thereby become tenants in common and the entire estate does not vest in the survivor of them by right of survivorship. The court rely chiefly on Hawes *v.* Wallness, 85 Ill. 197. The court did not cite Steltz *v.* Schreck, 128 N. Y. 263, and Thornley *v.* Thornley, 68 L. T. Rep. (N. S.) 199, holding exactly the same doctrine, the former disapproving the contrary holding in Appeal of Lewis (Mich.), 48 N. W. Rep. 580.

MARRIAGE — WIFE'S NECESSARIES — MONEY. — The Supreme Judicial Court of Massachusetts, in Skinner *v.* Tirrell, decide that one who furnishes money to a wife, living apart from her husband for justifiable cause, which she expends for necessaries, cannot recover therefor from the husband, on the principal of subrogation, as there never was any liability on the part of the husband to those furnishing the necessaries, they having been sold to the wife and paid for by her, and that there is no ground on which recovery can be had in equity against the husband for moneys so advanced to the wife. The court put this on the ground that a volunteer cannot compel subrogation. But it seems that the plain question is whether money is a necessity. The court say:

"There are ancient and modern cases in England which hold that a person advancing money to a married woman under circumstances like those in this case can recover the same of the husband in equity. Harris *v.* Lee, 1 P. Wms. 482; Marlow *v.* Pitfeild, *Id.* 559; Deare *v.* Soutten, L. R. 9 Eq. 151; Jenner *v.* Morris, 3 De Gex, F. & J. 45. See, also, *In re* Wood, 1 De Gex, J. & S. 465. These cases have been followed in this country in Connecticut (Kenyon *v.* Farris, 47 Conn. 510; 36 Am. Rep. 68), and there is a dictum in a case in Pennsylvania (Walker *v.* Simpson, 7 Watts & S. 83) to the same effect. Certain text writers, following the English cases, have stated the law to be as there held. Bish. Mar. & Div. §§ 621, 622; 1 Bish. Eq. § 193; 3 Pom. Eq. Jur. §§ 1299, 1300; 2 Kent Comm. 146, note by Holmes, J.; Schouler Husb. & Wife, § 61, note. But those cases do not appear to us to rest on any satisfactory principle. It was apparently conceded by the Lord Chancellor in Jenner *v.* Morris, *supra*, that they did not. He seems to have yielded to them simply as precedents which he was bound to follow. The earliest one (Harris *v.* Lee, *supra*), on which the subsequent ones rely, referred the jurisdiction, without much discussion or consideration of it, to the principle of subrogation. For reasons already given, we think that principle inapplicable. It is said that equity has jurisdiction because there is no remedy at law. It is admitted that there is none. Neither is there any right or claim at law on the part of the plaintiff against this defendant. To sustain the bill on that ground would require us to hold that equity may create a legal right where none exists, and then enforce it by equitable remedies. We do not understand that it can do so. The only remaining ground of jurisdiction is that the defendant was bound to furnish his wife with necessaries; that the money which the plaintiff advanced to her was actually expended in good faith by her for necessaries; that it will be no hardship upon the defendant to be obliged to pay for necessaries which the law would have compelled him to furnish; and that, in the interests of justice, equity should compel him to pay the plaintiff the sums which she has advanced. In effect, this is the same as saying that in equity money advanced to a wife living separate from her husband for justifiable cause, and expended by her in good faith in the purchase of necessaries, should itself be regarded as necessaries, and recoverable accordingly. At law, it is entirely clear that a married woman has no right under such circumstances to borrow money on her husband's credit, even for the purchase of necessaries. We can see no reason why the power should be withheld at law and given in equity. There may be strong reasons why married women, compelled, by their husbands' misconduct, to live apart from them, should be allowed to borrow money on their husbands' credit for the purchase of necessaries. Such reason would apply equally at law and in equity. It is for the legislature, if it deems it advisable, to give them such power."

It appears to us sheer nonsense to admit that a man may supply a wife with a barrel of flour out of his shop as a necessary and hold the husband, but that he cannot hold the husband for money furnished her to buy the flour from somebody else when he has it not himself.

The Green Bag.

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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 have received from D. B. Read, Esq., Q.C., of Toronto, the following valuable account of Canadian law associations, which we are sure will interest our readers: —

Law, like literature, is the common property of all civilized people, it does not belong to any one country exclusively. A country that has no well defined system of laws very much resembles a ship without a compass: it is tossed about here, there and everywhere, and is in constant peril of being dashed against the breakers.

In the United States a growth of more than a hundred years has established a system which has not only met with the commendation of the American people, but of many foreign nations as well. Nevertheless it is well to look abroad and see what is being done in other lands for the promotion of legal education and the foundation of those fixed principles upon which rest the stability of governments.

The United States, once colonists themselves before gaining their independence, are not disinterested spectators of what their neighbors, the colonists of Canada, are doing in the matter of legal education.

There is more democracy in Canada than people not well informed give her credit for. In no particular is this more conspicuous than in the schools of law, and in the way she has of bringing law home to the very doors of her student class and of her practicing lawyer.

The legal practitioners of Upper Canada (now Ontario) were in the year 1797, by act of the Provincial Parliament, empowered to form themselves into a society to be called "The Law Society of Upper Canada, as well for the establishing of order amongst themselves, as for the purpose of securing to the province and the profession a learned and honourable body, to assist their fellow subjects as occasion might require, and to support and maintain the constitution of the province."

Immediately after the passing of this act the Law Society was organized and entered upon the performance of its duties. For the Society to secure to the province and the profession a learned body, as they were commissioned to do, it was manifestly necessary that they should provide the profession with a well stored library of law books and other tabula incident to the profession of the law. This was effected by the establishment of a law library in Osgoode Hall, the seat of the courts.

The library at Osgoode Hall at present contains 23,000 volumes, or about that number, and from the period of its establishment, shortly after the act of 1797, has fulfilled its purposes of affording the profession at large, when attending the terms of the courts (which were four in number per year under the old regime), the means of producing to the courts the authorities for the various propositions of law which were there to be argued.

Since the passing of the Judicature Act in 1881, the courts, or some of them, or a judge thereof, sit daily to hear arguments; and it can well be understood of what great value the Osgoode Hall library has been to the great body of practitioners from all over the province when attending the seat of the courts on behalf of their clients.

But this was not all that was required for a thorough legal equipment. With the reform of the law procedure, enabling judges to dispense with jury trials and to take into their own hands the disposition of cases, it was indispensable that the county practitioners outside of Toronto should have at hand the necessary books to quote from in impressing on the judicial mind at the sittings the views they wish to present. Not that judge trials have entirely usurped the jury trials, but with the establishment of the former came the more necessity of having well equipped county libraries for the convenience of the Bench and Bar.

"Some years ago," says "The Canadian Law Times" of 1886, "the Benchers of the Law Society of Upper Canada made provision for the assistance, out of the funds of the Society, of county Bar associations throughout the province in the formation of local law libraries to be maintained in the various county towns. This was done in recognition of the claims of the Bar outside of Toronto, who, while contributing equally to the support of the large library at

Osgoode Hall, found themselves only occasionally enabled to make use of it."

The county of Wentworth and the practitioners of the city of Hamilton are entitled to the credit of establishing the first county law association. This association was organized in the year 1879, not then, however, as an incorporated society. The first county incorporated association was the Law Association of the County of York, established under cover of the Revised Statutes of Ontario, Cap. 168, the act entitled "An Act respecting Library Institutions and Mechanics' Institutes."

This act enabled any number of persons not less than ten, having subscribed or holding together not less than one hundred dollars in money or money's worth, for the use of their intended institution, to make and sign a declaration of their intention to establish a library association or a mechanics' institute, or both, at some time and place to be named in such declaration.

More than eighty members of the Bar practicing in Toronto and the county of York made the declaration according to the act, and to carry out the requirements of the act declared:

1. That the corporate name of the Association should be "The County of York Law Association."

2. Its purpose should be the formation and support of a law library for the use of its members, to be kept and maintained in the Court House in the city of Toronto, and to promote the general interests of the profession, and good feeling and harmony among its members.

The constitution then goes on to declare that the amount of money subscribed by the eighty members was in all the sum of $1035, that the shares should be five dollars each, and each member to be entitled to one share for every five dollars in cash, and ten dollars for each ten dollars' worth of books. The declaration provided for the continuance of the Association; an annual meeting of members for purposes prescribed in the act; and appointed the following nine trustees for managing the affairs of the Association until such time as their successors should be appointed by annual meeting. The following barristers were appointed the first nine trustees of the Association: Britton Bath Osler, Q.C., James Kirkpatrick Kerr, Q.C., George Fergusson Shepley, Edward Douglas Armour, George Tate Blackstock, William Lount, Q.C., Walter Barwick, Charles Henry Ritchie, Q.C., Thomas Jaffray Robertson. Britton Bath Osler, one of the most prominent members of the Bar of Toronto, was the first president of the Association and was succeeded by James Fitzpatrick Kerr, Q.C., and then Christopher Robinson, Q.C., who, by his advocacy of the British claims in the Behring Sea Arbitration, has established for himself a European reputation.

This Association, with its sister Association of Hamilton, and indeed with the co-operation of the other county law associations, twenty of which have been organized in Ontario, have done great service to the law and to the profession by suggesting reforms and improvements which have met with the approbation of the judges and crystallized into rules of court and legislative enactments.

It is sufficient to quote from only two association reports to show the effectuality of the work of the Association, i. e., the report of the Hamilton Association of 1888, and of the County of York Association of the same year. In the report of the Hamilton Association it is said, "Owing to the action of law associations throughout the province, and more particularly those of York, Middlesex and Wentworth, there is every reason to hope that a complete fusion of the courts, with a uniform and consolidated practice, may result from what at first promised to be but a collection of all known existing rules." The report goes on to say, "The committee consisting of Messrs. Martin, Q.C., McKelcan, Q.C., and Teetzel, having given much valuable time to this question and the report of the joint Committee on Legislation from the county law associations, dated 19th Nov. 1887, shows how fully the suggestions made by this Association in the report dated 4th March, 1887, have been carried into effect. The report of the Committee on Legislation also bears good testimony to the value and influence of the associations throughout the country, which is flattering to this, the oldest association in the province."

The County of York Law Association in their report of 1888 say, "At the last annual meeting a resolution was passed directing the Board to take means to bring about a meeting of the delegates of the various county law associations in the province for the purpose of discussing matters of general interest to the profession, and immediately after the meeting correspondence was opened with the view of bringing about such a conference. Before, however, the details of this arrangement had been completed, the draft of the proposed Revised Rules were laid before the Committee on Legislation, and this draft contained so many features requiring careful consideration that the Committee on Legislation of the Hamilton Association was invited to meet with our committee and take up the consideration of the draft Rules. This committee met and was subsequently enlarged by inviting all the other law associations in the province to send representatives to the meetings. Most of the other associations were represented at the subsequent meetings of the committee; and ultimately a report was made setting forth the suggestions of the

committee. The result of the labors of the committee has been recognized and freely adopted by the judges and by the Attorney-General, and the report has been freely recognized as representing the opinions of the profession on the subject of the new Rules. The trustees, in giving prominence to the work of the committee, desire to point out that, had it not been for the existence of the law associations, it would have been impossible to obtain any representative expression of opinion from the Bar of the province, nor could expression have been given to an opinion from the Bar which would have carried the weight the report of the joint committee admittedly bore. One of the principal features proposed by the joint committee provided for fixing difinitely the mode of trial before trial. On no point were opinions so strongly and vigorously expressed as upon this; and as the solution a very strong recommendation was made to take away the absolute discretion of the judge."

The Hamilton Association in their 1889 report states: "The opinions of the various county associations throughout the province have been noticeably felt in connection with the deliberations on the consolidation of the Rules and the re-organization of the Law School, and the trustees consider it is a matter of congratulation to the profession that questions of importance to the Bar now receive such general consideration." The County of York Association in its report of 1889 says: "Since the last annual meeting the report of the joint committee of the law associations has been adopted in the new Rules of Practice, and since their promulgation a sufficient time has elapsed to make it plain to the profession that these Rules have simplified practice and are a well attempted effort to bring about more effectively the fusion aimed at by the Judicature Act."

Sufficient has been said to prove the good accomplished by law associations. The advantage of such associations becoming known outside their own circuit is well exemplified by the importance attached to the American Bar associations by the profession in England, as explained by "THE GREEN BAG's London Legal Letter" in the July number of the magazine.

The library of the County of York Law Association has already on its shelves, in the rooms appropriated to the library in the Court House, 2,500 volumes, which will be largely increased when the library is removed to the new Court House in course of erection.

It may be remarked that the Association, with a praiseworthy interest in its officials, has on the walls of the library portraits of all its presidents, besides those of some distinguished judges and statesmen. These portraits have been presented to the Association, and will in the future serve as a link between the men of the present and the past.

OUR "Disgusted Layman" seems at last to have really found something in the law worthy an approving word from him: —

Editor "The Green Bag":

SIR, — Did you know that "The Law, Sir" is really getting moral and respectable? Fact though. It must be that courts are getting to do some thinking on their own account and bothering less about "My Lord Brackton" and other mummies. How it does make a layman, that can see his nose before his face, think bad words of law and lawyers, when Eldon, for instance, is set up as a shining monument. How *could* a man be great in such a profession as the law professes to be and say that the foundations of society would be upset if a woman was not hung for stealing a loaf of bread? Is Diabolus the patron saint? But here is the sort of law that does the layman good, clear up and down his backbone (you know how *shivers* run up and down that backbone). The law as to mechanics' liens in this State has grown to be a monumental iniquity. Legislature after legislature has added and tinkered until they have constructed a set of statutes having as their object, making erection of buildings as hazardous for the owner as human ingenuity can accomplish. So far has this gone, that an owner may contract as tightly as human ingenuity can manage, that the building contracted for shall not cost over ten thousand dollars, yet if the contractor-in-chief, the sub-contractor, "material men," etc., combine, they can make the house cost the unfortunate owner twenty thousand dollars, and he has no protection; he can see it go on under his eyes and be utterly powerless to prevent it. Now that's the *law* of the business (not my layman's law, but the genuine article); but our Supreme Court wouldn't have it; and they seem to have determined to make a bit of law themselves, and they decided that if the owner inserted a provision in his contract that no mechanics' liens should be filed against the building, all sub-contractors, etc., were shut off. This didn't suit the "material men" a cent's worth, so they hocussed and "worked" and got the legislature to say that this decision of the Supreme Court shouldn't stand, so it shouldn't; but the court rose to the emergency, and in some opinion kindly invited some outraged owner to bring a case before them that they might have the pleasure of declaring that statute unconstitutional because impairing the force of contracts! Now that's *business* clear through. The layman can see that the effect of the statutes our legislature set up to toady to "the labor vote" were simple outrage, operating against nobody as hardly as they did against the honest workingman who wanted to own his home, and

under the operations of these statutes, the "material men" and contractors had grown into the most tricky and unscrupulous set of business men in the community. This your Disgusted Layman states as a fact within his own knowledge, that no other class of business men are as unworthy of belief, so destitute of high commercial honor, as the average "material man," the man who sells lumber, etc., etc., and being in a business which *can* profit by the mechanic's lien law, he thinks he knows something about it. Many and many a thing that the layman rages at in decisions of our Supreme Courts can be forgiven and forgotten for its resolute stand in favor of simple right and justice, imperilled by legislative asininity and base truckling to demagogueism.

Let not the writer be mistaken. No mechanic's lien was ever filed against him.

YOUR "DISGUSTED LAYMAN."

LEGAL ANTIQUITIES.

BY an act passed in 22 Henry VIII., beggars found wandering about seeking their subsistence from the alms of the benevolent were to be "carried to some market-town or other place, and there tied to the end of a cart naked, and beaten with whips throughout such market-town or other place till the body should be bloody by reason of such whipping." In the thirty-ninth year of Elizabeth, however, this act was slightly mitigated, and vagrants were only to be "stripped naked from the middle upwards, and whipped till the body should be bloody." Entries in some of the old English church registers remain as witnesses of the operation of this law.

FACETIÆ.

MANY good stories are told of Judge Underwood of Georgia; among the best are the following: —

When the famous Tweed ring had been broken up for stealing millions in New York, and the daily papers were full of the developments, Rev. Mr. Axson, a man of pure heart and trusting disposition, said, "Judge Underwood, it surely is not possible that these charges against Tweed & Company are true. Are they not all Democrats?"—"Mr. Axson," said the judge, "I fear you are too good a man to live in this world. I once was young, but now I am old. I once was a Whig, but now I am a Democrat, and I grieve to say that, from long observation, I have become convinced that it is within the range of possibility for a Democrat to steal."

JUDGE WRIGHT once reminded him in a courteous way that justice was represented as being blind and holding the scales of justice evenly balanced in her hand.

"Yes," said Underwood, "and I have long thought that the representation was a mistake in the designer, for how is it possible for her to tell whether the scales are evenly balanced without she raises the bandage a little? And there is another mistake that the lawyers make. You misconstrue the old maxim that a man shall be tried by his peers, and so whenever you have a guilty scoundrel to defend, you try to get one or more guilty scoundrels on the jury. That is not what the magna charta meant by peers."

BOB MCCAMY said that when the judge was presiding and the criminal docket was before him, he seemed to forget that justice was blind, and in spite of himself would raise the bandage a little. After he had charged the jury it was exceedingly dangerous for the defendant's counsel to ask for an additional charge. Bill Glenn had been defending a big, strapping town boy who was charged with an assault and battery upon a smaller boy. The big boy had been imposing upon the little fellows, and one of them hit him with a switch and ran. The big boy pursued him and threw a rock at him and cut a bad gash in his head and laid him up for a week or two. The grand jury found a true bill, and after the closing speech by the solicitor the judge charged the law very fairly and then asked if there was any other charge that counsel desired.

Glenn rose forward and with some tone of apprehension said, "I believe your honor omitted to charge that self-defense may justify an assault."

"Yes," said the judge, as he straightened up and fired up. "Yes, gentlemen, there is such a law, and if you believe from the evidence that this great big, double jointed, big fisted young gentleman was actuated by fear and self-defense

when he ran after that poor little puny, tallow-faced boy, and because he couldn't overtake him picked up a rock big enough to knock down a steer, and threw it at him and knocked him senseless, then you can find for the defendant. Any other charges, brother Glenn?"

"I believe not," said Glenn.

"DON'T you think," said a brother lawyer to Judge Underwood, "that Jim Pierson is the greatest liar of a lawyer that you ever saw?"

"I should hate to say that of brother Pierson," replied the Judge; "but he is certainly more economical of the truth than any other lawyer on the circuit."

CHIEF JUSTICE JEREMIAH BLACK of Pennsylvania, in reviewing a case which came up from the court of his old friend, Judge Moses Hampton, remarked that "Surely Moses must have been wandering in the wilderness when he made his decision," and sent the case back to the lower court. Judge Hampton, on its second trial, took occasion to remark that although he would have to submit to the higher authority, yet he still thought he was right, "in spite of the Lamentations of Jeremiah."

THE following medical certificate was introduced recently in a hearing upon an application to take the deposition of an absent witness: —

"This is to certify that Mr. Thomas B— is very unwell. He has been sick for four weeks or more and is still in bed, and I do honestly believe that his life will be endangered, for I have been his attending physician.

Very respectfully,

F. J—, M.D."

ON an argument before the Supreme Court of N. C. one day in years past, Mr. Lanier, a very learned and very thorough argufier of his causes, was going "to the bottom of the reason of things," when Chief Justice Pearson interrupted him: "Brother Lanier, you should presume that this Court at least understands the elementary principles of the law. You need not discuss *them*." Mr. Lanier, blandly raising his spectacles with a placid smile, replied with great deliberation, "So — I did — your — Honors, at the last term of the Court, and I — lost — my case — by — it." "Umph," said the Chief Justice, as he slided a little lower down in his seat.

COL. FOLK of the Mountain circuit in N. C. is a very learned lawyer, but it seems is not one of those who think all judges absorb learning *ex officio*. On one occasion, in arguing a point before Judge —— of the Superior Court, he laid down a very doubtful proposition of law. The judge eyed him a moment and queried, "Col. Folk, do you think that is law?" The colonel gracefully bowed and replied, "Candor compels me to say that *I* do not, but I did not know how it would strike your Honor." The judge deliberated a few moments and gravely said, "That *may* not be contempt of court, but it is a close shave."

NOTES.

THE following beautiful instance of mixed metaphor is copied verbatim from a brief filed recently by counsel in a cause pending in the Supreme Court of North Carolina: —

"We conclude this argument by remarking that, however formidable an array that the able opposing counsel has made by his many exceptions and prayers for instruction, that they are *but straws forming a rope of sand* when opposed to the clear principles of law and equitable jurisprudence."

IN Leavenworth they have nominated a young woman for coroner. Her election would mitigate somewhat the distress of having the coroner sit on a fellow.— *Philadelphia Ledger.*

"LET me give you my dying advice," said Rufus Choate. "Never cross-examine a woman. It is of no use. They cannot disintegrate the story they have once told; they cannot eliminate the part that is for you from that which is against you. They can neither combine nor shade nor qualify. They go for the whole thing, and the moment you begin to cross-examine one of them, instead of being bitten by a single rattlesnake, you are bitten by a whole barrelful. I never, excepting in a case absolutely desperate, dared to cross-examine a woman."

SIR EDWARD COKE was memorable for one faculty, without which, though individuals at the bar have attained office, none have attained eminence — intensity of application. He generally rose at three in the morning, and studied all day. The court seldom sat later than noon, and thus he had leisure to acquire his extraordinary learning. But his eminence is not to be fairly ascertained but by contrast with the men of his day. He had some of the most powerful minds of the most powerful period of the English intellect to contend with: Plowden, the well-known author; Lord Bacon, the first of philosophers; Egerton, the most fortunate of all chancellors; Sir George Coke, the great judge, whose judgment on Hampden's trial was the keystone of the liberties of England. Those were his rivals in the field of legal learning, and those were the men to whom his learning was as that of an oracle. — *New Monthly Magazine.*

THAT the court is not always ready to overrule its prior decisions, even though they may be plainly erroneous, is a matter of every-day observation. The tendency towards blind adherence to precedent is strongly shown in a recent Massachusetts case in which the Court in reaching its decision uses this extraordinary language: —

"If we were contriving a new code to-day we might hesitate to decide in this way. But we are not at liberty to refuse to carry out to its consequences any principle which we believe to have been part of the common law simply because the grounds of policy on which it must be justified seem to us to be hard to find, and probably to have belonged to a different state of society."

In the course of its decision the Court quotes from such ancient authorities, dug from the dust and mould of the past, as Brackton, Plowden and the Year Books in the time of Edward I., Edward III. and Edward IV.! The estimation in which Brackton is held to-day is well shown in a note in a recent number of the "American Law Review" as follows:

"It would seem that Brackton was a kind of literary fraud and plagiarist. No doubt it was a great deal easier for an itinerant judge, as Brackton was, to copy out of the Digest than to discover and state what the customary law of England was. Even making the most liberal allowance for the backwardness of all scholastic attainments in England in the reign of Henry III., Brackton was little better than a literary fraud."

This "literary fraud" lived in England in the thirteenth century, but helps to decide a controversy arising in Massachusetts in the nineteenth! And this in spite of the fact that the Court finds difficulty in discovering the grounds of policy upon which his reasoning may be justified, and admits that it probably belongs to a different state of society. — *Boston Courier.*

A REPORT of a very queer lawsuit comes from Paris. During last season a house in the Avenue de Neuilly was suddenly and unaccountably infested by rats. They swarmed all over the place, and what was peculiarly irritating, seemed to confine themselves to that one house. The owner managed to trap one of the swarm, and, having a mechanical mind, constructed a wire noose, which he was able to slip round the captive's head. This collar was furnished with a small silver bell, and, so equipped, the rat was set free. Of course, he found his comrades, or tried to do so, with the result that that special house in the Avenue de Neuilly had peace at last. Near by there lived a studious gentleman of nervous temperament, the plaintiff in the forthcoming action. He was wakened in the night by a curious tinkling sound, which came on fitfully, and seemed to proceed from every corner of the room. He lit a candle, and timorously proceeded to search. There was nothing visible, and yet the mysterious sound was distinctly audible. He tried to think it was imagination, but, failing, decided it must be ghosts. It was clear his house was haunted — and haunted, too, by day as well as by night. For weeks he could not sleep, and the anxiety told on his health. At last a gossiping servant learned the truth, and the victim, instead of laughing at his own credulity, has begun an action against the man who belled the rat.

JUDGE MCKINLEY, of Duluth, is in a singular position. He is judge of the circuit court in which his own wife, recently admitted to the bar, will practice. He is probably the only man in the world to-day who can prevent his wife from having the last word. — *Law Reporter.*

LITERARY NOTES.

AFTER a half century of successful existence, LITTELL'S LIVING AGE enters upon its fifty-first year with renewed vim and vigor. Its prospectus for 1894 promises much interesting and valuable material. As heretofore its contents will be made up of elaborate reviews of recent publications; the latest results of scientific research; biographical sketches of eminent characters; travel, exploration, literary criticism and every phase of culture and progress in the European world; with fiction and choice poetry.

In addition to the productions of the leading British writers, THE LIVING AGE will publish, during 1894, copyrighted translations of noted French and German authors. A story of thrilling interest entitled "Manette Andrey—a Picture of Life during the Reign of Terror," from the French of Paul Perret, will be begun in the first January issue.

A curious and captivating work, also from the French, will follow "Manette Andrey," while early in the new year will appear a charming short serial by Ernst Eckstein, the famous German romancist.

THE December CENTURY contains the opening chapters of a story which will particularly interest the legal profession, entitled "Pudd'nhead Wilson." Mark Twain is the author, and the plot introduces a novel and ingenious employment of science in the detection of crime. The other contents of this Christmas number are of unusual interest.

A NOTABLE article of timely interest, especially to lawyers, in the December HARPER'S MAGAZINE, is "The House of Commons," by Thomas Power O'Connor. The subject is treated for its contemporaneous value, and the picture of the customs and *personnel* of the lower house of Parliament is distinct and vigorous. The article is illustrated with nine drawings by Albert E. Sterner.

THE CHRISTMAS HARPER'S comes clothed more handsomely than usual, in a cover of white and gold, while extraordinary attention has been given to the illustration of its contents. Nine short stories represent the most vigorous movement in American letters, and these tales are varied sufficiently to include all branches of the art which has reached so high an excellence within recent years.

THE ATLANTIC for December offers a goodly feast to its readers. The most noteworthy article is Mr. F. B. Sanborn's article on "Thoreau and his English Friend Thomas Cholmondeley." The paper is made up mainly of letters between a young Englishman of no common character and the naturalist and philosopher whose name is coming more and more to be coupled, like Emerson's and Hawthorne's, with Concord in its best days. Mrs. Wiggin provides the short story of the number in "Tom o' the Blueb'ry Plains," a pathetic sketch of New England Life. Mrs. Cavazza's story, "The Man from Aidone," has its third, last and most effective part. Charles Egbert Craddock continues "His Vanished Star." Prof. Woodrow Wilson, in "Mere Literature," makes a plea for the study of books not as subjects of scientific inquiry. "Democracy in America," by Professor Francis Newton Thorp, is of interest particularly to students of our social history.

THE complete novel in the December number of LIPPINCOTT'S is "Sergeant Crœsus," by Captain Charles King. It is one of his most interesting tales of army life and Indian fighting in the wild West, and makes a new departure in having a private and a foreigner for its hero.

A story of marked power, at once striking, delicate, and pathetic, is "In the Camp of Philistia," by Virginia Woodward Cloud.

J. N. Ingram gives the history of "The Australian Rabbit-Plague." Wilton Tournier tells "How to Cultivate the Body." Edgar Fawcett writes of "Literary Popularity," and M. Crofton concludes his series, "Men of the Day," with sketches of Professor Huxley and Luigi Arditi.

THE Christmas number of SCRIBNER'S MAGAZINE contains five short stories of unusual beauty in sentiment, especially chosen for their appropriateness to the Christmas season. The authors are Robert Grant, Thomas Nelson Page, Henry van Dyke, Edith Wharton, and Herbert D. Ward. There is in addition a hitherto unpublished work of fiction by Sir Walter Scott, which is here printed by arrangement with Mrs. Maxwell Scott, and introduced and edited by Andrew Lang. The poetry of the number represents an equally notable list of authors including Thomas Bailey Aldrich, Richard Henry Stoddard, Edith M. Thomas, Duncan Campbell Scott, and Graham R. Thomson.

THE multiplicity and excellence of other magazines, far from lessening the usefulness of the REVIEW OF REVIEWS, makes this unique periodical more and more a necessity. Its indexes, condensations of

leading articles, classified lists of new books, and general survey of things written, things said, and things done during the month preceding its issue, would suffice to keep the busy reader in touch with the current of life and thought, even if he were able to read nothing else. The December number is as full of variety and freshness as its predecessors have regularly been; and to those who know the REVIEW OF REVIEWS this is a sufficient commendation.

The December COSMOPOLITAN is "a thing of beauty," etc. The "World's Fair" is its chief theme, and to interesting material concerning the Great Exposition are added innumerable illustrations, many of them being perfect gems of art. The magazine closes the year with an enormous edition of over 350,000 copies.

LEADING ARTICLES IN THE LAW JOURNALS.

American Law Review (Nov.-Dec., 1893).

The Borden Case, John H. Wigmore; The Power of Corporations to prefer Creditors, Seymour D. Thompson; State Regulation of the Contract of Employment, C. B. Labatt.

Central Law Journal (Dec. 1, 1893).

Rights and Remedies of Preferred Stockholders, Seymour D. Thompson.

The Criminal Law Magazine (Nov, 1893).

The Defense of Irresistible Impulse, Ardemus Stewart; Criminal Anthropology, O. F. Hershey.

Harvard Law Review (Dec., 1893).

Reform in Criminal Procedure, Heman W. Chaplin; The Dwight Method, Thomas Fenton Taylor; Implied Warranties in Sales, Emlin McClain; Perils of the Seas, Everett V. Abbot.

Michigan Law Journal (Nov., 1893).

Can the Common Law be Codified? Wesley W. Hyde; Dissatisfaction with the Senate, Alfred Russell.

Yale Law Journal (Dec., 1893).

Constitutional Reform in Connecticut, Hon. Henry C. Robinson; The Behring Sea Award, Prof. Theodore S. Woolsey; The Effect of Foreign Judgments, Harry G. Day.

NEW BOOKS.

LAW.

THE LAW RELATING TO REAL ESTATE BROKERS as decided by the American Courts. By STEWART RAPALJE. L. K. Strouse & Co., New York, 1893. Cloth. $2.00. Full sheep. $2.50.

This little volume is a very careful and exhaustive compilation of the case law upon the rights and liabilities arising out of the relation of broker and customer in real estate transactions. It affords to the lawyer a ready means of access to the adjudicated cases, and will prove of great value to real estate brokers as a guide book to their rights and remedies under almost every conceivable circumstance. It is needless to say that Mr. Rapalje's work is thorough and conscientious, and the book can be relied upon as a trustworthy statement of the law upon the subject.

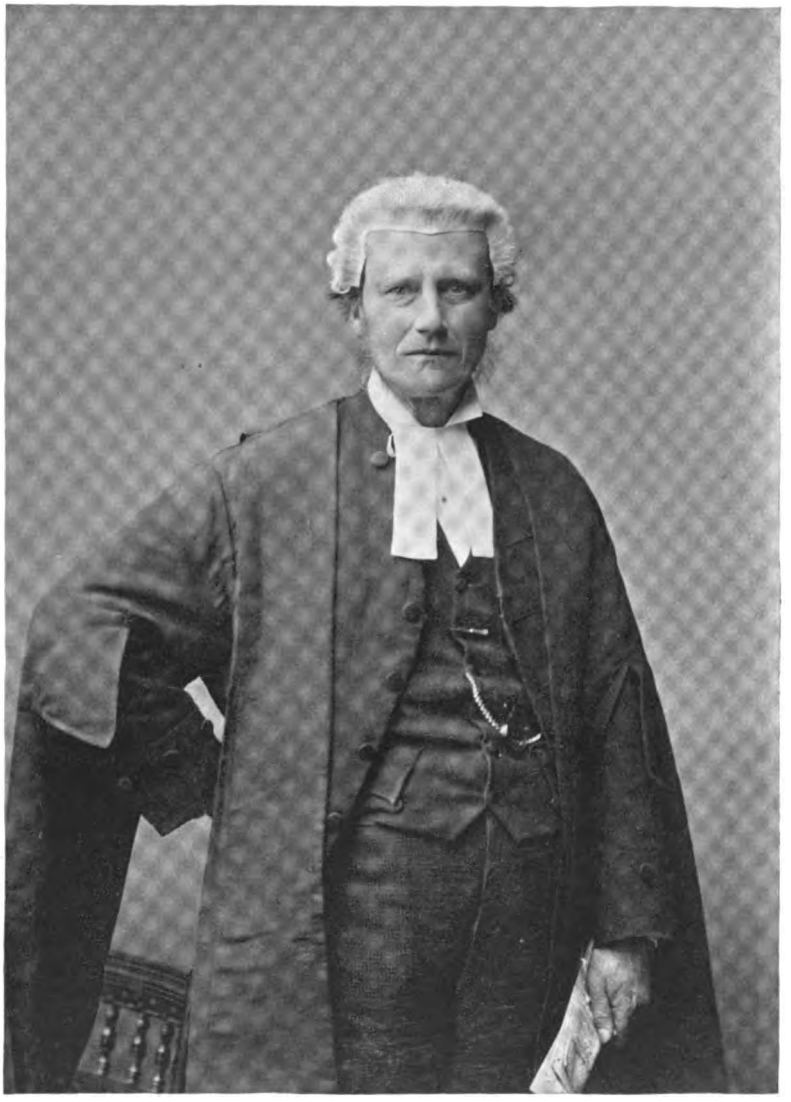
MISCELLANEOUS.

THE SEEKER IN THE MARSHES, and other Poems. By DANIEL DAWSON. Rees Welsh & Co., Philadelphia, 1893. Cloth. $1.50.

This little book of poems is the work of one who, if his life had been spared, would undoubtedly have taken high rank among our American poets. His verses are strong and manly and are imbued with all the passion of a Swinburne or Walt Whitman. While a tone of sadness and pathos pervades most of the poems, several of them are in lighter vein, and the author is equally happy in both. Nothing could be more delicate and touching than his paraphrase of "Carcassonne," while his "Verzenay" fairly sparkles with happy thought. The volume will appeal to all lovers of really good poetry, and it is a truly refreshing contrast to the sentimental rhymes which are so often foisted upon the public under the name of poetry.

THE DELECTABLE DUCHY. Stories, Studies and Sketches. By Q. (A. T. Quiller-Couch). Macmillan & Co., New York. Cloth. $1.00.

A number of short sketches, or rather charming "pen pictures," drawn with rare skill, make up this little volume. The author seems equally at home in both humor and pathos and his creations are delightfully fresh and original. Nothing could be better than the opening sketch, "The Spinster's Maying," and there is a flash of real dramatic power in "Daphnis." Altogether the book is a most agreeable companion for a leisure hour.



SIR HORACE DAVEY.

The Green Bag.

Vol. VI. No. 2. BOSTON. February, 1894.

SIR HORACE DAVEY.

SIR HORACE DAVEY is the son of the late Mr. Peter Davey of West Molesey, Surrey, and was born in 1833. He was educated first at Rugby and afterwards at University College, Oxford. Nature had made him for the Bar, and happily both for himself and for the innumerable clients whose causes he conducts with conspicuous ability and success, inclination turned his thoughts in this direction. He was admitted to Lincoln's Inn on 19th January, 1857, and was called to the Bar of that society on 26th January, 1861. Davey had the good fortune to become "devil" to W., afterwards Vice-Chancellor, Wickens, and that learned gentleman, than whom no shrewder judge of character and merit ever lived, had such confidence in Davey's probity and ability that he used simply to sign the papers drafted by him without revising them. Mr. Justice Day is reported to have given the same token of esteem to his quondam "devil," Mr. R. B. Finlay, now an eminent Queen's Counsel and politician. The reputation of so able and diligent a "devil" as Mr. Davey was could not long be confined to the narrow sphere of his principal's chambers. Solicitors soon found him out and vied with each other in sending him work. He did it in such a way as amply to justify the extraordinary regard which Mr. Wickens had shown for him, and from the moment of his first independent debut in professional life, his future was assured. From 1871 to 1873 he acted as secretary to Mr. Wickens, who had then been raised to a vice-chancellorship. From 1873 to 1874 he discharged the same duties for Vice-Chancellor Hall. On 23d June, 1875, Mr. Davey was made a Queen's Counsel. In 1877 he received the honorable appointment of standing counsel to the University of Cambridge. On 4th November, 1878, he was made a Bencher of Lincoln's Inn. At the general election of 1880 Mr. Davey was elected Member of Parliament for Christ Church — a constituency which he continued to represent in the Liberal interest till the general election of 1885, when he was defeated by Mr. Young. Mr. Gladstone was, however, returned to power, though his follower was defeated, and Davey, who had now been raised to the honor of knighthood and to the solicitor-generalship, continued to hold his law officership till the general election of 1886, when his party was completely vanquished at the polls. Sir Horace Davey's subsequent Parliamentary experiences must have tried his patience severely. He wandered from constituency to constituency, making fruitless efforts to secure his adoption as the official Gladstonian candidate. At last, however, Stockton took pity on him and sent him to St. Stephen's as its member. Sir Horace Davey is not, and never will be, a great politician. His intellect is both too academic and too legal in its fibre to admit of his becoming a keen partisan, and he has none of that "free delivery" (as it is called in Scotland) which is almost essential to Parliamentary success. But he has not failed to secure a unique position in English public life. Now that Cairns and

Jessel are no longer with us, to Sir Horace Davey the palm of legal pre-eminence must undoubtedly be assigned. In knowledge of law, in subtlety of intellect, in argumentative acumen, he stands first on the roll of the very learned and able body to which he belongs, and his elevation to the highest judicial appointment in the land would be an honor and a source of dignity and strength to the English judicature. On the recent retirement of Sir Edward Fry from the Court of Appeal, it was rumored, and one may add, hoped, in legal circles that the vacant Lord Justiceship would be conferred on Sir Horace Davey. It has long been the practice of English ministers to consider legal eminence rather than political services in manning the judicial staff. Sir James, now Lord, Hannen, a staunch Liberal, owed the puisne-judgeship with which his distinguished judicial career commenced to a Conservative government. The case of the present Mr. Justice Wright is another instance of the same graceful disregard of party traditions. It was thought that Sir Horace Davey himself would not be by any means averse to stepping from the arena of political, of forensic conflict to the platform of judicial service. But the Government disappointed professional expectation, and Sir A. L. Smith, one of the Parnell commissioners, was made a Lord Justice of Appeal. To enumerate the great causes in which Sir Horace Davey has been professionally engaged would be an almost impossible task. It would be infinitely easier to enumerate those in which his name does not appear. The period of his greatest forensic activity commenced in 1880, and every volume of the *Appeal Cases* from that date bears abundant testimony to his professional position. Alike in Scotch, English, Irish and Colonial appeals, Sir Horace Davey is beyond all question the "favorite" counsel. His professional income is said to average £23,000 a year; and in one memorable year it is alleged to have reached the enormous sum of £40,000. The following is an imperfect record of a small part of his forensic work: He was counsel for the successful appellant in Blackwood *v.* Reg. in a case which raised an interesting point as to the *lex loci* applied to the personal assets of a testator, in November, 1882. In March, 1883, he was again successful, and was highly complimented by the House of Lords, in Brownlie *v.* Russell, which turned on the right of a borrowing member of a building society to receive credit for all instalments and pay up the balance of the loan and be relieved of further liabilities when a winding up order had been made. In November, 1883, he was engaged with Mr. J. B. Balfour, Q.C., as counsel for the unsuccessful appellant in the famous Scotch jurisdiction case of Ewing *v.* Orr-Ewing. In July, 1885, he was counsel in the Aylesford Peerage case. In 1887, he appeared for the successful appellant in Caird *v.* Sims, the *locus classicus* as to the existence of copyright in University lectures. In more recent years, he has been engaged in the following cases, which are too well known to require any description: Cox *v.* Hakes, Adam *v.* Newbigging, and Derry *v.* Peek. It has sometimes been said that Sir Horace Davey has never addressed a jury. This statement is quite unfounded. We know of one recent case in which the ex-Solicitor-General not only "addressed a jury," but did so with a vigor and success that caused no little surprise and dismay to his common-law brethren on the other side. A similar and equally absurd rumor has lately been circulated with reference to Lord Chancellor Cairns, whose speech to the jury in the great Wyndham Inquiry is one of the masterpieces of forensic eloquence.

Sir Horace Davey is an accomplished scholar and student of literature. He was a member of the committee that recently undertook the erection of a memorial stone to Robert Browning in Westminster Abbey. In private life he is beloved and admired by

all his friends. Unlike many less distinguished leaders of the Bar, he takes a kindly interest in the prosperity of his devils and does not forget their services. He is an intimate friend, and at one time worshipped in the congregation, of the Rev. Llewellyn Davies, head of the Broad Church party in England, but his religious sympathies are now generally understood to be Unitarian.

* * * * *

Since the foregoing was written Sir Horace Davey has been appointed to succeed Lord Bowen in the Court of Appeal.

LEX.

THE CONFESSIONS OF A LORD CHIEF JUSTICE.

JOHN SCOTT was Attorney-General for Ireland, and from 1784 till his death, in 1798, Lord Chief Justice of the Court of King's Bench in Ireland. He was created successively Baron Earlscourt, Viscount Earlscourt, and Earl of Clonmell, and died possessed of property of the value of £200,000. Shortly before his death he gave peremptory orders that all his papers should be destroyed, and superintended himself the consignment of the documents to the flames. Through some strange fatality his diary escaped the general destruction, and is still extant. It was printed for private circulation among the members of Lord Clonmell's family, and short extracts from its pages have been given to the public in a work by Mr. V. J. Fitzpatrick, entitled "Ireland before the Union," published in Dublin more than a quarter of a century ago, and now long out of print.

In his diary Lord Clonmell reveals his true inwardness with the startling candor of a Marie Baskirtcheff. Here are a few extracts which lawyers of a later generation will read with keen interest: —

"GOOD RESOLUTIONS. Thursday, June 2, 1774. I am, I believe, thirty-five years old this month, just nine years at the Bar, near five years in Parliament, about four years King's Counsel. To-morrow, being Friday, Trinity Term sits. I therefore resolve to enter upon my profession as upon a five years' campaign, at war with every difficulty, and determined to conquer them. If I continue a bachelor until I am forty years old, and can realize two thousand pounds per annum, I will give up business as a lawyer, and confine it merely to the duties of any office I may fill. I will exert my interest to the utmost in law and constitutional learning for these five years, so far as temperance, diligence, perseverance, and watchfulness can operate, and then hey for a holiday."

"*Horrors of being Unprepared in Court.* — The pains of the damned are not equal to the horrors of going to court unprepared, and the fact of losing your reputation and going down in it. Whilst, therefore, you have an atom of business undone, give up every object, pursuit, pleasure, avocation, diversion; banish everything from your mind but business — the business of your profession. Quarter of an hour to breakfast, one hour only to dinner when alone, two to exercise, four to bed, quarter to rest in a chair after fatigue — wine.

"*Prudence.* — Have an eternal guard upon what goes into your mouth and what comes out of it, and always wait a little before you answer, and answer all unpleasant questions by asking another question, and never before you can begin with a smile.

"*Cunning.* — Lord Bacon says a proper mixture of the lion and the fox is essential to a man of the world. I think the proper mixture is a fox's head, with a lion's heart to carry the scheme into execution.

"*Mechanical Habits.* — As often as you put your fingers across and join your thumbs at the points, which you must do a thousand times a day, call the right thumb courage, and the four fingers of the right hand sagacity, and spirit, activity and address; the left thumb prudence,

the four left fingers, assiduity, flattery, temper and manner, thus you will always have these qualities in your mind and before your eyes to stimulate you." "It is absolutely impossible to go on in my profession without perpetual horrors, injury, and disgrace, but by adhering inviolably to the following rules: Have no fire to go to before breakfast, which should be no meal; guard yourself at dinner from eating half what you wish, and drink at dinner as little as possible, and after it water with your wine; go to bed at twelve and rise at four, and whilst you have existence in business employ from four to eight, from twelve to four, and from eight to twelve at business which gives you eight hours for exercise, idle pursuits, and the world."

"*Discipline of an Attorney-General.* — He should rise at four in the morning; he should read without fire, standing, if possible, until eight; he should exercise, bathe, and dress at nine; he should see all persons until eleven; he should apply every minute until three in court business; to four he should set down the report of the day; he should not drink wine at dinner, and eat but of a few things, and not much; he should not drink wine after seven, and from eight to twelve he should apply to business."

When Chief Justice, Lord Clonmell had his eye on the Lord Chancellorship, which was then held by Lord Lifford, who retained the Seals continuously for twenty-two years. "A race for the Seals," writes Lord Clonmell, "can be won but by superlative enthusiasm, watchfulness, temperance, diligence, and rapid acting." Lord Clonmell says that "Oliver Cromwell is the character best worth your imitation." There are several allusions to the Protector in the diary.

"20th June, 1785. To imitate Cromwell you should see what is useful and hurtful in everybody and in everything. Lay hold of one and avoid the other, and never complain, censure or find fault but to answer a purpose. Men and things are what God made them, and finding fault only shows ignorance and weakness."

The Chief Justiceship was not a bed of roses to Lord Clonmell, who thus speaks of his three puisne judges: "A perpetual state of rivalry with all the judges; especially with those of my own court, must be my constant object." Then there comes his judgment of the judges of his own court: "Downes is crowing over me; he is cunning and vain, and bears me ill. Diligence is necessary: Hewitt is dying. Boyd is drunken, idle and mad. Diligence will give me health, fame and consequence."

Surely *laudatores temporis acti* will not find in Lord Clonmell's diary much foundation for their faith. — *Law Times.*

GERMAN JURISTS AND POETS.

II.

By Arthur Hermann.

NOT all poets known and beloved in their own country attain international fame. To such belongs Fritz Reuter, the genial dialect poet. Born in 1810 at Stavenhagen in the Grand Duchy of Mecklenburg-Schwerin, he studied law in the university of Rostock, after having finished his college (*Gymnasium*) education. He pursued the study, much against his own wish, in Jena. In 1833, when the so-called *Demagogen-Verfolgung* (persecution of demagogues) was inaugurated in Prussia, he was apprehended, and after a preliminary examination (*Untersuchung*) of one year's duration, sentenced to be decapitated, which sentence was changed into confinement in a fortress (*Festungsstrafe*) for thirty years. His government, Mecklenburg, incessantly demanded his extradition, but he was retained in Prussian fortresses, particularly in Graudenz, for some years. In 1840, when general amnesty was granted by the new ascending monarch, he was released, when he took to farming. Having failed in this new vocation, he set up as a teacher in Treptow, and published here a series of dialect poems under the title "*Läuschen und Riemels.*" These poems are known among Germans the world over. Those who had no acquaintance with the *Vorpommerschen Dialect* went to work to learn it, solely for the purpose of enjoying those homely pastoral verses. In simplicity, naturalness, and healthy humor these productions have no equal. The dialect is not the object, but merely the vehicle to convey the matchless pictures of the humble life of the northern peasant. Whether he has borrowed some of his ludicrous episodes from Dickens and Oliver Goldsmith I do not know. His writings certainly resemble both famous English authors. The adventure of Moses Primrose, who sold his father's cow for twenty-four dozen of eye-glasses,[1] for instance, is elaborately told in a poem entitled "*Der Jahrmarkt*" (The Fair). Fritz Reuter has published ten volumes of prose writings, depicting with rare felicity the rural life of that part of the lower countries where he was reared. It is not difficult for anyone conversant with English and German to learn the dialect in a few weeks.

Carl Lebrecht Immermann, a very fertile poet and writer of dramas, was born in 1796 in Magdeburg. He studied law in Halle in 1813, but interrupted his studies, entering the Prussian army to fight Napoleon. In 1823 he was criminal judge in Magdeburg, and in 1827 a judge in Düsseldorf. At that time he created a great deal of sensation by living with the countess of Ahlefeldt, the divorced wife of von Lützow, the famous originator of the *Lützow's Freicorps*, a volunteer band of enthusiastic German youths (among them the poet Theodor Körner) who pledged themselves to conquer or die in the struggle against Napoleon. Among Immermann's productions the story of *Münchhausen* is the most popular. His dramas are said to have something of the grandeur of Shakespeare, of whose works he was a devout and deep student. He died in 1840, when busy with the preparation of his "*Memorabilia.*"

Gottfried August Bürger, one of the most popular poets, was born in 1747 in Molmerswende, a small town near the Harz. His father was a preacher. In 1764 he studied jurisprudence in Halle. His family life was almost as remarkable as that of Goethe. In 1774 he married Dorothea Leonhardt,

[1] O. Goldsmith, Vicar of Wakefield.

the daughter of a petty official at Niedeck in Hanover. He soon fell in love with his young sister-in-law Auguste and repeated the story of Count von Gleichen,[1] actually leading, with the connivance of his wife, a double matrimonial life. After the death of his wife he formally married Auguste, whom he celebrates in his poems as "Molly," and two years after her death, which took place in 1786, he married again, a young girl who had anonymously written an encomium upon the aging poet. But in 1792 he was bitterly undeceived, his wife eloping with another. Morally and physically shattered, he died in 1794. The popularity of his poems in Germany is very great; notably "*Lenore*," a weird, phantastical ballad, similar to Poe's "Raven," which shows a remarkable grasp upon the German verse. He made model translations of Shakespeare's "Macbeth" and of the Iliad. The "Travels and Adventures of Baron Münchhausen," commonly ascribed to him, are not his original production, but translated from Raspe's English text, which appeared in London in 1785. Bürger, with all his moral shortcomings, must be classed in German literature among the regenerators of German poetical style, if not as the founder of the new German poetry.

An entirely different type of poet in personal character from Immermann and Bürger is Victor von Scheffel, born in Karlsruhe (Baden) in 1826. He studied jurisprudence at Munich, Heidelberg and Berlin, and afterwards German philology and literature. From 1848 to 1852 he was *Referendar* (assistant of the court) in Säkkingen, but quitted office to travel through Italy. Later he lived in Heidelberg and Munich. From 1866 to 1886, the year of his death, he resided in his birthplace, Karlsruhe. His first, and indeed his most popular, epic poem, "*Der Trompeter von Säkkingen*," from which we have already quoted, was composed in Sorrento in the Isle of Capri. The book appeared in 1886 in its one hundred and thirty-sixth edition. Meanwhile a score or more new editions have followed. Another of his popular books is "Ekkehard." Of the classical beauty of his style there can be no doubt. One of his songs, "*Alt Heidelberg, du Feine*," is familiar to every German college student. He was particularly productive in college songs, which he published under the title "*Gaudeamus, Lieder aus dem Engeren und Weiteren*." The town of Karlsruhe erected to him a monument which was unveiled with great ceremonies on November 19th, 1892.

We now come to the poets still living. Four of them are most conspicuous: Albert Traeger, Ernst Wichert, Felix Dahn and Ernst von Wildenbruch. The first is by far the most interesting to us as Americans. He is in every respect a "self-made" man, having pushed his way to the very top, in the face of endless difficulties and obstacles. Born in 1830 in Augsburg, he went with his parents, in 1838, to Naumburg an der Saale, where his father entered upon business pursuits. Being left fatherless in 1844, his mother, amid great privations, succeeded in procuring sufficient means to complete his education. In 1848 he entered the university in Halle to study law, and continued the same studies at Leipsic. In 1851 he entered upon practical duties as assistant of the court, and six years later he passed the "*grosse Staatsprüfung*," henceforth being employed as *Assessor* in several courts. In 1862 he became a duly admitted lawyer in a small town, and in 1875 he moved to Nordhausen, where he remained in practice until 1892, when he took up his domicile in Berlin, to give his talents wider scope. When quite young he obtained a more than local reputation as a criminal lawyer, which branch of the law he has cultivated ever

[1] Count Ernst von Gleichen, after a German legend, on his return to the Occident from Cairo, brought home a beautiful Mohammedan as his wife. His faithful Teutonic spouse received both without a murmur, and they all lived happy — till they died. (Musäus, Volksmärchen der Deutschen. "Melechsala.")

since with signal success. Being from his youth an ardent democrat (the word in Germany meaning an advocate of the rights of the people), he soon became a popular public speaker, and was chosen the orator at a monster meeting at the *Kyffhäuser* in 1862, where over ten thousand people gathered to hear him. In 1874 he was elected a member of the German *Reichstag*, of which great body he has been a conspicuous member ever since, excepting the period between 1878 and 1880. To us it is particularly interesting to note that in 1880 he defeated Johann Most, the rabid anarchist who is now disturbing the peace of this nation. Traeger is a warm personal friend of Eugen Richter, the great leader of the progressive party. He has stood by him through all the vicissitudes of that party. As poet, Albert Traeger very early made a mark among his people. He published his poems chiefly in the "*Gartenlaube*," the leading German weekly magazine (at the height of its popularity commanding a circulation of 300,000). There can be no doubt of the great influence he exercised in disseminating the idea of unity among the German tribes. Very fine are his "*Mutterlieder*," songs of home and love. I can think of no American poet with whom to compare Albert Traeger more fitly than with Whittier. Space forbids tracing the analogies between both noble minds and characters. At present, to use his own words, "haben Praxis und Politik die Poesie fast gänzlich überwuchert ("practice and politics have almost entirely crowded out poetry"). Finally his translation of Robert Burns' poems into German ought not to be forgotten. Germany has certainly just cause to be proud of such a jurist, poet and patriot.

Somewhat akin to the former, although from an other region of the empire, is Ernst Wichert, one of the judges of the Chancery Court (*Kammergericht*) in Berlin. He comes from a family of jurists, his father, brother, and uncle being jurists. The sister of his father married a jurist. Ernst Wichert studied law at the university of Königsberg, where Kant taught previously for almost fifty years. In 1858 he entered upon practical duties at the courts in Königsberg, where his father was *Kreisgerichtsdirector* (President of the Circuit Court), working at the same time in the law office of his uncle at a remuneration of thirty Prussian thalers (twenty-two and a half dollars) a month. Being busy during the day, he pressed parts of the night into service to satisfy his literary propensities. At last, in the autumn of 1859, he was transferred to a small town on the Russian border and made a judge with a salary of five hundred thalers *per annum;* "worauf hin ich schleunigst heirathete" ("whereupon I immediately married") — to borrow his own language. In 1863 his salary was raised to six hundred thalers, when he was transferred to Königsberg as municipal judge. Later he became judge of probate at the same court, and gradually advanced to the high post of *Rath* at the *Ostpreussischen Tribunal.* In 1879 he was made an *Oberlandesgerichtsrath*, and in 1887 a *Rath* at the *Kammergericht* in Berlin, which office he still holds. He was always looked upon as a thorough and conscientious worker, and never neglected his official duties for his literary labors. How extensive these are may be gathered from the fact that he has written not less than thirty pieces for the stage, ten *Romane* (novels of more than one volume), and a considerable number of short stories. He has never taken his subjects from court experience, but he says that his legal training has almost invariably influenced his compositions, which are very popular in Germany. Prose writing is his forte rather than poetry.

Felix Dahn occupies a very unique place in German literature. He is at present professor of law (*der Rechtswissenschaft*) in the university of Breslau, and one of the most prodigious writers of the day. Of him it may be well said that "your proper

German author has no respect whatever for the eyes or the power of attention of his readers; his conscience assaults him until he gains peace by building his volumes about himself into a towering barricade."[1] Born in 1834 at Hamburg, he studied law from 1849 to 1853 in Munich and Berlin. In 1857 he became a member of the law faculty of the university in Munich, and in 1863 professor of law in Königsberg, where he taught until his recent removal to Breslau. To quote merely the titles of his works would fill a column of this magazine. His specialties are Roman and Ancient German law. Of his prose books, "*Ein Kampf um Rom*" is the most popular; of his historical law books the "*Geschichte der Völkerwanderung*" (History of the Teutonic Migration) and the "*Lex Visigothorum.*" He is the author of a variety of poems in German and Latin, and shows a rare command of both languages. The university of Edinburgh conferred upon him a few years ago the degree of *doctor philosophiæ*. He has just published a lengthy autobiography, which I had to forego reading, life being too short, other labors too pressing, and the autumn weather too fine in our northwestern corner. Of his Latin poems, the "Ode to the Emperor William I." has become very popular among German students. It may find here a place.

MACTE IMPERATOR!

Macte senex Imperator,
Barbablanca triumphator,
Quivicisti Galliam
Et coronae Germanorum
Post viduvium saeculorum
Reddidisti gloriam.

Petulanter lacessitus
Justo clypeo munitus
Herbibannum exitas:
Ecce surgunt quotquot gentes
Oras incolunt stridentes
Alpes usque niveas.

Primos vocat Bajuvaros,
Venatores teli gnaros,
Pulcher rex et juvenis;
Memor foederis recentis
At honoris priscae gentis
Et Germani sanguinis.

Nec recusat Philalethes,
Semper fidei athletes,
Verae causae Saxones:
Jugo hostis liberati
Solvunt debita Holsati,
Angli et Frisiones.

Mittit Rhenum custodientes
Equos suos hinnientes
Acris Alamannia,
Et laurifera vexilla
Vibrat propulsatrix illa
Aquilina Prussia!

Quas diviserant spoliandas
Ante pugnam et praedandas
Ripas sancti fluminis: —
Nemo hostium conspexit,
Nisi qui captivus flexit
Poplites in vinculis.

Perpugnaces, perfallaces,
Superbissimos, mendaces
Quantes pugnis fundimus,
Quo per castra Montalbana
Tot portenta turcicana
Princeps stravit regius!

Campum taceo Woerthensem,
Montem altum Spicherensem,
Et, qua nihil clarius,
Interruptam obsidionem
Qua Bazenum, ut falconem,
Longa fame fregimus.

At me praedico felicem,
Qui testatus sim ultricem
Prope Belgas aciem:
Arctum atque arctiorem
Circulum fulminatorem
Includentem Caesarem!

Aquilas ereptas multas,
Fractas vidi catapultas
Collem per Sedanicum,
Turmas equitum prostratas,
Partas castri concrematas
Et Tyrannum deditum!

[1] James K. Hosmer, Short History of German Literature (Preface, p. iv.); a concise work, heartily to be commended to Americans. The publication of a second volume, covering the fruitful era of the last three decades, would be a timely undertaking.

Dolo filias surreptas
Salutamus vi receptas
Reduces in laribus;
Regum veterum palatia,
Lotharingia, Alsatia; —
Decor redid pristinus!

Quantas urbes, quot castella
Mosa munit ac Mosella,
Sequana cum Ligeri:
Omnes cepit forte pectus,
Taciturni intellectus
Atque chalybs Kruppii.

Petunt mare — Goeben turget;
Scandunt alpes — Werder urget;
Undique periculum:
Perque montes, perque valles,
Terror sequitur per calles
Et Ulani spiculum!

Et quae proba tot jactabat,
Tot triumphos enarrabat,
Delirans superbia —
Panem petens a victore,
Pacem a debellatore
Cecidit Lutetia!

Qui coronae Germanorum
Post viduvium saeculorum
Reddidisti gloriam. —
Macte senex triumphator,
Barbablanca, Imperator,
Qui salvasti patriam!

As a sample of his German style I quote from his own translation of the above poem the first verse:

Heil dir, greiser Imperator,
Barbablanca, Triumphator,
Der du Frankreich niederzwangst
Und der Krone der Germanen,
Wittwe längst des Ruhms der Ahnen,
Glanz und Schimmer neu errangst!

Ernst von Wildenbruch may be regarded in some sense as the voluntary — although not official — *poeta laureatus* of the House of Hohenzollern. He was born in 1845 in Beirut in Syria, where his father was Prussian consul. In his second year he went with his father to Berlin, and in his fifth to Athens, where his father held the post of ambassador; in his sixth to Constantinople. When he was twelve, his parents, owing to the sickness of his mother, returned to Germany. After a careful preparation at colleges in Halle, Berlin, and the *Cadetcorps* at Potsdam, he entered the Prussian army, in 1863, as an officer, but quitted service in 1865. In 1866 he participated as *Landwehrofficier* in the war against Austria, and entered in 1867 upon the study of law at the university of Berlin. Having taken part in the campaign of 1870, he came in 1871 as *Referendar* to Frankfurt an der Oder, and worked later in the Municipal Court in Berlin. In 1877 he became a member of the Diplomatic Corps of the Empire, where he is still active as *Legationsrath*. He is *persona grata* at the royal court, his ancestor being Prince Louis Ferdinand, who fell in the battle of Saalfeld in the disastrous year of 1806. Ernst von Wildenbruch very early in his career became famous as a poetical playwright. So far he has written a score or more dramas, the subjects being taken largely from the history of the fatherland and from English history. Among his popular pieces are "*Die Karolinger*" and "*Christoph Marlow.*" He is the author of several novels and of two volumes of poems. In 1887 he married a granddaughter of the famous composer Carl Maria von Weber.

There are scattered all over Germany legal poets of whom mention cannot be made. My distinguished townsman Ernst Wichert, to whom I am indebted for biographical notes, tells me of a poet, Theodor Horm, whose poems and stories have recently been well received in Germany. There is also Friedrich Kind, the jurist and poet who wrote the poetical text to Carl Maria von Weber's famous opera *Der Freischütz;* but it is impossible to do justice to all. Whether that best known German statesman and ex-jurist Bismarck, the *Altkanzler*, has written lyrical poetry, was impossible for me to ascertain. One significant distich by him has found its way to the public. Fieldmarshal von Moltke was asked to immortalize his name in one of those *Albums* which hunters

of autographs have ever ready for celebrities. He wrote:

"Wahrheit besteht,
Lüge vergeht."[1]

Bismarck for his turn subjoined:

"Wohl möglich, dass in jener Welt
Die Wahrheit stets den Sieg behält;
Doch mit der Lüge dieses Lebens
Kämpft selbst ein Feldmarschall vergebens."[2]

For a closing character sketch I have selected Joseph Freiherr von Eichendorff, a very prominent poet of the "Romantic School." He was born in 1788 in Lubowitz, near Ratibor in Silesia, and educated in a Catholic *Gymnasium* at Breslau. From 1805 he studied law at Halle, and later at Heidelberg. In 1813 he entered the Prussian army as volunteer. After the war, in 1816, he became *Referendar* at the government offices in Breslau, and in 1821 he was *Regierungsrath* in Danzig; in 1824 in a similar position in Königsberg, and in 1831 in Berlin, where in 1841 he became *Geheimer Regierungsrath im Ministerium der geistlichen Angelegenheiten.* In 1844 he left the civil service and located at Neisse where he died in 1857. He was the last, and certainly the most talented and conspicuous, of the so-called Romantic School. He wrote many romantic stories, fairy tales, plays, etc., and a goodly number of poems. One of them has attained in Germany a popularity not even rivaled by Goethe's "*Erlkönig*" or Heine's "*Loreley.*" I quote the poem which has become so immensely popular through the music of Friedrich Glück. "Where two or three Germans are gathered together" they will immediately start a "quartette" on this famous *Volkslied.*

[1] Truth will subsist; lie will wane away.

[2] Quite likely that in worlds to come
The truth always will hold its own;
But 'gainst this life's great lie — what stain! —
A field-marshal e'en fights in vain.

DAS ZERBROCHENE RINGLEIN.

In einem kühlen Grunde,
Da geht ein Mühlenrad —,
Mein Liebchen ist verschwunden,
Das dort gewohnet hat.

Sie hat mir Treu' versprochen,
Gab mir ein'n Ring dabei;
Sie hat die Treu gebrochen;
Das Ringlein sprang entzwei.

Ich möcht' als Spielmann reisen
Weit in die Welt hinaus,
Und singen meine Weisen
Und gehn von Haus zu Haus.

Ich möcht' als Reiter fliegen
Wohl in die blut'ge Schlacht,
Um stille Feuer liegen
Im Feld bei dunkler Nacht.

Hör ich das Mühlrad gehen:
Ich weiss nicht, was ich will —
Ich möcht' am liebsten sterben,
Da wär's auf einmal still.

LEGAL REMINISCENCES.

VI.

L. E. CHITTENDEN.

INCIDENTS of the lost art of *special pleading* seem to interest the younger members of the profession. I will furnish another pair of them.

Hathaway guardian v. *Rice*, was my first victory in this noble warfare. The curious will find it reported in 17 Vermont Reports or thereabouts. Rice was a schoolmaster, Hathaway, the infant, a pupil who was impudent, and the master corrected him. Hathaway, *père*, sued Rice in an action of trespass, and declared that Rice "with force and arms did assault, beat, *wound* and injure the youngster, insomuch that his life was greatly despaired of." Rice pleaded the relation of teacher and pupil, averred that the boy was impudent, "wherefore he gently laid hands upon and corrected him as he lawfully might," etc. I demurred to this plea on the ground that it could not justify a *wounding*.

Instead of amending by pleading not guilty to the charge of wounding and a justification of the assault and battery, my adversary, fresh from the Harvard Law School, undertook to teach me a lesson in special pleading. He joined in demurrer, and when the court decided against him, carried the case to the full bench of the Supreme Court on exceptions. Unmoved by a cart-load of authorities and an argument of two long hours, that court affirmed the judgment, but permitted him to amend his plea on condition that he paid all the plaintiff's costs and waived his own, up to that time. He paid up, and as the infant had been saucy and his case promised neither fees nor farther amusement, I *discontinued the action!* I was younger then or I should not have esteemed it such a famous victory.

Moss v. *Hindes* was the *cause célèbre* which illustrated the science of special pleading in Vermont, in the middle years of the present century. Moss was a Hunker who, if he had survived, would have been a Mugwump. He was wealthy, also a miser who owned a large part of the real property in his school district, in which, by the destruction of the old, it became necessary to build a new school-house. Moss declared with profane emphasis that he would not pay a d——d cent of the expense. The other voters decided that the school-house should be paid for by a tax on the grand list, or the property within the district. The house was built, the tax warrant issued to the collector, who, as Moss still refused to pay, levied his warrant upon Moss's cattle, and sold them at auction for an amount sufficient to pay the tax.

It was quite possible to do all this in a lawful manner. A lawyer would have advised the prudential committee of the district that to justify such a proceeding, there must be a record which showed the lawful organization of the district and a compliance with the numerous successive requirements of the law, and that in the absence of such a record the seizure of the property by the collector was a naked trespass.

The district was more destitute than the family which "*was pretty much out of Bible*" when the minister called. It was entirely *out of record*, and in fact had never been the possessor of anything of the kind. Moss knew this fact; his lawyer advised him to *lay low* and say nothing, and he would have the district at his mercy. That lawyer miscalculated. He did not take into account the boundless resources of the science of special pleading. He commenced the

action of trespass, and the suit of Moss *v.* Hindes came into existence with a declaration alleging that Hindes "broke and entered the close of the plaintiff, and with force and arms seized and carried away twenty head of horned cattle of great value, to wit, of the value of six hundred dollars."

It was the law of the land that the records of a school district could be amended at any time *in accordance with the fact.* There were various memoranda scattered about the district on the backs of letters, and the blank leaves of old almanacs, useful to amend *by* and *with*, and there was a town record which showed that the district was made by dividing one large into two districts. On this scanty material an adroit lawyer and special pleader, retained for the school district, framed his plea of justification. It averred the lawful organization of the district and its continuance, the written warning for the meeting, posted ten days in advance, on the school-house door, "to see whether the district would vote to build a new school-house, and pay for it by a tax on the grand list," the holding of the meeting, the vote to build, to pay by a tax on the grand list, the appointment of a building committee, the warning for another meeting, its organization, the report of the building committee, its acceptance, the fixing of the amount to be raised by a tax, the appointment of the collector, the issue to him of the tax warrant, his demand of the tax, the plaintiff's refusal to pay, the seizure of the cattle upon the warrant, the advertisement for sale, and the sale under the warrant. In short, whether *I* have done it or not, *he* averred in his plea every fact in the chain, necessary to a legal justification, from the organization of the district to the sale of the property.

The plaintiff's counsel was delighted. There were a dozen facts, any one of which would break the chain of justification which could not be proved by the record. He promptly answered the plea by the replication *de injuria.*

I suppose that if I do not explain the replication *de injuria*, the younger of your legal readers will not know its meaning. It means, that the replication alleges that the defendant "of his own wrong," "*de injuria sua propria*," and not for the causes in said plea alleged, committed the trespasses complained of. It is the equivalent of a traverse or denial of every material fact alleged in the plea of justification.

To this replication the counsel for the defendant filed a special demurrer, and on the question thus raised our Supreme Court survived through repeated re-arguments, an infinite number of authorities, much consumption of midnight oil, and great acerbity of consultation. By a majority of one in a court of seven judges, it finally reached the conclusion that the replication was bad, that the defendant could plead as many facts as were necessary to its justification, but the symmetry of the law of pleading required the plaintiff to select a single fact in the chain, *deny that fact and thereby admit the truth of all the others alleged!*

The plaintiff's counsel undertook to comply. There had been, in fact, no vote to raise the money by a tax on the grand list. He denied the averment that the district had so voted. The district amended its record and made it show the vote. In vain it was objected that the district could only amend according to the fact, and there was no such fact! The court held that such an objection might be available elsewhere, but on this trial the record could not be impeached in that way. Again the plaintiff amended his replication, and again the record was amended. How long the game of see-saw went on, I do not remember, but finally I believe the plaintiff gave up and justice was defeated, which "was a great triumph for the law!"

A legislature of Vermont farmers failed to discover either the justice or the humor

of this result. They promptly interfered and made it the statute law of Vermont to this day, that in any action at law the plaintiff may be heard to deny as many facts as a defendant is permitted to set up in his defence.

I was not counsel in Moss *v.* Hindes, and "the mossy marbles rest" upon all who had anything to do with it. I do not think it was reported, and perhaps I do wrong in rescuing it from oblivion. I sometimes think that all these "Reminiscences" deserve the replication *de injuria sua propria*. But the offence is chargeable to you; it will not be many times repeated. It tends to show how much wiser the present generation is than the last preceding. But is this generation having any better time or extracting any more amusement out of the profession than the last? *Dubitatur.*

OLD-WORLD TRIALS.

III.

THE ARDLAMONT CASE.

SINCE the trial of Madeline Smith in 1857, for the alleged murder of her lover L'Augalier by arsenical poisoning, no case has moved the minds of the legal profession and the public in the United Kingdom more deeply than the *cause célèbre* of the Queen *v.* Monson and Scott, which occupied the attention of the Lord Justice Clerk of Scotland and a jury from Tuesday the 12th, to Saturday, the 23rd of December, 1893. The following sketch may enable your readers to decide how far the feverish earnestness with which every fresh episode in the Ardlamont case has been watched on this side of the Atlantic was justifiable or natural under the circumstances. On the eve of the commencement of the shooting season, last August, an announcement appeared in the daily papers that Lieutenant Cecil Hambrough, a young man of about twenty years of age, had shot himself by accident in a plantation on the estate of Ardlamont in Argyllshire. The catastrophe excited little attention at the time, for "accidents by flood and field" in the pursuit of sport are unhappily by no means uncommon. But within a fortnight after Lieutenant Hambrough's death, which occurred on the morning of the 10th of August, 1893, rumors of foul play began to circulate, and at the end of the month the world was electrified by the news that Mr. Alfred John Monson, the lessee of the Ardlamont estate where Hambrough met his death, and Hambrough's army coach, had been arrested on a charge of having murdered him, and that another man named "Scott," who had appeared at Ardlamont a day or two before the tragedy and disappeared immediately thereafter, was "wanted" by the police as a principal in, or accessory to, Monson's alleged offense. "Scott" was never found, however; all the efforts of the crown to trace and prove his identity were unavailing, and Monson was placed on his trial alone. The opening of the case was awaited with the keenest expectation. If Monson had been prosecuted in England, there would of course have been, first a coroner's inquest and then magisterial proceedings, and the public would have known beforehand with tolerable accuracy the case which the crown lawyers thought themselves in a position to establish. But in Scotland, things judicial are ordered differently. A prosecution is instituted by a Crown official,

the Procurator Fiscal, whose name, analagous as it is to that of the *ministères publiques* and *procureurs des rois* of France, at once recalls the memory of the ancient league between France and Scotland; and all the proceedings up to trial are conducted with a secrecy which excites the imagination of the public without satisfying it. When Monson was placed in the dock, therefore, no one knew, in spite of the surmises which had done daily duty in the press since the date of his arrest, what the Crown was really about to prove — or to make an attempt at proving. The Lord Justice Clerk of Scotland, Lord Kingsburgh, less known perhaps by his courtesy title than as Mr. J. H. A. Macdonald, the Lord Advocate of the late Conservative government, presided. The solicitor-general for Scotland, Mr. Asher, Member of Parliament for the Elgin Burghs, appeared for the Crown, while the prisoner was defended by Mr. Comrie Thomson, the Sheriff of Forfar, reputed to be the ablest "jury lawyer" at the Scotch Bar. The evidence for the Crown fell naturally under two categories: (1) that Lieutenant Hambrough's death was not accidental, and (2) that Monson either shot him or was an accessory, before the fact, to his death. An array of distinguished expert witnesses, including Dr. Henry O. Littlejohn, the veteran surgeon to the police in Edinburgh and the hero of a hundred contests in medico-legal *causes célèbres*, Mr. Patrick Heron Watson, perhaps the most distinguished surgeon in Scotland and formerly the officer in charge of the hospital for wounded soldiers during the Crimean war, and Mr. Joseph Bell, the "Sherlock Holmes" of Canon Doyle's charming romances, deponed that the gunshot which killed Hambrough, and which admittedly struck him on the side of the head from behind forwards, must have been fired at a distance of some feet from his head. This view was based on the facts that the charge had not entered his skull with the exception of a few bullets whose presence showed that it had begun to spread, that the cartridge wad was lying a little way from the corpse, that there was no trace of scorching, and that certain pellet marks were to be found in a rowan tree, at whose base the dead lieutenant was discovered lying in such a position as to indicate that the fatal shot had been fired by some one standing behind a bush some yards away. On behalf of the prisoner, Mr. Comrie Thomson contended and supported his contention by the evidence of Dr. Matthew Hay, Professor of Medical Jurisprudence in the University of Aberdeen, and Mr. Scott Sandars, that the absence of scorching was due to the amberite cartridges which the deceased had been in the habit of using, that the failure of the charge to enter Hambrough's skull was attributable to the fact that the shot was a glancing one, and that it was *possible* that Hambrough might have shot himself accidentally. It cannot be denied that while the expert evidence for the Crown was singularly coherent and probable, there was just room for that reasonable doubt of which a prisoner is entitled to the benefit, and the jury, therefore, took the view that the case for the Crown on this vital point was not established, and — if we may anticipate a little — returned that verdict of "not proven" to which the law of Scotland assigns an intermediate place between "guilty" and "not guilty." The evidence by which it was sought to bring home Hambrough's death to Monson was of a twofold character. In the first place it was said that he had a motive to murder him, and here we are plunged into a labyrinth of financial transactions through which it is difficult indeed to find a reliable path. Moreover, as many of these transactions are involved in the aftermath of litigation to which the Ardlamont case is threatening to give rise, it would be improper to comment upon them at any length. We shall therefore merely say that the contention for the Crown was that two

policies for £10,000 each, effected by Monson on the life of Cecil Hambrough and assigned by the latter to Mrs. Monson, constituted the motive for the alleged crime. On the other hand, it was tolerably clear that as Hambrough was a minor, his assignment to Mrs. Monson was invalid, and that the prisoner was aware of the fact. Here again, therefore, the obvious solution of the difficulty was a verdict of "Not proven." *Mutatis mutandis*, the same observation applies to the second branch of the Crown case against Monson under this head, his conduct antecedent and subsequent to Hambrough's death, the alleged attempt (which formed the subject of a distinct charge) to drown Hambrough in Ardlamont Bay on the night of the 9th of August, the conflicting stories which he told as to the identity of the mysterious "Scott," the bore of the gun with which Hambrough was shooting and the position of his body when found, and his concealment of the fact that the policies for £10,000 had been effected even from the dead lad's father. Highly suspicious these circumstances undoubtedly were. But the cases in which after execution

"Judgment hath repented of its doom"

have not been so infrequent as to justify a jury in returning a verdict of guilty on the strength of conduct apparently inconsistent with innocence. A verdict of "Not guilty" however would have been obviously improper when the law left open a *via media* between the two extremes. Monson has therefore been acquitted, but a portion of the dark shadow which rested over the death of Lieutenant Hambrough has followed him from the dock.

NULLUM TEMPUS OCCURRIT REGI.

"No time shall run against the King." Ah, me!
Were that but true, he were a king indeed;
Who keeps, as years unto the years succeed,
Undimmed his youth, and as at first can see
And taste the joys of life; the open, free
Spirit of him who grows in wealth, not greed;
Who still with zest life's various books can read,
Nor knows the cynic sneer, nor long ennui.
And yet, methinks, the years would still recall
The grief the gods award, the tears, the strife,
Wer't but the memory of her he saw
And loved when first he lived. Ripe fruit must fall:
And dearer, though less splendid, is our life,
Than the cold, distant ideal of the law.

THE SUPREME COURT OF VERMONT.

III.

By Russell S. Taft.

JONATHAN ROBINSON, a younger brother of Moses, the first Chief Judge, was admitted to the Bar in June, 1793, was early in public life, was clerk of Bennington, and represented the town for thirteen years prior to 1802 and again in 1818.

He was chosen Chief Judge of the Supreme Court in 1801, in place of Israel Smith declined, and served six years, when he was elected United States senator in the place of Israel Smith, resigned. In 1809 he was elected senator for a full term, and served till its expiration in 1815. He then became judge of probate, and held the office for four years.

He was a man of pleasing and insinuating address, of great talents and political shrewdness, and occupied a leading position in the State. Like his brother Moses, he was an ardent Republican, and when in the Senate, had the ear and confidence of President Madison, and a controlling influence in the distribution of the Federal patronage in the State, which, in consequence of the war with England, was very great.

The birthplace of Royall Tyler was near the site of Fanueil Hall market, Boston. His father, Royall, was a man of ability, a graduate of Harvard, and held several important positions under the Colonial government; he was a member of the King's Council from 1765 till his death in 1771. The subject of this sketch was his second son, first named William Clarke Tyler, but on the death of his father, at the request of his mother, the General Court changed it to Royall Tyler.

He entered college at the age of fourteen, was fond of study, quick of apprehension, and held a high position in his class; he received the appointment of valedictorian. Among his classmates were Christopher Gore, Governor and United States senator, and Sewall and Thacher, Chief Justices. He took his degree in 1776, and at the same time Yale College paid him the unusual compliment of bestowing upon him a like degree *in honorarium*. He began at once the study of law with Francis Dana of Cambridge, which was interrupted by a campaign of active service in the war. He acted as aide to Gen. Sullivan in his Rhode Island campaign; in 1779 he was admitted to the Bar, and as the business of Boston had been nearly ruined by British occupation, he opened an office in Falmouth, now Portland, Maine. In a history of the law, etc., of that State, it is said of him, "He was a fine scholar and an accomplished man."

He returned to Boston in 1781, and for two years resided in Braintree, now Quincy, and then removed his office to the city. He practiced there for several years.

During Shay's rebellion, he acted as aide-de-camp, with the rank of major, to Gen. Lincoln, who commanded the military forces. He was sent by Gov. Bowdoin to Vermont to make arrangements for the arrest of any fugitive rebels who might escape to that State. He addressed the Legislature, then in session at Bennington, and made the acquaintance of many of the public men of the State. While the results of his negotiations with Vermont were meagre, the administration of Massachusetts were so well satisfied with his conduct that they sent him to New York upon a like mission. In the summer of 1790, he again visited Vermont, and in the following winter established himself in Guilford, then the most populous town in the State.

His reputation as a lawyer and a man of learning was great, and he soon numbered among his friends most of the able and distinguished men of his adopted State. He was State's attorney for Windham County for many years, and was elected Judge of the Supreme Court in 1801; when Chief Judge Robinson retired in 1807, he was chosen Chief Judge, and held the position until 1813, the longest term of service of any judge, under the old judicial system. He removed to Brattleboro in the spring of 1801.

JAMES FISK.

Until his election as judge, Mr. Tyler had acted with the Federalists, and was one at the time of his election, but many of the considerations that were telling against that party seemed to him well founded, and although he could not take any active part in politics while on the bench, his views gradually changed and he became in sentiment a Republican; so that when, in 1807, the Republicans made a "clean sweep" in the State, Mr. Tyler was elected Chief Judge, with Harrington and Galusha assistants, and continued in service until 1813, when all the judges were taken from the Federal party.

His health, the latter part of his term of service, was poor, and this, with party strife, prevented his being chosen for a longer period. He was afterward register of the probate court for that district. His son of the same name is now judge of the same court, a position to which he was first appointed in 1846, and has been clerk of the county court in Windham County more than thirty-six years.

Judge Tyler is described by a late writer as "social in his disposition, a mind well stored with information derived both from books and their prototypes, men. He was the delight of all who knew him, and was the leading spirit on those occasions when the witty, learned and wise were assembled. To high mental ability, there was joined in his character an uncommonly benevolent and friendly disposition, which gained him the love and respect of many attached friends. As a judge, he was conscientious, clear-minded and just, both by a natural sense of right and an extensive knowledge of precedents. His humanity, though naturally unbounded, was so guided as to produce the most beneficial results. As a citizen he was public spirited and liberal; as a neighbor, social and unobtrusive; as a husband, kind and attentive."

He contributed largely to the early literature of this country. When in New York in 1786, conducting negotiations for the suppression of Shay's rebellion, a comedy which he had written during his military service was produced on the stage and was the first stage production in which the Yankee dialect and Yankee story-telling was employed, and was the first American play acted on a regular stage by an established company of comedians. It was played

at the old John Street Theatre, in April, 1786. He produced a second comedy, "May Day, or New York in an Uproar." He wrote many poetical pieces, contributing largely to the "Farmer's Weekly Museum" at Walpole, N.H., and published a series of papers entitled, "An Author's Convenience," in the "Portfolio" for 1801.

He had great facility in verse, and an abundant fund of impromptu humor. He wrote a comedy in three acts, "The Georgia Speck, or Land in the Moon," ridiculing speculation in the wild Yazoo lands. This was repeatedly performed in Boston with success. He wrote in two volumes, "The Algerian Captive, or The Life and Adventures of Updike Underhill." He wrote for nearly all the leading periodicals of the day, and his pen was often plied to correct and embellish manuscripts designed for the press.

His instructions to juries were often published, and were specimens of elegant composition and evidences of his great professional knowledge.

After his judicial services ended, he resumed his practice at the Bar, which was pecuniarily more profitable than his services for the State, but after the year 1820, he gradually retired from business, and died in 1826.

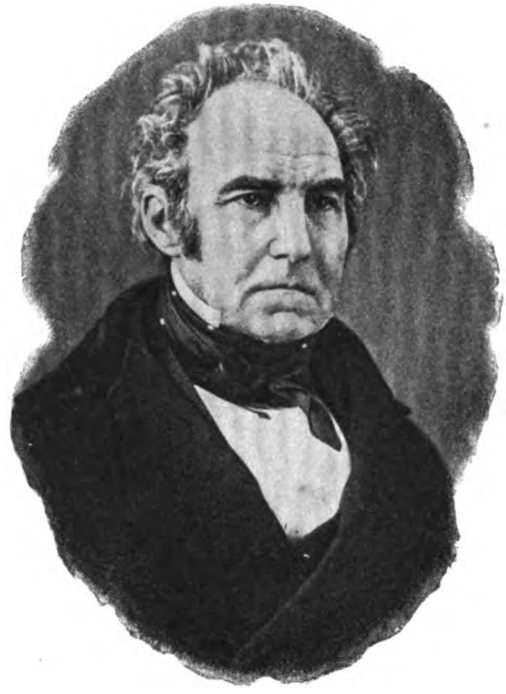
STEPHEN JACOB passed his youth among the Berkshire Hills. His father, Richard, was a man of substance and sent his son for education to Yale College. He graduated in 1778. Among his distinguished classmates may be mentioned Noah Smith, above noticed, Joel Barlow, Minister to France, Oliver Wolcott, Secretary of the Treasury under Washington and Governor of Connecticut, United States Senator Tracy, Chief Justice Swift, and Judge Miller of Connecticut, besides others who as members of Congress or great political leaders were prominent at the beginning of this century.

He came to Vermont, and at the first anniversary of the battle of Bennington, Aug. 16, 1778, read a poetical essay, his class-mate, Noah Smith, delivering an address. He pursued his legal studies with Theodore Sedgwick, the eminent patriot and jurist of Massachusetts; he was admitted to the Bar, and in 1779 marrying Pamela Farrand, came in 1780 to Windsor, and soon became a freeholder, residing in one of the most elegant residences in Windsor. He quickly became eminent in his profession. No one in this State ever rose more rapidly in the legal profession than Mr. Jacob. He was counsel in substantially all litigation in and near Windsor County; at the end of his second year in Vermont, his name appears as counsel in forty-six cases in that county. He was counsel in the second and third cases reported by Nathaniel Chipman, in the second volume of reports issued in this country, and was successful in both.

He appeared against such lawyers as Bradley, the Paines, Buck, Marsh and Hutchinson, men eminent in their profession. He was active in the extensive litigation growing out of the conflicting Vermont land titles.

He represented Windsor many years, was clerk of the House of Representatives and State attorney in Windsor County for a long time. He was the incumbent of this office at the time of the riots in 1786, when a mob attempted to interrupt the sessions of the court; he was with the militia called out to oppose the mob, and in the melee was wounded. He was a member of the first Council of Censors in 1785, whose important acts resulted in marking the line between the legislative and judicial departments. He was one of the commissioners to treat with New York, as to the controversies with that State. In 1791 he was appointed the first United States district attorney in the Vermont district. He was a member of the Governor's Council for several years and a member of the Constitutional Convention of 1793.

He was Chief Judge of the Windsor County court. In 1801 Woodbridge, Hall and Noah Smith, Federalists composing the Supreme Court, were retired, and Israel Smith, Royall Tyler and Jacob elected. Mr. Smith declining, Jonathan Robinson was chosen Chief. The latter was a Republican, Tyler and Jacob Federalists. In 1803, the Legislature still Republican, some changes were made to strengthen the party by legislative appointments, and as Tyler's Federalism was of a mild character, but that of Jacob pronounced, and as his opponents claimed, of a malignant and virulent type, the latter was retired. He was then in his forty-seventh year and afterward held no official position.



ASA AIKENS.

His family stood high in the social scale. His hospitality was unbounded, his benevolence proverbial and his entertainments extensive. Among his domestics he kept many servants, some of whom were colored, purchased and brought into the State where they were free to go and come. He purchased one Dinah, a negro woman slave about thirty years of age, on the twenty-sixth day of July, 1783, for forty pounds. He was afterwards sued by the town of Windsor for her support. The case was tried when he was upon the Bench, and defended by Charles Marsh, the then recognized leader of the Vermont Bar, and is reported in second Tyler, 192, and is well worth reading.

It is a singular coincidence that the able lawyer and accomplished scholar, Judge Jacob, who brought a slave into the State with his title in writing, should have been succeeded by the unlettered Republican layman, Theophilus Harrington, whose opinion upon the title to slaves will soon be noted.

Although his practice was large and his income great, his hospitable manner of living and his obligations in behalf of others made serious inroads upon his estate, and he died comparatively poor, illustrating the adage that "A good lawyer works hard, lives well and dies poor." His tombstone records that he was "One of the fathers of the State of Vermont, Hon. Stephen Jacob, an eminent counselor, an able judge, a distinguished citizen, a benevolent neighbor and an honest man."

THEOPHILUS HARRINGTON, a native of Rhode Island, came to Clarendon in 1785, taking a wife upon the way. Among his ancestors were many remarkable men: Theophilus Whaley was one of the judges who beheaded King Charles I. A son of his married a Harrington, from whom Theophilus descended; among his ancestors were Thomas Harris, one of the Pilgrims of 1620, Dr. John Clarke, Governor of Rhode Island, and Dr. Michael Dwinelle, who fled from Paris upon the revocation of the Edict of Nantes, and settled in Topsfield, Mass., his mother being a great-granddaughter of the latter.

He was a farmer, became a town officer in Clarendon, and represented the town in 1795, 1797 to 1803 inclusive. The latter year, he was elected Speaker; he was Chief Judge of the Rutland County court for three years, at the end of which term he was elected judge of the Supreme Court and served ten years, a greater number of elections than given any other judge, save one, until the change in the judicial system in 1825.

He was not admitted to the Bar until after his term of service as Chief Judge of the county court ended, and after his first election as Supreme Court judge. His term of service in the latter office ended but a few days before his death.

His successive re-elections to the highest judicial station indicate the ability and faithfulness with which he performed his duties.

He was rough and unpolished in his deportment, his personal appearance was far from prepossessing, and it is said he often went into court barefooted. He had no acquaintance with the technical principles of the law or with the learning of Coke and Blackstone, yet in discharging his judicial duties, his mind was so energetic and vigorous, his discrimination so acute, his investigation of the justice of the case so thorough, that he seldom had any difficulty in applying the fundamental principles of right to the case in hand. Whether the technical points before him were correctly or incorrectly decided, it is certain that substantial justice followed his rulings. To do justice was his sole aim.

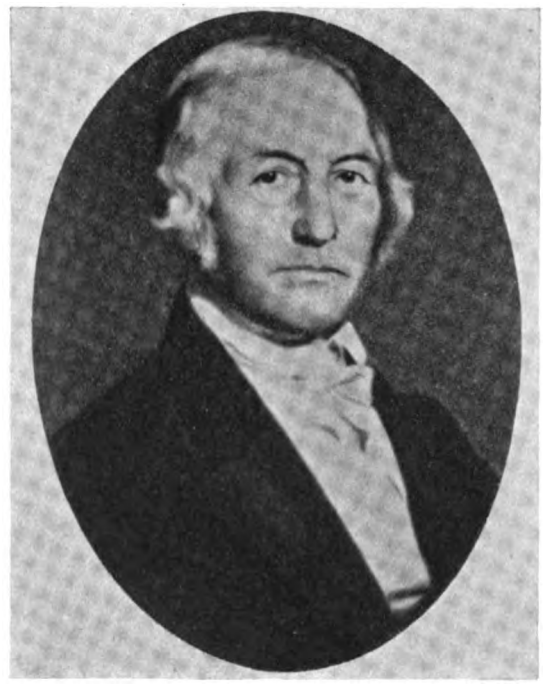
When the two leading lawyers of their day, Mr. Chipman and Israel Smith, were arguing before him a question under a demurrer to a declaration, he listened to them attentively for a long time, then taking the demurrer in his hand, said, "Mr. Chipman, what do you call that?" "That is a demurrer, your Honor." Turning to Mr. Smith, he said, "Do you call it a demurrer?" He answered in the affirmative; whereupon Judge Harrington said, "I do not know as the Court knows what a demurrer is, but it knows what justice is, and this plaintiff is entitled to a judgment."

A man stole a horse in Canada, and took it through Vermont into Massachusetts and sold it. He was indicted in one of the Vermont counties through which the horse was taken, for stealing the horse in Vermont, and his case came before the Supreme Court. It was objected with plausibility that he stole the horse only in Canada, and merely took it through Vermont, and could be punished either in Canada or Massachusetts, where he sold it, and not elsewhere. The other judges doubted somewhat, but Judge Harrington said that in his opinion the man stole the horse when he took it, and stole it every step of the way he took with it until he sold it, and therefore was stealing it all the way through Vermont. The other judges concurred, and the man was convicted.

When, in the trial of a land case, the objection made by the counsel to the admission of a deed in evidence was that the instrument had never been sealed, the counsel were inquired of if that was the only objection, and replied it was. "Mr. Clerk," said the Judge, "hand me a wafer"; and with the old-time wafer and a piece of paper, the instrument was sealed forthwith, and the Court said, "That objection is removed, now proceed, Mr. Attorney." This was doing what it would have taken a court of equity probably three years to accomplish, but it effected justice in the case in the same manner and to as full an extent as the act of the chancellor.

But the greatest case ever heard before Judge Harrington, and one that has made his name famous and by which he will always be remembered, was the slave case which arose under an act of Congress, authorizing the owner of a slave, that had escaped into another State, to seize him and take him before a magistrate in the district

wherein the seizure was made, and by showing to the magistrate by oral testimony or affidavit that the person seized "doth under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her," it was made the magistrate's duty to give a certificate thereof to the claimant, which should be a sufficient warrant for removing the slave. Under this law an owner undertook to prove before Judge Harrington that the slave owed service to him. The attorney for the claimant was armed with affidavits of title to the slave, and thinking Judge Harrington obtuse, offered an affidavit showing a bill of sale, then offered an affidavit showing the bill of sale to the man who sold the mother of the slave. "Is that all?" said the Judge. The claimant said he had gone back to the ownership of the mother, but the Judge, more familiar with land titles, which, in those early days, were frequently traced to the original proprietor, than with titles to a human being, replied, "You do not go back to the original proprietor." The claimant's attorney was surprised and asked what would answer beyond the bills of sale. The Judge went back in his mind to the original proprietor, the Creator of all mankind, and over all pretended intermediate ownership of one man by another and answered, "A bill of sale from God Almighty." The slave went free.



TITUS HUTCHINSON.

JONAS GALUSHA came from Connecticut in the first year of the war; was captain of one of the two militia companies in Shaftsbury, and after the capture at Hubbardton of Captain Huntington, Galusha was assigned to the command of both companies, and he led them in the battle of Bennington.

He was a member of both branches of the Legislature, sheriff many years of Bennington County, judge of the county court for nine years, and in 1807 and 1808 was elected judge of the Supreme Court, the last layman ever chosen to that position.

At the close of his last year, he was elected Governor and served until 1813, when he was defeated by his brother-in-law, Martin Chittenden, a Federalist, but in 1815 he was successful over the same relative, and continued Governor until 1820.

He was presidential elector in 1808, 1820 and 1824, one of the Council of Censors in 1792, a member and president of the Constitutional Convention in 1814 and 1822.

His civil life covered full forty years. He was taciturn and concise in his language, but his reasons were open and candid and were always plain to the dullest man. He was a farmer and innkeeper.

DAVID FAY, the youngest brother of Jonas, was in the battle of Bennington, in Captain Samuel Robinson's company as a "fifer." He was then sixteen years of age.

At the age of thirty-five, he was admitted to the Bar, was State's attorney in Bennington County for four years prior to 1801.

He was appointed by Mr. Jefferson United States attorney in the Vermont District, and in 1809, upon the election of Jonathan Robinson as senator, was chosen one of the judges of the Supreme Court. He held the office until 1813, when the whole Court were displaced, the Federals taking control of the State government.

He afterwards served as judge of the probate court; was a member of the Governor's Council from 1817 to 1821. He left no descendants.

DANIEL FARRAND, one of the most accomplished of our early judges, was a native of Canaan, Conn., eldest son of Rev. Daniel Farrand, who is noted as an eminent divine in Sprague's annals of the American pulpit. He was educated at Yale College, and after graduation came to Windsor, in this State, where his brother-in-law, Stephen Jacob, had settled in 1780. I think he pursued his legal studies with Mr. Jacob. He held the position of registrar of the Probate Court for three years, from 1783 to 1786.

I find no record of the admission of Mr. Farrand as an attorney, but he evidently began practice while in Windsor, for at the terms of the county court in 1784 and 1785, his name appears as counsel for the plaintiffs in at least a dozen cases, but he soon removed to Newbury, Vt.

He married Mary, eldest daughter of Asa Porter of Haverhill, N. H., May 1, 1794; her sister, Sarah, was the mother of Helen Olcott, the wife of Rufus Choate.

Mr. Farrand remained in Newbury until 1800, and then removed to Bellows Falls in Rockingham. While living at Newbury, he was registrar of the probate court in that district; he represented the town in the convention in 1791, which adopted the Constitution of the United States. He was State's attorney in Orange County for several years, during one of which he also served as judge of probate. He represented Newbury in the Assembly in 1792, 1793, 1796 and 1798, serving the last year as Speaker.

His professional practice was very large; as early as 1793, his name appears upon the docket of Orange County in over eighty cases. He represented the State in the first reported case in Vermont, State *v.* Annice, in which it was held that under an indictment for adultery, the *particeps criminis* should not be admitted to testify; but this ruling has since been reversed and the principle for which he contended has been recognized as law for half a century.

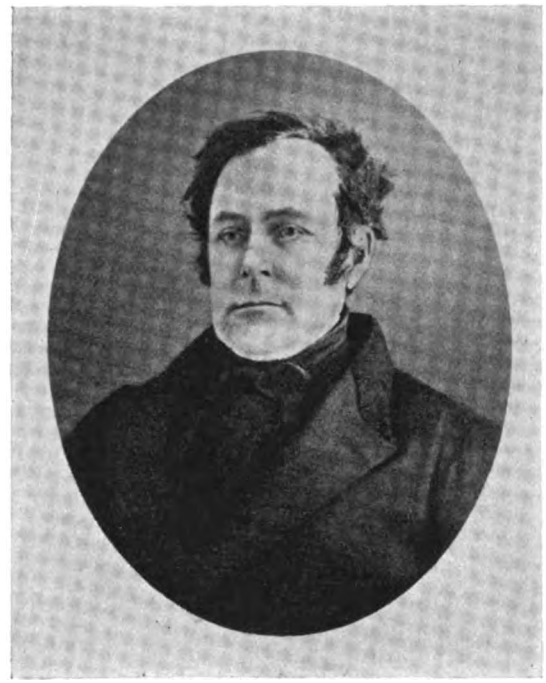
He resided in Rockingham four years, represented the town in 1802, was State's attorney in that county in 1801, 1802 and 1803, and in April, 1803, ran for Congress against James Eliott, but was defeated, the district being Republican.

In 1804, he removed to Burlington and resided there until his death; he was elected a member of the Council of Censors in 1813; at the session of the Legislature in October of the same year, a complete change was made in the membership of the Supreme Court, growing out of the political excitement occasioned by the war, and he was elected one of the judges with Jonathan H. Hubbard of Windsor, and Nathaniel Chipman as Chief. He served for two years, when the Federal party having lost control of the Legislature, another complete change was made and new judges elected.

Mr. Farrand made the address in behalf of the citizens of Burlington, welcoming President Monroe upon the occasion of his visit to the place in 1817.

He was a man of extensive learning outside of his profession. The later years of his life, he was troubled with failing eyesight, so that he was obliged to retire from active business, although he never became totally blind. He left surviving him nine daughters, all brilliant, accomplished women, the youngest of whom, Mrs. Ellen M. Russell

of Greenfield, Mass., is the sole survivor (October, 1890). Other descendants are in the West; one great-grandson, Edward R. French of Omaha, Neb., is the only one in the legal profession. Judge Farrand was described by a contemporary as "celebrated in his profession, as an able lawyer, and distinguished by the brilliancy of his wit and humor." And by another as "a man of stubborn and vigorous intellect."



SAMUEL S. PHELPS.

At his death, his professional brethren considered it due to his memory "to acknowledge his eminent talents and exalted pre-eminence. Nature had inspired him with a powerful and vigorous mind, which his industry and application had cultivated; his legal acquirements were of the first order, and we are bound to acknowledge him as one of the ornaments of the profession. But his researches were not confined to that: he had explored the circle of the sciences and made the treasures of literature peculiarly his own. As a judge of the Supreme Court he acquitted himself with honor, and passed from the Bench without reproach. As a statesman, his views were exalted and he sought his country's good rather than his own emolument or fame. As a neighbor and friend, he was valued and respected, and his memory will be cherished so long as sterling integrity shall be honored and esteemed."

JONATHAN HATCH HUBBARD came at an early day from Connecticut. Although not college bred, he possessed an excellent education. He settled at Windsor, and for a life-time was very prominent in the legal profession. He was elected representative in the Eleventh Congress, and served during the first part of the war with Great Britain, until March 3, 1811. At the time of the defeat of the Republicans in 1813, and the election of new members of the court taken from the Federal party, he was elected with Judges Chipman and Farrand, and served with them two years, 1813–1815.

Dartmouth College conferred upon him an honorary degree. He died in Windsor, among whose prominent citizens are some of his descendants.

In 1814 an act was passed requiring two sessions of the court annually, a winter and a summer session. The summer session could be held by one judge, a grand and petit jury were required to attend, jury trials were therein had, and any party thinking himself aggrieved by any ruling of the Court might allege exceptions thereto at that term, and the same being reduced to writing and signed, the action was thereupon continued to the winter term, when the questions arising upon the exceptions were heard by all the judges. Thus the issues of fact were disposed of at one term, and the legal questions arising thereon at the succeeding term.

ASA ALDIS was the son of a merchant of Franklin, Mass., of considerable wealth, but

unfortunately a Loyalist. He removed to Boston when Asa was a child, and died in May, 1775, his wife having died two years before.

Asa was brought up in the family of an aunt, and after the war closed he recovered some of the property which belonged to his father, including a farm, a part of which he retained until his death.

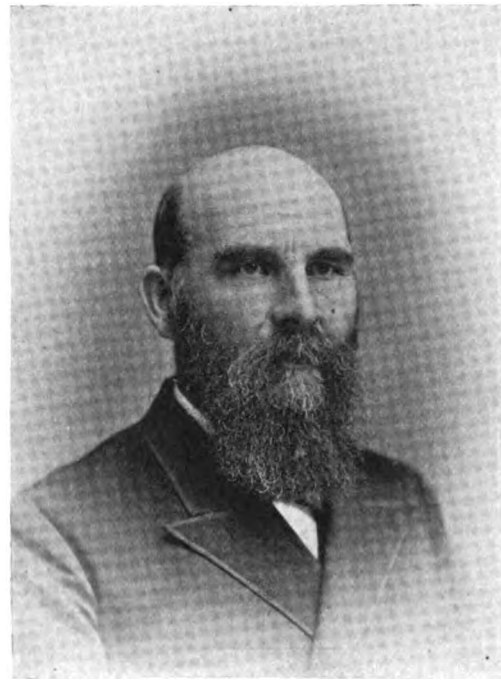
Quite late in life, he entered Rhode Island College, now called Brown University, graduating at the age of twenty-six; the noted Tristram Burgess was one of his class-mates. He studied law in Providence with Judge Howell, was admitted to the Bar, and opened an office in the village of Chepachet, remaining there a few years, acquiring a good business and an excellent reputation. He married the daughter of Lieutenant-Governor Owen, then the widow Gadcomb. Not satisfied with the place in which he lived, he made a prospecting tour through the western part of Pennsylvania and Ohio, returning home by way of St. Albans, Vt., with which place he was so well pleased that he removed there in 1802. For a time, he was in business with Bates Turner; he was somewhat averse to political life, although a warm partisan, and supported the measures of the Republican party, including the embargo and non-intercourse acts, which preceded the declaration of war with Great Britain. He was one of the foremost in his support of the war measures of the government and had great influence with the Republican party and was consulted more in relation to their views and measures than any other man in his part of the State. In 1815 the Republicans, having control, elected a new Supreme Court, and he was made its Chief. In making a complete change, it was thought best to select popular and able men to fill the judgeships in the highest court. He was made its Chief; it was an office he did not seek and did not want; his election being the result of a political move, there was much opposition to him on the part of the Federalists. At the end of the year he positively declined a re-election, although urged to continue in office by the most prominent men of the opposition party, and among others the then leader of the Vermont Bar, Charles Marsh of Woodstock, who wrote him a letter, earnestly entreating him to continue as Chief Judge of the court; but official life was distasteful to him, and he returned to the practice of his profession, from which, however, he retired many years previous to his death, for though his mental faculties remained unimpaired, his bodily infirmities rendered him unfit for active duties. He was never a healthy man, often ill with distressing attacks of hypochondria for which he could ascribe no adequate cause. He had, during life, several attacks of fever, still he lived until near his eightieth year. He is described by those who knew him intimately as a man of powerful intellect, for whose opinion and judgment in legal matters all had the greatest respect. He seldom read books, and determined a question by what seemed to him the law ought to be, and in the trial of cases, how the case would strike the minds of the jury under the charge of the Court.

He was a great student, devoted much time to metaphysics and mathematics. His oration delivered on his graduation was published. After leaving the university, he entirely neglected the ancient classics, deeming them of no importance, but however little he regarded the benefits of classical education in reference to himself, he spared no pains nor expense in the education of his children.

His son, Asa Owen, and his son-in-law, Daniel Kellogg, both served as judges of the same court. He has a grandson in the legal profession in Chicago.

RICHARD SKINNER, the son of General Timothy Skinner, was born in Litchfield, the seat of the great law school of Reeve and

Gould, that nursery of great lawyers at the beginning of the nineteenth century, in the first year of which Mr. Skinner was admitted to the Bar. He came directly to Manchester and began practice. In the second year of his residence, he was appointed State attorney for Bennington County, and reappointed until 1813. He afterwards held the office. He was constantly in the service of the public, judge of probate, representative in the Assembly, speaker of the House, member of Congress and governor. In 1815 and 1816 was elected judge, and in 1817 Chief Judge, but declined. After his term of service as governor, upon the reorganization of the court in 1825, he was elected Chief Judge, and continued in service until 1829, when he voluntarily retired.



WILLIAM H. WALKER.

His death was occasioned by injuries received in an accident in which he was thrown from his carriage. It is a sufficient tribute to his ability that he was elected Chief of the court with such men as Samuel Prentiss and Stephen Royce assistants.

It is written of him: "Intellectually his qualities were of that kind which gained the respect and confidence of mankind rather than immediate admiration. As a lawyer he was noted for the clearness and force with which he presented his cases. He filled the highest places in the State with ability and dignity, and left a reputation of which the town and State may well be proud." He and his descendants have been generous benefactors of the school, library and cemetery of his adopted town.

The father of JAMES FISK died when James was two years old, and left his son without means. When sixteen years of age James enlisted in the American army and served three years. He then married Priscilla West and began farming. When twenty-two years of age, he was elected representative to the General Court of Massachusetts; soon afterwards he began to preach the doctrines of Universalism. When thirty-five years of age he removed to Barre in this State and continued in the clerical profession for some time. He represented the town in the General Assembly nine years and served as judge of the county court. He cleared a new farm in the wilderness, studied law and began practice. In 1805 he was elected representative to Congress, and re-elected, serving four years; after an intermission of two years he was again elected, and in 1812 was a staunch supporter of the war with Great Britain. In 1815 he was elected judge and served two years, when he was elected United States senator. The following year he resigned to accept the appointment of collector of customs in the Vermont District, and in 1819 removed from Barre to Swanton, where he resided for the most part during the remainder of his life. In June, 1812, he was offered by President Madison the

position of Postmaster General, but declined, and subsequently, a judgeship in the United States courts in the territory of Indiana, but the strenuous opposition of his friends to his leaving the State induced him not to accept the appointment. He was possessed of a good mind, sound judgment, and was an excellent reasoner. He was of great integrity, and one of the few who held and was offered positions of trust without seeking them; he was a man of unusual ability.

In describing the speakers at the great war meeting in 1812, Mr. Thompson says: "On one side sat the small-sized, keen-eyed, ready-witted and really talented James Fisk of Barre, who was then a member of Congress and who had now come on to act as the champion of the Democrats at this meeting."

The parents of WILLIAM ADAMS PALMER came from England prior to the Revolutionary War and settled in Connecticut. He lost a part of one hand accidently and chose a professional life, studying law in Hebron, Conn., in the office of Mr. Peters, afterwards a judge of the Supreme Court.

Soon after 1800, Mr. Palmer came to Chelsea, studying in the office of Daniel Buck the statutes and rules of practice in the courts of this State. He was admitted to the Bar in Chelsea and spent a short time in the law office of William Baxter of Brownington, moved on to Derby, but not liking the place settled in St Johnsbury about 1805. He was soon after appointed judge of probate for the Caledonia District, and also county clerk. He then removed to Danville, the county seat; he held the first named office seven years and the latter eight years. His public offices were numerous, three of them of the highest dignity, judge of the Supreme Court, United States senator and governor. He represented Danville in the General Assembly many times, was one of the first State senators chosen in 1836, and a delegate in three constitutional conventions. After his term as senator ended he was appointed judge in the county court, and served for two years. He was elected judge of the Supreme Court in 1816; was re-elected but declined further service, and in 1818 was elected United States senator to fill the unexpired term of James Fisk and the full succeeding term. He voted in Congress for the Missouri Compromise and for a time was unpopular.

He was a candidate for governor upon the anti-masonic ticket from 1830 to 1835 inclusive. There was no election by the people in any year except 1833, when he was elected at the polls by a majority of more than two thousand. In 1830 Mr. Crafts was elected by the Legislature; in 1831 and 1832 Mr. Palmer was elected each year, in the Legislature, by one majority. In 1834, he was elected by the Legislature by one hundred and twenty-six majority, the Whig and Democratic candidates at the popular election declining the candidacy before the Legislature.

In October, 1835, there being no election by the people, the Legislature failed to elect, and Mr. Jennison, who was elected by the people as lieutenant-governor, discharged the duties of the office for the year.

The governorship terminated his public career, except as a delegate to constitutional conventions. Beginning as a Jeffersonian Republican, he adhered to the Democratic side from Jefferson to Buchanan, save during the anti-masonic excitement, when ordinary party lines were obliterated.

He was honest and just in his business transactions and estimable in all relations of life, was a man of strong natural abilities, possessing a decided and penetrating mind; it is said that he was "too benevolent, loving his neighbor better than himself. He had high social qualities, with great simplicity of manners."

DUDLEY CHASE was a native of Cornish, New Hampshire, a descendant of Aquila Chase, and uncle of Chief Justice Salmon P.

Chase. He graduated with honors at Dartmouth College in 1791; read law with Lot Hall of Westminster, Vermont, and soon after began practice in Randolph, and became very eminent in his profession. He was appointed State's attorney of Orange County in 1803, was elected representative from Randolph in 1805, and held both offices until the fall of 1812; the last five years he was speaker of the House. In 1812 he was elected United States senator and served until the fall of 1817, when he resigned the position to accept the Chief Judgeship of the Supreme Court. He held that position four years, when he declined further service. In 1824 he was again elected United States senator, his competitor being Samuel Prentiss of Montpelier. They were both members of the General Assembly, and sat side by side, in one of the desks for two members, during the election. In 1830 Mr. Prentiss was elected as his successor.

His wife was Olivia Brown, seventeen years of age at her marriage. They had no children of their own, but brought up and educated not less than twelve or fifteen nephews, nieces and indentured children.

During the latter part of his life he was subject to epilepsy, and an injury sustained by a fall resulted in paralysis of his right leg, which terminated in his death. He was extensively engaged in the practice of his profession, and after his election as judge, what is unusual in such cases, continued as counsel in his causes until they were ended.

Soon after his election he presided at a term of the court at Montpelier, and having a case, in which he was counsel, to be tried by jury, one of the other judges was called to Montpelier to preside during the trial while Judge Chase acted as counsel. An old gentleman residing in Montpelier, who habitually frequented the court, happened in during the trial when Judge Chase was making the closing argument, and as he supposed, was giving instructions to the jury. He remained a while and then passed out, and meeting on the steps a crony of his, who inquired if the case then on trial was finished, he replied it was not, but nearly so, for, said he, "the Judge is charging the jury, and he is going it like h—l for the defendant."

JOEL DOOLITTLE, of Massachusetts origin, graduated at Yale in 1799. He came to Middlebury as the first tutor of the college at that place, in the fall of 1800, and in the succeeding year was admitted to the Bar. He obtained an extensive law practice, and in 1817 was elected judge of the Supreme Court. He was elected successively for the five following years, and again upon the declination of Charles K. Williams in 1824. In the latter year, he represented Middlebury in the General Assembly; he was a member of the Governor's Council for three years prior to his judgeship.

In 1834 he was a member of the Council of Censors, and was chosen and officiated as president of it. For a score of years he was a member of the corporation of Middlebury College, was quite active in its behalf, as well as of other educational institutions.

He was studious in his profession, accurate and faithful in the preparation of his cases, and discharged his duties to clients and trusts committed to him by the public with fidelity. After his judgeship, he continued the practice of his profession as his health permitted until his death in 1841. His descendants are chiefly in Ohio, and quite prominent in the communities in which they live.

WILLIAM BRAYTON. — His name indicates Rhode Island origin. I have been unable to trace his ancestry. He was born at Lansingburg, N. Y., was a student at Williams College in his thirteenth year, but did not graduate. He came to Franklin County, was admitted to the Bar in February, 1807, and soon after began practice in Swanton.

He married Hortentia, daughter of Jabez

Penniman and his wife Frances, the widow of Ethan Allen. He was Chief Judge of the Franklin County court in 1815; represented Swanton in the Assembly in 1817; was then chosen judge of the Supreme Court and served five years. After his election as judge, he removed to St. Albans and remained there for some years. After leaving the Bench, he removed to Burlington and practiced his profession until his death in 1828.

He published reports of cases in the Supreme Court, elsewhere noticed in this article. His only son, William, died when young; his only surviving daughter is living in southwestern Missouri.

In 1821 it was found that having two terms of court caused great delay in the disposition of cases, and the act of 1814 providing for a summer and winter term was repealed.

CORNELIUS PETER VAN NESS, as his name indicates, was of Dutch descent. At the age of fifteen he was fitted to enter the junior class of Columbia College, but did not. Three years later he entered the law office of his brother, William P., in New York City, with Martin Van Buren as a fellow student. He was admitted in the year 1804 and commenced the practice of his profession in his native town of Kinderhook. Two years later he removed to St. Albans, Vt., and in 1809 to Burlington.

He was appointed by President Madison, United States district attorney for Vermont, through the unsolicited recommendation of Justice Livingston of the United States Supreme Court, who at that time held the circuit court in the Vermont District, and who had noticed the ability and promise of Mr. Van Ness. The office of district attorney at this time was one of peculiar importance and large responsibility in consequence of the many violations of the revenue laws and the difficulties in connection therewith, and the attempted illegal importation of merchandise by way of Lake Champlain. Mr. Van Ness performed the duties of the office with such shrewdness, skill and eminent success, that in 1813 he was transferred to the office of collector of customs at Burlington, the most important revenue post, at that time, in the country, caused by the closing of the seaports during the war. He held the collectorship until the termination of the war, and then left it, having been appointed one of the commissioners to settle our national boundaries under the treaty of Ghent, and in that position he displayed great ability and rare fitness for his duties.

After that he continued the practice of his profession, as was said, "from love of it." He represented Burlington four years successively in the General Assembly and displayed there the same habits of labor, industry, investigation and preparation which he had always shown in the performance of public duties.

The banking system of Vermont originated with him, and the first of the old banks, not connected with the State, was incorporated the first session at which he was a member. During the last year of his legislative term, Dudley Chase having declined further service as Chief Judge of the Supreme Court, Mr. Van Ness was chosen in his place. He held the office two years, at the end of which time he was placed in the executive chair, and twice re-elected without opposition.

In the discharge of his duties as judge, he was prompt, learned and able, and not surpassed in courtesy, dignity and impartiality. He was ambitious to represent his State in the United States Senate, but after a most acrimonious, bitter contest, in 1826, he was defeated by six votes, as was charged at the time, by influence of the national administration and influential persons in New York City who were hostile to him. So offended was he with the administration of Mr. Adams that he abandoned it

in a published manifesto, in which he directly charged his defeat to its interference.

Upon the accession of General Jackson to the presidency, Mr. Van Ness received the appointment of minister to Spain, a position which he filled for many years, the duties of which he performed with his accustomed ability and success. After an absence in Spain of ten years he returned to his own country, but finding that great changes had taken place in the field of politics, after a short stay in Vermont, he took up his residence in New York City.

He was appointed by President Tyler collector of the port of New York, a post which he well filled for many years. He continued his residence in New York, frequently visiting Washington, and died, while journeying between the two cities, at the Girard House in Philadelphia.

One who knew Mr. Van Ness well, although not of his political faith, wrote of him, he "neither felt nor affected love for literature; troubled himself little with theoretical speculations or with abstract principles, except as connected with the kindred sciences of law and politics, which few men more thoroughly studied and understood; . . . without imagination, using language plain but expressing always the precise idea he wished to convey, disregarding decoration, his reasoning, compacted link within link, glowed with the fire of earnestness and conviction, or rather his speech was a torrent of impassioned argument, as clear as it was rapid, capable of sweeping away juries and assemblies and of moving from their moorings the anchored caution and gravity of the Bench."

His eldest daughter was the wife of Sir William Gore Ouseley; another of Judge Roosevelt of the Supreme Court of New York. One son, at the time of his death, was secretary of State in Texas, prior to its admission to the Union, and his youngest son died holding the position of collector of customs at Carrigo, Texas. His oldest son, James, was the first mayor of San Francisco.

When Mr. Van Ness represented the government in Spain, his title was Minister Plenipotentiary; on his return, the people in the vicinity of Burlington turned out *en masse* to receive him at the steamboat landing, news having been received of his expected arrival. A stranger, stopping at one of the principal hotels in Burlington, inquired of the landlord who the man was that all the people, men, women and children, turned out to greet; the Boniface replied that "years ago he practiced law here, but he has been gone several years, and I believe he has been a minister in a penitentiary out in Spain." Such is fame.

CHARLES KILBORN WILLIAMS. — The father of Judge Williams was Samuel, a professor in Harvard University. Charles K. was born in Cambridge, Mass., but his father, soon after his birth, removed to Rutland, where he long remained one of the most influential citizens of the State; his work in two volumes is the most important contribution to the early history of Vermont; he represented Rutland in the General Assembly fourteen years.

Charles K. was educated at Williams College; he studied law with Chauncey Langdon at Castleton, whose daughter he subsequently married. He remained in Rutland, in the practice of his profession, until the year 1822. He was connected with the army during the war of 1812 and acquired the militia title of General. In 1822, he was elected judge of the Supreme Court, serving the first year with Judges Van Ness and Doolittle, and the second year with Judges Skinner and Aikens. He declined a re-election and was appointed collector of customs in the Vermont District and served during the administration of John Quincy Adams.

After his service as collector, when Chief Judge Skinner retired in 1829, he was again

elected judge, and in 1833 was made Chief Judge of the court in place of Judge Hutchinson, and served until 1846, when he voluntarily retired. He subsequently served two years as governor in 1850 to 1852. He held the position of Chief Judge longer than any other person, with one exception, the late Chief Judge Pierpoint.

Judge Williams, when in practice, was a leader of the Bar, quick, impulsive, with a high sense of honor, with a non-musical voice of rather high pitch. In manner he was courteous, affable, a good conversationalist, and of large general information; as a judge, he exhibited great readiness of apprehension, quickness of decision and a rare sense of justice. The right or wrong of the case, as it appeared to him, he could not well conceal from the Bar and jury in the trial of a case, for he was sympathetic and somewhat impulsive.

As presiding judge at a jury trial, he took charge of the business in hand and did not allow it to drift on and be finally controlled by the persistence or clamor of counsel; he protected witnesses from unjust imputations, and it was not an uncommon occurrence for him to interfere, during the examination, by some such remark as "The witness need not answer that question," or "The witness has already answered it." He made great dispatch in the trial of cases, sometimes carrying his urgency to finish up the business so speedily that it seemed to the Bar extreme. Night sessions were quite common, and when the examination of a witness lagged, his curt order was not unusual, "Cross-examine," or "Call your next." Much less time was occupied in the trial of jury cases in his day than now.

In the trial of jury cases, Judge Williams always rose and stood in his place while giving the jury their instructions, and they stood when addressed by him. In his instructions, he read largely from his minutes of the evidence, marshalling and applying the testimony to the different points of the case. This necessarily carried with it, sometimes, the force of an argument, and was largely influential with the jury, as supposed to indicate the judge's opinion of the case. No judge in the State was ever more justly and highly esteemed than Judge Williams. He was not so well known out of the State as some of the other judges, like the elder Redfield and Stephen Royce, as he studiously avoided connecting himself in any way with law periodicals, and did not allow the publication of his opinions in advance of the regular reports. With him, these things had too much the appearance of pretension or love of publicity and of condescension and subserviency, to meet the full approbation of that severe sense of propriety by which his own course was prescribed, and for this reason he was not so well known as others; but his opinions received marked commendation from great law writers and judges, and our reports unquestionably bear more distinctly the impress of his work than of any other. While his mind was active and almost electric, he was so patient that he was ordinarily sure of reaching a just conclusion in the quickest time. He had a strong sense of justice and was of incorruptible integrity.

The Judge was sometimes accused of being a martinet in the court house, and omitted none of the forms and ceremonies of old times, pertaining to the courts.

It was the custom then for the judges to be conducted by the sheriff, with sword or baton in hand, to and from the court house.

It is said that during his nineteen years of service he never laughed but twice in court: once when presiding in the Supreme Court at Burlington, the notorious Jacob Maeck was making an argument, when he was told by the presiding judge to omit discussing the question, as it had been decided. Mr. Maeck inquired, "It has?" "Yes," said Judge Williams, "in the 10th Vermont." "Where?" said Mr. Maeck, putting his hand to his ear. "In the 10th

Vermont," repeated the Judge. Mr. Maeck, very gravely bowing, replied, "I will buy the book, your Honor." A Southern slave was brought at an early day to Lamoille County; she was called "Black Sal" and exercised upon one of the hillsides the right of squatter sovereignty, where her cabin remained for many years. She finally executed a deed which covered a large tract of land, and the famous Joshua Sawyer brought an action to recover it from a claimant, and after putting in many deeds, he said, "This, your Honor, completes our chain of title, except one deed from '*Black Sal*,' which we wish to give in evidence to show *color* of title." Upon both these occasions, it is said, Judge Williams heartily laughed.

ASA AIKENS was the first native Vermonter given a seat in the Supreme Court. He was born in Barnard, a rocky, rugged town, near Woodstock. Mr. Aikens entered Middlebury College in 1804; not having the facilities for acquiring the French language in that institution which he desired, in 1807 he was transferred to the Military Academy at West Point, as a cadet, and passed the last year of his college course in that institution. At the end of the course he returned to Middlebury and studied law with Joel Doolittle.

In 1812 he was commissioned captain in the 31st Regiment of United States Infantry. He served as aide upon the staffs of Governors Skinner and Jennison. He located at Windsor in 1812, twice represented that town in the Assembly, and served as State attorney for Windsor County for two years. In 1823 he was elected judge of the Supreme Court and served until the change in the judicial system in 1825. He succeeded, as judge, his early instructor in the law, Judge Doolittle, and the last year of his term served with Judge Doolittle, who was elected when Charles K. Williams retired in 1824. Upon the reorganization of the court in 1825, he was appointed editor of the decisions of the court, and issued two volumes which bear the title and are now cited as "Aikens' Reports," and are the only ones of the individual reporters of much value. He published a book of practical forms of greater use than any similar publication issued in the State.

In 1843 he removed to Westport, N.Y., which was ever after his home. Although formally admitted to the Bar of that State, he practised little, occupying his time in needed exercise and in composing and compiling an elaborate work entitled "Aikens' Tables," being tables of interest, discount, values of annuities, rents, etc., with an almanac of the last half of the nineteenth century, and the Northampton Life Tables, a work which has been since that time an invaluable aid in the probate courts of this State.

A question having arisen during the administration of Gov. Palmer as to the title of the Dartmouth College lands in Wheelock, Mr. Aikens was appointed by the Governor to examine the legal questions involved in the case. From what I learn of him, it is apparent that he was a careful, painstaking, accurate man in whatever position he was placed, one who faithfully performed all duties entrusted to him. The opinions in two-thirds of the cases reported in the second volume of D. Chipman's Reports were written by Judge Aikens. Redfield, J., in 51 Vt. 551, says that an instrument then before the courts was drafted by Mr. Aikens, "an excellent lawyer, with thoughtful care."

He died suddenly of nervous prostration, in Hackensack, N.J., while on a visit to a son-in-law, July 12, 1863, in the midst of the great excitement caused by the war and the apprehended draft riots in New York City; but though feeble and upon his death bed, he hailed with delight and enthusiasm the ringing of the bells and the firing of cannon on the anniversary of the nation's independence. He was buried in Trinity Cemetery in New York City.

After the act creating the Supreme Court, the most important legislation in regard to it was the Act of November, 1824. Until that time, both Supreme and county courts were *nisi prius* courts, jury trials were had in both. The county court met twice annually, the Supreme Court once, except the few years when there was what was called the summer and winter terms of the Supreme Court. All the main questions of law generally arose upon a jury trial, no arguments of counsel upon the question nor consideration by the court, except during the trial, when no great delay could be had for the purpose of examining authorities or considering the questions.

The Act of 1824 gave the county court original jurisdiction of all criminal matters and all civil actions whatever, except in certain cases of judicial writs, etc. The Supreme Court was made exclusively a court of law, and all legal questions arising in the county court could pass to the Supreme Court on exceptions taken to the rulings of the county court, and such questions were then heard and determined in the Supreme Court. Since that date no trials involving questions of fact, in common law cases, have been had in the Supreme Court.

The Act of 1824 provided that when in a hearing in the Supreme Court the judges were equally divided in opinion, judgment should be rendered according to the opinion of those who had been present at the jury trial, and in all other cases upon an equal division of opinion judgment should be rendered according to the opinion of the Chief Judge. The Supreme Court was still continued as a court of equity, and also had jurisdiction of such petitions not triable by jury, as might then be brought before the court, and were given jurisdiction of writs of error, *habeas corpus*, *mandamus*, *scire facias* and *certiorari*.

No appeal from the judgment of the county court to the Supreme Court was allowed, but all questions of law passed to the latter court by way of exception to the ruling of the county court. Two judges of the Supreme Court were required to be present at all trials for capital offenses in the county court and if the judges present at such trial were equally divided in opinion, the decision was rendered in accordance with the opinion of the senior Supreme Court judge.

SAMUEL PRENTISS was the fourth of that name in direct descent from Captain Thomas Prentiss, the noted cavalry officer in King Philip's War. His father, when Samuel was a year old, removed from Connecticut to Worcester, Mass., and in about three years to Northfield in the same State, where Samuel passed his boyhood. After his training in the common schools, he studied the classics with a Mr. Allen, and when nineteen years of age entered the office of Samuel Vose as a law student, completing his studies with Mr. Blake in Brattleboro, Vt.

He was admitted to the Bar a short time before his majority; he was a great student, not only of the law but of the best masters of English literature. A year after his admission, he opened an office in Montpelier, which was ever after his home. He soon took high rank in his profession, and as early as 1822 was elected judge of the Supreme Court, which position he declined on account of the inadequacy of the salary and the demands of a large and increasing family. He was a great lawyer, an admirable advocate, and became a great judge. He originated the act which made so important a change in the Supreme Court. Until 1825, the three judges of the county court were mainly farmers, mechanics and merchants, occasionally a lawyer, but rarely one "learned in the law." Such courts endeavored to secure justice for all parties, but it is obvious they were liable to errors through lack of a thorough knowledge of the law. The system was so changed that the Chief

Judge of the county court should be one of the judges of the Supreme Court, presumably an able jurist. The system is still in force, and has added dignity to the county courts, while litigants have had greater confidence in having their rights protected. In 1824 and 1825, he represented Montpelier in the Assembly, and it was due to his efforts that the change was made, and when the act took effect, he was again elected judge and accepted the office, holding it until 1829, when he was elected Chief and served one year. He was then elected United States senator on the first ballot, by a Legislature which did not have a majority politically in accord with him. He was re-elected in 1836, but resigned in the spring of 1842, upon being appointed, by universal consent and unqualified approbation, United States district judge after the resignation of Judge Paine; he held this office until his death.

He was of quiet and dignified bearing, eminently studious and strictly methodical in his habits. He had nine sons who entered the legal profession: one, Samuel B., was judge of the Superior Court in Ohio. No opinion of his, while on the Bench of our Supreme Court, has ever been over-ruled. When in the Senate he was on terms of intimacy with the leading members, all of whom had great respect and admiration for his talents and civic virtues, and he was regarded by many as the best lawyer in the body.

His speech against the Bankrupt Act of 1840 was pronounced by John C. Calhoun to have been the clearest and most unanswerable of any, on a debatable question, which he had heard for years, and Chancellor Kent said of him: "Judge Story, the only man to be thought of in comparison, is certainly a very learned and able man, but I cannot help regarding Judge Prentiss as the best jurist in New England." Judge Nelson sat in circuit, in the district with Judge Prentiss, and Mr. Phelps, well qualified to judge of both, has written: "Prentiss carried the scales and Nelson the sword; Prentiss carried the scales hung upon a diamond pivot, fit to weigh the tenth part of a hair, so conscientious, so thoughtful, so considerate, so complete in his knowledge of every principle and every detail of the law of the land. When he held up the scales, he not only weighed accurately, but everybody felt that he weighed accurately. His very modesty, the distrust of himself and fear lest he should go too far or too fast, deprived him to some extent of what might be called the courage of his judicial convictions. Nelson, when they sat together, always took care to assure himself from Judge Prentiss that he was right in his conclusions; they never differed. It would have been very difficult to have brought Judge Nelson to a different conclusion from what he was aware Judge Prentiss had arrived at, but the sword of justice in Nelson's hand was 'The sword of the Lord and of Gideon,' and when a decision was reached it was put in force without delay or further debate, and without recall; and so it was that the court became like the shadow of a great rock in a weary land. It carried with it authority, inevitable respect and confidence. It was the terror to the evil doer, and a prompt protector of the just." And the same writer adds: "He was a man of rare and fine powers, of complete attainments in jurisprudence, a student and thinker all the days of his life; conservative in all his opinions, conscientious to the last degree, thoughtful of others, a gentleman in grain, because he was born so."

STEPHEN ROYCE, born in Tinmouth, was soon taken into the wilderness near the Canadian line, and in his fourteenth year sent to his native town to attend the common school, there being none in Berkshire. The following year he entered upon the academical course at Middlebury, and entering the college there, graduated in 1807. During his college course, owing to the ill

health of his father, he was called home and labored for some months upon the farm, and his studies were otherwise interrupted. In his journeys to the college at Middlebury he took along with him packages of furs which he had acquired in hunting, the avails of which he used in purchasing books for his college course.

His admission to the Bar was in his twenty-second year; he practiced in Berkshire, Sheldon, and St. Albans, representing the two latter towns in the Legislature, and acting as State attorney until he declined the position. He was elected judge of the Supreme Court in 1825, and after a service of two years declined a re-election on account of indebtedness, being under the necessity of earning more money than his compensation as judge afforded him. After a practice of two years he was again elected judge, and held the office until 1852, acting as Chief the last six years, when he declined further judicial labors. Two years later he was elected governor, and served for two years. He was the first governor elected by the Republican party.

Judge Royce never married; after his father's death in 1833, he made his home at his mother's in East Berkshire, and resided there until his death.

Judge Royce took high rank as a jury advocate, the equal of any at the Bar. He was effective in his simple statement of a case; he analyzed and presented the evidence, detecting the distinctions and shades of difference that often escaped others, and which served to expose a dishonest witness or frustrate the most cunningly devised schemes of fraud. He was pleasant, although grave and serious in his manner; his language was more to instruct and convince than to amuse the jury by sallies of wit or startling paradoxes. His well considered premises were sustained by the evidence and his conclusions were logical.

When discussing questions of law before the court he rarely read cases and seldom referred to them. He was not a "case scavenger," but acted upon well settled general principles and arguments drawn from them; it was not as a lawyer, but in his judicial capacity that he became so widely known, and no one served the State with more benefit than he. He was modest and diffident, hesitated in forming or expressing his legal opinions, and he was sometimes called the "doubter," after Lord Eldon. He was an excellent presiding judge at a jury trial, and endeavored to work out justice in every case; he was free from intimating any opinion to the jury as to the weight of evidence before them, but would refer to the evidence very fully and so present the case to their minds, that they would naturally arrive at the result which he thought just. No one in the State ever had superior capacity in that respect. He never allowed a witness to be interrupted during his examination so that counsel might write down all that the witness said, and he never interrupted the witness himself for that purpose. He might, after the witness was through, ask him to repeat what he had said on some point. He adopted this course for the reason that it was important for the jury to hear and understand the witness, more so than it was for the court or counsel to write down all that was said, and that if the witness was frequently interrupted, there was less chance of his being accurately understood by the jury.

He was polite, kind, and encouraging to the younger members of the profession; overlooked and corrected their mistakes in papers or pleadings, and did not permit a party to be injured by them. He was a great equity judge, — one of the best; was profoundly learned in the principles of equity, but never ostentatiously displayed his learning. Others read more books, but few profited so much by their reading.

His written opinions were models, and are received as authority and appreciated

as perfect specimens of judicial literature; he said all that was necessary to say in deciding a case before him, and never more. He never was accused of what Judge Mattocks called, "slopping over." His written opinions are not essays upon the law at large; he very carefully confined his language to the precise matter before the court. In stating the legal principles applicable to the case, and not referring to books for authority, he resembled our great Chief Judge Chipman and Chief Justice Marshall.

He was not in the habit of reporting every case which fell to him; if the case was not correctly decided, he would not report it; and he refused to report that class of cases in which no new principle was involved, or no new application of an old principle, — thinking that legal principles were not barred by the statute, and that it was not necessary to reaffirm them every year to prevent their becoming obsolete.

He retired from his judicial duties in the full enjoyment of intellectual and physical life, and passed his remaining days in quiet seclusion, congenial to his retiring tastes and reserved habits. A friend writes of him: "The treasures of information, the fund of anecdote and personal adventure, especially the amusing and comical scenes in and about courts, in which his experience had been so wide and varied, which were garnered in his retentive memory, were here unlocked and produced for the entertainment of his guests, arrayed in his own inimitable garb of quiet humor."

The first year of his practice he was called to defend in a justice suit, and fresh from Chitty, filed a plea in abatement which he duly discussed. The justice in deciding the case said: "The young lawyer has filed what he calls a plea in abatement; now this plaintiff seems to be a very ignorant man, and his lawyer about as ignorant as he is, and this writ doesn't seem to be a very good writ, and doesn't resemble one much more than it does a hog yoke; but the plaintiff seems to be an honest man, and if he has a just claim against this defendant he shall have judgment." The counsel for the defendant, who was exceedingly tall and of swarthy complexion, elated at the result, but somewhat disgusted with the remarks of the justice, arose and making a very profound bow, said to the Court, 'I much thank you, d—n you.'

At one time he went to hold the winter term at Irasburgh, and arrived there about sundown; during the evening, as was the custom in those days, the Bar called upon the presiding judge, and among them was a newly admitted member who had never seen him, and who after an introduction inquired, "Did your Worship arrive in town by the public conveyance or do you travel with your own coach?" Judge Royce, with a stern look, replied to him, "I came over from Berkshire in my old pung" (a square box of rough, unplaned boards on runners). He was not further questioned as to his mode of travel.

LONDON LEGAL LETTER.

LONDON, Jan. 6, 1894.

THE close of the Christmas recess has been signalized by a spell of weather extraordinarily severe. When we left town a fortnight ago for our various country and provincial retreats, wearied professional eyes encountered everywhere a landscape indicative of early spring, and vernal breezes caused one to forget that it was after all the winter season; as we return to the labors of the courts, however, a snowstorm and frost have enveloped the country, and persons who have devoted their lives to the collection of thermometers and the recording of their indications, affirm that such cold has not for many years Britannically prevailed, a conclusion at which the general public, experiencing extremely polar sensations, had independently arrived. Many of the leading men are complaining loudly about the state of business, a form of lamentation that never entirely dies away, but which at the present moment has more justification than usual.

I believe that legal appointments of subordinate importance are more and more coveted by Queen's Counsel, who only a year or two ago were considered likely aspirants for a law officership of the Crown. Lord Herschell has had a very difficult duty to discharge in selecting, from the crowds of applicants for county court judgships and magistracies, the men best suited for a particular vacancy. I rather fancy that another pen than mine will introduce to your columns a narrative of the greatest murder trial that has agitated the public mind for many a day. The Ardlamont case, although tried in the Scottish Justiciary Court at Edinburgh, was followed by Englishmen with an intensity of interest seldom bestowed on the proceedings of their own criminal tribunal. This case has raised again the vexed question of the respective merits of the English and Scotch systems of preliminary criminal inquiries. As you know, in England such an investigation commences with a public coroner's inquest, so that very often most of the available evidence has become public property ere the actual trial takes place, while in Scotland the equivalent of the inquest is a private inquiry conducted by the Procurator Fiscal, a system which adds much to the excitement of the trial when for the first time the evidence is officially disclosed. This is hardly the place or occasion on which to express an opinion as to which method best serves the ends of justice; the arguments on either side are very evenly balanced, and I incline to think that as they are both natural growths in their respective countries, no attempt should be made, as has been often proposed, to ingraft foreign elements in either.

Lord Hannen, who retired from active judicial work after the conclusion of the Behring Sea arbitration, has been prostrated by a serious illness which caused for some days great anxiety to his friends; but there is now little doubt of his recovery. The Master of the Rolls too, Lord Esher, has been laid aside and will not be able to sit on the Court of Appeals at the commencement of next term. Rumor has been busy with announcements of his impending retirement, which would place at the disposal of Mr. Gladstone one of our most conspicuous legal offices. I should not wonder very much if Lord Esher were to take the opportunity of retiring; his powers of mind and body are practically unimpaired notwithstanding his advanced age, but he has enjoyed a protracted and eminent judicial career, and he may well long for a respite from the daily routine of the bench.

Judicial honor has yet again been conferred upon a distinguished alumnus of Cambridge University. Mr. J. W. Bonser, who was senior classic in 1870, and afterward a fellow of Christ College, has been appointed Chief Justice of Ceylon; he has held important colonial office before, having been successively Attorney-General and Chief Justice of the Straits Settlements. Men who have won academic laurels succeed much more frequently at the bar than is commonly supposed where university fame is vulgarly imagined to be much more an impediment than an aid to forensic success.

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The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

PROF. THAYER ON AMERICAN CONSTITUTIONAL LAW. — Anything from the pen of this well-known author and instructor at Harvard University will be read with respect, and so we have been very much interested in perusing his paper on the above named subject read before the Congress of Jurisprudence and Law Reform at Chicago, last August, and now published in a pamphlet by Little, Brown and Company, of Boston. Mr. Thayer sets out with the inquiry: —

"How did our American doctrine, which allows to the judiciary the power to declare legislative Acts unconstitutional, and to treat them as null, come about, and what is the true scope of it?"

As to how it "came about," Mr. Thayer contents himself, substantially, with the following theory: —

"How came we then to adopt this remarkable practice? Mainly as a natural result of our political experience before the War of Independence, — as being colonists, governed under written charters of government proceeding from the English Crown. The terms and limitations of these charters, so many written constitutions, were enforced by various means, — by forfeiture of the charters, by Act of Parliament, by the direct annulling of legislation by the Crown, by judicial proceedings and an ultimate appeal to the Privy Council. Our practice was a natural result of this; but it was by no means a necessary one. All this colonial restraint was only the usual and normal exercise of power. An external authority had imposed the terms of the charters, the authority of a paramount government, fully organized and equipped for every exigency of disobedience, with a king and legislature and courts of its own. The superior right and authority of this government were fundamental here, and fully recognized; and it was only a usual, orderly, necessary procedure when our own courts enforced the same rights that were enforced here by the appellate court in England. These charters were in the strict sense written *law:* as their restraints upon the colonial legislatures were enforced by the English court of last resort, so might they be enforced through the colonial courts, by disregarding as null what went counter to them."

This theory the essayist by no means demonstrates, and it seems to us quite undemonstrable. Such an idea probably never occurred to any court in this country. If it had, the power in question would not have been so long denied in highly respectable quarters. A colonial charter proceeding from the sovereign is a very different thing and is very differently interpreted from an Act proceeding from the Legislature. One is an institution of government, the other a privilege or right under that government. We venture to differ from Mr. Thayer, and to aver that a charter is *not* "law," but only an authority to certain persons to *make* laws and govern themselves by them. We doubt that any court ever recorded an opinion that this power was derived or derivable from the source to which the writer attributes it. But aside from this, Mr. Thayer's essay is of great interest, in the purpose to which it is mainly devoted, of showing the history and growth of this singular doctrine; and it will be instructive and interesting to every student of our constitutional history.

LAWYERS' TOOLS. — If our profession is degenerating into a trade, as many are apt to believe, it is at least a trade provided with extremely convenient tools. There has never been a time, certainly for half a century, when it was so easy to find out what has been decided — not to say, what the law is — as the present. We are but expressing a personal obligation when we refer to some of the present vehicles of reporting the judicial decisions. In most of the leading States, notably in Massachusetts and New York, the official reports are now published with remarkable intelligence and promptitude. Then for the omnivorous lawyer who will have every case, there is the West system of St. Paul, by which all the legal news is brought weekly to the practitioner's eyes, or to speak more accurately, probably, to his shelves. Then there is the great series of American State Reports, which skims the cream of the current decisions in all the States, and offers the result, with most elaborate monographic notes, in comely volumes, at the rate of some half dozen a year. This is a fine enterprise and is nobly prosecuted. It seems to us indispensable to a well equipped practitioner. And last, but not least, there is the series called Lawyer's Reports Annotated, published at Rochester, New York. This is issued in monthly parts. The

selection is not so large as and is more eclectic than that of the American series, and the annotation is rather more specific. The editorial work is admirably done, both in selection and in annotation. The last half dozen numbers that have reached us contain an amazing amount of annotation — nearly every case is annotated — and the convenience and accuracy of it cannot be over-rated. So if one is forced to be a case-lawyer, and that seems to be inevitable now-a-days, there is no excuse for his not having "the last case" at his fingers' ends, and for not being intimately acquainted with all its ancestors and brethren. In preparing two law treatises recently the writer desires to express his personal obligation to these sources, especially to the last two, which have saved him much research and vexation, although they have at the same time added to his labor.

How many States. — The editor of the American Law Review has brought his microscope to bear upon some recent writings of David Dudley Field and the editor of the "Easy Chair," in which he discovers an appalling and discreditable degree of ignorance on the part of those persons concerning the correct number of the States of the Union. Mr. Field called it forty-two, and the other writer forty. The microscopist says it is forty-four. Probably Mr. Field was genuinely in error, but we can state on the best authority that the other person was not endeavoring to state the number with mathematical precision, but spoke of them with an unexpressed "more or less," just as he might have spoken of the sixty thousand lawyers in those States, although there are probably nearer seventy thousand. Even if those writers were unpardonably wrong, something must be conceded to their distances from the field of State-making, and the reviewer's superior knowledge must be attributed to his western position, which enables him to get the news of such proceedings earlier than the unwise men of the East.

American and English Lawyers. — Mr. A. Oakey Hall's recent comparison of these persons in the pages of this magazine has naturally aroused some criticism among the English, who seem for once to care something for American opinion of them. Mr. Hall is perfectly able to take care of himself, if he deem it worth while to reply to their criticisms, and we shall not volunteer to defend him. At the same time, Mr. Hall, as well as ourself, can appreciate a good joke at one's own expense, and the "Western Law Times" of Manitoba, which is famous for its mild manners, seems to have made a palpable hit at Mr. Hall's expense, by quoting an account of a recent fracas, in court, at Lynchburgh, Virginia, between two prominent lawyers, in which one borrowed a knife and stabbed the other and "slit his face from his mouth to his ear," and the other afterward borrowed a gun and tried to force the knife-wielder's door to shoot him, and both were arrested and put under bonds to keep the peace. Hereupon the Manitoba editor says:—

> "Mr. Hall will thank us for endeavoring to give a practical illustration of the 'elasticity and general grace of movement' of these 'most prominent lawyers' of courtly Virginia, as one chopped the other with a knife and proceeded to enlarge the scope of his 'facial gesture' by slitting his mouth from ear to ear, and the other, scorning that silly 'monotony and artificiality' of the English Bar, and 'fettered only by the innate dignity of a gentleman,' tried to blow holes through his adversary with a gun. Yes, Mr. Hall, you have proved your point; we quite agree with you that your system 'tends toward freedom and naturalness in thought and speech,' and, permit us to add, action. We appreciate the good qualities of the Bar of our neighbors across the line, but Mr. Hall makes a very poor trumpeter; he blows too loud."

We really wish those fiery legal lights of the Old Dominion would conduct themselves in a more courtly fashion, and not "give us away" in such a humiliating manner. The author of "The English and American Bar in Contrast," in our November issue, was more temperate than the hyperborean gentlemen, but he betrays the lack of an intimate acquaintance with the Bar of this country when he speaks of "the personal acrimony, the intense jealousy, the mortal enmity, which a short acquaintance with American lwyers is sure to bring to light." Nothing but a "short acquaintance" could make such a discovery. The writer, "Barrister," has pointed out traits from which the American Bar is singularly and absolutely free. Instead of these expressions, one should read, "the personal good nature, the intense admiration, the kindly friendship," as much more fitly describing the feeling of American lawyers towards one another. A more magnanimous and friendly set of men does not exist, nor one more noticeably devoid of jealousy and averse to personal disputes. Another point at which the last named writer is equally in error is that which he makes in regard to the "injustice" done in our courts "by the law of 'variance' as it now stands, and which no longer disgraces our rules of procedure"! Possibly this remark is directed towards the procedure of Massachusetts — the context would seem to imply it — and we are ignorant of the law of Massachusetts in this regard; but certainly the old penalty of variance was abolished in New York almost half a century ago, and as we understand

does not prevail in any of the twenty-five other so-called "Code States," but has disappeared under the power of amendment, and indeed, as we also understand, England copied the New York example in the matter of variance, as she has done in respect to every other item of modern law reform. "*Fas est ab hoste doceri*" — translating *hoste* mildly. At this point we shall leave this "pretty quarrel as it stands," merely observing that we do not think Mr. Hall was much astray, on the whole.

LOWELL AND THE LAW.— It is probably known to very few that James Russell Lowell set out to be a lawyer in his youth. His letters just published show an amusing fickleness on the subject. He changed his mind every few weeks, but finally forsook the law, fortunately, for literature. It seems however that he retained a taste for law reading, for he says, when nearly fifty years old, "I have been reading State Trials, as I always do when cast away. There is more nature in them than in all the novels" — meaning human nature, probably. He also unearthed a queer view of the legal profession in "Letters of an American Farmer" (1782), by H. St. John Crèvecœur, from which he quotes the following passage to Mr. E. L. Godkins : —

"Lawyers . . . are plants that will grow in any soil that is cultivated by the hands of others, and when once they have taken root, they will extinguish every vegetable that grows around them. The fortunes they daily acquire in every province from the misfortunes of their fellow citizens are surprising. The most ignorant, the most bungling member of that profession, will, if placed in the most obscure part of the country, promote litigiousness, and amass more wealth than the most opulent farmer with all his toils. They have so dexterously interwoven their doctrines and quirks with the laws of the land, or rather they are become so necessary an evil in their present constitutions, that it seems unavoidable and past all remedy. What a pity that our forefathers, who happily extinguished so many fatal customs, and expunged from their new government so many errors and abuses, both religious and civil, did not also prevent the introduction of a set of men so dangerous! . . . The nature of our laws, and the spirit of freedom, which often tends to make us litigious, must necessarily throw the greatest part of the property of the colonies into the hands of these gentlemen. In another century, the law will possess in the North what now the Church possesses in Peru and Mexico."

That century has considerably more than elapsed, and there is no fulfillment of the discouraging prophecy of this timorous granger. Poor old crank! He did not reflect or observe that the liberty of the colonies was itself chiefly due to the teachings and labors of a few of the incendiary class which he decried.

COMPULSORY PHOTOGRAPHY. — If a man has got himself into a situation where the Government insists on having his likeness for their "Rogues' Gallery," we suppose he is practically bound to sit and has no remedy, although it is recorded that this process against an American gentleman detained for forgery, in Newgate, before conviction, raised a great excitement in the House of Commons in 1879, and the Home Secretary had to explain and apologize. (See 20 Albany Law Journal, 162.) Professional photographers are the most impudent and unreasonable folks in the world. They seem to think that the human face divine was made for their special behoof, and that they have an inalienable right to take "snap shots" at it, willy nilly, and to expose and sell copies for their own pleasure and emolument, and that if a person once submits himself to the camera his portrait may be exhibited and sold by them at their own pleasure and for their own profit. This of course is a vulgar legal error and has been more than once denounced by the courts. The most impudent member of this craft is apparently an American who is thus described roundaboutly in the "Scots' Law Times":—

"A photographer tried to take a picture of a group of military officers at a recent reunion at Gettysburg, U.S.A. Some of the officers objected to being photographed, but the photographer persisted and made himself such a nuisance that somebody overturned his camera. Now he has sued Generals Sickles and Butterfield, who were in the party, for $10,000 to compensate for injury to his camera and loss of profits on the pictures he would have sold had his negative not been broken. The suit involves the right to take anyone's picture against his will and in defiance of protest, and the extent to which the proposed victim may go in resisting the camera fiend. It seems as though one ought to be able to say whether he will be taken or not, and to have considerable right of resistance to this process."

We do not quite know whether our contemporary intends some puns in the last sentence. The presumption is against it, but at all events the offence seems to be committed. We may be set down among the "anti-snappers."

LITERARY LAWYERS.— Quite a number of "literry fellers" have been cropping out among the lawyers of late, and naturally some are of Boston. Mr. Frederic J. Stimson has been aggravating his early offences of this description by some new short ventures, original and entertaining. Mr. Robert Grant has been elected (or appointed) probate judge on account, or in spite, of his pleasant literary writings. Mr. John C. Ropes, after having published an excellent review of Napoleon's career under the title

"The First Napoleon," has recently given out a very admirable review of the Waterloo Campaign — decidedly the most comprehensible, candid and readable of the multitude of works on this vexed topic. Then in England there is Mr. William O'Connor Morris, a barrister, as he discloses, who has recently written the fairest and most interesting short life of the great Napoleon, a book which is a number of the "Hero Series" of Messrs. Putnam's Sons of New York. To the lawyers who admire this greatest soldier and administrator since Cæsar — and they are legion — we commend these books by Mr. Ropes and Mr. Morris. It is not a little extraordinary that this most candid and unpartisan estimate of Napoleon, by Mr. Morris, should come from the pen of an Englishman. (By the way, "The Easy Chair" finds a new and excellent grievance against the English on account of their despicable treatment of their great enemy, disclosed in the diary of the officer of the "Northumberland," descriptive of Napoleon's removal to St. Helena, now published in "The Century" magazine. These thrifty shopkeepers actually picked their prisoner's pockets of 4,000 gold Napoleons, $16,000, and "covered them into" the national treasury!)

Then to come to another great soldier, portrayed by a lawyer, we have "The Trial of Sir John Falstaff," by Mr. A. M. F. Randolph, reporter of the Kansas Supreme Court. This is very ingenious and entertaining — "an admirable piece of work." One would think that the reporter had been sitting up o' nights with the redoubtable and inimitable Jack, so deep has he dived into his soul and so thoroughly comprehended his "antic disposition." In great part the book is made up out of the Shakespearian elements and language, and where it is not, the reporter has expressed himself as Jack and his comrades assuredly would have done. The *vraisemblance* is acute and deceptive on the whole, although we must be allowed to utter a critical protest against the migration of the descendants of Justice Shallow to this new world, and especially to the western part of it — if Kansas is western. Here was discovered the manuscript record of this novel trial so felicitously reported by Mr. Randolph. Sir Jack was put on trial at the Boar's Head, in Eastcheap, it seems, before Justices Shallow and Silence, with Slender as *amicus curiæ*, on the charge of being a tavern haunter, vagabond, robber, etc. Sir Hugh Evans was chaplain and clerk. Fang was sheriff. Among the witnesses Mistress Quickly was chief, but Jack "horsesheded" her after his old seductive fashion. But we must not "give away" the story. The little book is full of riotous fun which must make the sides of the gentle Will to shake. Occasionally there is an excellent phrase — what could be more exquisite than "that aloofness of manner which marks most judges"? We have all seen it, especially in the newly elected. There are some well deserved jibes at Mr. Ignis Fatuus Donnelly. There is much merriment at the expense of "Christian Science" and of homœopathy. We do not sympathize with Jack's satire on the latter, although we enjoy it, but we heartily agree that "if all the shimble-shamble stuff set down in the pharmacopœia could be thrown into the sea, 'twould be all the better for mankind, and all the worse for the fishes." The characterization of Justices Shallow and Silence is admirable. These names would fit some judges of our own day, would they not?— judges who expose their shallowness by not being able to be silent, and others who are silent because they have a suspicion that they are shallow.

That is a mad bit of mirth toward the close, where the reporter charges Pistol, in his speech on going to the wars, with an interpolation concerning certain domestic precautions which the Crusaders were wont to observe, the visible symbols of which are preserved in the Cluny Museum at Paris and the ancient tower at Nuremberg — a passage which sounds more like the "Albany Law Journal" upon a certain time than like Shakespeare.

We turn over Mr. Randolph's report to the legal profession in confidence that they will thank him for his wonderful discovery and report, and us for calling their attention to it. It has enabled this Chair to to take on some delightful hours of unwonted ease.

NOTES OF CASES.

HAWKERS AND PEDDLERS. In Hewson *v.* Inhabitants of Township of Englewood, in the Supreme Court of New Jersey, the facts were as follows: R., a merchant dealing in groceries in the city of New York, where for years he has kept a store, with a stock of groceries, from which he supplies his customers, employed the relator to drive his wagon to his customers in Englewood, and take their orders, and afterwards deliver the goods ordered. The relator did not sell or deliver goods in any other way, and neither he nor R. had a license, as required by the ordinance. *Held*, That the relator was not a hawker, peddler, or itinerant vendor, within the meaning of our statute. The Court said:

"The only question presented by the case is whether Hewson was a hawker, peddler or itinerant vendor of merchandise. No discrimination can be made between the merchant whose store is in New York City and one whose business house is in Englewood Township. Under like circumstances, the same rule applies to both (Morgan *v.* Orange, 50 N.J. Law, 389; Sternweis *v.* Stilsing, 52 N.J. Law, 517). Bouvier defines a 'hawker' to be a person going from place to place with goods to sell. He is one

who carries his merchandise with him, and disposes of and delivers it as he travels. A peddler is one who travels about with merchandise for the purpose of selling it; but a person in the service of a resident business establishment, who goes about the city carrying samples of goods kept for sale by his employer, and solicits orders to be filled by his employer, is not a peddler, and is not subject to punishment as a peddler, under a city ordinance requiring peddlers to take out licenses (City of Davenport *v.* Rice, 75 Iowa, 74). A commercial traveler, who simply exhibits samples of goods kept for sale by his principal, and takes orders for such goods, to be delivered by his principal, to whom payment is to be made, is not a peddler (City of Kansas *v.* Collins, 34 Kan. 434). The Supreme Court of Illinois held in Emmos *v.* City of Lewistown (122 Ill. 380; 22 Am. St. Rep. 540), that a book canvasser, who solicits subscriptions for books for future delivery, is not a peddler, and cannot be required to take license, under authority given to the town to license hawkers and peddlers. One who goes about a village, conveying samples and taking orders for a non-resident firm, is not a hawker or peddler (Supreme Court of Illinois, in Village of Cerro Gordo *v.* Rawlings, 25 N. E. Rep. 4006). A person who has a store, and travels through the adjoining country, soliciting orders, which he afterwards fills, is not a peddler, within the meaning of the statute prohibiting sales without a license by a hawker, peddler, or traveling merchant (Supreme Court of Pennsylvania, in Com. *v.* Eichenburg, 21 Atl. Rep. 258). The rule to be drawn from the reported cases is, that to subject a person to the penalties denounced against unlicensed hawkers, peddlers and itinerant vendors of merchandise, it must be shown that he carries his goods with him for sale, or has them sent from place to place, and disposes of them as he travels. That, in my judgment, is necessary to constitute a hawker, peddler or itinerant vendor, within the meaning of our statute. In Com. *v.* Ober, 12 Cush. 493, Chief Justice Shaw said, that to bring the acts of the defendant within the prohibition of the statute, there must be the essential characteristics of carrying goods about for sale, offering them to purchasers, fixing the prices, or receiving payment."

This decision is sustained by *Ex parte* Taylor, 58 Miss. 498; 38 Am. Rep. 336, and in Higgins *v.* Rinker, 47 Tex. 402, it was held essential to a "peddler" that he carry his goods about with him. But in Graffty *v.* City of Rushville, 107 Ind. 502; 57 Am. Rep. 128, it was held that one who goes about from house to house soliciting orders for the purchase of goods to be delivered in the future, is a "hawker or peddler." See note, 57 Am. Rep. 136.

ASSAULT BY MILKMAN. — That case of the milkman who entered his customer's bedroom and woke him up to dun him for a milk bill, which has been so much quoted in the newspapers, is Richmond *v.* Fiske, in the Massachusetts Supreme Court, in October last. The following was the agreed statement of facts:—

"Plaintiff was in the rightful possession of a tenement on the second floor of No. 152 Hancock Street, Springfield. His tenement was reached by a flight of stairs, at the head of which was a door opening into a hall twelve or fifteen feet long, at one end of which a door opened into the kitchen, and at the other end a door opened into plaintiff's sleeping room. The hallway was part of the plaintiff's premises, and the outer entrance was about midway of its length. Defendant was a milkman, in the employ of the Springfield Milk Association, and he delivered milk to plaintiff at an early hour every morning. The hall and kitchen doors were left unlocked, so that defendant could enter, and leave the milk in the kitchen. For some time prior to the act complained of, defendant had, with plaintiff's permission, occasionally entered plaintiff's sleeping room, through the door from the hall, for the purpose of collecting the milk bills. Prior to the alleged trespass, plaintiff had forbidden defendant entering the sleeping room any more, and requested him to keep out. On the morning in question, after a night of suffering from sick headache, the plaintiff had dropped off into sleep, when defendant, entering the sleeping room from the hall, after having left the milk in the kitchen as usual, and finding plaintiff asleep, took hold of his arm and shoulders, and used sufficient force to awaken the plaintiff for the purpose of presenting a milk bill. If upon these facts defendant was guilty of a trespass, as alleged, plaintiff is to be awarded such sum for damages as to the Court shall seem just: otherwise, judgment is to be for defendant."

The Court said:—

"The declaration contains two counts — one for an assault and battery upon the plaintiff, and the other for forcibly entering the plaintiff's close. The agreed facts show that the defendant entered the plaintiff's close by his permission. The fact that after the defendant entered, by permission, through the outer door into the hall, he went, against the commands of the plaintiff, into the plaintiff's sleeping room, does not constitute a trespass upon the close (Smith *v.* Pierce, 110 Mass. 35). But the facts show a trespass upon the person of the plaintiff (Com. *v.* Clark, 2 Metc. Mass. 23). On the facts agreed, it must be taken that the defendant, against the express commands of the plaintiff, entered the plaintiff's sleeping room, and 'took hold of his arm and shoulders, and used sufficient force to awaken the plaintiff, for the purpose of presenting a milk bill.' If there were any circumstances which would justify this, they do not appear in the agreed statement of facts. Although the trespass is slight, the damages are not necessarily nominal, and they should be left to be assessed by the Superior Court. The judgment should be reversed, and, in accordance with the agreed statement, the plaintiff's damages should be assessed under the first count."

NEGLIGENCE — CONTRIBUTORY — RIDING IN SHOW CAR. — In Blake *v.* Burlington, C. R. & N. R. Co., Iowa Supreme Court (21 Lawy. Rep. Ann. 559), it was held that a member of a theatrical troupe, riding in the show car, does not, as a matter of law, assume

the hazard of the journey — especially where it is not shown that the car was not a safe one to ride in or that he had been forbidden to ride there, but there was some evidence that his employment required him to ride there. The Court said:

"It is contended by counsel for appellant that plaintiff ought not to recover, because he voluntarily left the passenger coach for his own pleasure, and knowingly assumed a more hazardous place on the train, and by that act directly contributed to his death. The facts of this case do not, in our opinion, bring it within the rule of the cases cited by counsel. In Baltimore & P. R. Co. *v.* Jones, 95 U. S. 439, the injured party was riding on the pilot of the locomotive when he was injured. In other cases the passenger was riding upon platforms of cars, or riding on the foot-board in front of an engine. In Jacobus *v.* St. Paul & C. R. Co., 20 Minn. 125, 18 Am. Rep. 360, it was held that where a passenger was riding in a baggage car he might recover for an injury sustained while in that position if he was there with the knowledge of the conductor of the train, and without any attempt of the conductor to enforce a rule requiring passengers not to ride in baggage cars. In Dunn *v.* Grand Trunk R. Co., 58 Me. 187, 4 Am. Rep. 267, plaintiff was riding in the 'saloon car' of a freight train, where the conductor permitted him to remain, and collected his fare. It was held that recovery might be had for an injury sustained by reason of the company's negligence. See also Creed *v.* Pennsylvania R. Co., 86 Pa. 139, 27 Am. Rep. 693, where recovery was held in a case where, with the knowledge and acquiescence of the conductor, a passenger was permitted to ride in a caboose, which was for the exclusive use of the train hands. It is not necessary to further consider the case. Under the evidence the jury might well find that the deceased was in the direct line of his duty in riding in the show car, and that he was allowed to remain there without any effort on the part of the conductor to induce him to return to a passenger coach; and not only this, but as the evidence is now presented, it cannot be said as matter of law that riding in the show car was attended with any known hazard."

TRIAL BY JURY. — They seem still to idealize trial by jury down in Alabama. In the late case of Western Railway *v.* Mutch, 21 L. R. A. 316, the Chief Justice said:—

"Trial by jury is a bulwark of American, as it has long been of English, freedom. It wisely divides the responsibility of determinative adjudication, of punitive administration, between the judge, trained in the wisdom and intricacies of the law, and twelve men chosen from the common walks of nonprofessional life; chosen for their sound judgment and stern impartiality. The one declares the rules of law applicable to the issue or issues formed, in the light of the testimony adduced; the other weighs the testimony, determines what facts it proves, and, moulded by the law as declared by the court, renders its verdict, In the jury box, and under the oath the jurors have solemnly sworn on the holy evangelists of Almighty God, there is no room for friendship, partiality, or prejudice; no permissible discrimination between friends and enemies, between the rich and the poor, between corporations and natural persons. The ancients painted the Goddess of Justice as blindfolded, and jurors must be blind to the personal consequences of the verdicts they render. If the testimony convinces their judgments of the existence of certain facts, they must be blind to the consequences which result from those facts. A wish that it were otherwise furnishes no excuse for deciding against their convictions. Justice thus administered commands the approbation of heaven and earth alike: and a verdict thus rendered meets all the requirements of the juror's oath, in the fullest sense of the word, — a true expression of the convictions fixed on the minds of the jury by the testimony."

This was the ideal. The practical seems somewhat different, for the court reversed the judgment because "the verdict of the jury was so palpably against the evidence." 'Twas ever thus in railroad cases. The "bulwark" does not serve the purpose of "stern impartiality."

CONTRACT — HUSBAND FOR WIFE — SPECIAL OWNERSHIP. — In Jacksonville, St. A. & H. R. Co. *v.* Mitchell, Florida Supreme Court (21 Lawy. Am. Rep. 487), it was held that where husband and wife are traveling together over a railway and the husband purchases the tickets for himself and wife, and has his own and wife's baggage checked to the point of their destination, himself receiving the checks, and the railway company loses or fails to deliver the trunk of the wife, containing her wearing apparel and that of her child, the husband can, in his own name alone, without joining his wife, maintain an action for damages therefor, and that a recovery by the husband is a complete bar to any subsequent suit upon the same cause of action by the wife. The Court said: —

"In such case where there is a special property in the goods to be carried resting in one, although the general property therein rests in another, such special ownership therein is sufficient to warrant the former in maintaining a suit in his own name alone for the redress of a violated contract made with him to carry and deliver such goods, Denver, S. P. & P. R. Co. *v.* Frame, 6 Colo. 382; Freeman *v.* Birch, 3 Q. B. 835; Blanchard *v.* Page, 8 Gray 281; Dunlop *v.* Lambert, 6 Clark & F. 600; Great Western R. Co. *v.* McComas, 33 Ill. 185. And a recovery had in such case by the person having such special ownership will be a complete bar to any subsequent suit upon the same cause of action that may be instituted by the person having the general property in the goods lost. Green *v.* Clark, 13 Barb. 57; Great Western R. Co. *v.* McComas, and Denver, S. P. & P. R. Co. *v.* Frame, *supra;* Owners of Steamboat 'Farmer' *v.* McCraw, 26 Ala. 189.

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.

To the Editor of "The Green Bag."

DEAR SIR: — The following extract is from the "Answers to Correspondents" column of the evening edition of the "New York World," of recent date:—

"A. M. — It is not illegal for cousins to marry in this State. Until May 6 of this year an uncle could marry a niece and an aunt a nephew. A girl is of age at twenty-one, and not an hour before, in any State of this Union, or *in any country of Europe outside of Africa*. Her age for marriage in the State of New York is twelve years. At that age she may marry without her parents' consent. A girl never has to ask her parents' consent for her marriage. As soon as she is of marriageable age, which is twelve years, she has the right to marry whomsoever she pleases. But a man has no right to marry her while she is under sixteen, unless he pays the parent whatever sum may be demanded. The theory of the law is that the daughter is to be sold by the parent, and that it is grand larceny to marry one without first buying her from the parent. After sixteen she gets tough, and if not sold before that time the parent can only recover for loss of services."

The fact that persons act on such "legal opinion and advice" may partly account for the crowded condition of our New York courts.

Yours, &c.,

LEGAL ANTIQUITIES.

IN the reign of George III. a Bill was introduced into the House of Commons for the improvement of the Metropolitan Watch. In this Bill there was originally a clause by which it was enacted that the watchmen should be *compelled to sleep* during the day.

RECENT DEATHS.

THE death on December 26 of Hon. HENRY W. PAINE, in his eighty-fourth year, removes from us one of the last distinguished associates at the bar of Webster, Choate and Sumner.

Mr. Paine was born in Winslow, Me., August 30, 1810; he was graduated from Waterville College (now Colby University) with the class of 1830, and after completing his course at the Harvard Law School, he was admitted to the bar and began the practice of his profession at Hallowell, Me., in 1834. In 1836, 1837 and 1853 he represented that town in the Maine Legislature, and during this time he was for five years the attorney for Kennebec County. His career as a great lawyer did not begin until he came to Boston in 1854, where he at once took rank among the leaders of his profession — a rank which never diminished until, the recognized and undisputed leader of the Suffolk County bar, he gave up the active practice of his profession somewhere about 1880 or 1881. His retirement was due to his failing health and an infirmity of increasing deafness. In 1854 he received the degree of LL.D. from Colby University.

It is probable that his early and constant application to study impaired his health. He had shared but little in the sports of childhood or in the exercises of youth. His college days and nights were given to study, and as athletic sports formed no part of the curriculum in those days, but little time was devoted to that branch of education. He was originally possessed of an iron constitution and a vigorous physique. No recreation, no vacation, and incessant, unremitting toil made up the history of those busy years. For some time after his retirement from active practice he attended to his office business, but for the last two or three years he gave this up.

From 1872 to 1883 he was the lecturer in the Law School of Boston University on the "Law of Real Property," and his personality had much to do with giving that school its great popularity.

FACETIÆ.

MR. JUSTICE BURROUGH'S mode of illustration was remarkably quaint. He once began an address to the jury in this manner: —

"Gentleman, you have been told that the first is a *consequential* issue; now perhaps you don't know what a consequential issue means; but I dare say you understand ninepins. Well, then, if you deliver your bowl so as to strike the front pin in a particular direction, down go the rest; just so it is with these counts; knock down the first and all the rest will go to the ground; that's what we call a *consequential issue*."

THE following is a literal copy of an indorsement on the back of a warrant returned by a Michigan constable:—

"I do hereby sertify that I arrested the within *wiles* as I am directed, and Should have taken the horses, but they ware with held from me by warren wiles and Biger Wiles by fisical Strength, and the defendant Biger Wiles was taken from me by a writ of Habo Scorbous.

"—— —— Cons Table."

IT is sometimes queried whether it would not save time and answer the ends of justice equally well, to do away with all argument to the jury. It might do occasionally, but the following instance shows that it is not always safe: —

"I once had a case," said a member of the bar, against a man in the country, which was as clear as daylight in my favor — the fellow had not even a shadow of defense for refusing to pay his debt — but by the cunning of his lawyer, he had continued to avoid coming to trial for about two years, in hopes that he might worry me into a compromise. At last the case was called, late in the term and late in a hot day, the court and jury tired and impatient. I stated the facts, produced the evidence, which was all on my side; the judge asked the counsel whether they wished to argue the case, stating that he hardly thought it necessary in so plain a matter. The lawyers agreed to submit it without argument; the jury went out and immediately returned with a verdict for the defendent. As soon as the court adjourned I sought the foreman of the jury, a worthy but not very brilliant man, and asked him how, in the name of common sense, they came to render such a verdict.

"'Why you see,' said he, 'we didn't think much of the lawyer against you, and it wasn't strange he didn't have nothing to say; but, Squire, the fact is, we thought you was about one of the smartest lawyers in the country, and if you couldn't find nothing to say on your side, it must be a pretty hard case, and so we had to go against you!"

LEGAL authorities were not much used and very lightly esteemed in "the West" a few years ago. Dan Wilson, who resided not many miles from the western bank of the Father of Waters, was a sharp lawyer, more noted for wit than wisdom, for tongue than talent. He was trying a case before a justice of the peace, and the opposing counsel had cited "Greenleaf on Evidence" so decidedly against him that a bold push must be made, or all was lost for him and his client. Squire Wells sat down after making the quotation, satisfied that the justice would do justice in the premises. Dan asked him for the book, opened it, rose, and, with a look of solemn surprise, said he was amazed that so good a lawyer as Mr. Wells should bring such a book as that into court. "Why," said he, "the author himself never thought of its being used for *authority* in any case. Just hear what he says in the preface: 'Doubtless a happier selection of these principles might be made, and the work might have been much better executed by another hand. For, now it is finished, I find it but an approximation towards what was originally desired. But in the hope that it may still be found not useless as the germ of a better treatise, it is submitted to the candor of a liberal profession.' Now," continued Dan, "an author who admits that his work is as bad as this, certainly never expected it to be brought into court to govern the opinions of a gentleman who has sat on the bench, as your Honor has, for eighteen months."

The justice was perfectly satisfied. He ruled the "authority" out as of no account whatever, and gave his judgment for Dan and his client.

AN old negro being on trial, his lawyer challenged a number of the jury who, his client said, had a prejudice against him. "Are there any more jurymen who have a prejudice against you?" inquired the lawyer. "No, sah, de jury am all right, but I want to challenge de judge."

NOTES.

A CHINAMAN thus describes a trial in our Courts: "One man is silent, another talks all the time, and twelve wise men condemn the man who has not said a word."

A CURIOUS and interesting case has recently been decided at the Aberdeen Police Court under the Prevention of Cruelty to Animals (Scotland) Act, 1850, which has already acquired a somewhat equivocal reputation south of the Tweed. The Rev. James Littman, Rabbi of the Jewish Synagogue, in Aberdeen, and Mr. Alexander Zamek, a member of the same persuasion, were charged with having slaughtered a bullock with unnecessary cruelty in contravention of the Scotch statute. The public are already sufficiently familiar with the ordinary *modus operandi* in slaughter, however, to render any description of it here superfluous; and it will be enough to say that the Jewish method differs from it chiefly in this respect: that the Christian process of stunning the animal about to be killed before the actual killing takes place, is in the Jewish practice dispensed with. The questions raised by the present case were in substance two; viz., whether Mr. Littman (for Mr. Zamek seems to have taken no active part in the proceedings) had slaughtered the bullock in such an unskilful manner as to bring himself within the danger of the law, and whether, even if he had not done so, the mere act of slaughtering in the Jewish fashion amounted to cruelty under the statute. On the first of these issues, the presiding magistrate pronounced that judgment of "not proven" by which the law of Scotland (in our opinion with very questionable propriety) at once gives an accused person "the benefit of the doubt" and relieves the Scotch courts from the obligation of declaring a person, of whose innocence they are not assured, "not guilty." The evidence on the personal charges against Mr. Littman was, of of course, conflicting. On the one hand it was alleged by the witnesses for the prosecution that there was an undue delay in the performance of the operation, that the ropes with which the bullock was strapped down were unsuitable for the purpose, and that the animal was "an unconscionable time in dying." On the other hand, these allegations were positively denied by the witnesses for the defence, and a strong *prima facie* case was made out in Mr. Littman's favor by evidence that he was a qualified and certificated "slaughterer" of long standing. Under these circumstances he was clearly entitled to have the charge against him dismissed as "not proven," if the magistrate did not feel able to acquit him altogether. On the second issue, whether slaughtering according to the Jewish ritual was in itself legal "cruelty," no direct decision seems to have been given, unless we may infer that the magistrate was prepared to answer this question in the negative from the acquittal of Mr. Zamek as "not guilty" and the dismissal of the charge against Mr. Littman as "not proven," for if the Jewish method of slaughtering cattle was *per se* an offence against the statute, the proved, and indeed admitted fact that Mr. Littman had used it and Mr. Zamek had been present consenting to its use, would, we should have imagined, have rendered them both liable to conviction. If this was the magistrate's view, we think that on the evidence, and in the present state of the law, it was the right one. There can be no doubt that the ordinary process of stunning cattle is not always accomplished by a single or even a double blow; and the long training through which it was proved that Jewish Rabbis pass as a preparation for the work of slaughtering creates a strong presumption that they will perform their sacrificial duties with skill and humanity alike. The solicitor for the accused, however, appears to have contended that "wanton cruelty" alone will justify a conviction under the Scotch law. The Prevention of Cruelty to Animals (Scotland) Act has already received such startling interpretation in the "dishorning" and "cock fighting" cases, that we hesitate to pronounce any decided opinion as to what possibilities of extraordinary construction may yet be involved in it. But when any infliction of pain which was unnecessary was *ipso facto* held to be 'wanton,' we should regret extremely to find the doctrine apparently contended for in this case receiving judicial sanction. The fact, however, that this point has been seriously raised in the Aberdeen case may perhaps have the beneficial result of directing the attention of the British Legislature to the need for the passing of a Prevention of Cruelty to Animals Act for the whole Kingdom in order that the legal meaning of "cruelty" may not depend upon latitude.

LITERARY NOTES.

THE February number of HARPER'S MAGAZINE is filled with entertaining matter. Nine illustrated articles first claim attention, the most important being "Lord Byron and the Greek Patriots," by Rev. Henry Hayman, D.D.; "Great American Industries. X. A Bar of Iron," by R. R. Bowker; "In the Sierra Madre with the Punchers," by Frederic Remington. Among the short stories, "A Transplanted Boy," by Constance Fenimore Woolson, will be read with especial interest at this time.

THE ARENA for February is a magnificent midwinter issue, containing 164 pages. Among the contributors are Rev. M. J. Savage, Rev. Washington Gladden, D.D., Heinrich Hensoldt, Ph.D., Congressman John Davis, Stinson Jarvis, Rabbi Solomon Schindler, Helen Campbell, and Rev. Hiram Vrooman. The Editor contributes two important papers: one dealing with uninvited poverty, the other an argument against medical monopoly. A striking feature, is a Symposium by six well known American women on "Rational Dress for Women." This Symposium is profusely illustrated. The publishers announce that hereafter THE ARENA will contain 144 pages, making it the largest monthly Review published.

FEBRUARY being the birth-month of Lincoln and Washington, the February number of the CENTURY contains material relating to both. It presents two heretofore unpublished portraits of Washington, one a newly discovered miniature by Ramage, made in October, 1789, and the other a portrait in black-silk embroidery on a white-silk ground by Rowlinda, daughter of James Sharpless, the English artist. These two portraits are substantial additions to the pictorial biography of the first President. The Lincoln material consists of an essay by the Rev. John Coleman Adams on "Lincoln's Place in History," and the true story of "Lincoln's Gettysburg Address" by John G. Nicolay, his private secretary, the latter being accompanied by a reproduction of an attractive photograph of Lincoln, which, being from an unretouched negative, makes faithful record of the lines of his face. Mr. Nicolay compares the different versions of the Gettysburg Address, and accounts for their variations, and there is a fac-simile, made for the first time, of the original manuscript. There is also an "Open Letter" from Major W. H. Lambert dealing with the same topic, and one on "Lincoln as an Advocate."

The other contents of this number are of unusual interest.

IN the February ATLANTIC, Hon. Henry L. Dawes gives some very interesting "Recollections of Stanton under Lincoln," and Oliver Wendell Holmes pays a graceful poetical tribute to Francis Parkman. The feature of the number is contributed by Margaret Deland, Walter Mitchell, and Charles Egbert Craddock; while the more solid reading matter comes from J. C. Bancroft Davis, B. J. Lang, Horace E. Scudder, and H. C. Merwin.

THE CENTURY Co., 33 East 17th St., New York, have just issued "Pudd'nhead Wilson's Calendar for 1894," containing humorous extracts from Mark Twain's latest story, "Pudd'nhead Wilson," now appearing in the CENTURY. They offer to send a copy of the calendar free to any one who will inclose them a stamp to pay postage.

THE COSMOPOLITAN for February introduces a famous European author to its readers — Valdés of Madrid, and the artist Marald, of Paris, well known as a French illustrator. A profusely illustrated article on the designing and building of a war-ship appeals to the interest taken by all in the new navy, and a thrilling description of a naval combat under the significant title: "The Meloban and the Pentheroy" describes, after the manner of the Battle of Dorking, a possible sea-fight, the outcome of which is watched by the entire naval world. Elaine Goodale has some interesting information of Indian Wars and Warriors. T. C. Crawford, the Washington correspondent, gives the first half of a startling story, under the title of "The Disappearance Syndicate."

THE REVIEW OF REVIEWS for February is strong in all of its departments. In the "Progress of the World" the important political, social and industrial events of the month are reviewed and their significance clearly and frankly set forth. This department alone contains fifty timely illustrations, chiefly portraits of well-known men and women. Among the portraits are those of William L. Wilson, of West Virginia; Charles F. Crisp, of Georgia; Thomas B. Reed, of Maine; and Julius C. Burrows, of Michigan.

BOOK NOTICES.

LAW.

GENERAL DIGEST OF THE DECISIONS OF THE PRINCIPAL COURTS IN THE UNITED STATES, ENGLAND AND CANADA. Refers to all reports, official and unofficial, first published during the year end-

ing September, 1893. ANNUAL, BEING VOLUME VIII. OF THE SERIES. Lawyer's Co-operative Publishing Company, Rochester, N.Y., 1893. Law sheep. $6.00.

The publishers claim this to be the *best* digest offered to the profession, and it is undoubtedly worthy of great praise. Certainly great care has been taken in its preparation, and it has admirably met the numerous tests to which we have subjected it. The classification is excellent, and the bulk of the book has been kept down so far as possible by carefully combining propositions which are identical, instead of making superfluous repetitions of them. Every subject of importance is outlined at its beginning by an index which fully shows all its contents, even to minute subdivisions. With this digest for a guide, no lawyer can fail to find the law upon any desired subject.

THE AMERICAN STATE REPORTS, containing the cases of general value and authority decided in the court of last resort of the several states. Selected, reported and annotated by A. C. FREEMAN. Vol. XXXIII. Bancroft, Whitney Co., San Francisco, 1893. Law sheep. $4.00 net.

This volume is made up of selections from the reports of Alabama, California, Illinois, Kansas, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, Vermont and Wisconsin. The annotations are as full and valuable as usual, and the selection of cases evidences good judgment and discrimination.

A TREATISE ON THE MEDICAL JURISPRUDENCE OF INSANITY. By EDWARD C. MANN, M.D. Matthew Bender, Albany, N.Y., 1893. Law sheep. $4.00 *net.*

In these days when a plea of insanity is the city of refuge for most of those who fall within the clutches of the law, the question of mental responsibility becomes one of the most important with which the legal profession has to deal. In this volume Dr. Mann discusses the phenomena of insanity in its various forms, and sets forth with clearness the effect of mental disease on the power of the mind. The capacity and incapacity for the management of affairs is strongly dwelt upon, and the duties of medical witnesses are carefully considered. The treatise is a valuable addition to medico-legal literature, and should be of great use and assistance to both the Bench and Bar.

A LAW DICTIONARY AND GLOSSARY. Primarily for the use of students, but adapted also to the use of the profession at large. By J. KENDRICK KINNEY. Callaghan & Co., 1893. Law sheep. $5.00.

In this volume the author has successfully accomplished his purpose to give with brevity, but with precision and reasonable fullness, the meanings of the words and phrases in the books of law. As a dictionary of legal words and terms it is as good as any we have seen, and for ordinary reference will be found to meet all requirements. We commend it to the profession as well as to students.

HISTORY OF THE ENGLISH LANDED INTERESTS, Its Customs Laws and Agriculture (Modern Period). By RUSSELL M. GARNIER, B. A., MacMillan & Co., New York, 1893.

In a previous volume Mr. Garnier has given an interesting account of the early customs, laws and agriculture of the English landed interest, and in the present he devotes himself to the further discussion of the same subjects, the period covered being the eighteenth century and the first half of the nineteenth. The book displays an intimate acquaintance on the author's part with rural England, and he has succeeded in investing what is usually considered a dry subject with much real interest. While his work appeals most strongly to agriculturists, the legal profession will find in it much valuable and instructive information. The chapter discussing "The Labor Question," "The Land Taxation and the Economists," "The Effects of Agricultural Progress on Legislation," and "The Emancipation of Labor" will be read with especial interest. Altogether the book is a remarkable one, and well worthy a careful perusal.

AMERICAN RAILROAD AND CORPORATION REPORTS. Vol. VII. Being a collection of the current decisions of the courts of last resort in the United States pertaining to the law of Railroads, private and municipal Corporations, including the law of Insurance, Banking, Carriers, Telegraph and Telephone Companies, Building and Loan Associations, etc. Edited and annotated by JOHN LEWIS. E. B. Myers & Co., Chicago, 1893. Law sheep. $4.50 *net.*

We have heretofore expressed our appreciation of this excellent series of reports. The present volume is fully up to the standard of its predecessors, and Mr. Lewis in his selection of cases and his annotations displays good judgment and discrimination. Over one hundred and thirty cases are re-

ported, covering almost every branch of corporation laws.

THE ANNUAL ON THE LAW OF REAL PROPERTY. Vol. II., 1893. Being a complete compendium of real estate law, embracing: all current case law, carefully selected, thoroughly annotated and accurately epitomized; comparative statutory construction of the laws of the several states; and exhaustive treatises upon the most important branches of the law of Real Property. Edited by TILGHMAN E. and EMERSON E. BALLARD. The Ballard Publishing Co., Crawfordsville, Ind. Law sheep. $6.50.

The Messrs. Ballard are doing a good work for the profession in preparing these annual volumes on the law of real property. Containing the most recent decisions as well as the statute law of all the states upon important subjects pertaining to real estate, they are exceedingly handy working tools for the busy lawyer. A vast amount of labor, and great care and discrimination have evidently been bestowed upon the work, and it should meet with the hearty approval of the profession.

MISCELLANEOUS.

MASSACHUSETTS, ITS HISTORIANS AND ITS HISTORY. An object lesson. By CHARLES FRANCIS ADAMS. Houghton, Mifflin & Co., Boston and New York, 1893. Cloth. $1.00.

Mr. Adams appears in the rôle of an iconoclast of the first order in this little volume, and we fear many a Massachusetts man will hold up his hands in holy horror as he sees his cherished idols so ruthlessly handled and torn from their lofty pedestals. The history of Massachusetts according to the author was certainly, for hard upon two centuries, black indeed. Such a history of intolerance and persecution it would be hard to duplicate even in the palmy days of the Inquisition. Wholesale proscription; frequent banishment under penalty of death in case of return; the infliction of punishments both cruel and degrading, amounting to torture, and regardless of the sex of those punished; the systematic enforcement of rigid conformity through long periods of time; — all these are part of the record — and in these bad respects it is not apparent how the Massachusetts record differs from those of Spain or France or England. Mr. Adams has no patience with Massachusetts historians who, devoted to "ancestor worship," have addressed themselves to their task in such a blind sense of filial devotion that their self-deception has been complete. No one will accuse Mr. Adams of anything of the kind. He does not hesitate to call a spade a spade, and even his own ancestors come in for unfilial treatment at his hands. The book is exceedingly interesting, and one lays it down with a sigh of relief that his lot was not cast with the early founders of the Commonwealth.

SPEECHES AND ADDRESSES OF WILLIAM E. RUSSELL. Selected and edited by CHARLES THEODORE RUSSELL, Jr., with an introduction by THOMAS WENTWORTH HIGGINSON. Little, Brown & Co., Boston, 1894. Cloth. $2.50.

Whatever may be one's political affiliation, this collection of addresses by Massachusetts' Ex-Governor will receive a hearty welcome from every thoughtful reader. The author is respected and admired by both Republicans and Democrats, and his remarkable career demonstrates the high estimation in which he is held. In this volume a great number and a great variety of topics are discussed, and one cannot but be impressed by the manly, straight-forward manner in which they are uniformly treated. There are not many bursts of eloquence to be sure, and little superfluous rhetoric, but there is throughout a spirit of patriotism and sincerity which is positively captivating. One is at once convinced that the Governor is not talking for effect, but that his utterances are the result of a firm conviction. This, added to his wonderful persuasive powers, makes one almost ready to agree with whatever he says. There is a vast amount of food for reflection for unprejudiced minds in these addresses, and we commend them to every fair-minded reader. The book is handsomely gotten up, but we are disappointed in the portrait which forms the frontispiece. It fails to do the Governor justice.

A NATIVE OF WINBY, and other Tales. By SARAH ORNE JEWETT. Houghton, Mifflin & Co., Boston and New York. 1894. Cloth. $1.25.

No writer appeals more strongly to one's sense of humor or to one's tender sensibilities than Miss Jewett. The mixture of wit and pathos in her writings is indescribably captivating, and the collection of stories which makes up this volume shows the gifted author at her very best. The title story is a pathetic picture of the return of an old man who has made both name and fortune in the world, to his native village and his old friends. "Decoration Day" and "Jim's Little Woman" are both touching stories, while New England rural life is charmingly depicted in "The Passing of Sister Barrett," "Miss Esther's Guest," and "The Flight of Betsey Lane." It is a real pleasure to take up such a book for an hour's recreation.

Ichabod Bartlett

The Green Bag.

VOL. VI. NO. 3. BOSTON. MARCH, 1894.

ICHABOD BARTLETT.

BY FRANK W. HACKETT.

LAWYERS as a rule are generous in their estimates of each other. It may with truth be said that little of the spirit of envy or detraction manifests itself among practitioners at the Bar. Their rivalries are manly and above-board. If a new-comer shows unusual intellectual power he is heartily welcome, for the simple reason that contact with such a man is a positive advantage to opponents. No one who has had experience in trying causes is at a loss to apprehend just what Daniel Webster meant when, speaking of the training that he underwent from having to meet the celebrated Jeremiah Mason as his antagonist, he said: "Mr. Mason always put me up to all that I knew."

That the Bar really is, in the full sense of the word, a fraternity, is seen when a lawyer of prominence dies. According to time-honored custom, such an event is made the occasion for calling a Bar-meeting, to adopt resolutions in memory of the deceased. While the public may take no great interest in what is going on, the brethren of the Bar can generally be depended upon to attend in fair numbers. There is always more or less speaking to the resolutions. The remarks are kindly in tone, often eulogistic, and nearly always sincere. So with the death of a judge. Our reports, both state and federal, are freely sprinkled with the proceedings of the Bar upon the demise of those who have reached distinction as jurists or as advocates. Examine these records, and you will be struck with the regularly recurring fact, not only that the deceased was a man of surpassing ability, but that it was his fortune to have begun practice at a Bar remarkable for great lawyers. In proof of the assertion that the Bar referred to was of a standard exceptionally high, we are treated to the names of certain leaders, and assured that they were "giants in the law." To us of the present day how many of these are names — and nothing else!

This exhibition of mutual respect is highly creditable to the profession. Indeed, it is a characteristic of which we may justly be proud. It cannot be otherwise than influential in attracting young men to the practice of the law as a calling. Certain it is that a sense of brotherhood has more than once encouraged the young attorney to hold steadily on during that long, dreary period, when it seems to him as though a client would never come. It is a trait, however, that must be taken duly into account, when we attempt to assign to any one lawyer his just rank among his fellows.

Making allowance for the propensity to overestimate the abilities of those for whom obituary words are spoken, we are safe in concluding that the American Bar at no period of its history has ever lacked the presence of strong, intellectual men as leaders. Moreover, the average ability of our lawyers is probably higher to-day than ever before. This is unquestionably so in respect to legal attainments.

But let us go back three-quarters of a century, and undertake to determine how the men who then stood at the head of their respective Bars compare with the leaders of the present day, and we shall find ourselves addressed to a task beset with difficulties. In such an attempt we are obliged to rely wholly upon recorded evidence, unless indeed we can deal with that vague, indefinite something, known as the "tradition of the Bar." Well aware that their contemporaries were wont to overpraise these leaders of the olden time, we yet find it hard to resist an inclination to surrender ourselves to the pleasure of joining in the admiration that comes down to us through the medium of Bar-meeting speeches and similar channels.

On the other hand, the few who are disposed to magnify the extent of this habit of friendly criticism, may fail to see in their true proportions the really great men who in the earlier days have adorned our Bench and the Bar.

I purpose to offer a sketch in merest outline of one who, early in this century, stood in the very front rank of the leaders of the Bar of Rockingham County, New Hampshire. When I claim for that Bar a special distinction, I trust that the reader will not dismiss me with the remark that a like claim has more than once been advanced in behalf of other localities; and advanced too with considerable fervor.

ICHABOD BARTLETT measured his strength with such men as Jeremiah Mason, Daniel Webster, George Sullivan, and Jeremiah Smith. In the art of gaining verdicts Mr. Bartlett was confessedly the equal of any one of these eminent lawyers. They, together with others scarcely less formidable as opponents in the trial of causes, have secured an eminence in legal annals which fully warrants the assertion, I think, that Rockingham County (with its shire towns of Portsmouth and Exeter), at the period mentioned, did indeed possess a Bar of an extraordinary degree of ability.[1]

Ichabod Bartlett was born July 24, 1786, at Salisbury, N.H., a small town on the Merrimac, about sixteen miles north of Concord, noted as the birthplace of Ezekiel and Daniel Webster. He was the sixth in a family of nine children of Doctor Joseph and Hannah (Colcord) Bartlett; and the sixth in descent from Richard Bartlett, who in 1633 was a passenger from England in the "Mary & John," and who not long afterward settled in Newbury, Mass. Ichabod's father, Doctor Joseph Bartlett, was the first physician who practiced in the town, having come to Salisbury in 1771, at the age of twenty, after a course of study with his uncle, the well-known Doctor Josiah Bartlett, of Kingston.[2]

The paternal grandfather Joseph, who lived at Amesbury, Mass., had married Jane, daughter of Ichabod Colby, a circumstance that probably accounts for the Christian name of the subject of this sketch. Ichabod's brothers won success as professional or business men. Peter, a physician of fine acquirements, removed from Salisbury, and practiced his profession at Peoria,

[1] Mr. Webster once said that he had practiced law, commencing before old Justice Jackman in Boscawen, who received his commission from George the Second, all the way up to the court of John Marshall in Washington, and he had never found any place where the law was administered with so much precision and exactness as in the County of Rockingham. — *Webster as a Jurist*, by Joel Parker (1853), p. 25.

[2] The distinction that Josiah Bartlett (born in Amesbury Mass., in 1729) attained was fully merited. He was a man of sterling worth. While he earned the reputation of a skillful physician, Doctor Bartlett early showed a peculiar fitness for public affairs. He was a signer of the Declaration of Independence, and of the Articles of Confederation. He was made chief justice of the court of common pleas, and later a justice of the Superior Court, and in 1788 chief justice of that tribunal. The Legislature chose him president of New Hampshire in 1790. In 1791 the people elected him to the same office; and, in 1792, under the revised constitution, he was chosen first Governor of the State. Doctor Bartlett was the chief founder and the president of the New Hampshire Medical Society. He died in 1795. There was a mixture of medicine, law and politics in his career, rarely afforded in the lives of our public men.

Illinois; Joseph was also a physician; James, a lawyer at Durham and Dover. The father of the subject of this sketch enjoyed a large practice, and stood deservedly high as an accomplished and skillful physician. Like his uncle Josiah, he took a lively interest in public matters, chiefly in town affairs; and he showed himself to be a stirring, active and useful citizen. He died in 1800, when Ichabod was fourteen years old.

The town of Salisbury, N. H., took its name from Salisbury, Mass., from which neighborhood had come many of the first settlers, the Bartletts among the number. These settlers were a sturdy, self-reliant class of men, as the character of their descendants abundantly testifies. Salisbury Academy could number upon its roll of pupils such names as the two Websters (Ezekiel and Daniel), Ichabod Bartlett, John A. Dix, Charles B. Haddock, and Joel Eastman. Young Bartlett was ready for college in 1804, when at the age of eighteen he entered Dartmouth as a freshman.[1]

During the winter vacation of his first year at college, the young student taught school at the Academy in his native town, a fact that indicates in what esteem as a scholar he was held by those who best knew him. In 1808, while a senior at college, he delivered a Fourth of July oration at Salisbury. This early display of his oratorical powers proved so acceptable to his townsmen, that the oration attained to the honor, somewhat unusual at that day, of being printed in pamphlet form.

Immediately upon graduation, Mr. Bartlett applied himself to the study of the law. He entered the law office of Moses Eastman, and later that of Parker Noyes, both graduates of Dartmouth who were in practice at Salisbury. In 1811 he was admitted to the Bar.[1] He went to Durham and there opened a law office. This thriving village, about seven miles from Dover, was then thought destined in its growth to outstrip Dover. Situated on the main highway between tide-water, at Portsmouth, and the country lying north of Concord, a great part of the teaming ran through its streets. There were already several gentlemen in practice at Durham when young Bartlett arrived there.

The young attorney, however, did not remain long in this little village, for the superior attractions of Portsmouth, the business capital of the State, invited him to a new scene of action, and in 1816 he removed to that delightful town. He soon commanded a large and lucrative practice.[2] In 1819 he was chosen solicitor for Rockingham County.

Mr. Bartlett was gifted with a remarkable fluency, and being bright and quick upon his feet, he had a most captivating manner with an audience. No young man at that day gained wider popularity as a public speaker. Love of law, and success at the Bar, however, did not prevent his coming forward rapidly into political station. No doubt he had a taste for public life, for as early as 1817 we find him filling the office

[1] Among his classmates who afterward became widely known, may be mentioned Governor Grenwell, of Massachusetts; Isaac Fletcher, of Vermont; Ichabod R. Chadbourne, of Eastport, Me.; Samuel Osgood, of New York; Leonard M. Parker, of Charlestown; and William Claggett, of Portsmouth. Others of note who at that period were students at Dartmouth, are General Fessenden and Albion K. Parris, Richard Fletcher, Matthew Harvey, Levi Woodbury, Joseph Bell and Amos Kendall.

[1] Mr. Bartlett was admitted to the Bar of the Supreme Judicial Court at Dover, September 8, 1813, on motion of John P. Hale. This fact implies that he had already become a member of the Bar of the court of common pleas, and had "practiced two years with reputation" in that court. That he began practice in Durham in 1811, and was taxed there as late as 1816, we know from the records of that town. These records also impart the quaint information that Ichabod Bartlett paid one dollar admission fee to the Old Hundred Sacred Music Society.

[2] The other lawyers then at Portsmouth were: Daniel Humphries, Jeremiah Mason, Edward Cutts, Jr., John P. Lord, Joseph Bartlett, Nathaniel A. Haven, Jr., William Claggett, Timothy Farrar, Nathaniel P. Hoar, Peyton R. Freeman, John Pitman and William Plumer, Jr.; Levi Woodbury had just gone upon the Bench, and Daniel Webster had but lately removed to Boston.

of clerk of the State Senate. In 1819 the people of Portsmouth sent him as a representative to the Legislature. He was re-elected to this post for two successive terms, and in 1821 he was Speaker of the House. At later periods, in 1830-32, as well as in 1851 and 1852, he served as a representative from Portsmouth.

At the threshold of his legislative career, Mr. Bartlett displayed good judgment, a characteristic which only made his gift of ready and eloquent speech the more valuable to his supporters. He immediately took undisputed rank as a leader. His entry into public life was signalized by a warm espousal of the cause of toleration. He advocated a repeal of the act of 1791. This act had empowered the inhabitants of a town to vote such sum of money as they should judge necessary for the support of the ministry. Mr. Bartlett believed that religious denominations should rely for maintenance upon voluntary private contributions, a proposition that to us seems reasonable enough, but one that in his day demanded for its support an able advocate. Mr. Bartlett's views prevailed, and the act of July 1, 1819, was passed, that forever dissociated Church and State.

New Hampshire was then a hotly contested State at elections, as it indeed has always continued to be. Her lawyers could hardly keep out of politics. At all events, a man so ready, so tactful, and so eloquent as Mr. Bartlett, was not to be permitted to content himself with the triumphs of the Bar.

Mr. Bartlett's practice, it seems hardly necessary to add, extended before long into all parts of the State.[1] Other lawyers were only too ready to retain him to argue their causes. Indeed, he enjoyed much the same privilege that Webster had already profited by, namely, the frequent opportunity to measure swords with Mason. Bartlett was alert, adroit and daring. He was thoroughly prepared, and knew just what he purposed to do. His tactics ofttimes were to worry and "nag" Mr. Mason. One of Mr. Mason's admirers, who (when a student at the Academy) used to see the two pitted against each other at Exeter, has said: "Mr. Ichabod Bartlett was a man of remarkable adroitness in the management of a case, as quick as a flash of lightning in the movements of his mind whether to inflict or to parry a blow. At first it might seem as if he were the keenest and most brilliant advocate of them all. But before getting through the case in which he and Mr. Mason were engaged on opposite sides, it was plain enough that he was obliged to put out all his strength to sustain himself against an opponent who was hardly exerting himself at all."[1]

Mr. Bartlett, it is true, was not so profound a master of the common law as was Mason, but in the shifting phases of a jury trial, he was fully the equal of that great New England leader in the readiness with which he could say the right word, and do the right thing, that should lead up to a successful verdict. The late James W. Emery of Portsmouth, who knew Bartlett thoroughly (they were once partners), used to say that no lawyer ever practiced in New Hampshire, who had more *tact* than Ichabod Bartlett.

As an instance of his quickness at repartee, I may as well give here a retort of his which, though very familiar to the profession, has been attributed to others, both in this country and in England. I am satisfied that the occurrence actually took place, the Court being held, I believe, by Chief Justice Richardson. As everybody knows, Jeremiah

[1] My father, the late W. H. Y. Hackett of Portsmouth, entered Mr. Bartlett's office as a student in 1822. While Mr. Bartlett was arguing to the jury at Gilmanton, my father (then a student at Gilmanton Academy) listened to him, and was so impressed with his wonderful ability, that he determined to study law, and to begin his studies, if possible, with the famous Mr. Bartlett.

[1] Letter of Rev. J. H. Morrison (November 29, 1872). Life of Jeremiah Mason, p. 424.

Mason was a man of powerful physique, standing over six feet in height. Mr. Bartlett, on the other hand, was of undersize, and quick in every movement of gesture. It seems that one day at a trial, Mr. Mason was greatly annoyed by Mr. Bartlett (who was then a very young man), until at length he could bear it no longer, and he exclaimed contemptuously: "Why, I could put you in my pocket." "Then you'd have more law in your pocket than you have in your head," was the reply.

Among the many important causes in which he was of counsel, there may be mentioned Trustees of Dartmouth College *v.* Woodward,[1] the Exeter Bank robbery case, and the political libel suit of Upham *v.* Hill and Barton. With what a touch of sarcastic humor he could impress his views upon the Court appears from his brief as reported in Erickson *v.* Willard, 1 N.H. 217. A testator expressed his desire that J. W. should at his discretion appropriate a part of the income of testator's estate, not exceeding fifty dollars a year, to the support of the widow. Mr. Bartlett said: —

"The testator was a feeble and solitary female in the eve of life. The defendant was her religious teacher, the pastor of her church, writing an instrument making himself residuary legatee and executor of her estate, and with every possible inducement of interest not to create a legacy out of himself contrary to her intention. Notwithstanding the clerical character of this executor, and the singleness of view with which he may have been supposed to have devoted himself to the spiritual concerns of his flock, the history of the ingenious stratagems with which the gentlemen of his cloth evaded all the skill and care of parliament from the 7th of Edw. I. to the 9th of Geo. II. shows that they are not always indifferent to their temporal interests . . .

"The testator desires to be decently buried in the church yard of St. John's Church *at the discretion* of the executor. Now, apply to this period the construction contended for by the defendant, and let him have been as averse from expending, as paying over the property to legal claimants, and the testator's chance for burial would have been much more problematical than the good woman herself would ever have suspected."

[1] 1 N.H. Reports, 111. Mr. Bartlett's argument has lately been reprinted in the sixty-fifth volume of the N. H. Reports.

While busy with a large practice, he found time to assume numerous duties lying outside of his profession. He was corresponding secretary of an Agricultural Society, and in that capacity prepared an interesting and valuable report on the subject of farming. He served as a bank director, and as a trustee of a savings-bank. In 1818 he was made one of the trustees of Dartmouth University, then just incorporated. In 1827 he was chosen president of the New Hampshire Historical Society. He wrote a memorial sketch of N. A. Haven, Jr., a brother lawyer. All through his life he was in demand for the delivery of political addresses; or won great applause by the bright and sparkling style in which he "responded to toasts," to use the phrase then in vogue for what we now term "after-dinner speeches."

It is the design of this article to revive a few memories of Mr. Bartlett as a lawyer, rather than to compass the entire range of his achievements as a distinguished son of New Hampshire. Yet a just estimate of his professional standing can scarcely be arrived at, unless a glance at least be taken at his political career. Entering Congress at the age of thirty-seven, Mr. Bartlett quickly came to the front as a ready and formidable debater. Before he had abandoned politics to return to the exclusive practice of his profession, his keen and bold sallies upon the floor had won for him the unique title of "the Randolph of the North."

He was elected a representative to Congress in 1823, and was kept there until 1829, when he declined a renomination. He served on the Committee upon Naval Affairs. Frequently he was called upon to

preside in the absence of the Speaker, or in Committee of the Whole. He joined in the debate on many important questions; and to judge from the rather imperfect reports of that day, he must have wielded much influence. Several speeches by him were printed, and circulated throughout New Hampshire by his political friends.[1]

No sooner had he entered Congress than an encounter with Mr. Clay served to bring him into prominence before the country. It was during the debate on Mr. Webster's Greek resolution, on the 24th January, 1824. The Speaker (Mr. Clay) had left his chair to urge, in an ardent and eloquent speech, the adoption of the resolution. Mr. Bartlett, then an unknown young man, took the floor to oppose it. With what felicity he could turn a compliment may be discovered in the following allusion to Mr. Webster: —

"There is an influence connected with the distinguished individual who moved this resolution that I have neither the inclination nor the power wholly to resist. While it has been urged upon us with a force which shows that eloquence expired not with the renowned orators of ancient Greece, we have listened with pleasure — with pride for the American character, a pride more cherished by me as the claim of New Hampshire, dearer still as of my own native village. Though such is the resolution, under such circumstances and thus urged upon us, yet I must vote against it."

Of the charge of personality made by the Speaker, Mr. Bartlett said: —

"If the loud voice, the menacing look and the sneering gesture which accompanied it were intended to apply to him personally, he must send it back as unjust, ungenerous and untrue. He did not advise, but he must say to the Honorable Speaker that it was unwise to throw out the insinuations which had escaped him as to the motives of the opposition. They were as little merited as would be the insinuations of one who should say to that Honorable gentleman: —

"You, Sir, have a great personal and political object in view. You perceive that on this question the whole country is in a tempest. You feel it to be necessary for you to 'buy golden opinions from all sorts of men'; and you have aimed to 'ride on the whirlwind, and direct the storm.'"

Mr. Clay was nettled at this bold language of "a mere boy that New Hampshire had sent here." He began his reply by alluding to the young member as having made "a very ingenious, sensible and ironical speech." He then went on to give his young friend some advice, in that lofty and imperious tone of which Clay was so peculiarly the master.

The "National Intelligencer" reports Mr. Bartlett as rejoining as follows: —

Mr. Bartlett: He had been seriously advised by the Honorable Speaker. He ought doubtless to receive the advice with due deference; yet, however criminal it might be, he felt inclined to say to him. "I thank you for your advice; more forasmuch as it was entirely gratuitous and uncalled for; but however inexperienced I may be, or however young, when I feel any need of lessons on the subject of political integrity, I feel myself of age to select my instructor. . .

"Gentlemen were asked if they dare go home to their constituents after voting against the resolution. Whether to vote against the resolution or against the opinion of that honorable gentleman were the more daring he would not attempt to determine. Where he should go when he left this House, he might not be able to say, but if not to his constituents, he certainly should not go to the Grand Seignior, — for he should make a bad slave, either at Constantinople or in this House. However obscure he might be, he had no constitutents so humble as not to know that he dare do all his duty."

Mr. Clay rejoined with warmth: saying that the gentleman from New Hampshire he believed was a member of the House. If he had ever been here before he (Mr. C.) was ignorant of it. He had never till now

[1] Among the more important subjects that he discussed were: Suppression of Piracy (1825); Amendment of the Constitution (1826); Internal Improvements (1827); and Retrenchment (1828).

heard his name in the House or out of it. At the close of his remarks Mr. Clay intimated plainly that some other mode might be resorted to in order to adjust the difference that had arisen.

After the adjournment, Mr. Clay set about ascertaining what sort of a man Mr. Bartlett was. He asked Governor Plumer if he thought Bartlett would fight. Plumer replied that he knew how he could find out. Mr. Clay enquired, How? Plumer answered, "Ask him!"[1] Some one approached Mr. Bartlett to sound him on the subject, and received as a reply: "Tell him if he wants to fight, it shall be across a four-foot table, — I have no crying children to leave behind me."[2] Fortunately the affair was soon amicably arranged. Bartlett's spirited conduct gave him a great prestige both in Congress and with his constituents at home.

After three terms of service, declining a renomination, he was pressed into service, in 1831, as the anti-Jackson candidate for Governor. The campaign was most exciting, but he was defeated by Samuel Dinsmoor. He was the Adams candidate also, the succeeding year, when Governor Dinsmoor was re-elected.

Mr. Bartlett never was married. He lived for the greater part of his life at a hotel. Always of a social disposition, there grew upon him in later years an inclination to conviviality, as he gradually withdrew from active practice. It was not possible for him however wholly to decline serving the public. In 1850 he was sent to Concord as a member of the Convention for revising the Constitution, and he was chosen temporary chairman of that body. His intimate friend Franklin Pierce became the permanent presiding officer.[1]

Mr. Bartlett died at the Rockingham House, Portsmouth, on the 9th of October, 1853, at the age of sixty-seven. The funeral was from Rev. Dr. Peabody's South (Unitarian) Church. Portsmouth paid an official tribute to his distinction as her most honored citizen. His fellow-members of the Bar evinced their appreciation of his ability and talent in resolutions and speeches of an unusual degree of merit.

Perhaps the most remarkable of Mr. Bartlett's many gifts was that of a certain felicity of expression. In ordinary conversation he employed the choicest and fittest words, and convinced his hearers by the apt way in which he put forward what he had to say.[2]

Anecdotes and incidents in a lawyer's practice gathered from tradition are easily

[1] Judge Ira Perley used to say that this reply was the smartest thing that Governor Plumer ever uttered.

[2] George Wallis Haven, of Portsmouth, writes to me: "I think in 1892, I received a letter from Mr. Arthur Livermore, living in England, in which he alluded to Mr. Bartlett's first term in Congress, when Mr. Clay with his wonted proclivity sought to fasten a quarrel upon him, but Mr. Bartlett retorted so very successfully that Mr. Clay felt that if a challenge was to pass between them, he must be the one to send it. Therefore, with becoming though unexpected prudence, he called upon Judge Livermore to inquire into the heroic status, or otherwise, of the new member from New Hampshire; and the judge assured him that he was a man to fight to the last gasp of his life. In the session of the next day, Mr. Clay offered most conciliating remarks to Mr. Bartlett, and they were ever after excellent friends. This statement Mr. Livermore had from his father."

[1] The two were warm friends. Woodward Emery, of the Boston Bar, has a gold-headed cane that came into the possession of his father, the late James W. Emery. It had been given by Pierce to Bartlett, and bears the inscription, "From Frank to Ick."

[2] The late Charles H. Bell, in his admirable Bench and Bar of New Hampshire, published after this article had been put in type, says of Mr. Bartlett: "In his public speeches he had a fashion, when he wished to lay particular emphasis upon a word, of pausing an instant before pronouncing it. One of the elders of the Bar described this process as "*poising* his word before he launched it." It seemed as if he were hesitating in the choice of his expression, and that he always picked out the fittest. But in fact the man never hesitated. His powers were always on the alert. If he had had hours for deliberation he could not have done or said the right thing at the right moment more uniformly than he did without a moment's forethought" (p. 176). No man was better qualified to write of New Hampshire lawyers than Governor Bell; nor can too much praise be bestowed upon the justice and discrimination that marks this invaluable collection of biographical sketches. It is fortunate that the work has been seasonably done by one who could do it so well. Fortunate too will be any other State where legal annals shall be preserved to posterity by a labor so thorough, a judgment so sagacious, and a power of expression so apt and so enlivening.

forgotten and lost. They often give an insight into character, and are so far deserving of permanent preservation. Only two of Mr. Bartlett's students now survive, the venerable J. Hamilton Shapley of Exeter, and William H. Rollins, a prominent lawyer and financier of Portsmouth. Both of these gentlemen speak feelingly of their attachment to their preceptor. He was always dignified and courteous, and greatly liked by young men.

To Mr. Rollins I am indebted for a fragment of an address to the jury in rather an odd case of Bell and Tuck *v.* Dow. I only wish the reader could have it in the exact words as told to me.

Two distinguished members of the Rockingham bar, it seems, had bought a horse of a farmer at Hampton, for the sum of thirty dollars. They managed to get the steed as far as Exeter, where they lived, a distance of about ten miles; but the animal proved too weak to stand up to get his oats. Upon arrival in town he soon collapsed,—a total loss. The irate purchasers brought a suit against the farmer for fraud in the sale. Bartlett was retained for the defence. He began his argument to the jury somewhat after this fashion: "Gentlemen of the jury, before we consider the testimony that bears on the circumstances of this sale, let us for a moment see who are the parties to this suit. Whom have we here as plaintiffs? Two able and astute lawyers. Who is here as defendant? A plain farmer. One of these plaintiffs, gentlemen, is James Bell! A lawyer of talent and experience; a gentleman of such shrewdness, that when the rich corporations of Massachusetts were hunting all over the State of New Hampshire for the right kind of an attorney to protect their enormously valuable interests at Lake Winnepisseogee, they selected *him*. Amos Tuck! Another lawyer, gentlemen, of such marked success and distinction at the Bar, that the people of this district have just chosen him to represent them in Congress. These two keen-witted men, as if not content to trust their own sagacity and skill, proceeded to call in a third party to help them. They selected none other than Stephen W. Dearborn, gentlemen, the High Sheriff of this county, who is sitting in yonder box,—a man known all this region roundabout as the sharpest horse-jockey to be found anywhere. And now, gentlemen, with this combination brought to bear on the subject, you are seriously asked to believe that they were cheated in a horse-trade by my poor, simple, old client here!"

The verdict, it is hardly necessary to add, was for the defendant.

When he thought that the occasion called for it, Mr. Bartlett did not hesitate to employ criticism of a most caustic kind. A trifling incident may be recited, where he administered a rebuke to one of his neighbors who had presumed to make a show of learning. One day Mr. Bartlett, being in the library of the Portsmouth Athenaeum, observed a gentleman present just closing a book that he had been reading. When the gentleman had withdrawn, Mr. Bartlett out of curiosity picked up the volume. It was a work upon a recondite subject, and the book opened at the place where the other had been reading. A few minutes later, Mr. Bartlett went down into the reading room to find the gentleman in question engaged in a discussion. With an air of profound acquaintance with the topic in hand the gentleman remarked: "It is some time since I have read the author, but if my recollection serves me aright, the passage runs something like this." He then repeated a long quotation, and looked around upon his little audience most triumphantly. After a brief pause, during which much credit was accumulating for the gentleman's powers of memory, Mr. Bartlett deliberately said: "Yes, you are exactly right. I know you are right, for not five minutes ago up-stairs I picked up the book you had laid down, and looked over that portion of it

myself. I think you 've got the very words."

A former sheriff of Strafford County has said that he well remembers frequent instances when the Judge on the bench would stop in the midst of a trial and address Mr. Bartlett, who was sitting within the bar, with the inquiry, "Pray what is the law on that point, Mr. Bartlett?"

James W. Bartlett of Dover, a nephew of Ichabod Bartlett, has kindly sent me the following anecdotes. Of the first he says that his uncle, when asked about it, admitted that it had some foundation in fact:—

A man was brought before the court for stealing spoons. Having no counsel, Mr. B. was assigned to him. The other lawyers thought he did not relish being connected with so petty a case, as he sat, during the trial, with his eyes half shut, apparently paying little heed to the witnesses. He declined to cross-examine, only asking two or three questions of the principal witness which served to make his story even stronger than ever. The other lawyers thought that the defendant was surely booked for prison. When, however, Mr. B. came to argue for the defence he was alert enough. He took the testimony all to pieces, showed wherein the witnesses contradicted each other, and made such an eloquent appeal in behalf of the accused, that the jury acquitted him without leaving their seats, when Mr. B., turning to the fellow, said, "Now go, you old rascal, and don't steal any more spoons."

The other was told me by one of the oldest Dover lawyers, now dead. During a term of court the lawyers were assembled at the old Dover Hotel and thought to have some fun over a traveling phrenologist. They told him the Democratic candidate for Governor (a very ordinary kind of man) was in the parlor, and they wanted him to examine his head, and in order to make the experiment more striking they wished him to enter the room blind-folded. This he did, but Ichabod Bartlett was seated in the chair instead of the candidate, who had the pleasure of hearing the phrenologist, after feeling the head a moment, exclaim, "*This* is not the Democratic candidate, it is the head of a much more able man," then going on to describe Mr. Bartlett's character correctly.

I am likewise under obligation to the Honorable Charles Levi Woodbury, of Boston, for a valuable letter of October 19, 1893, describing some of his impressions of Mr. Bartlett. He says:—

"I have heard him try a cause in court. It was when I came home (to Portsmouth) on a visit in 1842 or 1844; and I was impressed with his skill and vigor in belaboring a witness, who was on the other side. His voice, as to which you enquire, was tenor in quality, not shrill, but full or round in tone and rather prepossessing than otherwise. His manner was easy, deliberate and frank. He was a caustic speaker, and in that line of resources had imagination enough, and force also."

Mr. Bartlett was the owner of a beautiful country seat upon the river, two or three miles above the town of Portsmouth. It was a farm that had originally belonged to President John Cutt. Here Madam Ursula Cutt (the President's widow) was killed by the Indians, in the summer of 1694. To this retreat Mr. Bartlett in his later years liked after dinner to drive on days when the weather was fine. He was specially fond of the company of young men. From 1845 onward Mr. Woodbury was more frequently at Portsmouth, where he formed one of a small circle of gentlemen whose society "the Colonel" (as Mr. Bartlett used to be called) was wont to enjoy.[1] It was a source of pleasure to the distinguished lawyer to take one or more of his young friends for an "outing" to the farm. Says Mr. Woodbury:—

"Here we amused ourselves about the house and grounds doing nothing in particular until it was time to return home. The Colonel was much respected by all of us, and he felt and appreciated our modest deference. He was easy in conversation. Possibly it is the highest com-

[1] Among others were Horatio Coffin, Dr. Edward Rundlet and Charles W. March, the author of Reminiscences of Webster, etc.

pliment that can be paid to his tact and universality, to say that he made himself very acceptable to us youngsters without diminishing our respect for his power of caustic repartee, or our regard for him.

"Colonel Bartlett and that learned and eccentric grandson of Governor Langdon, John Elwyn, both lived at the Rockingham House. Each was a conversationalist of rare power, though of marked difference; and quite a controversial spirit, though masked, seemed to grow up between them. From others who sat at the genial board of that famed hostelry, I have had many graphic accounts of the little sparring matches which not unfrequently arose between them. Judge Odell and the rest always sheltered themselves in complete silence when one of these "scraps" broke out. Each antagonist addressed his remarks to them, and not to his opponent.

"Major Coburn's cellar furnished a copious supply of that renowned March Madeira, supplied by the brothers March themselves to him, and therefore of unexceptional pedigree. This had qualities, like many mythological beverages. Silently the auditors sipped the generous fluid, and the sparks of collision disappeared, and were forgotten."

It is gratifying to be assured that a kinsman, Dr. Samuel C. Bartlett, ex-president of Dartmouth College, cherishes the purpose of writing a memorial of this distinguished member of the Bartlett family. We may thus hopefully look forward to the possession of something of enduring value that shall transmit to posterity in befitting lines the portraiture of a very remarkable man.

The engraving that accompanies this sketch is from a portrait, at the age of forty, painted by Professor S. F. B. Morse. The original is owned at Concord, N.H., by the widow of a nephew of Ichabod Bartlett — the late Judge William H. Bartlett, a jurist whose untimely death the people of New Hampshire have not yet ceased to deplore.

THE COURT OF STAR CHAMBER.

By John D. Lindsay.

I.

ACCORDING to the popular idea the Court of Star Chamber was a secret tribunal wielding unlimited power and influence in the middle ages, practising monstrous oppressions, and serving no good purpose whatever, — a tyrannical relic of ancient barbarity used to vent the baser designs of wicked sovereigns, — a place for punishing annoying interferences with the unjust doings of the king and his favorites, — a tribunal as cruel as any inquisition, as unlimited in its power over the lives and liberty of the people as the Venetian Council of Ten — and whose proceedings were conducted in absolute secrecy; whose victims were condemned without notice, or any opportunity of defense, and whose whole history was a history of unjust persecution and arbitrary oppression. Very different indeed is the truth.

Instead of being regarded as a tyrannical institution, the Star Chamber was for ages looked upon by the English people, especially those of the middle and lower classes, as the one place where the wrongs perpetrated by the wealthy lords could be redressed, — where they could be relieved of the oppressions of the rich landowners, and the tyrannies and extortions of petty officials, — where justice would be administered honestly, and substantial right done fearlessly, — where no tampering with venal

jurymen could avail, and the integrity of the judges was above the shadow of a doubt.

It was a court where the poor man need not hesitate to press his grievance, though the courts of his own neighborhood had refused to aid him, — and whose censure the lordly wrong-doer held in awe while defying the judicial authority of the local tribunals.

Its proceedings from the first were open and public; throngs attended its sittings and watched and listened as freely and with as little interference as the idle crowds that to-day resort to our courts when sensational cases are being tried. The causes were heard, argued, and determined sedately, solemnly and with dignity and deliberation. The defendants were summoned before it by due process of law; an information drawn with as great technical precision and in substantially the same form as a bill in equity apprised them of the charge they were called upon to meet, and from the earliest times, while the common law courts stubbornly refused to grant an accused any legal aid whatever, the Star Chamber allowed him, not one adviser, but always, of right, two counsel, and very often three or four whose active and full services he was permitted to enjoy.

The career of the Star Chamber was not, however, one of uninterrupted justice. At times its authority was basely perverted. Great wrongs were there committed, and its oppressions, especially at times of political uneasiness and for purposes of state discipline, were many. Of the wicked persecutions which stained its memory during the later years of its existence I shall speak later.

The Court of Star Chamber was the king's privy council, as it existed in former times, sitting in its judicial capacity. The sovereign prerogative of directly administering justice, recognized and preserved in England from the most ancient times, and exercised in its amplest form in the *Curia Regis*, was in course of time, so far as it related to civil controversies and ordinary criminal matters, gradually distributed among other tribunals. The right of the king to administer justice in person, or through his high officers of state, in respect to offenses under the degree of capital, affecting the government or wherein the common law was deficient, was however never delegated, but continued to be exercised by the council till the Long Parliament in 1640 declared that the occasion for the exercise of that right no longer existed.

The council, even as early as the time of Edward III., when disposing of criminal business, usually held its sessions in that room of the palace called the "Star" chamber, and thus the name of the court was derived, — a designation that was applied to the end, and one that was recognized in the books and statutes as its proper title. The history of this tribunal is full of interest.

From the most remote antiquity the administration of justice has been one of the highest, if not the greatest, prerogatives of the sovereigns of England.[1]

Under the rule of the Saxons the first and principal place for the administration of justice was the *wittenagemote*.

Justice in both civil and criminal matters

[1] Montesquieu sets forth the objections to the sovereign's acting as a judge in any cause within his realm, and then proceeds to show that equally grave reasons exist against his officers of state participating in judicial affairs: "It is likewise of very great inconveniency in monarchies for the ministers of the prince to be judges. We have still instances of States where there are a great number of judges to determine fiscal controversies, and where the ministers notwithstanding (a thing almost incredible!) want likewise to determine them. Many are the reflections that here arise, but this single one will suffice for my purpose. There is in the very nature of things a kind of contrast between a prince's council and his courts of judicature. The king's council ought to be composed of a few persons and the courts of judicature of a great many. The reason is, in the former, things should be undertaken and pursued with a kind of warmth and passion, which can hardly be expected but from four or five men who make it their sole business. On the contrary, in courts of judicature a certain coolness is requisite, and an indifference in some measure to all manner of affairs."

was ordinarily administered near the homes of the suitors, in the *reve motes* (or *shire motes*), the tourns, and the hundred courts derived out of it, and the county courts. But over all these there was the *wittenage-mote*, which had a concurrent jurisdiction with them. The king himself sat in it. It was held in his palace and removed with his person. Its principal officer below the king was the *Justiciarius Angliæ*. The judges were the great officers of state, together with such lords as were about the court. Its ordinary business consisted in the determination of causes concerning the revenues, criminal accusations against any of the lords, and civil disputes between them, besides which it heard originally offenses of a very heinous and public nature committed by persons of inferior rank, and all causes in the inferior courts might be adjourned thither on account of their difficulty or importance.

This same supreme tribunal, or a similar one in all substantial respects, was preserved by William the Conqueror under the name of the *aula regis* or *curia regis*, so called because it was held in the royal palace before himself or his justice, of whom the *Justiciarius Angliæ*[1] still continued to be the chief.

There was also the exchequer, called *curia regis ad scaccarium*, which was likewise held in the palace, and though in effect a member of the *curia regis*, was expressly distinguished from it.

The *curia regis* consisted of the following persons: the king himself, who was the head; next to him the *Justiciarius Angliæ*, who was the principal minister of state, and decided all causes in the king's absence as his vice-regent or deputy; and the great officers of the palace, such as the chancellor, treasurer, chamberlain, steward, marshal, constable and the barons of the realm. With these were associated certain persons called *justiciæ* or *justitiarii*, to the number of five or six, on whom, with the *Justiciarius Angliæ* the burden of judicature principally devolved, the barons seldom appearing to participate in the proceedings, the duties incumbent upon the office being at variance with their martial education and occupations. The king chose such of his nobles as he preferred, to associate with himself in the *curia regis*, who were usually residents of the palace and attendant upon his person.

All matters of judicial concern were cognizable by this supreme court. Many pleas, from their great importance, were deemed within its exclusive jurisdiction, while others were brought there by special permission.

For the issuing of the necessary writs, and for other offices pertaining to the court, the king had near him some great man, usually an ecclesiastic, who was called his chancellor, and had the keeping of the great seal. It was probably this office of the chancellor that rendered him a necessary member of the court. However this may be, the chancellor was always one of the principal members of the *curia regis* and of the Star Chamber.

The Exchequer sat in another place, namely *ad scaccarium*, as we have seen, and the justices of the *curia regis* were there called barons.

While we may find indefinite mention of affairs of a criminal nature being considered in the exchequer, no considerable criminal jurisdiction was ever assumed by it, and it may be safely asserted that all great criminal prosecutions for misdemeanors were conducted originally in the *curia regis* proper.

When by reason of the great and constantly increasing mass of business brought before the *curia regis* from all parts of the realm, the *justiciarius* and his associates found themselves unable to directly deal with all its affairs, it became necessary to erect some other tribunal of a similar nature,

[1] An officer not unlike the ancient grand seneschal of France, called *major domus*.

and thus came about in the twelfth century the establishment of justices *in eyre*, who under the king's writ, in the nature of a commission, went in circuits and held courts throughout England, endowed with all the power and authority of the *curia regis* and its exchequer branch, save the reservation of final appeal thereto.[1]

Not long after this a court made its appearance under the name of *bancum* or *bench*, as distinguished from the *curia regis*. This court, like the justice in eyre, was erected in aid of the *curia regis*, and the latter ceased to entertain common pleas about the time when the *bancum* or *bench* made its appearance. The existence of the bench and of the *justiciarii de banco* appear from the records of the reign of Richard I. The bench took charge of the common pleas, thus leaving only matters of great concern, not cognizable at common law, for the *curia regis*.

After the erection of the *bancum* or *bench* the style of the supreme tribunal began to alter, and the proceedings there were frequently said to be *coram rege*, or *coram domino rege;* and in subsequent times the court was styled *curia regis coram ipso rege*, or *coram noblis*, or *coram domino rege ubicunque fuerit*, etc. However it was still called *aula regis*, *curia regis*, *curia nostra* and *curia magna*.

The exchequer being a member of the *curia regis* and a place for determining the same sort of common pleas as had been brought in that court, the separation of such pleas from the latter considerably affected the exchequer. The clause in King John's charter equally concerned both: *curia nostram* meant the exchequer as well as the court properly so called.

Thus the great sovereign court of the Saxons, preserved by the Normans, and of supreme power and influence over the entire kingdom for many generations, having found itself unable to deal with all the causes within its cognizance, had distributed its jurisdiction by sending forth the new establishment of justices itinerant and justices of the bench, and then, except for judicial emergencies unprovided for by the established law, its functions became unnecessary and its ancient supreme authority ceased to be of general need. It had thrown off the three courts of common law, the *coram ipso rege*, since called the King's Bench, the bench, subsequently known as Common Pleas, and the modern Court of Exchequer.

But while provision had been made for the transaction of all judicial business for which a legal remedy existed at the common law, no tribunal had as yet been created with power to adjudicate matters in respect to which the common law was deficient, or offered no relief.

In the thirteenth century jurisdiction over civil matters of this character was conferred upon the Court of Chancery.

With respect to the origin of the judicial power possessed by the Lord Chancellor and from which the great Court of Chancery resulted — it is the opinion of Lombard that he had no jurisdiction for the hearing and determining of civil causes till the reign of King Edward I., when, the power of the *justiciarius Angliæ* declining, it being restrained *ad placita coram rege tenenda*, the king committed to his chancellor, together with the trust and charge of his great seal, his own royal and extraordinary pre-eminence of jurisdiction in such civil causes, as well

[1] It is not easy to determine the exact period when this establishment of *justices itinerant* was first made. It was long the common opinion that they were originally appointed in the great council held at Nottingham, or as some say, at Northampton, in the 22d of Henry II., 1176; but it has been proved from the records in the exchequer that there had been justices itinerant to hear and determine civil and criminal causes in the 18th Henry I., and likewise justices in eyre for the pleas of the forest.

It is probable that the first appointment of justice itinerant was made by Henry I. in imitation of a like institution in France, introduced by Louis le Gros, that in the reign of King Stephen the new system was dropped and was again revived by Henry II., during the greater part of whose reign pleas were held in the counties by the justice itinerant from year to year, and who at length fixed the system as a part of the legal constitution of the realm.

for amendment as supply of the common law.

But the crown was not willing to confer upon the chancellor this same plenary power in respect to the criminal jurisdiction inherent in it and its councillors, and that sovereign prerogative was still retained by the king and his nobles.

In its judicial capacity, the body possessing this extraordinary power of supreme judicature was called the council, and as time went on these several bodies came to be distinguished by different titles: (1) the great council of the nation, or Parliament; (2) the Council; (3) the Privy Council. It is a matter of some difficulty to distinguish these three bodies from each other in the early stages of their history.

The council took from the earliest times a part in the administration of justice, which was viewed with great suspicion by Parliament and was made the subject of remonstrance by them on various occasions in the course of the fourteenth and fifteenth centuries. Notwithstanding these remonstrances and the provisions of several statutes on the subject, the jurisdiction of the council continued and increased, and it ultimately established itself as one of the recognized institutions of the country.

Although the hereditory lords had from time immemorial usually neglected to assert their rights to participate in the proceedings of the *curia regis*, still they had always possessed this inherent right of judicature as constitutent members of the council of the king and kingdom, and when the *curia regis* was divided, and the departments of ordinary judicature were branched out in the manner we have just seen, the peculiar character of this council, now separated and retired within itself, became more distinguishable.

"FOREIGN" RECEIVERS AND JUDICIAL ASSIGNEES.

By Seymour D. Thompson.

I.

I. Preliminary Statement.

DURING the past year the assets of an unprecedented number of individuals, partnerships, and corporations, engaged in banking, in trade, and in manufactures, have passed into the hands of receivers, assignees, and trustees, for judicial administration, under the insolvent laws of the states. The business conducted by these insolvents has, in nearly every case, extended beyond the limits of the state of the domicile, and has, in many cases, extended into every state and territory in the Union. The task devolved upon the receiver, assignee, trustee, or other representative of the insolvent and of the creditors of the insolvent, is, therefore, to collect debts and gather in assets in many states other than that in which the administration is conducted. In the absence of any legislation on the part of Congress, either under its power of establishing a uniform system of bankruptcy, or under the commerce clause of the federal Constitution, he must rely upon the statute laws of every local jurisdiction in which debts are to be collected or assets gathered in and conserved, with such feeble aid as he can find in that provision of the Constitution of the United States which directs that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."[1]

[1] Const. U. S., art. 4, § 1.

He finds that, notwithstanding this provision, the "full faith and credit" which is given to a *judicial assignment* of the property of an insolvent, under the laws of a sister state of the Union, is no greater than that which would be given to a similar assignment if made in the Turkish or in the Chinese Empire, under such laws as there subsist. In other words, he finds that the forty-four states and five territories which compose the American Union, are, in respect of his power to collect the debts due the estate which he represents, and to gather together and remove to the principal place of administration any assets belonging to it which he can find, *sovereign nations*, *foreign* to each other; so that, when, in the attempted exercise of his office, he crosses the boundary which divides two of these sovereignties, — we will say, journeys a distance of forty-four miles from Boston to Providence, — he finds himself in a *foreign country*, where he is called a "*foreign receiver*," and he finds that he has no rights except such as may be extended to him under a principle of *comity*. This principle of comity will, in some cases, be expressed in legislative acts which will be found sufficient for his purposes. In other cases, he will make an appeal to the judicial courts; and the answers which will be made to his appeals in different states will be as variant, and often as dubious, as the responses of the Delphian oracle. Such is the "full faith and credit" which will be given to the judicial proceedings appointing him to his office and trust when he crosses the boundaries of the state where he has been appointed.

II. Judicial Holdings as to the Status of "Foreign Receivers."

To make more clear the difficulties which will beset the trustee upon whom the administration of an insolvent estate has been judicially devolved, whenever he crosses the boundaries of the state of his appointment, it may be stated, on a unanimous concurrence of judicial authority, that he finds himself divested of all power whatever;[1] that he cannot sue to collect a debt due to the estate which he represents, unless the courts of the state in which he attempts to sue allow him to do so, on the principle of mere favor or comity;[2] that this comity will never be extended to the prejudice of the citizens of the state in which he attempts to sue, nor when to do so will contravene the public policy or the laws of such state,[3] and will not be allowed to operate in any case so as to deprive the creditors of the insol-

[1] Booth *v.* Clark, 17 How. (U. S.) 322, 333; Moseby *v.* Burrow, 52 Tex. 396, 403. Other cases affirming this doctrine are: Hunt *v.* Columbian Ins. Co. 55 Me. 290; *s. c.* 92 Am. Dec. 592; Tully *v.* Herrin, 44 Miss. 626; Kronberg *v.* Elder, 18 Kan. 150, 152; Catlin *v.* Wilcox Silver Plate Co. 123 Ind. 477; Sercomb *v.* Catlin, 128 Ill. 556; *s. c.* 15 Am. St. Rep. 147; Chicago etc. R. Co. *v.* Keokuk etc. Packet Co. 108 Ill. 317; Wilkinson *v.* Culver, 23 Blatchf. (U. S.) 416; Reynolds *v.* Stockton, 43 N. J. Eq. 211; *s. c.* 3 Am. St. Rep. 305; State *v.* Jacksonville etc. R. Co. 15 Fla. 201; Holmes *v.* Sherwood, 3 McCrary (U. S.) 405; Kain *v.* Smith, 80 N. Y. 458; *s. c.* 8 Abb. (N. C.) 426; Kilmer *v.* Hobart, 58 How. Pr. (N. Y.) 452; Olney *v.* Tanner, 21 Blatchf. (U. S.) 540; Brigham *v.* Luddington, 12 *id.* 237; Warren *v.* Union National Bank, 7 Phila. (Pa.) 156; Hope etc. Ins. Co. *v.* Taylor, 2 Rob. (N. Y.) 278; Farmers etc. Ins. Co. *v.* Needles, 52 Mo. 17; Willitts *v.* Waite, 25 N.Y. 577; Bartlett *v.* Wilbur, 53 Md. 485; Day *v.* Postal Telegraph Co. 66 Md. 354.

[2] Olney *v.* Tanner, 10 Fed. Rep. 101, 104; Humphreys *v.* Hopkins, 81 Cal. 551; *s. c.* 15 Am. St. Rep. 76; Sercomb *v.* Catlin, 128 Ill. 556; *s. c.* 15 Am. St. Rep. 147; Hunt *v.* Columbian Ins. Co. 55 Me. 290; *s. c.* 92 Am. Dec. 592; Hoyt *v.* Thompson, 5 N. Y. 320; Hoyt *v.* Thompson, 19 N. Y. 297.

[3] Mowry *v.* Crocker, 6 Wis. 320; Cook *v.* Van Horn, 81 Wis. 291; Iglehart *v.* Bierce, 36 Ill. 133; McLean *v.* Hardin, 3 Jones Eq. (N. C.) 294; *s. c.* 69 Am. Dec. 740; Mahorner *v.* Hooe, 9 Smedes & M. (Miss.) 247; *s. c.* 48 Am. Dec. 706; Humphreys *v.* Hopkins, 81 Cal. 551; *s. c.* 15 Am. St. Rep. 76; Wells *v.* Wells, 35 Miss. 638; Smith *v.* Godfrey, 28 N. H. 379; *s. c.* 61 Am. Dec. 617; Kanaga *v.* Taylor, 7 Oh. St. 134; *s. c.* 70 Am. Dec. 62; Bank *v.* McLeod, 38 Oh. St. 174, 180; Walters *v.* Whitlock, 9 Fla. 86; *s. c.* 76 Am. Dec. 607; Roche *v.* Washington, 19 Ind. 53; *s. c.* 81 Am. Dec. 376; Hurd *v.* Elizabeth, 41 N. J. L. 1; Johnson *v.* Parker, 4 Bush (Ky.) 149; Saunders *v.* Williams, 5 N. H. 213; Bagby *v.* Atlantic etc. R. Co. 86 Pa. St. 291; Pierce *v.* O'Brien, 129 Mass. 314, 315; Taylor *v.* Columbian Ins. Co. 14 Allen (Mass.) 353; Boulware *v.* Davis, 90 Ala. 207; Chandler *v.* Siddle, 3 Dill. (U. S.) 477; Pugh *v.* Hurtt, 52 How. Pr. (N. Y.) 22; Thurston *v.* Rosenfield, 42 Mo. 474; Runk *v.* St. John, 29 Barb. (N. Y.) 585; Palmer *v.* Mason, 42 Mich. 146, 152; Booth *v.* Clark, 17 How. (U. S.) 322.

vent whose estate he represents, domiciled in the state where he is attempting to sue, of any remedy given them by the domestic law.[1] If he is so fortunate as to be the receiver of the property of a railroad company engaged in the operations of interstate commerce, and while prosecuting such operations, sends one of the cars, which have come into his possession as receiver, into the state of California, over the line of some other railroad, to avoid the delay and expense of unloading and reloading at the state line of the state within which he has been appointed receiver, he will find that the car is liable to be seized under attachment or execution, by a creditor of the insolvent railroad company residing in California,—and this notwithstanding the fact that he had reduced it into his possession in the state where he was appointed receiver, and that he was appointed receiver, not by a state court, but by a court of the United States.[2] He will, therefore, find it necessary, either to pay all the debts of the insolvent railroad company, whose property has passed into his custody, owing to individuals or corporations domiciled within the state of California, or else withdraw from the ordinary operations of interstate transportation within that state. Nor, he being a mere layman, will he derive any consolation from what his lawyer will tell him,—that there is neither law nor sense in the decision of the California court, and that every other American court to which the question has been presented has decided it the other way,—holding that where a receiver or other trustee, upon whom the property of an insolvent has been devolved *in invitum*, has once acquired title and possession for the purposes of his trust, if that property finds its way into another state and is there detained from him, he has the same right to reclaim it which he would have if he were the full and absolute owner of it.[1]

He will find, if he crosses into the state of Iowa and attempts to prosecute an action to collect an honest debt due to the insolvent whose estate he represents, that he will not be allowed so to do, although it is not made to appear that any creditor of the insolvent, domiciled in Iowa, desires to impound the debt, or that the insolvent has any creditor in that state at all.[2] Let us further suppose that he has been appointed to his trust under the laws of Indiana.[3] In vain will he appeal to the sense of justice and comity of the Iowa judges, by drawing their attention to the fact that if a receiver appointed in Iowa, had brought an action upon a like demand in Indiana, the decision of the Indiana court would have been exactly the other way.[4] They will retort by drawing his attention to the fact that the Supreme Court of his state, at a more recent period, has thrown away the comity which courts sometimes extend on this question, by holding that a receiver of a partnership firm, appointed in Illinois, cannot hold a debt due to the firm by citizens of Indiana, as against a creditor of the firm in Connecticut, who has attached the debt by garnishment.[5]

[1] Taylor *v.* Columbian Ins. Co. 14 Allen (Mass.) 353; Booth *v.* Clark, 17 How. (U. S.) 322, 336; Blake *v.* Williams, 6 Pick. (Mass.) 286; May *v.* Breed, 7 Cush. (Mass.) 15, 41, 42; Willitts *v.* Waite, 25 N. Y. 577; Catlin *v.* Wilcox Silver Plate Co. 123 Ind. 477; *s. c.* 24 N. E. Rep. 250; Pugh *v.* Hurtt, 52 How. Pr. (N. Y.) 22; Humphreys *v.* Hopkins, 81 Cal. 531; *s. c.* 15 Am. St. Rep. 76.

[2] Humphreys *v.* Hopkins, 81 Cal. 557; *s. c.* 15 Am. St. Rep. 76.

[1] Chicago etc. R. Co. *v.* Keokuk etc. Packet Co. 108 Ill. 317, 324; Pond *v.* Cook, 45 Conn. 126; *s. c.* 29 Am. St. Rep. 668; Cooke *v.* Orange, 48 Conn. 401; McAlpin *v.* Jones, 10 La. An. 552; Caniwell *v.* Serrell, 5 Hurl. & N. 728; Clark *v.* Connecticut Peat Co. 35 Conn. 303; Taylor *v.* Boardman, 25 Vt. 581; Crapo *v.* Kelly, 16 Wall. (U. S.) 610; Waters *v.* Barton, 1 Coldw. (Tenn.) 450. See note of Mr. Freeman, 15 Am. St. Rep. 82, where the California case is criticised. Upon this question compare Crapo *v.* Kelly, 16 Wall. (U. S.) 610 with Kelly *v.* Crapo, 45 N. Y. 86.

[2] Ayres *v.* Siebel, 82 Iowa, 347; *s. c.* 47 N. W. Rep. 989.

[3] Which was, in fact, the case in the decision last cited.

[4] Metzner *v.* Bauer, 98 Ind. 425.

[5] Catlin *v.* Wilcox Silver Plate Co. 123 Ind. 477; *s. c.* 18 Am. St. Rep. 338.

He thus discovers that he has no power to sue in Iowa except by comity; that this comity is never extended to the prejudice of citizens of Iowa; and that it is deemed prejudicial to a citizen of Iowa to pay an honest debt contracted with a citizen of Indiana. But, as he is a mere layman, and destitute of that reverence for the decisions of courts of last resort which is supposed to pervade the breast of every lawyer, and which is a part of the courtier-like habit of the legal profession, — he exercises his last remedy, that of going to the nearest saloon and there "cussing" the court. His soliloquy may be readily imagined. In the late war between the states, he was a soldier in a regiment sent out by the state of Indiana; his regiment was placed in the same brigade with a regiment sent out by the state of Iowa; the two regiments stood elbow to elbow in the "Hornet's Nest" at Shiloh, and, mingled together in one common mass, they held the hill at Chickamauga, "when fire and earthquake led the charge." Neither of them knew that they were the troops of two foreign powers. The Indiana boy did not know that the Iowa boys at his elbow were foreign auxiliaries; but both of them supposed that they were offering up their lives to prevent the citizens of eleven states of the American Union from becoming foreigners to them. It remained for the Indiana soldier, a quarter of a century later, when he became the trustee of a firm under the insolvent laws of Indiana, to learn, through the teachings of the highest judicial tribunal in Iowa, that he was a foreigner in the state of Iowa, or a representative and official of a foreign government, and that he had no rights whatever in the state of Iowa. No doubt, when the lesson was delivered to him, his blood tingled, and he felt that the civil war had ended too soon, and the wish involuntarily arose in his heart that it had resulted in sponging out state lines and in abolishing the tribal theory of our government entirely.

THE SUPREME COURT OF VERMONT.

IV.

By Russell S. Taft.

Titus Hutchinson with his father's family, on the memorable 4th of July, 1776, began his journey to Pomfret, Vt. The opportunities for schools at that time were limited; he labored upon the farm until past his nineteenth birthday, when he began his preparations for college, and in the second summer thereafter was prepared to enter Dartmouth two years in advance; but as the rules of the college exacted tuition for the full course, which his family deemed unjust, he went to Princeton College, N.J., where he graduated with honor in two years, delivering the English salutatory oration, placed as second among the honorary appointments. He was admitted to the Bar at Chelsea in this State. He soon after appeared at Woodstock, and "professing him skilled and learned in the law, publicly erected on the corner of the street a sign with the words, Law Office, by T. Hutchinson, inscribed thereon." His only competitor at Woodstock was Charles Marsh, cousin of the celebrated Jeremiah Mason, a most excellent and ready lawyer, an accurate classical scholar withal, with wit and sarcasm, wielding weapons of the keenest edge and finest finish, and the leader of the Vermont Bar; practicing with such a man as a competitor made Mr. Hutchinson an excellent lawyer.

In 1813 he was appointed by President Madison, United States Attorney for the Vermont District, and retained the office about ten years. Upon the reorganization of the Supreme Court in 1825, he was elected second assistant. In 1830 he was elected Chief Judge, and served until 1833.

During the session of the Legislature of this year, there was considerable opposition to his re-election. In April, 1830, he presided at the murder trial of one Cleveland, at Irasburgh, Judge Paddock of the Supreme Court sitting with him, as the statute then required two judges of the Supreme Court present at every capital trial. Cleveland was convicted, and although there were many exceptions taken upon the trial and allowed by the Court, he was sentenced to be executed on the last Friday of the next October, some five months before the session of the Supreme Court at which his exceptions could be heard. The error was corrected at the next session of the Legislature, which met the first part of October, and Cleveland's sentence was commuted to imprisonment in the State prison, but the blunder made by the Chief Judge was urged with great effect against his re-election. There were other matters which affected the election. One of the assistants, Charles K. Williams, had served as judge of the Supreme Court prior to the election of Mr. Hutchinson, and had he been in service when the court was reorganized, would undoubtedly have been continued as judge, when he would have outranked Mr. Hutchinson; Williams's name was earnestly pressed for the Chief Judgeship, and he was elected by three majority in a total vote of 233.

After this election, Mr. Hutchinson lived in retirement till the close of his life, occasionally engaging in the duties of his profession and laboring upon his farm. In the earlier part of his life he was eminently a popular man, and might easily have secured any preferment within the gift of the people.

He was often solicited to become a candidate for Congress, but steadily refused. He early became an abolitionist, and was a

candidate of that party for governor at a time when it was composed of but a tithe of the voters.

I think Judge Hutchinson reported a larger proportion of cases that were assigned him than any other judge of his day.

BATES TURNER was the oldest person, at the time of his first election, ever chosen judge of the Supreme Court. He entered the Revolutionary army at the age of sixteen, and was exposed to great hardships and dangers in defense of the country. After the war closed, he entered upon the study of law under Judges Reeve and Gould; was admitted to the Bar in Connecticut, but soon after removed to Vermont. He settled in Fairfield in 1796, supposing that place would be made the shire town of Franklin Co. He soon after removed to St. Albans, and for a few years was in partnership with Asa Aldis, but returned to Fairfield and organized a law school, preparing many young men for admission to the Bar. During his professional life, he instructed nearly one hundred and seventy-five law students. With the design of establishing a more permanent school, he removed to Middlebury in 1812, but not receiving adequate encouragement, he returned to Fairfield, but soon after removed to St. Albans.

CORNELIUS P. VAN NESS.

In 1827 he was elected judge of the Supreme Court, and after a service of two years returned to his profession. He was a sound lawyer, a fair minded and skillful practitioner; he had many enjoyable social qualities, was amiable and facetious, always in good spirits, courteous and kind to everyone. Once, when calling upon a lady acquaintance with his bag of law papers in his hand, he was playfully reminded by her that Judas carried a bag. "Yes," said he, "and he kept better company than I do, too." He succeeded Stephen Royce in the judgeship, and was succeeded by him.

EPHRAIM PADDOCK came early from Massachusetts to St. Johnsbury. He was a man of excellent character, a careful and studious lawyer, and of great discrimination.

In 1828 he was elected judge, but preferring professional to judicial work, retired after three years' service. He continued in the profession, vigorously at work after passing the "three score year and ten mark." So well was he esteemed among his brethren, that they placed his portrait in the court room of Caledonia County.

JOHN C. THOMPSON, a native of Rhode Island, obtained his legal education in Hartford, Ct., where he was admitted to the bar about 1813. He came at once to Windsor, Vt., remaining there until 1818, when he removed to Hartland, and after a residence of four years in that place, removed to Burlington and remained there until his death.

He married Nancy Patrick in December, 1816; one son was drowned in a sailing accident on Lake Champlain in September, 1846. None of his descendants, if any are now alive, reside in the State. He obtained an extensive practice in Chittenden and the adjoining counties, and took high rank as a practitioner, especially in the Supreme Court. In 1827 he was elected a member of the Governor's Council, and so continued until his election to the judgeship in October, 1830.

He gave promise of great usefulness as a judge, but in June following his election, while on his way to Montpelier, was taken ill in the stage coach and died in a few days. His term of service was short, and but one opinion of his was reported, Crofoot *v.* Moore, 4 Vt. 204.

He was with the court in its winter circuit, and the other cases assigned to him were reported after his death by Hutchinson, C. J.

At a great demonstration in Burlington, July 4, 1828, he delivered an oration which shows not only his partisanship, but his power and logic in dealing with the exciting political questions then being agitated.

He succeeded Judge Prentiss and was followed by Judge Phelps, who was elected at the legislative session in October, 1831.

NICHOLAS BAYLIES, a native of Uxbridge, Mass., remained at home upon the farm until about nineteen years of age, when he fitted for college, graduating at Dartmouth in 1794. He then studied law a part of the time with Charles Marsh at Woodstock, with whom he afterwards became partner. He removed to Montpelier in 1810 and remained there until 1836, when he located in Lyndon, and resided there until the time of his death.

He published a digested index of the common law reports, both English and American. The work was no doubt of some value at that time, but is now practically useless. He was quite active and instrumental in initiating the Vermont State Library as well as the reports of the Supreme Court.

He was a man of great industry and labor, and learned in the law of the reports. He was elected judge when sixty-three years of age, served but two years, and was succeeded by John Mattocks.

SAMUEL S. PHELPS was a native of Litchfield, Conn., and a student at its great law school. He came to Vermont, studied law in the office of Horatio Seymour, afterwards United States senator, and was admitted to the Bar about 1815. He began practice, coming in contact, through his early professional life, with such men as the Chipmans, Horatio Seymour, David Edmond, Samuel Prentiss, Charles K. Williams and others. Before he reached the Bench, he was not only a leading but the foremost advocate in southwestern Vermont, and a master of legal principles by long practice in their practical application.

He was a man of fine figure and presence, of military bearing, with fine style in manner of expression and of such a physical character and striking appearance that he would, in any place or any assemblage of men, immediately command attention and admiration. He was tall, erect, finely moulded and well proportioned, with an easy, graceful and dignified carriage. His temper was somewhat mercurial, and under sudden provocation he was hasty and irascible, but those who knew him best understood that these were mere mannerisms; of an exquisitely sensitive nature, essentially gentle and refined. He was never a case lawyer, but an absolute master of the fundamental principles of the common law. He had great power of analysis and generalization, in that respect was unsurpassed. No question was new to him, or rather he never invoked a new legal principle to settle a question springing out of new conditions. He would unravel apparently complicated cases, which

confused common minds, with ease and rapidity. His application of the principles of law in such cases was quick and conclusive. His power of rapidly dispatching judicial business has not been equalled in Vermont. His clear and quick legal perception enabled him to discern, at once, the decisive point in the case and to confine the case to it; his thorough acquaintance with the rules of evidence abridged discussion on such points, and enabled him to exclude all that was immaterial. He could direct juries with great precision; his control over the business shortened trials and prevented waste of time. At one term in Rutland, not exceeding four weeks, the juries returned forty-three verdicts.

He was strong in the exposure of a legal fallacy, was a great master of sarcasm, sometimes bitter; his apprehension was so quick that he saw or seemed to see the end from the beginning, so that with the impatience of such a mind at the movements of the sluggish, he not unfrequently tried cases and directed verdicts upon the statement of counsel. He would inquire as to the case as claimed by the plaintiff, and on its being stated, it was like him to say, "You cannot maintain this action upon your statement," and direct a verdict for the defendant. Or, the plaintiff's case being stated, he would inquire of the defendant's counsel, "What is your answer to this?" and that being stated, he might say, "That is no defense," and direct a verdict for the plaintiff. This and like modes of speedy trial of cases caused some criticism, characterizing it as a decapitation of the case rather than a trial.

JOHN MATTOCKS.

He was a delightful man in social life, had a fine sense of humor, loved to converse, was free in the expression of his opinions, full of anecdote, a capital story teller, of keen wit, enjoyed the ludicrous and was inclined to be satirical; he was, however, reserved except among his intimate and congenial friends. This was the result of his sensitive nature, but among his intimate friends, his genial and companionable qualities shone out and his discourse was charming and instructive.

When in the Senate, Mr. Webster pronounced him one of the ablest lawyers in the body, then full of great lawyers. Chief Justice Chase, who served in the Senate with him, said that in power of clear, convincing statement, he had no peer in the Senate, and at that time, Webster, Clay, Calhoun, Wright, Benton, Crittenden and others of national reputation were members.

While senator, he argued several causes in the Supreme Court with great ability; one, the West River bridge case, in which he prevailed against the arguments of Mr. Webster, is a leading case in constitutional law, and Judge McLean, of the United States Supreme Court, pronounced his argument in the Woodworth Planing Machine Patent case, the ablest address to the court at that

term, though many distinguished counsel were present in that case alone.

He was about seven years on the Bench; had he remained there, he would have had a high judicial reputation. The late Chief Judge Redfield pronounced him the most gifted man ever in the State, and since his time certainly none have appeared who equalled him.

JACOB COLLAMER was taken when a child with his father's family to Burlington, Vt., where he passed his early life, graduating at the university in that place at the age of nineteen. He studied law at St. Albans and was admitted to the Bar in 1813. In the war, at that time, he was drafted into the militia service, and served as lieutenant of artillery in the frontier campaign; was with the army in 1814 as aide to General French.

During the war, he began his professional life at Randolph, but soon removed to Royalton, where he remained until April, 1836, when he located in Woodstock, to reside during the remainder of his life.

He rose rapidly at the Bar, and in 1833, upon the retirement of Judge Hutchinson, was elected his successor and served until 1842, when he voluntarily retired. In the following year he was elected a representative in Congress, was twice re-elected, declining further service. He was selected by General Taylor as Postmaster-General, and held the position until the death of the President in July, 1850. He returned home and in October following was elected circuit judge under the remodeled judiciary system, then just going into operation.

It is said that he was given to understand that he could have his choice to be either Supreme Court or circuit judge, and he expressed a preference for the service of presiding in the county courts. He continued as circuit judge until his election as senator in Congress, in October, 1854. He represented the State in the Senate until his death in 1865.

But few citizens of Vermont have been called to so many positions of trust and honor as was Judge Collamer, and few have performed such varied duties with stricter fidelity or greater ability. As a judge, he was noted for his impartial bearing, his quick apprehension of the merits of a case and for the clearness, vigor and learning of his opinions.

His student life and the first years of his practice were distracted and his work interrupted by his services in the army, so that he did not give his exclusive attention to law till he located in Royalton. It was said of him by Charles Marsh that, at that time, his knowledge of the law was about as meagre and inadequate as that of any man of his age whom he had known at the Bar; but by his industry and application, he was soon regarded as one of the most promising of the younger members. One who knew him thoroughly writes: "The professional and the public judgment of the State concurs in assigning to Judge Collamer an excellency of merit as a *nisi prius* judge not exceeded, and rarely, if at all, attained by any other. With the disposition to accord full justice to all of the many judges whom I have known within and without the State of Vermont, I frankly say that I never saw any other who, in so many respects, came up to my idea of a perfect *nisi prius* judge as did Judge Collamer."

At his death, a fellow senator wrote: "Judge Collamer was the Nestor of the Senate. We think that if his colleagues had been called to designate the wisest of the body, the general suffrage would have fallen upon him. On every occasion his opinion had great weight, whether in the open Senate or in the informal deliberations which often preceded the settlement of important measures."

His senatorial life covered the most exciting period in American history, from 1854 to 1866. Mr. Sumner, in his remarks in the Senate on the announcement of Judge

Collamer's death, said, "The great Act of July 13, 1861, which gave the war for the suppression of the rebellion its first congressional sanction and invested the President with new powers, was drawn by him. It was he that set in motion the great ban, not yet lifted, by which the rebel states were shut out from communion with the Union. This is the landmark in our history, and it might properly be known by the name of its author, as Collamer's Statute."

Reverdy Johnson of Maryland said: "The universal sentiment seemed to be that under the guidance of such wisdom as his all would be well."

JAMES BARRETT.

JOHN MATTOCKS was brought by his father, Samuel Mattocks, to Tinmouth, Vt., when he was one year old. His father was a prominent man, served for fourteen years as treasurer of the young State, and was judge of the Rutland County court.

Young Mattocks was academically educated, commenced the study of the law with his uncle, Samuel Miller, a prominent lawyer at Middlebury, but completed it with Bates Turner at Fairfield. In 1797, he opened an office in Danville, but in the following year removed to Peacham and resided there the remainder of his life.

He was one of the directors of the Vermont State Bank, and was general in the militia force in 1812. He represented Peacham repeatedly in the General Assembly, and in the Constitutional Convention, was elected member of Congress several times, and judge of the Supreme Court for two years, in 1833 and 1834. He was Governor of the State in 1843. He declined further service in the Supreme Court, and also as Governor.

He was a man of brilliant talents and cordial manners. He early met with marked success in his profession, standing in the front rank among his legal brethren. The Bar of northeastern Vermont, in the first half of this century, was a strong one, and among the brilliant array of able men, in its ranks, Judge Mattocks stood *facile princeps*. Such was the general judgment of the people and the Bar.

He was possessed of an acute and logical mind, sound judgment, a tenacious and comprehensive memory and power of analysis to unravel cases, and a remarkable power of statement. He was plain and simple in his style of argument, persuasive and honest in his manner, and possessed of infinite wit and humor.

Serving but two years, he must be judged by his judicial opinions contained in the sixth and seventh volumes of our reports, and from them can be seen his power of analysis, clearness of statement and argument. His manner in court was kind and gentle; he disposed of the business with great facility, and his instructions to the jury were easily understood by them; the

only complaint ever made of him was that he did not conceal from them his own opinions of the merits of the case. He felt a solicitude lest, through neglect of his, the jury should go wrong.

It was a great loss to Vermont when Mr. Mattocks declined a re-election to the judgeship. He was in comfortable circumstances and the salary was small; the short time of his service, and the record of it which he left in the reports, show him to have been one of Vermont's greatest judges. After serving as Governor one year, he declined a re-election, and having strong premonition of the fatal shock which ended his days, he withdrew entirely from active duties, and passed his last years in peace and quietness among his neighbors in the little mountain town of Peacham, having the love and respect of all its people, who were proud of his success.

In Lyon *v.* Strong, Judge Mattocks wrote a dissenting opinion. He says: "This decision upon the face of it goes no greater length than that a contract for swapping horses, made on the Sabbath, cannot be enforced in a court of justice. This as an isolated position would receive my most cordial assent; such a transaction is most shameful in any Christian community; but when it is considered that the law is a rule comprehending all cases of a similar description, and that the rule cannot bend to the case, but the case must yield to the rule, it follows, I suppose, of course, agreeable to the analogy of the law, according to this decision, that no recovery can be had upon contracts in general, made upon the Sabbath."

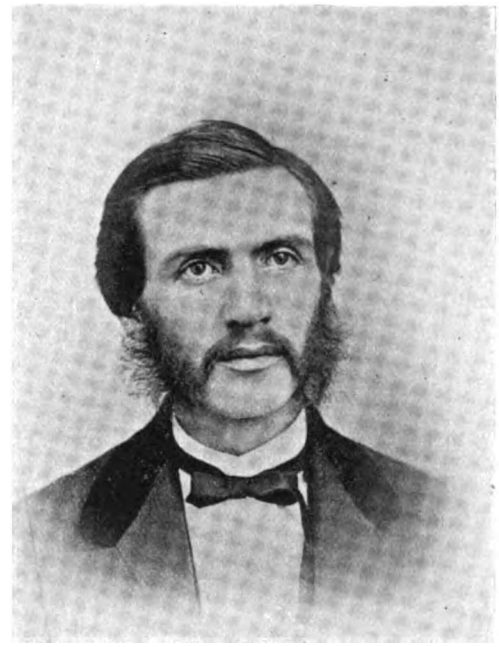
From this proposition he dissents. The statute which provided that these contracts were unlawful excepted such as were "acts of necessity or charity." And Judge Mattocks queries, "And what cases shall *per se* be adjudged necessary or charitable? How with marriage, the greatest of all contracts among Protestants; this is no sacrament or other religious rite, but a mere civil contract; is this void or voidable, or does it come under the saving clause?" And closes: "But for myself, I am not able to view the subject as they (my brethren) do, and I hope it is not for lack of respect for religion or its institutions, for I believe with the Scotch Covenanters in my own neighborhood that the law, as well as a man, 'may like the kirk well enough without riding in the rigging.'" His graphic description of a transient pauper as a "wanderer ever on the tramp" is in the brief or opinion in almost every transient pauper case from his day to this.

Judge Mattocks was an intense Federalist, living in a Democratic district; he was three times elected a member of the lower House of Congress, but not consecutively; was first elected in 1821, and last in 1841. He was Governor in 1843; at that time the former vice-president of the United States, Richard M. Johnson, visited the State and was received by the Governor and General Assembly in joint session. Governor Mattocks welcomed his former acquaintance, making one of his always apt speeches of welcome, and concluding in his own inimitable manner: "How are you, Dick Johnson? I am glad to welcome you to this State and to this chamber." The Vice-President closed his reply by saying, "How are you, Jack Mattocks, God bless you."

ISAAC F. REDFIELD served longer than any other member of the court. His personal and professional reputation is shown by the fact of his election at the early age of thirty-one, by a legislature the majority of which were of different political sentiments. His labors during the quarter of a century, when upon the Bench, have given the jurisprudence of Vermont greater lustre than those of any other judge. He was elected Chief Judge upon the retirement of Judge Royce in 1852. His opinions are more distinguished in the line of equity and railway law than in any other department.

He did much towards tempering the rules of the common law by an infusion of equity principles. He was thoroughly acquainted with the course of decisions, both English and American; and while he followed the cases, he questioned the authority of those which controverted sound principles or led to unjust judgments. He looked upon the law as a broad and noble science, not a mass of arbitrary rules.

He was not circumscribed by the narrowness of a case, but making himself familiar with the reasons, its history and morality, rendered such judgments as the law required. He regarded precedent not as law, but merely as an evidence of what the law ought to be.



B. H. STEELE.

He probably did as much in determining the great questions that arose during the development of the railroad system in America as any other judge in the country. During his services upon the Bench, he published his "Law of Railways," and after his services ended, he published several editions of the same work, a treatise upon the law of wills, on carriers and bailments, besides editing leading cases upon the law of railways and wills, several of Judge Story's works, and Greenleaf's "Law of Evidence." For many years he was one of the editors of the "American Law Register," and many of the leading articles in that magazine were from his pen.

At the time of the reorganization of the court in 1857, the name of Judge Poland was actively pressed for the Chief Judgeship, and Mr. Redfield was elected by a vote of 128 to 115. In 1860, having served a quarter of a century, and fond of his work as a law author and editor, he retired from judicial service. His withdrawal occasioned sincere and genuine regret; the Bar of the State adopted, at the time, a series of very cordial and complimentary resolutions, which were presented in court and responded to appropriately by Judge Redfield (36 Vt. 762).

He took up his residence in Boston, and was soon called to act in conjunction with Caleb Cushing as special counsel for the United States in England in respect to claims and suits in the English equity courts, relative to Confederate property remaining in England, and in the discharge of such duties resided in England for two years. He was counsel for the government with reference to the claims against Great Britain for the heavy losses sustained by privateers fitted out in England. No one was better qualified to manage these questions than Judge Redfield; his residence in England was a delightful one to him, and he acquired the respect and admiration of all those who came in contact with him there. Of unfailing courtesy, great tact and moderation, his services were praiseworthy and in a high degree creditable to the government.

Judge Redfield's opinions are not so con-

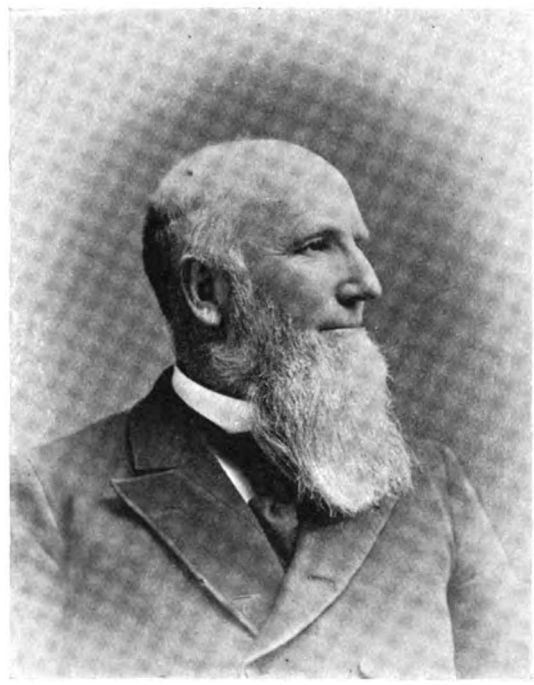
cise as those of some of his brethren; he had a great acquaintance with cases, modern as well as early, and had one advantage, in that respect, over many of his brethren, in that he understood and accurately remembered what the cases were, so that he could apply the principles established by them correctly. Although his opinions are somewhat discursive and not concise, they are very interesting; he does not stray from the point before the court, but occasionally states a principle used in his reasoning and as illustration, that sometimes misleads an ignorant or not discerning counsel in leading him to suppose that that was the point decided. Nothing is more interesting than the reading of Judge Redfield's opinions, for you meet often with such instances as these: in referring to the testimony in an equity case, he says, "After reading and re-reading till I have become heartily tired of it, I have not been able to feel very confident upon this point" (24 Vt. 248). In Paddock *v.* Palmer, 19 Vt., he says, referring to the interference of equity in enjoining judgments at law, for the penalty of a bond, instead of damages suffered by the plaintiff, that Sir Thomas More, when Lord High Chancellor, "swore an oath in the horrid language of the times, by the beard of the Almighty, that just so long as courts of law continued to render such judgments, he would enjoin them." After the death of Judge Chase in 1846, Judge Redfield purchased his homestead at Randolph Centre, removed to it the following year and resided there until his removal to Boston. He died of an attack of pneumonia in his seventy-second year, and was buried at Windsor.

MILO L. BENNETT, a native of Connecticut, was educated at Williams College and Yale, graduating at the latter in 1811. He studied law at the Litchfield Law School, settled in Bennington, removing in a short time to Manchester. He was State attorney and judge of probate. About 1836, he went to Maine, engaging in the lumber business and land speculations, in which he lost his property. He facetiously referred to his Maine experiences in stating his age, by saying that he was so many years old, but if you counted the time he lost in Maine, was two years older.

In the spring of 1838, he removed his family to Burlington and returned to Maine for the purpose of closing his business there. In the fall of that year, Judge Phelps, his class-mate at Yale, having been elected senator, he was chosen to succeed him as judge, Mr. Phelps being quite active in his support. Mr. Linsley of Middlebury was a prominent candidate upon the first ballot, but upon the third Mr. Bennett was elected by thirty-seven majority.

He was plain and simple in his manners, without display or ostentation, better fitted for service in the Supreme Court than at *nisi prius*. He was a great master of the common law and equity; more noted in the trial of criminal cases than in civil. Upon being told of his reputation in that respect, he replied, "I try criminal as I do other cases; I don't intend that many of these rascals shall slip through my fingers." He was sometimes criticised by counsel for respondents, and often unjustly. Probably the most widely known of his opinions is the dissenting one in State *v.* Croteau, in which the Court held that the jury were judges of the law in criminal cases. The case was argued for the respondent in December, 1849, by the late United States District Judge Smalley. Judge Bennett dissented and wrote a lengthy opinion (see 23 Vt.), in which he made a vigorous attack upon the doctrine enunciated by the Court. The decision has lately been overruled by the Court in State *v.* Burpee, 65 Vermont 1, in which the views of Judge Bennett were fully approved. It is a singular coincidence that the respondent Croteau died immediately after the doctrine established in his case was overruled.

Judge Bennett could never reconcile his views to the opinion of the Court in the Croteau case, but long afterwards, in State *v.* McDonald, characterized the doctrine that the jury were judges of the law as "a most nonsensical and absurd theory." It was in the latter case that the counsel, in discussing the charge of the Court, said, "This part of the charge bristles all over with italics, like daggers, and drips blood at every sentence." Notwithstanding what was said with reference to his trials of criminal cases, he often sided with the respondent, as in his dissent in State *v.* Dennin, 32 Vt., from the doctrine that a respondent can be convicted of arson, though no portion of the building was actually burned. In his long experience as judge in the trial of criminal cases, I think it was never known that an innocent man was convicted, and it was not often that a guilty man escaped. Would that this might oftener be said of judges at the present day.



HOYT H. WHEELER.

Judge Bennett served until the change in the judiciary system in 1850. He acted as circuit judge for one year, was in practice with E. E. Kellogg the succeeding year, and was again chosen judge of the Supreme Court and served until 1859, when he was appointed commissioner to revise the statutes of the State, and his judicial services then ended. He has worthy descendants well known in the profession, in his son and grandson of the Boston Law School.

WILLIAM HEBARD was a resident of Randolph, and after his service as judge removed to Chelsea, where he remained until his death. He represented both towns several times in the Assembly, was a member of the State Senate, judge of probate, member of the eighth and tenth Council of Censors, and secretary of the eighth.

When Judge Collamer retired in 1842, Mr. Hebard was elected as his successor, and served one year. At the election in 1843, Daniel Kellogg was elected but declined, and Mr. Hebard was appointed by Gov. Mattocks. He was re-elected in 1844 and retired at the end of the year, when Judge Kellogg was elected as his successor.

He was a good advocate, an excellent lawyer and a faithful official in many and various positions to which he was called by the public. He had a long and valuable service at the Bar, which was more agreeable to his tastes than upon the Bench. His opinions are exceedingly well written and will bear comparison with those of his brethren.

He succeeded Mr. Collamer as judge, and when the latter retired as a member of the National House of Representatives, he succeeded him in that position and served until 1853.

DANIEL KELLOGG was another of our Massachusetts emigrants; born in Amherst, educated at Williams College, he

studied law with Gen. Martin Field of Newfane, and commenced practice at Rockingham, where he continued to reside until 1854. He then removed to Brattleboro. He was a successful advocate and an excellent lawyer; he was for a few years State attorney, judge of probate in the Westminster district, and secretary of the Governor and Council during the administrations of Van Ness and Butler. He was United States district attorney during the administrations of Jackson and Van Buren; member of both houses of the Legislature, and of the Constitutional Convention of 1843. He was elected judge of the Supreme Court in 1843, but declined the position; he was again elected in 1845 and accepted it; at both of these elections he belonged to the minority party. He took great pride in his published opinions, and it is said annually read them until his death.

In 1850, when the court was reorganized, he was elected one of the judges with Stephen Royce and Isaac Redfield. His reputation was that of a discreet, learned and able lawyer. He was a member of the Court under both systems, when the judges performed services in the county court as well as in the Supreme Court, and served one year when the Supreme Court judges were not required to preside in the county court; but in whatever judicial position he was placed, he was adequate to all its responsibilities and requirements. His lawyership was broad, accurate, practical and sensible, the result of faithful study and extensive practice, and large conversancy with current business affairs in all departments; his social culture and bearing was excellent. His personal character was blameless and without suggestion of impropriety in any respect.

HILAND HALL.—The emigrant ancestors of Judge Hall came from England about 1635, and after remaining at Boston and Hartford until 1650, became the first settlers and large land owners in Middletown, Conn. His father was a farmer and came to Bennington in 1779. Hiland remained with his father on the farm, reading all the books he could find or borrow in the vicinity, inclining particularly to those of history and biography. He obtained his education wholly in the common schools, except three months at an academy in Granville, N.Y. The only sickness of his youth was during this quarter at school.

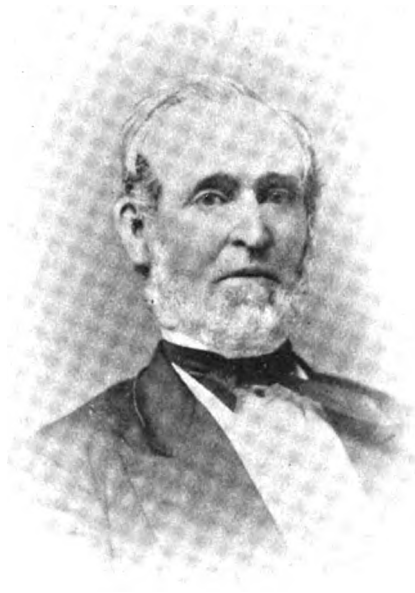
During his minority he was a member of the Sons of Liberty, organized "for a vigorous prosecution of the war." He was a Federalist in politics, and became a Whig upon the organization of that party; was admitted to the Bar in Bennington, in 1819, and began practice in his native town. He was clerk of the courts in that county, a position which was afterwards long held by a son until his death, and since that time by his grandson.

He was several years State's attorney for the county, and in 1833 was chosen representative in Congress. This service terminated in March, 1843, when he declined further candidacy. He performed valuable work in the national legislature, was a member of the committee on post offices and post roads, and on Revolutionary claims, and was active and prominent in framing and procuring the important act passed in July, 1836, relating to the postal department.

His most important service, however, in Congress was in reference to the numerous claims founded on the alleged promises of the Legislature of Virginia, or of the Continental Congress, to Virginia officers of the Revolutionary army. Millions of dollars had been paid in satisfaction of such claims, and millions more were still pending. The exposure of these claims by Mr. Hall, followed by a full history of them by a select committee, ended them forever. Ex-President John Q. Adams was a member of the House at the time, and in his diary of June 16, 1842, writes, with reference to these Virginia

claims: "Hiland Hall opened a hideous sink of corruption, until he was interrupted by the expiration of the morning hour." June 21: "Gilmer growled an hour against Hall for detecting and exposing a multitude of gross frauds perpetrated in the claims relating to the Virginia land warrants." June 22: "Goggin scolded an hour against Hiland Hall, and W. A. Goode took the floor to follow him." June 24: "W. A. Goode followed the Virginia pack against Hall. James Cooper moved the previous question, but withdrew it at the request of Hall to give him opportunity to reply to the Virginia vituperation." June 25: "Hiland Hall took the morning hour to flay Gilmer, and the Virginia military land warrants."

The claims were purely State claims, and there were no legal or equitable grounds for making the United States pay them. After Mr. Hall left Congress, he acted as bank commissioner of Vermont for four years, when he was appointed second Comptroller of the United States Treasury.



TIMOTHY P. REDFIELD.

In 1851, at the solicitation of President Fillmore, he accepted the office of land commissioner for California, his associates being Wilson of New Hampshire, and Thornton of Alabama. The duties of this commission, of which Mr. Hall was chairman, were quite onerous, as they were required, under the treaty with Mexico, to adjust the claims to land, the titles of the owners, as recognized by the Mexican law, being guaranteed to them by that treaty. The opinion of the commissioners, written by Mr. Hall, upon the famous Mariposa claims and General Fremont, which involved millions of dollars, was so full and clear that eminent jurists wrote him, expressing their admiration of the document.

Judge Hall was a member of the first national Republican convention, and in 1858 and 1859 was elected by that party Governor of the State. He was a member of the fruitless Peace Congress in February, 1861. He was an earnest anti-slavery man. One of his sons was major of a Vermont regiment in the battle of Gettysburg, and when the war bounties had reached four hundred dollars each, and the drafts discontinued, he sent substitutes for four other sons, and also one for himself, although he was seventy years of age.

He took a deep interest in Vermont history, delivered the first annual address before the Vermont Historical Society, was many years its president, wrote many important, historical papers, contributing to the prominent historical magazines of the country, published an early history of Vermont of more than five hundred pages, was one of the friends and staunch supporters of the Bennington battle monument, a life member of the New England Historic Genealogical Society, and an honorary member of many other prominent historical societies.

The University of Vermont in 1859 conferred upon him the degree of LL.D.

Although his services as judge covered a period of but four years (1846–50), he was one of our ablest jurists, his published opinions being clear and strong presentations of the law.

He died in his ninety-first year, while passing the winter with his son in Springfield, Mass.

CHARLES DAVIS came with his father's family from Connecticut to Rockingham in Vermont, and in 1806 to Middlebury. After his college course at that place, he studied law under Daniel Chipman and was admitted to the Bar in 1814. He was at one time editor of a newspaper, Federal in politics. Remaining in Middlebury two years, he removed to Barton, comparatively a new country; soon after to Waterford, but his professional business caused him to remove to Danville, the county seat of Caledonia County, in 1828, in which year he was elected State attorney for the county, holding the office for seven years. He was again elected to the same office in 1838.

Judge Davis received, without solicitation upon his part, the appointment of United States District attorney, and held the office under the administrations of Presidents Harrison and Tyler. He was judge of the probate court in Caledonia District, and in 1846 a bill having passed the Legislature increasing the number of judges, he was elected to that office and held it for two years.

Judge Davis was an excellent lawyer, thoroughly educated in common law, and an able and honest judge, with an industry and application which, to some extent, affected his health. He was courtly and polished when presiding in the county court, and his opinions, contained in the nineteenth and twentieth volumes of the Vermont reports, are noted for strong reasoning, showing the results of diligent research.

It was not a pleasant task for him to preside at *nisi prius*, and at the end of his second year he retired, not liking the position of presiding judge at a jury trial.

After he left the Bench, he continued in practice, represented Danville in the Legislature, although there was a majority of more than two to one in the town against the Whig party, of which he was a firm and unwavering member, and at the session was placed at the head of the judiciary committee. Judge Davis was an excellent scholar, well versed in ancient classics, the best English authors and some of the modern languages. His last years were spent in Illinois with one of his sons.

THE CIRCUIT JUDGES.

By an act which took effect in the fall of 1850, a change was made in the judicial system. A Supreme Court of three judges was authorized, the State divided into four judicial circuits, a circuit judge appointed in each whose duty it was to preside in the county courts, the Supreme Court judges having no duties to perform in the county courts; each circuit judge was a chancellor, the Supreme Court having no jurisdiction in equity matters except as a court of appeals therein. This act continued in force for seven years, and was repealed by an act which took effect in 1857; the persons serving as circuit judges, in the first circuit were Robert Pierpoint, six years; William C. Kittredge for the year thereafter. In the second circuit Jacob Collamer served until 1854, and Abel Underwood, of Wells River, the three last years. In the third circuit, Judge Bennett served one year, when he was succeeded by Asahel Peck, who served the remaining six years. In the fourth circuit, Judge Poland served the full time and was the only judge who served as circuit judge during the seven years.

Robert Pierpoint, a brother of the late Chief Judge, was a native of Litchfield; was

brought when a child to Manchester; had a common school education, studied law with Judge Skinner, settled and remained in Rutland. He was born May 4, 1791, died May 6, 1865.

Mr. Kittredge, who succeeded Judge Pierpoint, resided in Fair Haven. He was born in Dalton, Mass., Feb. 23, 1800, graduated at Williams College, studied law in Northampton, Mass., resided and was admitted to the Bar in Kentucky, and for six months was in a law office at Ravenna, Ohio. He was admitted to the Bar in Rutland County, in December, 1824, and thereafter resided in Fair Haven. He held almost all of the local and county offices, and was lieutenant governor. His abilities were respectable and his standing and character high.

Abel Underwood, in the second circuit, was a prominent lawyer at Wells River. His only judicial service in the higher courts was the circuit judgeship, from 1854–7.

These are the only persons who served as circuit judges besides those who were judges in the Supreme Court.

LUKE P. POLAND first saw the light of day among the foot hills on the westerly side of Vermont's greatest mountain, Mt. Mansfield, and resembled it in his grand and rugged character. He came to the Bar with but little education. He worked while young in a saw mill and for a short time in a country store; was in the district schools and for a few weeks at Jericho Academy. After teaching a term or two, he entered the office of Mr. Willard of Morristown, and so well did he improve his time that he was admitted to the Bar the second month of his majority, the first admission in Lamoille County, then just organized. He practiced at Morristown with his tutor, afterwards alone, and in twelve years, at the age of thirty-three, was elected judge, taking the place of Judge Davis of Danville. He served two years, until the change in the judicial system, when he became circuit judge and continued as such until 1857. He was then elected first assistant and Chief in 1860, and so continued until 1865, when, upon the death of United States Senator Collamer, he was appointed his successor by Gov. Paul Dillingham.

He was one of the best "all round judges" that ever served in the State; was dignified and courtly, saw at once the question at issue, had a clear perception of the testimony as it was given, and the jury readily understood his instructions. In the trial of cases, he enforced great order without waste of time in any way, and rapidly dispatched business without seeming in the least to hurry. He was one of the best triers of fact that ever sat in court, and was unequaled as auditor or referee. In the Supreme Court, his opinions were generally written during the session of the court and are therefore not as finished as some of the productions of judges who were inferior to him in every respect. He gave as a reason for this that, while it might be desirable in many instances to make fuller examination of questions and refer to authorities not at hand at the time, owing to his defective education, he could write a matter at first fully as well as he could if he attempted to revise it.

He served as senator until March, 1867, when he entered the lower house in Congress and remained there until 1874. He afterwards served a term in 1882–84; he represented St. Johnsbury, and also the town of his former residence, Waterville, to which place he retired after his main services of life were over. As a legislator he had no peer. His services in Congress were valuable and notable in many instances, especially the revision of the statutes of the United States, and the Arkansas imbroglio; I think, without doubt, he was the most useful and practical legislator ever sent to Washington from this State; after his congressional life was over, he said he regretted he ever left the Bench, that judicial service was as pleas-

ant and agreeable to him as any other; he thought that he could perform such services as well as any other duties to which he might be called. He resigned on account of the inadequacy of the compensation; that he had a family that he then thought would require more expenditures than he was able to make; but had he known at the time his subsequent situation in respect to his family, it not requiring what he had anticipated, he should have remained upon the Bench. After fifty years' service at the Bar and on the Bench, he attended the April term of court in 1887, in the Court House of Lamoille County, where he was admitted; on account of the situation of one of his causes, a recess was taken until July 5, following. Three days prior to that date, when engaged in removing a load of hay, he suddenly expired.

PIERPOINT ISHAM was the son of Dr. Ezra Isham of Manchester. His mother was a cousin of Judges Phelps and Pierpoint. With an academical education, he studied law with Judge Skinner, was admitted to the Bar and settled in Pownal; he soon removed to Bennington and continued there in practice until his election as judge in 1851.

He was short in stature, of a rotund figure, quick and energetic in his movements, excitable in his temperament, impulsive and ardent, of too impatient a spirit to endure gracefully, as a judge, the vexations of jury trials. Of this he was so well conscious that when the judicial system was changed and the Supreme Court judges were required to preside in the county courts, he declined further service upon the Bench. He would have been chosen in 1857 had he not positively declined an election. He took pride in his profession and greatly honored it, and sought to keep abreast with the literature of the law and the current decisions, particularly upon questions of commercial law. His reported opinions exhibit a good legal scholarship, a comprehensive knowledge of the case in hand and the legal principles applicable to it.

Unlike most Americans, the pursuit of politics was not to his taste. He was so averse to political life that he declined popular election to any position, and I think the only office ever held by him, aside from the judgeship, was the legislative appointment of bank commissioner.

His son, Edward S. Isham, is a member of the law firm of Isham, Lincoln & Beale, in Chicago.

Having tried the circuit system for six years, it was found that it was very unsatisfactory, and at the session in 1856 the court was reorganized, and instead of a Supreme court of three members, with four circuit judges for service in the county courts, by an act taking effect in the autumn of 1857, a supreme court of six members was established, and a Supreme Court judge required to preside in the county courts. At that time, Judges Redfield, Bennett and Isham composed the Supreme Court; Judge Redfield was elected Chief by a majority of 14; Judge Isham declined further service, and Judge Bennett was elected by a majority of 43. Judge Poland was elected unanimously; Judge Aldis was elected over Circuit Judge Kittredge by a majority of 107. John Pierpoint was elected over Circuit Judge Kittredge, and his brother, Robert Pierpoint, on the second ballot, by a majority of 13, and Judge Barrett was elected by a majority of 38.

The system, as then established, has remained the same until the present time.

ASA OWEN ALDIS, a native of St. Albans, graduated from the University of Vermont in 1829. He studied law and was a partner with his father. He was an able lawyer, a distinguished advocate, and had an extensive practice until 1857, when he was elected to the Bench. He was one of the most able, graceful and distinguished members of the court. The loss of several children and the

delicate health of others of his family induced him to resign the judgeship in the summer of 1865, when he was appointed United States Consul at Nice, where he remained until 1870. The following year, he was appointed president of the southern claims commission, and held this important position until 1880, when the commission was brought to a close. Immediately afterwards, he was appointed commissioner on the French and Alabama claims, and served as such until 1884. His duties in these offices required his presence at Washington, and he made that city his home the last twenty years of his life.

He was of high ability, a cultured scholar, a fine talker, a man of strong independence, sturdy patriotism, and a thorough gentleman.

He suffered from an attack of grippe in the winter of 1890, from the effects of which he never recovered. His son, Owen Aldis, is at the Bar in Chicago.

He was deeply interested in all scientific matters and was of a philosophic, inquiring turn of mind; in one of his last years he said that if he could live his life again, he should not pursue the legal profession, but spend his time in scientific investigations.

JOHN PIERPOINT was born at Litchfield, Conn., and could trace his descent in an unbroken line from Robert Pierrepont, commended by William the Conqueror for gallant conduct in the battle of Hastings. Robert and John were frequent names in the family, and John, number nineteen, settled in Roxbury, Mass., between 1630 and 1640.

One of the family settled in Connecticut, and from him the subject of this sketch descended. When he was ten years old, he came to Rutland to reside with his brother Robert, and remained with him until he began the study of the law, when eighteen years of age. He soon went to the law school at Litchfield, boarding in his father's family, two miles distant. On leaving the law school, he returned to Rutland, and was admitted to the Bar in 1827. He opened an office in Pittsford, where he remained five years, when he removed to Vergennes in May, 1832.

His health broke down and he spent the winter of 1835–36 in Mississippi; in the spring he returned to Vergennes somewhat improved, but he ever after continued a frail, delicate man, and although his health was better in his later years, it was necessary for him to avoid severe work or exposure. His practice, while at the Bar, was never large, but he did all that his health would permit. He settled more controversies than he prosecuted. He was often auditor and referee, selected by the parties on account of his fairness, his knowledge of the law, and his power to apply it to the common affairs of life.

He was a member of both branches of the Legislature, and when in the Senate was chairman of the judiciary committee; he was register of the probate court for twenty-one years. He was elected judge in 1857, and was appointed Chief Judge in November, 1865, and held the position for more than sixteen years, a longer time than the same has been held by any other one. He was well versed in the principles of the common law, but not always accurate in his remembrance of cases, even late ones, in the decision of which he had taken part. He would often forget them, but when reminded of what doctrines had been held in such a case, he readily yielded his views, often with the remark that "that seems to be the law, but it ought not to be." His opinions are well and forcibly written. The cases reported by him are less in number than those of some of the other judges, but this was caused by his ill-health during the latter part of his life. The Bar of the State erected a monument to his memory.

JUDGE BARRETT, a native of Orange County, obtained his education at Dartmouth; he became a resident of Woodstock

and connected in his profession with Mr. Collamer, and afterwards with the great law firm of Tracey, Converse & Barrett. He was a member of the State Senate in his thirtieth year. In 1852 he was a prominent member for the judgeship when the court was composed of but three members, and was the leading candidate against Judge Bennett, who was that year elected. In 1857 he was chosen by a majority of thirty-eight over Mr. Merrill of Montpelier and Timothy P. Redfield.

Judge Barrett served for twenty-three years. In his professional and judicial life, he has undoubtedly seen more service than any other man in the State now living. He was engaged as counsel before judges who were elected as early as 1822, and has seen service before most of those elected since, until his judicial life began in 1857; he has performed more judicial service than any other one of the judges. He was actively in duty for twenty-three years, and although the elder Redfield and Stephen Royce served two years longer than he, for several years they performed no duty in county court, and Judge Pierpoint, the only other judge who has served more than twenty-three years, was in so delicate health the latter portion of his service, that he was excused from much judicial labor the latter part of his term.

Judge Barrett was one of our strong men in the Supreme Court, and it is said by those who witnessed them that controversies between him and Judge Peck, our greatest jurist, when in consultation, were well worth witnessing. In the trial of cases in the county court, his rulings were made more with reference to what he thought the law ought to be than what it actually had been declared to be in the reports. His manner in the court room was sometimes regarded as imperious, but it is safe to say that in the trial of causes, he, and not the counsel, had control of the business. One thing was certain, that whoever heard him in the court room had no doubt what Judge Barrett thought about any principle of law that he was stating. His rulings were pointed, clear and sharp. He was a great scholar, classical as well as legal, and one of the most learned and able judges that ever graced the Bench of the State.

After his services as judge ended, he removed to Rutland, where his son, James C., a promising member of the profession, was engaged in business until his untimely death, resulting from a coasting accident, and now resides there. He is an octogenarian, the oldest ex-member of the court.

LOYAL C. KELLOGG was the son of a lawyer, John Kellogg of Benson, and inherited the strong judicial qualities of mind and high character that distinguished his ancestor. He graduated at Amherst College, and after admission to the Bar began practice in his native town. He was elected judge upon the retirement of Judge Bennett in 1859 and served eight years, was then re-elected but declined further service. While judge he resided in Rutland, but returned to Benson in 1868. He represented Benson in the Legislature and constitutional conventions many times; the degree of LL.D. was conferred upon him by Amherst College in 1869. After he retired from the Bench, he interested himself in historical studies, wrote many valuable communications for the press on the subjects connected with the local history of towns and the State, his last communication being one written to prove from official records that "Slavery had no legal existence in Vermont." The history of his native town written by him is said to be one of the most perfect town histories ever written in the State. Judge Kellogg took high rank as a legislator. The last measure which he advocated was an act "authorizing the formation of railroad corporations and to regulate the same." Although he was unsuccessful, the act became a law the succeeding session. He

was a learned and sound lawyer, not as quick and ready as some of his brethren, but his arguments were exhaustive. He deserved and acquired an enviable reputation for ability, learning and unyielding integrity. He was faithful and conscientious in the discharge of his judicial duties, examining questions with great learning, fairness and impartiality. He was deliberate and orderly in the transaction of business in *nisi prius* courts, but exceedingly slow in the trial of jury cases, sometimes taking weeks for the trial of a single cause. He took full notes of all the testimony, and if he made any mistake in the formation of a letter, his penknife was brought into requisition and the examination of the witness stopped until he could have his i's dotted and his t's crossed; but so excellent and estimable a man was he that no one could object to such idiosyncrasies. He never married, and with the exception of the time he resided in Rutland during his judgeship remained at the ancestral homestead in the family of his brother. He donated his law library to be kept in the Court House at Rutland for the use of the courts and the profession attending them.

ASAHEL PECK was a descendant of Joseph Peck, who came in 1638 with a company of Puritans from England; his ancestry is traceable through twenty generations to John Peck of Belton, Yorkshire.

Squire Peck, the father of Asahel, came to East Montpelier when the latter was three years old. Entering the University of Vermont, when twenty-four years of age, "one year advanced," he remained one year and then left from "inability to support himself." He taught school, and after his college life studied French in Canada. He began his legal studies with his brother Nahum in Hinesburgh, then entered the office of Bailey and Marsh. He was in his twenty-ninth year when admitted to the Bar in March, 1832.

He began practice in Burlington, and was associated with Archibald W. Hyde under the name of Hyde & Peck, though it is said that Hyde had no interest in the business but lent his name for the prestige it had. From the time of his admission until elected judge of the circuit court in 1851, his practice was extensive.

He was very irregular in his habits, would often work in his office until the late hours of night; he seemed to have no idea of time, and often, after visiting with some friend until past midnight, would be surprised to learn the hour. His law students, who usually slept in the room adjoining the office, were often disturbed by his coming to the office at any hour of the night. He was of great physical endurance and would often pass the night upon the office table with Coke or Blackstone for a pillow.

He would start from his boarding place in the morning and might reach his office by noon, and he might go without his dinner unless some one suggested that it was dinner time. When in court he seemed to think the day was not long enough, and seldom adjourned before six o'clock and often held evening sessions until eleven o'clock.

He was unmindful about his dress; wore the old-fashioned standing collar annexed to the shirt, and once amused the crowd in Chelsea by appearing in the court room arrayed in two shirts with collars prominently in sight.

A Democrat in politics, he early joined the Free Soil party and was often its candidate for official positions. In 1851 he was elected judge of the third circuit, and served in that position until the change in the judiciary system in 1857. He then resumed practice until 1860, when he was elected State senator, and at the session of the Legislature was elected judge, Redfield, C. J., having declined a re-election. In 1874 he was elected Governor, resigning the judgeship on the last day of August.

Without a peer as a lawyer, he was one of

the strongest advocates before a jury that the State has ever known. His speech was without ornamentation, he possessed none of the arts of oratory, but juries had unbounded confidence in all he said.

As circuit judge, he only presided in the county courts, and it must be confessed that this was not his place. During his six years of service as circuit judge, and for several years after his election to the Supreme Court, it was a difficult matter to obtain the conviction of a respondent in any trial in which he presided. He always leaned in favor of the prisoner. In State *v.* Fitzsimmons, the respondent was indicted for the larceny of a barrel of molasses called "sugar house syrup." The owner of the molasses testified to the larceny of a barrel of molasses without stating the latter part of the description. There was no question upon the evidence as to the guilt of the respondent, and when the testimony of the State closed, the respondent's counsel moved for a verdict of acquittal upon the ground that the State had not shown that the molasses was called "sugar-house syrup." The State's attorney asked leave to recall the witness, stating that the trial had been a hurried one, that they had waited several hours for the witness to arrive upon the train, which had been blockaded in snow, and in the hurry he had forgotten to ask the question. This the court refused and ordered a verdict of acquittal.

He was noted in this respect, and continued so until the trial of Henry Welcome for the larceny of a horse at Montpelier in September, 1868. It was said, at the time, that although Welcome was clearly guilty, his acquittal was the result of the cautions given the jury by the presiding judge. Welcome, after his discharge, at once went to Hinesburgh and in cold blood murdered one of Judge Peck's old friends, for which he suffered the death penalty. Judge Peck was visibly affected when the circumstances of the crime were stated to him, and ever after, while he continued upon the Bench, it was as easy to obtain the conviction of a guilty respondent as it had been previously difficult to secure one. The prosecuting attorney said to me that a short time after the Russell murder, he secured the conviction of sixteen respondents in that number of successive trials.

A *nisi prius* trial was not the place for Judge Peck. It was said that if there was a woman in the case, old bachelor as he was, she was sure of a verdict, and the same was often said of him in any trial when the individual stood against a corporation. His instructions to the jury were clear and full. He discussed the evidence thoroughly, but had a way of giving special prominence to what favored the side that he deemed right, and not always discerning as to where the right lay, the result of the trial was in such cases often wrong.

He was of unquestioned integrity and free from all wrong in thought or deed. He was slow in coming to a conclusion, but after having formed it, was rapid in his execution. He had no favorites at the Bar, was not liked as a judge by many of the prominent leaders, but took great pains to see that a young lawyer, not versed in practice nor well grounded in the principles of the law, did not lose his case either through his ignorance or stupidity.

The Supreme Court was his place; his opinions are clear, they go direct to the matter in controversy, and as was said by one who practiced in his court for years, "They form an unbroken chain of logic throughout." In his discussions in the Supreme Court with his brethren, he at times took the side of a case which would, as he thought, work out justice, although not in accord with precedent; and it is said by one who sat with him during his whole term that never, but upon one occasion, when he differed with his brethren, did he ever change his views as the result of a discussion, although he seldom in those

cases appeared as dissenting in the reports.

When associated with Rufus Choate in a case in the circuit court, Choate was astonished at the arguments of Judge Peck, and said, "There are very few men like him in Massachusetts."

After his services as Governor, he retired to his farm in Jericho, and although consulted in matters professionally, he did but little work, and died soon after. He was without prejudice; it is doubtful if he ever spoke ill of any one; he was a benevolent man, one of the kindest, and often met with trouble in obligations assumed for others. I doubt if any matter of relief for the poor or for any one unfortunate ever suggested itself to Judge Peck; but a story, however improbable, if upon its face was sad and unfortunate, would at once enlist the active sympathies of the Judge if he was applied to for relief.

He died leaving quite an estate, consisting principally of real property, but I think none of it, except his private office, was ever acquired in any way except by being taken from one for whom he had assumed obligations, either by way of surety upon official bonds or endorsements upon promissory notes.

It was alleged by many that Judge Peck favored certain suitors in the county court at at the time he was circuit judge, but this arose from the fact that he was determined that one who apparently was being persecuted by a powerful combination of his adversaries, should be protected and have what rights the law accorded him. This was notably true of the litigation of William P. Briggs; the proposal to change the judiciary system, by which his opponents intended he should be retired from the courts was strongly aided by the opponents of Mr. Briggs, known as the "Richmond Clique." About three years later, the same parties aided in sending him to the State senate, when he was elected judge of the Supreme Court, and assigned to duty in the county courts in the eastern part of the State. He always read every paper presented him for signature, even the informal interlocutory orders certified by counsel, and generally made an alteration in the paper. When he subscribed the gubernatorial oath required by the Constitution some wag wagered he would interline or change it in some manner.

THE LEGEND OF SAINT YVES, THE LAWYERS' PATRON SAINT.

Translated from the French, by F. LONGUEVILLE SNOW.

IT was on the 19th May, 1303, that the "bâtonnier" of one of the legal societies of Brittany assembled its members and thus addressed them: "My brethren, every guild has its patron in the world above, and its history stored away in the celestial archives. Surely our brotherhood is as worthy as the fashioners of garments, joiners of wood and bakers of bread, and yet it has no saint to look after its interests in the heavenly kingdom; all of which gives a chance to those with evil tongues to say that never has one of us been found worthy of entering Paradise. Now, what I propose is this: that we send an ambassador to God with the view of getting him to grant us a patron. I cannot but believe there may be among His Elect some lawyer of condition who, during his terrestrial life, kept aloof from shady actions at law. If my views meet with your approval, I suggest that we select from our society one qualified by his eloquence and keen logic, and who, while being a fine speaker, is not too much of a 'talker.' His virtues must be such as to render him acceptable to God, the Virgin Mary, and all the celestial court."

Having this spoken, the aged *bâtonnier* took his seat. The lawyers present all signified their assent in the manner peculiar to those times, by discreetly raising the bonnet with the right hand.

"Since we are agreed," continued the speaker, "we must set about to choose a worthy and capable ambassador. For my own part I feel that my gout would prevent me from undertaking such a long voyage; instead, I would propose Monsieur Yves de Kermartin, who is an able and honorable gentleman."

This proposal was unanimously ratified, and the lawyers dispersed after embracing their confrere and wishing him "bon voyage."

The next day at dawn Yves left his home, and while "en route" busied himself concocting a lengthy speech. On the evening of the third day he arrived at the entrance to Paradise; which, it is necessary to state, is nearer to Brittany than any other country. After knocking thrice at the gates, Saint Peter appeared, but perceiving the bulky brief borne by the pilgrim, was loth to let him in.

"I am Yves de Kermartin," said the traveller, "a Breton and a gentleman."

"Ah! a Breton and a gentleman," replied the celestial door-keeper, "that is satisfactory; but what do you do on earth?"

"I am a lawyer."

"A lawyer indeed! and what is that? such a calling is quite unknown in the Divine Kingdom."

While thus speaking Saint Peter tried to push Yves back. I will not go so far as to deny that the latter hustled him a little, for certain it is that the Breton managed to enter the heavenly precincts, and immediately went in search of the throne where sits the Eternal One.

The Elect, however, who were not accustomed to one so strangely garbed, scattered at his approach, and running to God complained that a contraband Saint had forced himself into their presence. Yves followed them to the throne of the Almighty, where, bowing himself thrice to the ground, he said: "Oh Lord, before believing them, I beg you to listen to my petition." Then taking the bulky brief from its "chemise," he unfolded it at length. The Great Judge showed no symptoms of annoyance at this, but listened with attention, and even complimented him upon his eloquence. He then

ordered Saint Luke, who, as everybody knows, is keeper of the archives of the saintly court, to search the registers to see if he could there find the name of some lawyer. Saint Luke returned; his researches were fruitless.

Yve's countenance began to redden, and he to lose confidence. Then God said to him: "Maître Yves, as you observe, we cannot give you for patron a saint who pleaded in his lifetime, but in order to show Our good will in the matter, you shall go blindfolded along the passage where my saints have their statues, and you may there select one of my Elect by placing your hand upon his image; that one, whether good or indifferent (this seems rather paradoxical), shall be your patron saint."

Carrying out this command, the honest Breton tied a heavy bandage over his eyes, and step by step, with arms extended, went down the passage, racking his brain for some inspiration to guide him in making a suitable choice.

At last, with some hesitation, he came to a halt, and passing his hand over a head, "Brow, bald and receding," said he, "mouth cynical, this must surely be an attorney, if indeed it is not a president or even a judge. Well, here goes! for better or for worse. I will select him as the lawyer's patron."

Immediately an immense burst of laughter broke from the ranks of the Elect, who through curiosity had come to assist at the ceremony. Yves de Kermartin, anxious to discover his choice, tore the bandage from his eyes, and with one glance at the statue uttered a cry of dismay. It was worse than a president, it was much worse than a judge, it was even much worse than an attorney; it was no less than . . . Satan . . .

You ask, no doubt, how his Satanic Majesty came to be there. The reason is, that Saint Michael is represented there, as on earth, overcoming the devil, and paring his diabolical lordship's claws. The Breton had mistaken the devil for an angel.

"Ah! my poor man," said God, "your luck has played you a bad turn this time. But as I would not have such a patron to represent the Bar, especially the Bar of Brittany, henceforth I enroll you among my Elect, and the lawyers will no longer be without a patron."

At that moment, it is said, the gentleman from Breton died at his home in Trequier, the 19th day of May, 1303, and this is how, as the legend naively relates, Saint Yves the glorious friend of God became the lawyer's patron saint.

It was said of him:

> "Sanctus Yvo erat Breto
> Advocatus et non latro
> Res stupenda populo."

HYPNOTISM AND THE LAW.

THE proposal — now apparently abandoned — of the Dutch judicial authorities to hypnotize De Jong in order to extract from him a clue, which they believe him to be able to give, with regard to the missing women whom he is alleged to have murdered, is well fitted to furnish the sober minds of English lawyers with material for serious reflection. It seems that, by the law of Holland, a prisoner may be subjected to hypnotic experiments, with a view to obtaining from him information which may lead to his conviction, but that statements so obtained are not admissible as evidence against him. The inquisitorial character of Dutch criminal procedures renders the case of hypnotism as a medium of inquiry logical enough; although we suspect that the

distinction between employing a prisoner as his own detective and converting him into his own accuser and judge must in practice be somewhat difficult to draw and to preserve. But the proposed hypnotization of De Jong derives its chief interest and importance from the light that it casts upon the advanced stage of medico-legal opinion abroad as to the possibilities of hypnotic science. In England we are still maintaining an attitude of philosophic doubt in regard to the phenomena of hypnotism; the new science, even as purified by Braid, has not yet succeeded in ridding itself of the discredit with which the schools and the market-place alike view the speculations of Mesmer; the great organization of the medical profession is not prepared to go much farther than the memorable dogma delivered to the faithful in 1889: "the phenomena of hypnotism are worthy of observation"; while the majority of lawyers have not considered the question as a legal problem of the near future at all. On the other hand, the wild living intellects of our continental brethren have busied themselves for years in the discussion of hypnotic facts. They have canvassed the claims of the new science in all their varied relations and bearings — social, medical, and legal — and have evolved a system of doctrines and propositions which to all appearances they are now about to reduce to practice. A critical analysis of some of the results of their activity may not at the present moment be inopportune.

1. The first medico-legal inquiry which occurs to a student of hypnotism is the still vexed question, whether hypnotic subjects will accept criminal suggestions. On this point continental opinion has been and still is acutely divided. Liégois, whose excellent work on suggestion may be heartily commended to English readers, believes that hypnotic subjects may be induced to commit criminal offences. Gilles de la Tourette, Benedict, Janet, and Dr. Kingsbury, of Blackpool, the ablest exponent of hypnotism in Britain, take, with more or less confidence, an opposite view. There is obviously much to be said on both sides of the question. It is true that a sub-current of consciousness often seems to underlie the hypnotic sleep, and that there is a difference between a criminal suggestion made in a doctor's consulting room and a similar suggestion made in real life, of malice aforethought. Moreover, the theatrical exhibitions which imparted so ludicrous an element to the Eyraud and Gompard trial in Paris a few years ago are not fitted to impress the English legal mind in favor of the conclusions which they were intended to establish. But some weight must undoubtedly be allowed to the experiments made by Liégois and other investigators in all seriousness and in the presence of officers of the law; and it seems difficult *à priori* to deny that certain subjects might, after, or even without, hypnotic training, be made to accept the suggestion of criminal acts. If the possibility of such a state of things be admitted, a further legal question at once arises as to the criminal responsibility of hypnotic subjects. How would the law deal with a person who voluntarily submitted himself to hypnotic treatment knowing that a criminal suggestion was to be made to him, and intending beforehand to accept it? Can persons under the influence of suggestions ever be held responsible to the criminal law? The answers to these questions are at present conflicting, and indeed it seems impossible to dispose of them finally till the degree of volition that may exist in the hypnotic sleep has been more accurately determined.

2. Second in importance to the subject with which we have been dealing comes the inquiry, whether criminal offences can be perpetrated upon hypnotic subjects without their knowing it? In spite of Taylor's criticism — made, it should be observed, in another connection — *Non omnes dormiunt*

qui clausos habent oculos — there seems to be no doubt that this question must be answered in the affirmative. Cases of this kind were recorded by Liégois and Despine. In 1853 a professional mesmerist at Marseilles assaulted a patient while obviously in a magnetic sleep; and the cases of Castellan in 1865, and Levy in 1879, are of a similar character. Here a further line of inquiry arises. How shall we protect the patient against the hypnotist and the hypnotist against false charges by the patient? The ethics of the medical profession will doubtless prevent the performance of any hypnotic experiment by a medical practitioner, except in the presence of independent witnesses. But there is something to be said for the view that this dictate of professional morality should be clothed with the authority of law.

3. The other medico-legal problems to which hypnotism gives rise can be disposed of briefly. The general principles of our law are already comprehensive enough to embrace means of settling such questions as these. What shall be done unto the man who hypnotises another without his consent? When is hypnotic influence undue? How shall we determine the business responsibility of hypnotic subjects? Nor need we tarry long over the questions raised by the De Jong case, whether the use of hypnotism as a method of detective inquiry is either fair or valuable. Such a thing as the hypnotisation of a prisoner against or with his will is utterly alien to English juridicial ideas. But there is no incongruity in its appearance in a system of criminal procedure which subjects an accused person to the inquisitorial cross-examination, and turns his speech and his silence alike to his disadvantage. The value of hypnotism as a mode of obtaining evidence is, however, extremely doubtful. It is difficult to hypnotize a man without his consent, and the most competent hypnotists declare that hypnotic subjects can and do tell lies as readily as if they were awake. The proposed hypnotization of De Jong will, however, achieve a useful end, if it arouses legal and general interest in the problems of hypnotism. It is certain that we shall soon have to face and to solve them; and it is much to be desired that when our day of experiment comes, both the legal profession and the public should be able to approach with informed minds the difficult questions which it will present for our consideration. — *Law Times.*

LONDON LEGAL LETTER.

LONDON, February 10, 1894.

GRAYS Inn Chapel, which has been closed for some time for the purpose of restoration, was reopened the other Sunday. A large congregation of barristers and their friends assembled in honor of the occasion, when the Bishop of Marlborough preached an appropriate sermon, sketching the history of the little shrine from whose pulpit Laud and Whitgift have held forth, but whither now-a-days a scanty company comes to worship on the first day of the week.

The rumor of Mr. Gladstone's approaching resignation, which was circulated last week, sent a thrill of excitement through the ranks of the profession. Conservative lawyers held their heads higher, and the adherents of the present administration whose claims to promotion have not as yet been discovered or gratified, were proportionately downcast: however, Mr. Gladstone would appear to have no immediate intention of leaving the helm. In one of my recent letters I referred to the opportunities of practice afforded by the law of local government in its various branches; before Mr. Justice Wright became a judge he enjoyed a practical monopoly of this lucrative kind of work; he was standing counsel for almost every municipality in the kingdom, and made an enormous income: no one has as yet taken his place; we have of course one or two excellent local government lawyers, but their practices as compared with the one Mr. Justice Wright enjoyed are quite inconsiderable. Lord Halsbury, the late Lord Chancellor, took the place of the Master of the Rolls in the Court of Appeal at the commencement of the sittings. Lord Esher had a severe illness from which, happily, he has now recovered to the satisfaction of the profession and the litigating public. Lord Esher is not only a great lawyer and a great judge, he possesses a very striking personality, and seldom fails to diffuse some humor around the dreariest details. A number of the leaders of the Irish Bar have recently joined our ranks in the Temple, in some instances purely for the purposes of prestige, but one or two aspire to make a name in London as well as in Dublin. The most prominent by far of these Anglo-Irish barristers is Mr. Edward Carson, Q. C.; he was Solicitor General for Ireland under the late government, and gained high official distinction by his strenuous and successful conduct of government prosecutions; last year he joined the Middle Temple and has been doing fairly well in the English Courts since then; he only ranks as a junior in London. He made one speech in Parliament in the Home Rule debate, which won for him great fame, but his subsequent appearances in the House of Commons have not been remarkable. I rather think that he would have better consulted his material interests by adhering to the Four Courts across the Channel. Mr. Carson is not an orator, but he is a strong, capable party speaker.

Lincoln's Inn has made itself notorious by introducing, on special occasions, the system of table d'hôte dinners, instead of the venerable English meat, still in use on ordinary days, and which still reigns in undisturbed majesty in the other Inns. We dine in messes of four, each mess receiving a tureen of soup, or a dish of fish, a joint, a pudding, and cheese. The Benchers of Lincoln's Inn have once and again taken a plebiscite of the members on the question of substituting a table d'hôte dinner for the old system, but an enormous majority of votes has always defeated the sacrilegious proposal. However, on Grand Day in each term, the authorities have arbitrarily imposed the new plan, and apart from prejudice, I think most people prefer the change.

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The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

THE BACONIAN THEORY. — Possibly politeness requires us to acknowledge the receipt of a circular of a book perpetrated by Orville W. Owen, M.D., in which he essays to establish the theory that Bacon wrote not only the works which are conceded to his authorship, and the only works which he ever publicly claimed to have written, but also all the plays of Shakespeare, Green, Peele and Marlowe, all the works of Spenser, and Burton's Anatomy of Melancholy! But politeness does not require us to refrain from expressing the opinion that anybody who professes to believe such a theory is either a conscious imposter or next door to a lunatic. As Addison said that when a man declared that he had drunk a dozen bottles of wine over night it would be a compliment to him to believe that he was a liar rather than such a beast, so it is compliment to the persons who put forward such senseless and incredible propositions to believe that they are playing on the credulity of the public, rather than that they are such fools. This whole Bacon business is a proof of the soundness of Barnum's assertion that the public love to be humbugged. It is also to a lawyer a curious study of evidence. These silly Baconians do not know enough of the principles of evidence to realize that they have not adduced, and from the nature of the case cannot adduce, a particle of evidence that Bacon wrote Shakespeare's plays. If we grant that they find in Bacon's writings the cypher which they pretend, and that Bacon intended to put it there for the alleged purpose, it amounts to nothing more than his own assertion, and the verdict of every critical scholar must be that he lied. This is a point that the anti-Baconians have never pressed, but it disposes of the whole ridiculous imposture. No man's agency can be proved by his bare assertion of his agency. It is of a piece of the foolish argument that Christ was divine because he uniformly asserted his divinity. Christ must be judged by his works, and so must Bacon. The circular sent to us is accompanied by specimens of the idiotic drivel spelled out of the cypher, in which Dr. Owen, following in Donnelly's path, but far outstripping him, discovers the "evidence" of Bacon's authorship of all the writings mentioned above, and by sundry certificates of adhesion from mischievous or credulous newspaper people, including the following ambiguous one from the "Pastor of the First Baptist Church" of Detroit: "I hope you may succeed in establishing the reality of your discovery to the conviction of the most skeptical." One's faith in the sanity of the present cypher is strongly disturbed by his announcement in the circular that Bacon's

> "Disclosure is to the effect that he was the son of Elizabeth and the Earl of Leicester by a secret marriage, and therefore the rightful heir to the throne; he tells how this became known to him; and he relates how Essex, his dearest friend, was murdered at the command of the queen, and how he was made party to his condemnation; how Elizabeth, in her last sickness, acknowledged Bacon as her son to the doctor who attended her; how Elizabeth was poisoned and afterward strangled in her bed by Robert Cecil, and various other startling things that historians of the Elizabethan era have never set down in the books. Except the murder of Elizabeth and the reasons for the execution of Sir Thomas Seymour, all assertions have at least the semblance of collateral historical evidence to sustain them."

It is quite probable that if this sage doctor, or the versatile Donnelly, should set about it, he could find a cypher in Lowell's writings claiming the authorship of Lincoln's Gettysburg oration, addresses and State papers, and there is no doubt that every one of these open-mouthed, shallow-pated Baconians would eagerly believe it and Lowell's claim. We indignantly resent the imputation cast on our intelligence by the sending of this circular to us in the apparent belief that we may credit such nonsense, and on our pecuniary sagacity in the apparent hope that we may squander fifty cents for the pamphlet in which it is set forth.

THE PRIZE FIGHT. — It was the earnest wish of the Easy Chair that the laws of Florida might prove sufficiently civilized to enable the Governor to prevent the recent prize fight. Next to that, it was our hope that these two vicious and ill-conditioned brutes, whose barbarous doings have taken up more space in the newspapers for several weeks than any

topic of moral, political or social interest, might kill one another outright, so that this country might be rid of them forever and possibly of the detestable exhibitions in which they are the foremost experts. Failing that, we hoped that the Englishman might whip, so that the sacred name and cause of patriotism might not be stained by the loaferish glorification sure to follow the success of the other brute. Disappointed in all these hopes we can only relieve our feelings by expressing the hope that the two tramps who have turned our country upside down for months, demoralized all the young boys, and made fools of too many of the mature men, might be set at good, honest, hard work for the State, say in building good roads which Florida so much needs, or in killing alligators, or some other useful office. The affair is a disgrace to civilization and a stigma on good sense. The adherents of this barbarous sport laud it as tending to enable a small man to defend himself against a big one, and to cultivate the spirit of fair play; and yet the country has gone wild and mad over the inevitable victory of the giant over the pigmy, just as it rejoiced in the less decisive triumph of the huge Heenan over the little Sayers, and that of the hulking Hyer over the small Sullivan; and the amount of fair play deducible may be estimated by consideration of the fact that the vindictive Goliah in this instance would inevitably have thrown away the battle if he had not been forcibly restrained by his seconds and the referee, by interference in contravention of the explicit rules of the ring. The only party to the affair entitled to the smallest degree of consideration for courage and pluck is the loser, who now for a second time has stood up against his superior in size and strength. Now, we suppose, the cities are to be excited by hippodrome contests between these two fellows, one of whom is fresh from prison for a cowardly assault on an old man, and the other is a violent and offensive braggart, who observes the rules of temperance and virtue only because they enable him to preserve his muscular supremacy, and who, not having earned an honest or laudable dollar in years, is just now enabled to reap as much for a brutal and bloody exhibition of ten minutes as the Chief Justice of the United States receives in two years and a half. And this creature is the only human being in the United States who arrogates to himself and is accorded the distinctive appellation of "gentleman"! We are not in favor of restoring flogging as a criminal punishment, but the least harmful and shocking exercise of it, in our judgment, would be the wallopping of these two dangerous and disgusting reprobates at the tail of a cart. We greatly fear that there were some lawyers among the crowd of rogues who witnessed that wretched contest. It is a great pity. For such sports as base-ball, yachting, rowing, horse-racing, one may reasonably have more or less admiration, but a relish for prize-fighting argues the survival of the tiger in mankind. It is worse than bull-fighting. And now there is only one thing left for such as ourself to pray for in this regard, and that is that the "nigger" may whip this boastful Dares. It would be a good ending to this sport if the white man should prove inferior in it to the despised African, as he already has proved in this country in one class of smaller combatants.

THE LAWS OF HEALTH AND WEALTH. — Mr. Philip D. Armour of Chicago, who has made an immense fortune by the pursuit of the beef and pork trade, has been unbosoming himself to some reporter on the subject of his personal habits. He seems to attribute his success to going to bed early and getting up early, "retiring" at 9 o'clock, breakfasting at 5.30 or 6, and arriving at the office at 7 o'clock, the year around. He evidently is a believer in the old adage: "Early to bed and early to rise, makes a man healthy and wealthy and wise." (We despise this so much that we will not print it in metrical form.) That is a very misleading maxim, for there have been very few men who were all these, no matter how early they lay down and got up. Mr. Armour may be healthy — provided he eschews one of the staples of his trade in his own domestic use — and there is no doubt that he is wealthy, but that he is wise is quite disputable. We have never heard him called a wise man, and we do not see how he can be, having up to the age of sixty-one spent all his time and talents in the promotion of his peculiar articles of commerce and according to his own showing never having had an evening's rational enjoyment. We should even prefer Edward Everett Hale's recipe for the attainment of wisdom and health, if not for riches, which as illustrated in his own person, if we recollect right, chiefly consists in sleeping ten hours. Mr. Armour, as we understand, is a liberal and public spirited citizen, who does not meanly hoard and cling to his gains made in the advancement of beef and bacon; but as between him and Mr. Hale, we would prefer to have wielded the pen that wrote "The Man without a Country," than to have owned or controlled all Mr. Armour's favorite pens. Probably Mr. Hale has not gone to bed at nine nor risen at five in fifty years, and probably he is not exceeding rich, but he is wise and looks healthy. After all, as a writer in the "Buffalo Courier" very aptly asks, "Is a man a rooster," that he should do this thing? There is just one concession of weakness in Mr. Armour's argument — he admits that he takes a nap after his lunch of bread and milk. He really ought to have

suppressed the confession of the nap, and averred that he lunched on pork chops or pig's feet. Then the advertisement would have been more adroit. In the immortal language of Patrick Henry, "We know not what course others may take, but as for us," give us sleep from 11 to 7.30, and poverty, with that moderate degree of wisdom which enables us to occupy this Chair. Doubtless there is hardly a lawyer in this land who would habitually adopt Mr. Armour's hours even if he knew there was a tail of clients awaiting him at his office door. From recent statistics we find that the order of longevity among different classes is as follows: Clergymen, grocers, fishermen, lawyers, commercial travellers, plumbers and painters, blacksmiths, railway laborers, tailors, doctors, liquor dealers, hotel keepers and bar tenders.

GRAND JURIES. — The composition of juries in this country is becoming a very troublesome problem. If anything is to save the jury system from disrepute it must be a thorough reform and greater vigilance in the selection of the materials, and especially in the abolition of the present practice of excusing very many if not most of the most reputable and intelligent citizens from this service. It is to be feared that especially in the work of selecting grand juries there are shocking abuses. This is exemplified by a recent report by three prominent citizens of Albany, N.Y., who were appointed by the citizens' general reform committee to look into this matter. These gentlemen say: —

"That of the ten jurors selected from the fourth ward of the city of Albany, seven are saloon keepers;

"That of the eight jurors selected from the sixth ward of the city of Albany, five are saloon keepers;

"That of the eight jurors selected from the seventh ward of the city of Albany, four are saloon keepers and one a gambler by occupation;

"That of the forty-four men selected from the town of Watervliet, there are less than ten who can be described as of 'fair character,' and that of the remainder, eleven are saloon keepers, seven are officeholders and the others are principally professional politicians and their followers;

"That of the total number of 176 grand jurors named from the city of Albany, thirty-nine are engaged in the liquor business, most of them keeping saloons; one is a gambler by occupation, one a professional prize-fighter, three are contractors with the city, six are at present officeholders of the city or county, nine are ex-officeholders, eight are closely related by blood or marriage to present officeholders, and over fifty per cent of the total number are men of little or no standing in the community, most of them living by the practice of politics as a profession;

"That on the list of grand jurors for the year 1893, of the forty-four men from the town of Watervliet, the occupation of twenty-six was given as 'gentlemen,' and that on inquiry nearly all of these so-called 'gentlemen' proved to be saloon keepers or men of no occupation but politics.

"The list of jurors for the year 1894 was made after the attention of the board of supervisors had been called by the district attorney of Albany County to the statute requiring grand jurors to be men of 'approved integrity,' in addition to having certain property and other qualifications, specified in that statute."

Why would it not be a good plan to prohibit any saloon-keeper, professional gambler, or prize-fighter from sitting on any grand jury, if not on any petit jury?

NOTES OF CASES.

"HIGH SEAS." — The most important and interesting question of judicial definition that has arisen in many years was decided by the United States Supreme Court, on November 20, 1893, in the case of the United States *v.* Rodgers, certified on a difference of opinion between Justices Jackson and Brown in the Circuit Court. The defendant was indicted for assault with a dangerous weapon, on board a steamer in the Detroit River, and within the territorial limits of Canada, under section 5346 of the United States Rev. St., which reads as follows: —

"Every person who, upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, on board any vessel belonging in whole or in part to the United States or any citizen thereof, with a dangerous weapon, or with intent to perpetrate any felony, commits an assault on another, shall be punished by a fine of not more than three thousand dollars and by imprisonment at hard labor not more than three years."

It was conceded by all the members of the court that the word "river" refers only to rivers flowing into the high seas or connecting such seas, and the question was whether the great inland lakes are "high seas." This was decided in the affirmative, Mr. Justice Field writing the opinion, but Justices Gray and Brown wrote dissenting opinions. It was conceded by Mr. Justice Field that anciently the term referred exclusively to the great oceans, forming the common international water highway of travel and commerce, but he argues that as there are other seas than the oceans, the term in modern times is used to distinguish between their open waters and their ports and havens. The gist of his contention is that there are "high seas" of the lakes as well as of the ocean, and is found in this sentence: —

"The term 'high seas' does not, in either case, indicate any separate and distinct body of water; but only the open waters of the sea or ocean, as distinguished from ports and havens and waters within narrow headlands on the coast."

He quotes the "Æneid," book 1 : —

> "Insula *portum*
> Efficit objectu laterum : quibus omnis ab *alto*
> Frangitur, inque sinus scindit sese unda reductos."

(But we submit to Lord Justice Bowen that *alto* here does not mean *high*, but "the *deep*.") Mr. Justice Field also argues that it would seem absurd that Congress should not have intended to include within the term in question such great bodies of water, carrying such an immense commerce of all nations. But the apparent answer to that is, if they meant to include such important waters, they would have said "lakes" as well as rivers, etc. The inference is pretty strong that they simply referred to the ocean and waters connecting with it. Mr. Justice Field also observes : —

"But it will hardly be claimed that Congress by the legislation in question intended that violent assaults committed upon persons on vessels owned by citizens of the United States in the Detroit River, without the jurisdiction of any particular State, should be punished, and that similar offences upon persons on vessels of like owners upon the adjoining lakes should be unprovided for. If the law can be deemed applicable to offences committed on vessels in any navigable river, haven, creek, basin, or bay, connecting with the lakes, out of the jurisdiction of any particular State, it would not be reasonable to suppose that Congress intended that no remedy should be afforded for similar offenses committed on vessels upon the lakes, to which the vessels on the river, in almost all instances, are directed, and upon whose waters they are to be chiefly engaged. The more reasonable inference is that Congress intended to include the open, unenclosed waters of the lakes under the designation of high seas."

But is not this begging the question that Congress meant either the great lakes or their connecting or affluent waters ? On the other hand Mr. Justice Brown contends that the term "has never been regarded by any writer or held by any court to be applicable to any *territorial* waters, and like the word 'highways,' presupposes the right of the public to make free use of them, and excludes the idea of private ownership." But he seems to us to hit the nail exactly on the head when he says that "the underlying error of the opinion of the court appears to me to consist in a total ignoring of the last qualification" of the statute, namely, "and *out of the jurisdiction of any particular State*," and that the term is not applicable to the lakes because "they are within the local jurisdiction of the States bordering upon them." He also considers that as in 1790, when the act was passed, there was no commerce on the lakes except in canoes, "it seems impossible to say that Congress intended that the words, 'arm of the sea, or river, haven, creek, basin or bay' should apply to the lakes when the word 'lakes' might just as well have been used, had the interior waters of the country been included." On the whole, the decision can be supported only on the theory of prophetic legislation and of a statutory "growth" like that of "Topsey." The three opinions are distinguished by great learning and ingenuity.

FISHING ON SUNDAY. — In People *v.* Moses, 35 N. E. Rep. 478, the New York Court of Appeals held, by a majority of one, that it is a misdemeanor to fish on Sunday, in a pond belonging to a club of which the defendant is a member. The Court in the prevailing opinion observed : —

"Section 259 of the Penal Code provides that, 'the first day of the week, being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.' It is not the meaning of this section that every act which is claimed to be a violation thereof must, in fact, be a serious interruption of the repose and religious liberty of the community; but the Legislature in subsequent sections specified certain acts which are declared to be serious interruptions of the repose and religious liberty of the community — acts, necessarily described in general and comprehensive terms, which the lawmakers believed had a general tendency to interfere with Sunday as a day of rest and religious worship. Section 263 prohibits all labor on Sunday, excepting works of necessity or charity; and it matters not whether the prohibited labor be public or private, wherever it is performed it is prohibited. In section 265 particular acts are specified, which are prohibited as follows: 'All shooting, hunting, fishing, playing, horse-racing, gaming, or other public sport, exercises or shows upon the first day of the week, and all noise disturbing the peace of the day, are prohibited.' In sections 266, 267 and 268 other acts are specially prohibited. It is thus seen that among the acts specially prohibited on Sunday is fishing. That is absolutely prohibited on Sunday everywhere, and under all circumstances. It may be done in a community where it does not offend the sensibilities of any one, it may be done in such a manner as not to disturb the peace or interrupt the repose or religious liberty of the community, and yet the law is violated. It is quite unreasonable to suppose that the Legislature meant that whenever any of these acts are charged as a violation of the law an issue can be framed and tried as to their public, offensive or disturbing character. The Legislature has settled that matter by prohibiting them absolutely."

It seems to us so clear as almost to preclude argument, that the Legislature in this enumeration of prohibited sports, etc., intended to prohibit them only when they are publicly conducted. The words "other public sport" qualify the preceding words and attach to them, as an ingredient to their criminality, a public character. This construction is the more apparent by the concluding clause concerning

"noises disturbing the peace of the day." The whole section is evidently aimed at acts and occupations of a character calculated to disturb the peace of the day. If the publicity is not essential, pray why was the word "public" inserted? Why was not the enactment simply against the things named, "or other sport"? This would conclusively have embraced the acts when privately done as well as when public. If this is not the proper construction, a man would be a misdemenant for playing "penny-anti" in the privacy of his household on Sunday. It may well be doubted that such a construction as the court have made is constitutional. If we should grant that it is not necessary that the acts (except noises) should be disturbing to the public peace, at least they must be public, — publicly conducted, publicly visible. We regret a decision that marks a backward step, and puts the State on a level of puritanic narrowness with Massachusetts whose courts sent a poor shoemaker to prison for hoeing a few hills of corn in his door-yard early on Sunday night, and sent a farmer to prison for gathering seaweed on a lonely beach at 10 o'clock on Sunday night. Set us down, not as a Puritan, but as a dissenter, in this case.

NEGLIGENCE — INFANCY — TRESPASS. — In Gay *v.* Essex St. Ry. Co., Massachusetts Supreme Judicial Court (21 Lawy. Rep. Ann. 448), it was held that leaving street-cars in the street is not an invitation or license to children to play upon them, even though the street-car company knows that they attract children, and that the youth of a wrongdoer and trespasser, although he acted as reasonably as might be expected of him, if his conduct contributes to an injury which he receives, will not prevent his contributory negligence from constituting a defense to a person whose negligence also contributed to the injury. The Court said: —

"Assuming that there was evidence for the jury of defendant's negligence in leaving the cars in the street as it did (see Powell *v.* Deveney, 3 Cush. 300, 50 Bm. Dec. 738), we then come to the question whether plaintiff's intestate is to be regarded as a trespasser and joint actor with the other children. If he is, then the question whether he was in the exercise of due care becomes immaterial. His wrongdoing as a trespasser and joint actor would, in such event, be a cause contributing to the injury, though in doing what he did he might be doing no more than would naturally be expected from a child of his age. We think he must be regarded as a trespasser and joint actor with the other children. Leaving the cars in the street as it did was not an invitation or license by the defendant to him to play upon them, even though defendant knew that they were calculated to attract children, and did in fact attract them. Knowledge on the defendant's part that they attracted children was not an invitation or license to them; otherwise, the fact that one knowingly maintained on his own premises an object that allured children would constitute an invitation to them. Nor could an invitation or license be implied from the negligence of the defendant, if there was negligence, in leaving the cars in the street. The most that can be said for the plaintiff is that the defendant, knowing that the cars would be, and were, attractive to children, was bound to anticipate what actually occurred, and to exercise a corresponding degree of care to see that the cars were securely fastened and guarded, and is liable for an injury occurring to the plaintiff's intestate through its failure to do so. This assumes that all the plaintiff is required to show is that his intestate acted as reasonably might be expected of him. But he might do that, and still be a wrongdoer and trespasser, and contribute by his conduct to the injury which he received. If he did, then the fact of his youth, and the fact that the defendant's negligence also contributed to it, would not render the defendant liable. If the cars had been set in motion by other children and the plaintiff's intestate had been injured by them while lawfully upon the highway, the defendant, clearly, would have been liable. Lane *v.* Atlantic Works, 107 Mass. 104; 111 Mass. 136. But he was using the highway and the cars for play, and was a joint actor with other children in causing that to happen which resulted in his injury. We might fairly assume, if it were necessary, that a boy ten years of age, and of ordinary intelligence, would know that he had no right to play upon cars which a street railway company had left standing in the streets. Upon the declaration, as we interpret it, we do not think that under the decisions in this State the plaintiff is entitled to recover. See cases 21 L. R. A."

LATENT AMBIGUITIES. — In Hallady *v.* Hess, Supreme Court of Illinois, October, 1893 (35 N. E. R. 380), it was held that where a deed describes the land by metes and bounds, beginning at a certain corner of "section eight" in a certain county, without naming the township and range, and it appears that there are in said county several sections numbered 8, it may be shown by parol evidence in a suit to reform the deed what section was intended, since the ambiguity is latent. The Court said: —

"The description, taken in connection with the proof, reveals a latent ambiguity. There are several sections numbered 8 in La Salle County, and this fact is ascertained outside of the deed, and does not arise upon the face of it. When an ambiguity is made to appear by the introduction of proof outside of the deed it is a latent ambiguity, and may be explained by parol evidence. It being made to appear that there is a section 8 in each of several different townships in the county, it may be shown by parol in what township the section 8 mentioned in the deed was located (Dougherty *v.* Purdy, 18 Ill. 206; Bybee *v.* Hageman, 66 Ill. 519; Clark *v.* Powers, 45 Ill. 283; Billings *v.* Coal Co., 67 Ill. 489; Fisher *v.* Quackenbush, 83 Ill. 310). Here the evidence shows that the grantor, Abram Hess, owned a tract of land in section 8, in town-

ship 33, range 2 east of the third P.M., in said county, described by the metes and bounds, and containing the quantity of land above mentioned; that he occupied it at the time of the conveyance, and had occupied it for about twenty years, as a homestead, cultivating it as a vegetable garden; that he owned no other real estate in the county; that he and appellee were both present in an attorney's office when the deed was drawn, and that the scrivener made a mistake in the description by leaving out the township and range. Where a mutual mistake in the description is made under such circumstances, the deed may be reformed to conform to the intention of the parties (Lindsay *v.* Davenport, 18 Ill. 375; Martind. Conv., secs. 88, 89)."

We quote this decision only for the purpose of expressing a doubt as to the correctness of the possible implication from it that an action to reform an instrument on account of a mistake is not maintainable unless the mistake is latent. We suppose the doctrine of patent ambiguities has nothing whatever to do with the doctrine of reformation on account of mistake. That whole doctrine is very thoroughly scouted in this country, and no distinction between patent and latent ambiguities is any longer generally recognized. It may be that an action to reform a deed is not necessary when the mistake is patent, but we have no doubt that it would still be maintainable to quiet title. As for instance if the grantee's name was omitted, certainly such an action would be maintainable.

SALE TO SATISFACTION — WAIVER. — In Palmer *v.* Banfield, Supreme Court of Wisconsin, November, 1893 (56 N. W. R. 1090), defendant, to whom plaintiff had sold a harvesting machine, to be paid for if it proved satisfactory, after using the machine for a day and a half decided to return it for defects, but in order to finish his harvesting, used it the next day, and then offered to return it. It was held that such additional use constituted an acceptance by which defendant waived his right to return it.

The Court said: —

"If the defendant did not, by his use of the machine, destroy the right to return it, if otherwise he had such right, it must be held as matter of law that he returned it, or rather that he effectually offered to return it (which amounts to the same thing) within a reasonable time after it came to his possession. So the question is not whether the offer to return was made within a reasonable time, but whether the defendant had any right to return the machine when he attempted to do so. If the sale was absolute, as claimed by plaintiff, and there was a breach of an express or implied warranty of the machine, and if defendant accepted the machine after testing it, and discovering its defects; or if the sale was upon condition that, if dissatisfied with the machine, the defendant might return it, and if defendant, after testing it, fully determined that it was unsatisfactory to him, and he would return it, and afterwards accepted it — in either case the right to return it was lost."

The Court instructed the jury, that

"If defendant ascertained on Thursday or Friday that the machine did not do good work, in the one case; or, in the other case, that he then determined he would return it as unsatisfactory — if he used it on Saturday, not to test it further, but merely to complete the cutting of his grain, and without any expectation that plaintiff or his agent would come there and make the machine satisfactory to him, such use was an acceptance of the machine as a compliance with the contract, and was fatal to his right to return it."

We think the Court stated the law correctly, and that the testimony justified the submission to the jury of the question of acceptance.

TORNADO INSURANCE. — In Queen Ins. Co. of Liverpool *v.* Hudnut Co., Appellate Court of Indiana, in November, 1893 (35 N. E. R. 397), an action upon a tornado insurance policy, the question arose upon the pleadings, whether there is any difference between a "tornado, cyclone or hurricane," and "a very high wind," and this was answered in the negative. The Court observed: —

"It is alleged in the complaint that the property insured was destroyed by a cyclone or hurricane. The assurers deny that the loss was occasioned by a tornado, cyclone or hurricane, but allege that it was caused by a very high wind, forcing the boat against it. Is this not a confession that a tornado, cyclone or hurricane, caused the injury? The words 'tornado' and 'hurricane' are synonymous, and mean a violent storm, distinguished by the vehemence of the wind and its sudden changes; while the definition of a 'cyclone' is 'a rotatory storm or whirlwind of extended circuit' (Webst. Unab. Dict.). It is evident, therefore, that a hurricane is a very high wind. That the hurricane itself coming in contact with the building did not alone cause the damage is not material, but, if it caused another body to come in contact and do the damage, the hurricane would be the direct and controlling cause. The special allegations as to the cause of the injury are inconsistent with the allegations that the loss was not occasioned by a tornado, hurricane, or cyclone; hence control such general allegation."

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 this number we publish the first of a series of articles on "The Court of Star Chamber." The author, John D. Lindsay, Esq., Assistant District Attorney of the city of New York, has devoted much time and research to their preparation, and they cannot fail to prove of great interest and value to our readers.

A GEORGIA correspondent kindly sends the following additional anecdotes of Judge Underwood of that State: —

ATLANTA, GA., Jan. 30, 1894.

Editor "Green Bag":

DEAR SIR, — In the January issue of the GREEN BAG, I see some of the stories told of Judge Underwood of this State, among others one upon myself. I was then a very young lawyer at Dalton, in Whitfield County, in the northern part of the State, having begun the practice at the age of seventeen. It will at once occur to you that I knew a great deal more law then than I ever have since, or ever will; and the story as told by Bob McCamy is substantially true.

Another story of the judge on the same line is this: At Cedartown in Polk County, several men were indicted for a riot. The testimony for the State was that they had been out at a little grog shop on the edge of the town, and having pretty thoroughly fired themselves up, after yelling and screeching around the place got upon their horses, went galloping to and fro in the city of Cedartown, and making a disturbance generally. When the testimony was concluded and Judge had finished his charge, he turned to the counsel for the defendant and asked, "Any other charge, Brother Jones?" "I believe," said Brother Jones, "that your Honor neglected to give the jury the definition of a riot." "That's true, gentlemen," said the Judge, turning to the jury, "and was a clear oversight on my part. If you find from the evidence that these defendants now on trial were out there at a grog shop, and loaded themselves up with mean whiskey, and after yelling and screeching around out there, got on their horses and came galloping into the city of Cedartown and ran around over the streets and sidewalks, yelling like Comanche Indians and firing pistols and creating a general disturbance and throwing the town into an uproar, that is a riot. You can retire, gentlemen, and make up your verdict."

Coming down from Dalton to Atlanta on one occasion I struck up with Judge Underwood at Kingston. After some general conversation, he said to me, "Glenn, I want to tell you of a case I had before me at Cedartown the other day, and see what you think of it." He then stated the case and I expressed a view of it, to which he replied, "That same view you express was very largely, ably and elaborately maintained before me on this hearing by Wright, Branham, Featherstone and several other lawyers from Rome, old lawyers, experienced lawyers, and there was not a soul on the other side but a bright young lawyer from Cedartown, who had never had any experience, and myself. This in fact was his first case, and they out-argued us, but we beat them."

One of the stories which clung to Judge Underwood all his life, was a recommendation given him by his father, himself an able lawyer and a man of great humor, when Judge Underwood in his younger days went to a Governor of Georgia to secure the office of Solicitor-General. The letter was somewhat of this sort: —

"MY DEAR GOVERNOR, — This will be handed you by my son, John W. H. Underwood, who is a young lawyer of this city. He has the greatest thirst for office and the least capacity to fill it of any man in Georgia, within my knowledge.

Yours truly,
W. H. UNDERWOOD."

Judge Underwood was a man of very great capacity and a very able lawyer. His last official appointment was as a member of the Tariff Commission. All of us who knew him loved him, and had he been a student he would have left an enduring name in the judicial history of this State.

Yours truly, W. C. GLENN.

LEGAL ANTIQUITIES.

At a session of the Supreme Judicial Court of Massachusetts, held in Salem in November, 1787, Elizabeth Leuthe of Lynn, for harboring thieves and receiving stolen goods, was convicted and sentenced to be whipped twenty stripes, and *to be sold for six months*. Also at a session of the same Court, held in Boston in September, 1791, six persons were convicted of theft and sentenced to be whipped and pay costs, or to be sold for periods of from six months to four years.

FACETIÆ.

Near the old Court House in Poughkeepsie there stood years ago a tavern, kept by a Mr. Hatch. It was no uncommon thing to see "the court," jury, counsel, sheriff, constables, prisoners and all, adjourned to Mr. Hatch's bar for drinks. On one of these social occasions the prisoner, a horse thief, slipped away from his constables. When the judge resumed his seat the fact was made known to him. At first he said nothing but appeared to be in deep thought. Finally he arose, and with more than his usual gravity, delivered himself as follows: —

"Gentlemen of the Jury, I am told that the prisoner has informally taken leave of the court and gone the sheriff knows not whither. This gives the case before you a more perplexed phase, as the Statutes distinctly provide that the prisoner shall at no time, during trial, sentence or punishment, absent himself from the officers of the law. Therefore it only remains for me to say, that further prosecution in this case must be postponed until the return of the damned scoundrel who has thus informally trifled with the dignity of the court and the People of the State of New York."

The following anecdote is related of Judge Thornton, who was Chief Justice of the Court of Common Pleas in New Hampshire and Judge of the Superior Court of that State in the last century. While he was presiding in the Common Pleas, a counsel who was making his closing argument to the jury, in a protracted case, on a warm afternoon, discovered that the presiding judge on the bench was absorbed in reading a book, and his associate was soundly sleeping by his side. The advocate turned to the jury, and with indignant emphasis remarked: "Gentlemen, my unfortunate client has no hope but in your attention, since the court in their wisdom will not condescend to hear his case!"

Of course there was no sleeping on the bench after that, but Judge Thornton looked up from his book, and remarked: "When you have anything to offer, Mr. ——, which is pertinent to the case on trial, the court will be happy to hear you. Meantime, I may as well resume my reading."

Lawyer A. of Buffalo tells this good story at his own expense. He went into the office of Judge B., who happened to be busy and cross, and asked him if he had a certain book. "Yes," was the answer. "Will you lend it to me?" "No." "Won't lend it! why, you're a regular dog in the manger." "Now see here," said Judge B., "if that ox had been an ass, that dog would have been perfectly justified."

Among some old newspapers in an Arkansas Probate Court was found a doctor's account for medical attendance during the last illness of the deceased. On the back the administrator had made the following endorsement: —

"This claim is not verified by affidavit as the statute requires, but the death of the deceased is satisfactory evidence to my mind that the doctor did the work.

"W—— S——, Adm."

An aged Professor, after lecturing on the distinction between trespass and case, asked one of his pupils: "Mr. B., suppose I should be walking in the public streets, and you should throw a rock and put out one of my eyes, what sort of an action would I have?" "An action on the case," was the ready answer. "Why so, Mr. B.?" "Because Blackstone lays it down that an action on the case is the proper remedy for obstructing ancient lights."

An Irishman, swearing the peace against his three sons, thus concluded his affidavit: "And this deponent further saith that the only one of his children who showed him any real affection was his youngest son, Larry, for he *never struck him when he was down*."

NOTES.

A VERDICT of "guilty of assault and battery with intent to commit involuntary manslaughter" is invalid. (Thetge *v.* State, 83 Ind. 126.)

CICERO, whose mind was always diffuse and imaginative, shows in all his writings an impatience and scorn for all sorts of antiquated legal formalities; he indulges himself in deriding obsolete law ceremonials, and talks of the judicial systems as eating into the very flesh and blood of the Romans.

THE Law School of the Northwestern University deserves more notice than it has received anywhere except in Chicago. Nowhere in the country have more praiseworthy or promising efforts been put forth for high attainments than in the management of this school — efforts far beyond the ordinary perfunctory ones of making a "good school." Chief among these is a really superb faculty, a faculty such as but one or two other Law Schools in the country can match. Among them are four graduates of Harvard, two of Boston University, and one of Yale; one of them being a graduate of both Harvard and Boston University, another of both Yale and Boston, and all first-rate men.

THERE is nothing in any of the games of chance or skill which engage men's efforts which can compare with the intellectual pleasure of advising clients. The lawyer confronting what at first seems an inextricable confusion, or an insuperable combination of barriers, finds gradually that their aspect yields to his persistent analysis. As he gather the facts, compares the conflicting representations, weighs the adverse elements of the situation, he begins to see a path opening before him. The task of laying out his policy is often as interesting as the plan of a political or military campaign. He may, just because he knows all the ins and outs of the complex situation, employ one agency to accomplish one move, and another for another move, and sit himself silent and perhaps apparently inactive: but he is at the centre, and the various activities of his office, and sometimes those of others, are only the results of his direction.—*N. Y. Daily Register.*

"A CASE just settled on appeal in the Dutch courts establishes the fact that according to the law of Holland a man cannot be punished for kissing a strange lady in the streets against her wish. A young man having assaulted a young woman in this way in the streets of a little village near Utrecht, the latter complained to the burgomaster, who instituted proceedings, demanding that the offender should be fined one florin, or in default that he should be imprisoned for one day. The Utrecht Court first of all, and now the Appeal Court at Amsterdam, have dismissed the case, the judges declaring that 'to kiss a person cannot be an offense, as it is in the nature of a warm mark of sympathy.'"

TRUE or not true, this story is sufficiently amusing. Only, coming as it does from America, we hardly know in which part of our columns to print it. Among the curiosities of American administration, it is reported, a case is recorded of a young German whose betrothed had amassed sufficient money in America to pay for his ticket from Hamburg. He was detained on his arrival by the immigration authorities, who were of opinion that the importation of a husband was a distinct infraction of the Alien Contract Labor Law! — *Indian Jurist.*

WE see it reported in one of our English contemporaries that "Judge —— rose on Thursday and will not sit again for a month." Poor fellow! His lot is surely "not a happy one."

A JURY is a body organized for the purpose of deciding which side in a law suit has the smartest lawyer. — *Washington Law Reporter.*

THE old story of the lawyer who advised his pupil, "When you are sure that you have lost your case, abuse the plaintiff's counsel," extends to the plaintiff's witnesses. No good lawyer abuses witnesses while he feels strong in his case, and it is a test — almost a supreme test — of skill that a lawyer shall be courteous to witnesses against his client while endeavoring to weaken the force of their evidence. Certainly a brow-beating cross-examination is a dangerous proceeding —

dangerous to the interests of the client who has a brow-beating attorney. Jurors sympathize quickly with a terrified witness.

If witnesses be of the willfully forsworn sort, bullying never confuses them; they have their story pat, and enjoy the anger of the cross-examiner; they feel that he is baffled. It takes infinite patience, perfect coolness, and the uttermost semblance of good humor to entrap a well-drilled perjurer into a fatal lapse. On the other hand, an honest witness easily may be led into an apparent contradiction concerning some immaterial point. It is a mistake on the part of a lawyer to seek for contradictions on trivialities. They are apt to make a judge indignant, and they rarely deceive a juror. Very often the counsel whose witnesses have been led into such trivial lapses makes a strong point in his closing address by showing the vast importance of the main evidence that has been left unassailed, while every petty extra-judicial circumstance has been attacked by his opponent. Far more cases are lost by too much cross-examination than by too little.

Hints against the character of an opposing witness always are dangerous, and generally fatal, unless sustained by direct impeachment, and an aspersion of the character of a woman witness rarely fails of damage to the aspersing counsel.

It is the duty of the courts to put a stop to "this kind of thing." No witness ought to be subject to the rudeness of a naturally ill-tempered or a professionally irritated lawyer. A person is as reputable when on the witness stand as when off it. A person loses no right of citizenship in court. — *Inter-Ocean.*

RECENT DEATHS.

MRS. MYRA BRADWELL, who was the first woman in the United States to apply for admission to the Bar, and who founded and edited the "Chicago Legal News," died in Chicago, February 16. Mrs. Bradwell was born in Manchester, Vt., Feb. 12, 1831, but at an early age she removed, with her parents, to Chicago. In 1852 she was married to James B. Bradwell, whose father was among the pioneer settlers of Illinois. When Mrs. Bradwell first began the study of law under the tutelage of her husband, she had no idea of becoming a practicing lawyer, but subsequently felt that she might be of valuable assistance to her husband in his business. She applied herself vigorously to her studies and passed a most creditable examination, but on account of being a married woman was denied admission to the Bar. She did not despair, but bent all her energies in the direction of removing this legal defect. Her application was refused by the Supreme Court of Illinois, and she sued out a writ of error against the State of Illinois in the Supreme Court of the United States. Her case was argued in 1871 by Matt Carpenter, United States Senator from Wisconsin. Though the decision was adverse to Mrs. Bradwell's application she never again renewed her application for admission to the Bar, but was much surprised to receive a certificate of admission upon the original application from the very court that had refused her admission years before. Her public career never detracted from her womanly tenderness and refinement, nor from her efficiency as a wife, mother, and the director of a household. She was remarkable for her firmness of character, but still more so for her gentle and noiseless methods. She possessed wonderful tact, and seemed able to ingratiate herself at will in the favor of all with whom she had dealings, and held a high place in the confidence and affection of her acquaintances.

LITERARY NOTES.

THE March number of the ATLANTIC MONTHLY opens with the third installment of Mrs. Deland's "Philip and his Wife." Charles Egbert Craddock's "His Vanished Star" appears for the last time before its publication, as now completed, in book form. The Rev. Walter Mitchell's "Two Strings to his Bow" is also ended — in its second part. The remaining piece of fiction is a fanciful, pathetic tale of New England, "The Fore-Room Rug," by Mrs. Kate Douglas Wiggin. Of uncommon interest to students of modern European politics is Professor Jeremiah W. Jenks's account and estimate of "A Greek Prime Minister: Carilaos Tricoupis," a statesman whose recent return to power has brought him conspicuously to the attention of all Europe. Greece, in the earliest days of her life, is represented in Maurice Thompson's "The Sapphic Secret," a study of the peculiar charm of Sappho's diction. Still farther into the East and the past goes Sir Edward Strachey's "Talk at a Country House" on Assyrian Arrowheads and Jewish

Books. But the present and the near-at-hand speak forth again delightfully in Miss Edith Brower's "Is the Musical Idea Masculine?" and Mr. Bradford Torrey's "On the upper St. John's."

THE people of the North have almost forgotten that their ancestors owned slaves. In an article on "The New England Negro," in HARPER'S MAGAZINE for March, Mrs. Jane De Forest Shelton has collected some curious information regarding the Connecticut slaves and that unique custom, the annual election and inauguration of a "negro governor" of the State. This number is noticeably strong in short stories: "The Buckley Lady," a love-story of colonial New England, by Miss Mary E. Wilkins; "A Partie Carrée," a history of a yachting cruise in the Mediterranean, by W. E. Norris; "An Undivined Tragedy," a romantic tale of English country life, by Laurence Alma Tadema, daughter of the well known painter; "At a Private View," a sketch of New York life, by Brander Matthews; and "Cache-Cache," a story of the French Revolution, by William McLennen.

SCRIBNER'S MAGAZINE for March is filled with interesting matter. The illustrated articles include "The High Building and its Art," "Subtropical Florida," "The Cable Street-Railway," and "The Sea Island Hurricanes." There is a bountiful supply of excellent fiction by such authors as George W. Cable, William Henry Bishop, and George A. Hibbard. Altogether the number is exceedingly readable and entertaining.

THE March number of THE CENTURY contains a great variety of points. The opening article is a sketch of the Tuileries under Napoleon III., written by a lady who was a governess in one of the court families. The accompanying portraits are especially interesting The announcement of the book on Lourdes by Zola gives timeliness to "A Pilgrimage to Lourdes" by Stephen Bonsal — a graphic record of individual experience at this famous shrine. Mrs. Van Rensselaer describes one of New York's most beautiful buildings, the Madison Square Garden; "Josiah Flynt" writes of "The City Tramp," and incidentally shows the crying need of organized charity; Prof. Edward S. Holden tells a good deal that is new about earthquakes, and how to measure them; the Rev. Dr. Washington Gladden writes of "The Anti-Catholic League" in a way that will attract wide attention. Major André also is a "contributor" to this number; his account of the "Mischanza," the famous festival given in honor of Sir William Howe in 1777, is printed from Major André's manuscript, heretofore unpublished.

THE complete novel in the March number of LIPPINCOTT'S is "A Desert Claim," by Mary E. Stickney. It is a charming tale of ranch life in Northern Colorado. Gilbert Parker's serial, "The Trespasser," reaches its ninth chapter. "The Inmate of the Dungeon," by W. C. Morrow, is a story of uncommon power. Joel Chandler Harris, in "The Late Mr. Watkins of Georgia; His Relation to Oriental Folk-Lore," compares a curious legend of his own State with one of India. In "A Prophet of the New Womanhood," Annie Nathan Meyer considers Henrik Ibsen from an unfamiliar point of view. Emma Henry Ferguson tells "More about Captain Reid," the Confederate blockade-runner. John Gilmer Speed describes "The Training of the Saddle-Horse." Dr. Charles C. Abbott writes of "Bees and Buckwheat," and Charles McIlvaine of "The Evolution of Public Roads." In "Talks with the Trade," the subject of "Literary Mendicancy" is presented.

WHO are the most famous writers and artists of both continents? The COSMOPOLITAN MAGAZINE is endeavoring to answer this inquiry by printing a list from month to month — in its contents pages. This magazine claims that notwithstanding its extraordinary reduction in price, it is bringing the most famous writers and artists of Europa and America to interest its readers, and in proof of this claim, submits the following list of contributors for the five months ending with February: Valdés, Howells, Paul Heyse, Francisque Sarcey, Robert Grant, John J. Ingalls, Lyman Abbott, Frederick Masson, Agnes Repplier, J. G. Whittier (posthumous), Walter Besant, Mark Twain, St. George Mivart, Paul Bourget, Louise Chandler Moulton, Flammarion, Tissandier, F. Dempster Sherman, Adam Badeau, Capt. King, Arthur Sherburne Hardy, Georg Ebers, De Maupassant, Sir Edwin Arnold, Spielhagen, Andrew Lang, Berthelot, H. H. Boyesen, Hopkinson Smith, Lyman J. Gage, Dan'l C. Gilman, Franz Von Lenbach, Thomas A. Janvier. And for artists who have illustrated during the same time: Vierge, Reinhart, Marold, F. D. Small, Dan Beard, José Cabrinety, Oliver Herford, Remington, Hamilton Gibson, Otto Bacher, H. S. Mowbray, Otto Guillonnet, F. G. Attwood, Hopkinson Smith, Geo. W. Edwards, Paul de Langpré, Habert-Dys, F. H. Schell. How this is done for $1.50 a year, the editors of "The Cosmopolitan" alone know.

THE March number of THE POLITICAL SCIENCE QUARTERLY opens with "Some Ideas on Constitutional Revision," by J. B. Uhle, of the New York Bar; Mr. A. D. Noyes, financial editor of the "Evening Post," presents a critical study of "The Banks

and the Panic of 1893"; Prof. John Dewey, of Michigan University, examines anew "Austin's Theory of Sovereignty"; Mr. C. M. Platt contrasts and compares "Positive Law and Other Laws"; Mr. Edward Porritt, the veteran English journalist, describes the earlier and the current phase of "The Revolt against Feudalism in England"; Mr. G. H. Blunden, the British expert, contributes the first installment of an elaborate study of "British Local Finance"; and Prof. W. G. Ashley, of Harvard, sums up the latest knowledge as to "The Village in India." Some forty book-notices close the number.

MEMBERS of the legal profession will read with interest the paper by Professor Russell H. Curtis, of the Kent Law School at Chicago, on "Classification of Law," published in the March ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE. Professor Curtis has devoted much time and study to this subject, and has previously published shorter descriptions of his proposed new classification. The present paper gives the classification in its complete form, and fully explains Professor Curtis' ideas on the subject.

THE March number of the REVIEW OF REVIEWS contains an article by the editor, Dr. Albert Shaw, on the Constitutional Convention, which is to meet at Albany, N.Y., in May of this year. After explaining the constitutional provision that an opportunity for amendments be given every twenty years, Dr. Shaw gives details of the forthcoming meeting of the delegates who were elected in response to the vote of 1886 for a convention, and then reports an important interview which he himself has had with a delegate to this convention, who is in an especial position to forecast its action. This delegate outlines, in answer to Dr. Shaw's queries, the general scope of the convention's work and its probable action on certain specific questions of the highest importance, such as the provision for a Greater New York, a reform of the State Judiciary system, the introduction of proportional representation, educational reforms, certain changes in city governments, uniform charters, city home rule and various other city reforms.

BOOK NOTICES.

LAW.

A TREATISE ON THE LAW OF LIENS, Common Law, Statutory, Equitable and Maritime. By LEONARD A. JONES. SECOND EDITION, revised and enlarged. Houghton, Mifflin & Co., Boston and New York, 1894. Two vols. Law sheep. $12.00 net.

When the first edition of this work appeared some five years ago, it was at once recognized by the legal profession as a most exhaustive and thorough treatise upon Liens, and it has since maintained its position as the standard work upon the subject. Like all of Mr. Jones' works, these volumes evidence a thorough knowledge of his subject and a careful attention to the minutest details, which renders his books of the greatest value and assistance to the practising lawyer. The author is not satisfied with a mere statement of legal principles, but, as he himself says, he has deemed it his province to find out the uncertainties in the law, and, if he could refer them to some principle, or to classify them, and at least to state them, if he could do no more. The result is a most satisfactory and reliable treatise. In this new edition all the cases bearing upon the subject, decided within the last five years, have been incorporated into the text and the notes. Important changes and additions have been made in that part of the work relating to Mechanics' Liens, the number of new citations added on this particular branch of the law being more than twelve hundred. In its present form the book will be gladly welcomed by the profession, and will continue to hold its well deserved position as the authority upon the law of Liens.

THE BENCH AND BAR OF NEW HAMPSHIRE, including biographical notices of deceased judges of the highest court, and lawyers of the Province and State, and a list of names of those now living. By CHARLES H. BELL. Houghton, Mifflin & Co., Boston, 1894. Cloth. $6.00.

The Bar of New Hampshire has always been a remarkable one and has furnished, in proportion to its size, more "legal giants" than any other Bar in the United States. Such names as Daniel Webster and Jeremiah Mason are household words among the profession, and Ichabod Bartlett, Jeremiah Smith and Richard Fletcher, while perhaps not so widely known, were their peers and worthy opponents. Mr. Bell has gathered a vast deal of valuable information concerning the New Hampshire Bar, and these biographies are exceedingly interesting not only to the lawyers of the Granite State, but to the profession at large. It is astonishing to see how, from the earliest times to the present day, the high standard of the New Hampshire Bar has been maintained. It almost seems as if inspiration were drawn from the rocky giant hills and the pine woods of this New England State. The list of New Hampshire lawyers is a long

one, but Mr. Bell has succeeded in mentioning and in giving more or less data and facts concerning all those who have passed away, and has also added a list of names of all those now living and practicing in the State. Many bright anecdotes are scattered through the book, which add greatly to its interest. To New Hampshire lawyers the work will be invaluable, and it will be read with pleasure and profit by every member of the profession.

A TREATISE ON THE LAW OF MORTGAGES ON PERSONAL PROPERTY. By LEONARD A. JONES. FOURTH EDITION, revised and enlarged. Houghton, Mifflin & Co., Boston and New York, 1894. Law sheep. $6.00 net.

This treatise needs no introduction to the legal profession, by whom it has been well and favorably known for nearly thirteen years. Four editions during that time are sufficient evidence of the value and popularity of the work. Its merits may be summed up in a single sentence. It is undoubtedly the best work. for practical working purposes, ever written upon the subject. In this revision more than eight hundred new cases are incorporated, as well as all changes in statutes published since the last edition. As compared with the original edition the present edition contains citations of some two thousand additional cases and about two hundred pages of new matter.

THE AMERICAN STATE REPORTS, containing the cases of general value and authority decided in the courts of last resort of the several States. Selected, reported, and annotated, by A. C. FREEMAN. Vol. XXXIV. Bancroft-Whitney Co., San Francisco, 1894. Law Sheep. $4.00 net.

In our last number we noticed Vol. XXXIII. of this Series of Reports, and what we then said applies with equal force to this last volume. There is apparently no falling off in the quality of Mr. Freeman's work, and excellent judgment is manifest in both selection of cases and annotation. The series is really a very valuable one and should be, as we have no doubt it is, ably supported by the profession.

LEGAL STUDIES IN THE UNIVERSITY OF OXFORD. A valedictory lecture delivered before the University, June 10, 1893, by JAMES BRYCE, D.C.L., late Regius Professor of Civil Law in the University of Oxford. Macmillan & Co., New York, 1893. Paper. 35 cents.

This little pamphlet will be read with great interest by all interested in the subject of legal education. Very naturally, Professor Bryce insists upon the great importance of the study of the Roman Civil Law as a foundation for the study of the English Law. To use his own words: "The learner will make quite as rapid progress with English law if he has begun with Roman as if he proceeds to break his teeth from the first upon the hard nuts of our own system." The lecture gives a general review of the progress of the Law School of Oxford University, which is evidently destined to become a great institution for legal education. Speaking of the system of examination at Oxford, Professor Bryce gives utterance to the following words, which well deserve the serious consideration of those connected with our American Universities: "Have we not in our English love of competition and our tendency to reduce everything to a palpable concrete result, allowed the examination system to grow too powerful, till it has become the master instead of the servant of teaching, and has distracted our attention from the primary duties of a University?" He favors "a return to the older conception of Oxford as a place to which every one who desired instruction might come, knowing that as she took all knowledge for her province she would provide him with whatever instruction he required." Professor Bryce's words are full of thoughtful suggestions which will benefit all Americans, as well as Englishmen, interested in legal education.

THE LAWS AND JURISPRUDENCE OF ENGLAND AND AMERICA. Being a series of lectures delivered before Yale University by JOHN F. DILLON, LL.D. Little, Brown & Co., Boston, 1894. Cloth. $4.00 net.

This is one of the most delightful (we might say with truth *the* most delightful) legal works which it has been our good fortune to read. Judge Dillon is always an interesting writer, but he has invested this history of the progress of English and American law with an unusual charm. The scope of the work embraces a consideration of Our Law in its Old Home, its definition and distinctive character; the education and discipline of the English Bar, and therein of the Inns of Court, their history, character, and purposes; of Westminster Hall and the characteristic qualities of the English system of law which is indissolubly associated with this illustrious building, and in this connection of judicial tenure, of the trial by jury, and the doctrine of judicial precedent. Then follows a consideration of Our Law in its New Home, its American expansion, development and modifications. The excellences and defects of both the English and American systems are care-

fully noted and examined, and the probable lines of the future growth and improvement of the law in this country are marked out. Judge Dillon has very decided opinions upon many of the topics discussed which he freely expresses, and as the matured views of one of our greatest lawyers, they will be read with unusual interest. The work is unique in design and is a most valuable addition to our legal literature. We urge all our readers to procure it, and by so doing provide themselves with a genuine treat. They will, we are sure, thank us for the suggestion.

PRINCIPLES OF COMMON-LAW PLEADING. A brief explanation of the different forms of Common-Law actions, and a summary of the most important principles of pleading therein, with illustrations taken from the cases. By JOHN JAY MCKELVEY, of the New York Bar. Baker, Voorhis & Co., New York, 1894. Cloth. $2.00 net.

This book seems admirably adapted to the needs of law students, for whom it is especially designed. It is a clear and concise summary of the main principles of the subject, illustrated by numerous cases bearing upon the particular point set forth. It should prove a valuable assistant to both teachers and students in our law schools.

A TREATISE ON THE LAW AND PRACTICE OF VOLUNTARY ASSIGNMENTS FOR THE BENEFIT OF CREDITORS, adapted to the laws of the various States, with an appendix of forms. By ALEXANDER M. BURRILL. SIXTH EDITION, revised and enlarged, and an Appendix of State Statutes added by JAMES AVERY WEBB, of the Memphis, Tenn., Bar. Baker, Voorhis & Co., New York, 1894. Law sheep. $6.00 net.

This treatise of Mr. Burrill's is well known to the profession, and six editions evidence its popularity and value. In its original form it was a work of great merit, but with the numerous additions and revisions which have since been made, it is now much more meritorious and valuable than ever before. Mr. Webb has made changes for the better in both text and arrangement, and his appendix, giving the statutes of the several States, is a feature which will be appreciated. He has examined and cited practically all the cases, American and English, decided since 1877 (the date of the first edition), and has added nearly one thousand in number to those cited in the fifth edition. We commend the work with pleasure to all desiring a thorough and exhaustive text-book upon this important subject.

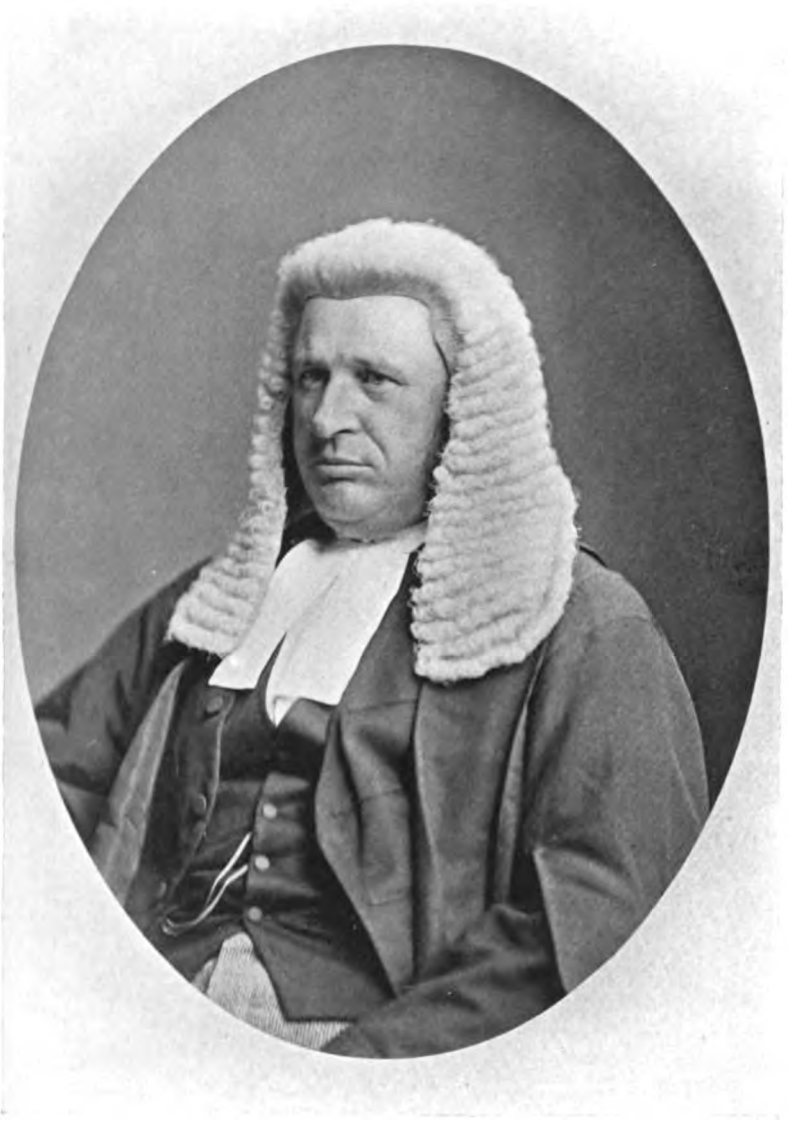
MISCELLANEOUS.

TWO GERMAN GIANTS: FREDERIC THE GREAT AND BISMARCK, The Founder and the Builder of the German Empire. By JOHN LORD, D.D., LL.D. To which are added a Character Sketch of Bismarck by BAYARD TAYLOR and Bismarck's Great Speech on the Enlargement of the German Army in 1888. With two portraits. Fords, Howard & Hulburt, New York, 1894. Cloth. $1.00.

The history of Frederic the Great, says Mr. Lord, is simply that of a man who committed an outrageous crime, the consequences of which pursued him in the maledictions and hostilities of Europe, and who fought bravely and heroically to rescue himself and country from the ruin which impended over him as a consequence of this crime. This is perhaps true, but this rugged old chieftain, through the crime committed, wrought out his own salvation and that of the German Empire. This book is a delightful one in every way, and gives a clear and lucid account of the parts played by two great Germans in war, diplomacy and statecraft. The sketch of Bismarck is of peculiar interest, coming as it does at the moment of the reappearance of the Iron Chancellor at the German Court. The added sketch by Bayard Taylor is valuable for its discriminating analysis of Bismarck both as a politician and a statesman. Many reminiscences are interspersed, giving one an insight into the characteristics of the man. An excellent portrait of Bismarck forms the frontispiece of the volume.

DEEPHAVEN. By SARAH ORNE JEWETT. Illustrated by CHARLES and MARIAN WOODBURY. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth.

Although one of the earlier of Miss Jewett's writings, this story is equal, perhaps, to anything which has since come from her pen, and is in every way as enjoyable to the readers of to-day as it was to those of twenty years ago when it first made its appearance. There is the same captivating charm in her description of a certain phase of New England life and character which has distinguished her later works, and the adventures of the two heroines in quest of rural pleasures are provocative of both smiles and tears. This new edition is a perfect gem of the publisher's art. The illustrators have entered fully into the author's spirit, and having, moreover, a personal familiarity with the scenes depicted, have drawn both characters and localities to the very life. In its new form the work is destined to become more popular than ever.



SIR JAMES FITZJAMES STEPHEN.

The Green Bag.

VOL. VI. No. 4. BOSTON. APRIL, 1894.

SIR JAMES FITZJAMES STEPHEN.

NO English judge was better known by name to the American Bar than Sir James Fitzjames Stephen, who died on the 11th of March, 1894. He came of a family of hard-workers, some of whom were distinguished as well as industrious. His grandfather, Mr. James Stephen, was a well-known Master in Chancery, and played a leading part in the anti-slavery movement, while his father, Sir James Stephen, was for a time Under Secretary of the Colonies, and was the author of "Essays in Ecclesiastical Biography." His only brother is Mr. Leslie Stephen, the eminent *littérateur*. Born at Kensington Gore on March 3, 1829, he was educated at Trinity College, Cambridge, where he graduated in 1852. The early part of his career, either at Cambridge or in the Temple, gave no indication of the eminence which belonged to his later years. He did not distinguish himself as a scholar at his University, and his rise at the Bar — to which he was called at the Inner Temple in 1854 — was far from rapid. His qualities were not those of the advocate. His speeches were always models of lucidity; but his delivery was ponderous, and the accuracy of his views was not accompanied by rapidity of judgment. Five years after his call, however, he was appointed Recorder of Newark-on-Trent, and he obtained a moderate practice on circuit and at sessions.

The first case to bring his name prominently before the public and the profession was the prosecution of the Rev. Roland Williams in the Court of Arches on a charge of heresy preferred against him by the Bishop of Salisbury. In this defense he obtained his first opportunity of displaying those extraordinary powers of research for which subsequently he became famous. The reputation he acquired in this ecclesiastical trial was strengthened by the part he played as one of the prosecuting counsel in the case of Governor Eyre. But it was in the fields of journalism and literature that his best work was done, during the fifteen years that elapsed between his call to the Bar and his appointment as legal member of the Council of the Governor-General of India. He was a regular contributor to the "Saturday Review" and the "Cornhill Magazine," and to several others of the leading periodicals of the day, the whole of his contributions being marked by a thoroughness of thought and lucidity of phrase which rendered them very acceptable reading even to those who did not share the conclusions at which he arrived. He was one of the earliest and most valued contributors to the "Pall-Mall Gazette." It is related that on many an occasion the editor would receive two articles on topical subjects from his pen before ten o'clock in the morning, and that their argumentative power and phraseology would not be inferior to his more studied contributions to the reviews. A number of his essays were gathered into a volume and published under the title of "Essays by a Barrister." His chief work of legal interest before he went to India was

"A General View of the Criminal Law," which was published in 1863.

It was in 1869 that he was appointed to succeed Sir Henry Maine as Legal Member of the Council of the Governor-General of India, and he remained in India some three years, during which his labors as a law reformer were sufficient to secure for his name an enduring place in the annals of the country. His activity knew no bounds, and doubtless the severe strain he imposed upon his mental and physical powers at this time was not unconnected with the sorrowful events that preceded the comparatively early death which every member of the legal profession now deplores. Taking up the work of codification begun by his predecessors, he prepared and passed through the council a code of criminal procedure and the Indian Evidence Act, 1872, both of which, though not beyond criticism in several respects, conferred lasting benefits upon the country. and in the preparation and passing of which Sir James Fitzjames Stephen exerted all the strength of which his massive frame and mind were capable. Having achieved such great success in his work of codification in India, he devoted himself to somewhat similar tasks in England on his return in 1872. At the instance of Lord Coleridge, then Attorney-General, he drafted a bill codifying the English law of evidence, and later on he prepared a bill for the codification of criminal law; but neither of his efforts, though each had involved an enormous amount of labor, met with success. The latter bill was submitted to a select committee consisting of Lord Blackburn, Lord Justice Lush, and Mr. Justice Barry, and a report was published; but, despite many promises that the matter should be dealt with in Parliament, the Government allowed it to disappear from their programme. Henceforward, until his promotion to the Bench, his time was chiefly occupied with literary labors. He resumed with renewed energy his contributions to newspapers and magazines, and increased his reputation as an author by "Liberty, Equality and Fraternity," a powerfully reasoned reply to Mill's "Liberty." He was appointed to the Bench in 1879; but his literary labors did not cease with his promotion. Some of his most important works were written as relaxation from his judicial duties. Among them are his "History of the Criminal Law of England" and his "Digest of the Law of Criminal Procedure." His letters to the "Times" on Mr. Gladstone's Home Rule Bill of 1886 will be remembered for the masterly manner in which he presented his case against that measure.

It must not be supposed, however, that the literary interests of the distinguished jurist were confined to legal, political and philosophic questions. He was thoroughly familiar with all the standard novelists of England and France, his favorite works of fiction being those of Victor Hugo, upon which he was ever ready to discourse. Among the lighter works from his own pen may be mentioned published addresses on "The Right Use of Books," "The Relation of Novels to Life" and "Desultory and Systematic Reading." He occupied a seat on the Bench for twelve years, during which period he was distinguished, both in civil and criminal trials, for the conscientiousness with which he discharged his duties and for the profound learning which marked his judgments. He retired in April, 1891, in consequence of certain statements that were made regarding his health. He bade the Bar "good-bye" in the Lord Chief Justice's Court, which was crowded with members of both branches of the profession eager to witness his last appearance on the Bench, and to hear his pathetic words of farewell. In recognition of his eminent services he was created a baronet.

THE COURT OF STAR CHAMBER.

By John D. Lindsay.

II.

IN the reign of Henry III. the council was considered a court of peers within the terms of Magna Charta. It unquestionably exercised a direct jurisdiction over all the king's subjects, and great transgressors against the public peace were dealt with by it.

Segrave, constable of the Tower, was arraigned before the council for allowing the escape of Mortimer. There is a curious record showing how Sir John Dalton was summoned, "sub forisfacturâ vitæ et membrorum et omnium aliorum quæ nobis forisfacere poteris," to bring before the Council one Margeria de la Beche, the wife of Gerard De l'Ile, whom Dalton had forcibly abducted, and to do and receive *(ad faciendum et recipiendum)* such orders as the council should give.

The council consisted of certain of the peers, together with the great officers of state, the justices and others whom the king chose to take into his confidence, as persons whose advice he deemed most useful in affairs of importance. This assembly possessed some of the powers exercised by the whole council sitting in parliament, and as both retained the same appellation, and the king presided in both, there was no difference in the style of them as courts; each was *coram rege in concilio*, or *coram ipso rege in concilio*, till the reign of Edward I., when the term Parliament was first applied to the national assembly.

The barons or lords, by virtue of the judicial authority which still resided in them, constituted the court of last resort in all cases of error; they explained doubtful questions of law and interpreted their own acts; for which purpose the judges of the common law courts used to refer to them matters of difficulty coming before them. They heard causes commenced originally there, and tried criminal accusations against their own members.

The *council*, properly so called, seems to have had a more ordinary and more comprehensive jurisdiction than the *commune concilium;* which it was enabled to exercise more frequently, as it might be, and was, continually summoned, while the other was called only on great emergencies.

In the court held *coram rege in concilio* there seems to have originally resided a certain supreme administration of justice in respect of all matters, both civil and criminal, which were not cognizable in the courts below. Its decisions were *ex æquo et bono*, upon principles of equity and general law. All offenses of a very exorbitant kind were proper subjects of their criminal animadversion. If the offenders were of a rank which exempted them from the usual process, or the occasion required something more exemplary than was within the power of the inferior justice, these were reasons for bringing inquiries before the council. In these, and in some other instances, it acted only in concurrence with and in aid of the courts below.

"Thus," says Reeves, "was the administration of justice still kept, as it were, in the hands of the king, who, notwithstanding the dissolution of his great council where he presided, was still in construction of law, supposed to be in all those which were derived out of it. Thus, as we have seen, the style of the great council was *coram rege in concilio*, as was that of his ordinary council for advice. The chancery, when it became a court, was *coram rege in cancellariâ*, and the principal new court which had sprung out of the *curia regis* was *coram ipso rege*

and *coram rege ubicumque fuerit in Angliâ.*

The council however of which we speak, in distinction from that of the great council or Parliament, and the great council of the king next under it, and which in effect approached very near to what was afterwards called the *privy council*, consisted of the treasurer, chancellor, justices, barons, the keeper of the rolls, the master in chancery, the chamberlains of the exchequer, justices in eyre, justices assigned, justices in Wales, the king's sergeants, the secretaries of state, clerk of the privy seal, clerk of the wardrobe, and such other persons as the king chose to advise with.[1]

The nature and constitution of the former of these two councils is less known to us than that of the latter, but it may be discerned that both of them kept up a close correspondence with the Parliament, so that causes were adjourned from the latter into either of the councils, and were there heard and finally determined. The method of address to both was by petition, and the subjects of their jurisdiction comprised everything respecting law and justice, both civil and criminal, that was not declared by any known rule, or not distributed among some of the established judicial departments.

It was, however, in the king's own council, or that branch of it to which we have referred, consisting of his principal officers of state and resembling the modern privy council, that criminal prosecutions were conducted, and which possessed supreme jurisdiction over all matters of a criminal nature under the degree of capital, for which the law contained no appropriate provision.

This council used to sit in different chambers in the palace, sometimes *en la chambre de peincte*, again *en la chambre blanche* or *en la chambre de marcolf*, and probably even as early as the reign of Edward III. *en la chambre des etoiles*[1]; to which place of their sitting the general return of certain writs in this reign, *coram nobis in camerâ*, referred.

Sir Francis Palgrave says that it "held its sittings in the 'starred chamber,'[2] an apartment situated in the outermost quadrangle of the palace, next to the banks of the river, and consequently easily accessible to the suitors, and which at length was permanently appropriated to the use of the council. The 'lords sitting in the Sterre chamber' became a phrase, . . . and we can hardly doubt that this circumstance contributed to assist the council in maintaining their authority."

No opposition seems to have been made to the exercise of this tremendous

[1] Blackstone (Book I., chap. 5), in speaking of one of the councils belonging to the king, viz., his judges of the courts of law, for law matters (citing from this designation Coke, I. Just. 110), expresses his view that when the king's council is mentioned in reference to a subject of a legal nature then is understood his council for matters of law, namely, his judges; and he cites St. 16, Ric. II., c. 5, whereby it was made a high offense to import into England any papal bulles or other processes from Rome, and it was enacted that the offenders should be attached by their bodies, and brought before the king and his *council* to answer for such offense, and says: "Here by the expression of the king's council were understood the king's judges of his courts of justice, the subject-matter being legal, this being the general way of interpreting the word council." (Citing Coke, 3 Just. 125.)

But Ld. Ch. J. Coleridge dissents from this view. He says the passage referred to in 3 Just. is no authority for Blackstone's interpretation of the word "council" in the Stat. of Richard. It is a comment on the statute of praemunire, 27 Edw. III. st. 1, c. 1, where the word seems used in the same sense as in the first mentioned statute, and in which Coke states that it cannot mean the judges.

"The truth is," says Ld. Coleridge, "I believe that the council here mentioned was a court of very extensive equitable jurisdiction both in civil and criminal matters, the fountain from which in process of time the courts of Chancery and Star Chamber were derived."

[1] Hudson says: "And so I doubt not but Camera Stellata . . is most aptly named; not because the Star Chamber is so adorned with stars gilded, as some would have it, for surely the chamber is so adorned, because it is the seal" (seat) "of that court, . . . and it was so fitly called because the stars have no light but what is cast upon them by the sun, by reflection being his representative body; and as his royal majesty himself was pleased to say, 'in short that the king was the sun and the judges the stars.'"

[2] The favorite derivation of the name is from the "starra" or Jewish charters anciently kept there.

The Jews were expelled from England in the time of Edward I., and the meaning of the word "starra" might naturally be forgotten though the name survived.

jurisdiction by the Star Chamber till 1350, when the Commons petitioned: "Qe nul franc homme ne soit mys a respondre de son franc tenement ne de riens que touche vie et membre byns ou redemptions par apposailles" (informations) "devant le conseil nre seignur le Roi, ne devant ses ministres quecumques sinoun par proces de lay de ces en arere use." The answer was: "Il plest a nre seignur le Roi q les leies de son Roiaume soient tenuz et gardez en lour force, et q nul homme soit tenu a respondre de son fraunk tenement sinoun par processe de ley; mes de chose que touche vie ou membre contemptz ou excesse soit fait come ad este use cea en arere."

"This," says Sir James Fitz-James Stephen, "seems to be an express recognition of the fact that for at least 135 years after Magna Charta the criminal jurisdiction of the council was undisputed."

Either in the same or in the next Parliament a similar petition was granted without any reservation, and this led to the statute printed as 25 Edw. III. Stat. 5, c. 4. Similar statutes were passed in 1354 (28 Edw. III. c. 3), and in 1368 (42 Edw. III. c. 3).

On two occasions in the reign of Henry IV., two in the reign of Henry V., and one in the reign of Henry VI., petitions were made by Parliament with a view of limiting the powers of the council, but none of them resulted in the passage of a statute, the answers given by the king being either unfavorable or qualified. Some of these petitions and the answers show that the ground on which the jurisdiction of the council was defended was the difficulty in many instances of obtaining redress for injuries at the common law.

Thus in 1399 (1 Henry IV.) the Commons petitioned that personal actions between party and party may not be tried by the council, to which the answer was: "Soit l'Estatut eut fait tenuz et gardez, la ou l'une partie est si graunt et riche, et l'autre partie si povre qu'il ne purra autrement avoir recoverer." The word "except" (supplied by Sir F. Palgrave after "gardez"), appears to be lacking.

The jealousy of the power of the council entertained during the fourteenth century was justified by the improvement of the judicial polity compared with what it had been in times past. The judicature of the king in council had been admitted in past times for wise reasons, although as wise ones might now be urged for it abrogation. It was principally calculated for times of disorder when the common course of justice was circumscribed to very narrow bounds, and ordinary judges were unable to enforce the execution of the law against powerful subjects. When the state of society was altered and things grew more settled, such supreme power seemed no longer necessary. Again, the common law, during this period, had arrived at such a degree of perfection that arguments from the incompetency or defect of ordinary provisions were no longer of any avail. The remedies of the law were so increased in number and their execution so effectually secured that it was no longer requisite to recur to the judicial character of the king to supply by his prerogative the insufficiency of the law. All injuries now found a means of redress in the ordinary courts, and to recur to any other jurisdiction was thought unnecessary, dangerous and burdensome to the subject.

Such arguments, co-operating with the dread impressed by an authority that was as much or more perhaps of a political than judicial nature, contributed to raise a clamor against the council, and occasioned several acts of Parliament which contributed to discountenance any unnecessary application to the king in council, and allowed it only on such terms as it was thought might prevent an abuse of it.

The first of these statutes was the 25th Edw. III. Stat. 5, c. 4, which enacted that according to the Great Charter none should thenceforth be taken by *petition* or *sugges-*

tion made to the king or his council unless it was by indictment or presented by good and lawful people of the same neighborhood where the fact was done, in due manner, or by process of writ original at the common law. Further it enacted that none should be ousted of his franchise or his freehold unless he were duly brought in to answer, and was fore-judged of the same by the course of the law; and if anything was done otherwise that it should be redressed and held void. It was however subsequently thought insufficient to merely declare such proceedings void, but suggestions to the king being often false or malicious it was enacted by 37 Ed. III. c. 18, that to prevent such for the future, all persons making suggestions should be sent with them before the chancellor, treasurer and the council, there to find surety for prosecuting these suggestions; and if the suggestions were *found evil*, that the party should incur the same penalty as the adversary would if convicted, and then the matter should be left to the process of the law. This latter clause was repealed the following year (Stat. 38, Ed. III. Stat. 1, c. 9) and instead it was ordained that a person failing in proof of his suggestion according to the former statute should be committed to prison till he had agreed with the defendant for the damage and slander he had sustained, and besides made ransom and fine to the king.

Either the evil was not abated by these statutes or the uneasiness of the people required further declarations of the Parliament on the subject, for we find that about four years later an act was passed which seemingly was intended to give a finishing blow to all extraordinary judicature whether civil or criminal. The Commons having again complained that persons were brought before the council by writ "and otherwise upon grievous pain" (sur greve peine), against the law, it was enacted (Stat. 42, Ed. III. c. 3) that no man be put to answer before justices without presentment or matter of record or by due process and writ original, according to the old law of the land, and that anything done to the contrary should be void.

The process of bringing defendants before the council was however probably regarded as "due process and writ original, according to the old law of the land." In any event some plausible method was evidently devised to prevent the literal operation of the statute.

During the reign of Richard II. the judicature of the council was exercised in all its amplitude, notwithstanding the attempts made in the last reign to draw the causes of which it held cognizance to the ordinary courts, and complaints of its encroachments were repeatedly made to Parliament.

In 1377 it was prayed that no suits between parties should be *ended* before any lords or others of the council, but before the justices only. In the following year it was prayed that no man should answer before the council, by writ or otherwise, concerning his freehold, but only at the common law: to which it was answered that no man should be "forced to answer finally" there on such matters, though all persons should be obliged to answer before the council concerning "oppressions." Thus, a limit seemed to be fixed to the jurisdiction of the council, by allowing it to entertain all sorts of suits commenced there originally by complaint or otherwise, but instead of determining finally, to refer them, as it should seem proper, according to the subject of debate, to the different courts of common law.

Besides the business that would perpetually engage the council when it acted in this manner, as auxiliary to the judicial determination of the courts of law, it was laid down by Parliament that "oppressions" might be determined there finally: and in all times, particularly those of disorder and change, numberless are the causes which the council might have drawn to itself under the idea of "oppressions."

A POSSIBLE MISNOMER.

By Wendell P. Stafford.

COME, name the child, my dear. "What's in a name?"
Yet we are moulding now the speech of men:
For, oh, how many, many thousand times
This name will be pronounced in days to come!
With tender iterations of the home,
With every fond addition and sweet change
That love delights in, — crooned in cradle song,
Then shouted on the green by boys at play,
Then murmured softly under moon and stars,
By lips that make it music, — then, ah me!
Bandied about the rude ways of the town,
In praise and blame, from kindliness to scorn,
And blown, perhaps, world-wide for ill or good, —
Spoken at last, one day, with awed, hushed breath,
Then treasured in a few fond, faithful hearts,
Read a few years upon a low, white stone,
And then forever, evermore forgot!
So name the child, my dear. What's in a name?

LEGAL VULGAR ERRORS.

WHEN Sir Thomas Browne wrote his "Pseudodoxia Epidemica," or Vulgar Errors, he omitted altogether to take notice of an important class, viz., legal vulgar errors. As a physician, it was rather errors of natural history or science which exercised his mind, and he accordingly explodes with much abstruse learning such vulgar notions as that "the elephant hath no joints in his legs," that Jews stink, and that the chameleon lives only upon air. Yet as "there are waur lees than ithers," as the parish idiot in Ramsay's "Anecdotes" observed, so there are errors and errors, and it is safer to indulge the innocent belief that an elephant has no joints or that "storks will only live in republics or free states," than the somewhat dangerous notions that you may keep what you find, or marry again if your husband or wife has been missing for seven years. The idea that an Englishman has a common law right to take his wife to market for sale with a halter round her neck now only lingers in the mind of the intelligent foreigner and some North-country miners, but the related superstition that a husband may beat or imprison his wife died hard only quite recently in the Jackson case. These, and a good many other vulgar legal errors, seem to be the shadows cast by traditional usage or obsolete statutes, such, for instance, as that bull-beef may not be sold unless the bull has first been baited; that no one may shoot a crow within five miles of London, or carry a dark lantern; or, more singular still, that the owner of an ass must crop its ears to prevent it frightening horses on the road. The idea that an heir could not be disinherited unless he was given a shilling still survives in the phrase being "cut off with a shilling." When Sheridan was threatened with this last extremity by an indignant parent, he replied with characteristic coolness, "You don't happen to have the shilling about you, sir, do you?" This demand was premature: the said shilling need only (according to the vulgar view) be given by will. Wills themselves are the subject of a great deal of popular misconception; for instance, one very common mistake is that the destruction of a will revoking a former one revives the earlier will. This is a very fatal error, as fatal as that pride of knowledge which leads makers of "oleograph" wills, as a country solicitor once called them, to talk about "heirs" when they mean "next of kin," and "demising," when they mean "devising." One widespread fallacy is that a trespasser is liable to prosecution. It is small blame to people that this should be believed, because they are confronted at every turn from their infancy upwards by boards threatening prosecution and the severest penalties of the law to the trespasser. It requires a daring originality and great firmness of mind to take in the idea that such a notice board is nothing but a "wooden lie," and the severest penalties of the law a civil action for nominal damages. Landowners would seem, in putting up such notices, to act on the principle of Sir Arthur Heveningham. This gentleman, according to the "Camden Anecdotes," "being informed of some abuse of his liberties by a saucy, impudent fellow, he vowed and threatened such a kind of punishment presently as was not very legal, whereupon a friend of his prompted him of the danger of such unwarrantable proceeding as the letter of the law would not bear. 'Oh! pox on't,' says he, 'in cases of this nature we must not be so nice and scrupulous; lett's doe something by law and something by presumption too.'"

A very common form of popular fallacy

is confusing a contract or other legal act or relation with the evidence of it. People who get married seldom realize that it is the exchange of mutual promises at the altar which makes the contract binding. They fancy, like Mr. Macey, the parish clerk in "Silas Marner," that "It's the *regester* does it," and that the signing of their names is "the glue." In the same way heroines of melodrama in humble life cling with desperate tenacity to their marriage lines, as if the validity of the marriage depended on their preservation.

Gifts are another matter on which people are much at fault. "Mind," says the intending donor, "this ring is yours," or "is to be yours." If this is meant as an immediate gift *inter vivos* it ought to be accompanied (as every lawyer knows, but every layman does not) by delivery or be made by deed. If it is meant to take effect on the donor's death, then the intended gift is a testamentary disposition, and (if not a *donatio mortis causâ*) must be made with the formalities required by the Wills Act.

A common illusion of tenants is that the landlord is bound to do repairs, whereas the painful truth is that, in the absence of an express covenant, the landlord is not bound to do anything, not even if the premises become ruinous or insanitary (Gale *v.* Harvey, *Times*, May 9), and thereby uninhabitable. Again, a favorite fallacy of the British juryman is that there is no difference, where a railway company is concerned, between *injuria* and *damnum absque injuria*. He reasons thus with himself: Here is an innocent man, perhaps the bread-winner of a family, killed or disabled. What does it matter to him whether there was any negligence on the company's part or not? The company is the author of the injury; it can pay, and it must pay. This is just the retaliatory principle of early law, which looked at what the plaintiff had suffered without discriminating the degree of the defendant's delinquency.

Aristotle, with his usual acuteness, remarks that there are a thousand ways of going wrong and only one of going right, which may account for the infinite variety of errors, legal or otherwise. Certainly legal errors are as plentiful as blackberries. That you may shoot a burglar or a cat trespasser which is making night hideous on the tiles, that a judge's black cap is a funeral emblem (really it is only full dress), that deeds executed on a Sunday are void, that the Queen signs death-warrants, are just a few specimens of prevalent vulgar errors. One deeply rooted but, needless to say, vulgar error, is that all lawyers are more or less rascals — an assumption from which honest Mr. Tulliver, in the "Mill on the Floss," drew the inference (as many still do) that the ends of justice are only to be achieved by employing a stronger knave to frustrate a weaker knave. The analogous view of law as a cockfight, in which the victory depends on securing an advocate who is a game-bird with the best pluck and the strongest spurs, is, it is to be feared, too like the fact to be reckoned among legal vulgar errors. — *Law Journal.*

"FOREIGN" RECEIVERS AND JUDICIAL ASSIGNEES.

By Seymour D. Thompson.

II.

III. What Concessions have been made to such Receivers.

The principle now generally acted upon is that a receiver or other trustee, appointed in another state, will be permitted, on the principle of comity, to bring an action in the domestic forum, for the purpose of collecting the assets of the insolvent, for distribution in accordance with the law of the jurisdiction within which the receiver has been appointed, when so to do will not contravene the rights of citizens of the state in which the action is brought.[1]

This principle applies, not only in the case of receivers, but in the case of every other kind of statutory assignee or trustee, acquiring, by operation of the law of the state or country wherein he is appointed, dominion over the property of an insolvent, for the purpose of administration for the benefit of his creditors, — as distinguished from a *voluntary assignee*, who holds the legal title, which carries with it a right of action *ex proprio vigore*.[2]

[1] Metzner *v.* Bauer, 98 Ind. 425; Runk *v.* St. John, 29 Barb. (N. Y.) 585; Hoyt *v.* Thompson, 5 N. Y. 320; Bagby *v.* Atlantic etc. R. Co. 86 Pa. St. 291; Hurd *v.* Elizabeth 41 N. J. L. 1; Bidlack *v.* Mason, 26 N. J. Eq. 230; Bank *v.* McLeod, 38 Ohio St. 174; Toronto Gen'l Trust Co. *v.* Chicago etc. R. Co., 123 N. Y. 37 (trustee appointed in Canada); Re Waite, 99 N. Y. 433; McAlpin *v.* Jones, 10 La. An. 552; Comstock *v.* Frederickson, 53 N. W. Rep. 713; Lycoming Fire Ins. Co. *v.* Langley, 62 Md. 196; Boulware *v.* Davis, 90 Ala. 207; Lycoming Fire Ins. Co. *v.* Wright, 55 Vt. 526; Chicago etc. R. Co. *v.* Keokuk etc. Packet Co. 108 Ill. 317; *s. c.* 48 Am. Rep. 557; Graydon *v.* Church, 7 Mich. 36; Pugh *v.* Hurtt, 52 How. Pr. (N. Y.) 22; Iglehart *v.* Bierce, 36 Ill. 133; Ex parte Norwood, 3 Biss. (U. S.) 504; National Trust Co. *v.* Miller, 33. N. J. Eq. 155; Paradise *v.* Farmers etc. Bank, 5 La. An. 710; Cagill *v.* Wooldridge, 8 Baxt. (Tenn.) 580,583; *s. c.* 35 Am. Rep. 716.

[2] With reference to the question, so far as it relates to the right of action of the *assignees* of bankrupts appointed by a foreign tribunal, it may be worth while to note that the liberal genius of Chancellor Kent conceded to such trustees an unqualified right of action in the courts of New York. In Bird *v.* Caritat (2 Johns. [N. Y.] 342) it was held that a suit could be brought in that state, in the name of a foreign bankrupt, by his assignees, for their benefit as such, using the name of the bankrupt, according to the principles of common-law pleading, since abrogated in the code states. "This," said he, "is more a question concerning form than substance; for there can be no doubt of the right of the assignees to collect all debts due to the bankrupt, either by a suit directly in their own names, or as trustees, using the name of the bankrupt. It is a principle of general practice among nations to admit and give effect to the title of foreign assignees. This is done on the ground that the conveyance, under the bankrupt laws of the country where the owner is domiciled, *is equivalent to a voluntary conveyance by the bankrupt.*" In Holmes *v.* Rensen (4 Johns. [N. Y.] 460), Chancellor Kent wrote an elaborate opinion, holding that foreign assignees in bankruptcy took title to all the property of the bankrupt wherever situated, with the same force and effect as if the bankrupt had made a voluntary assignment of his property, and that such a title was good, even against subsequent attaching creditors, in a country other than that where the bankruptcy adjudication had taken place, and where the statutory transfer had been made. He said: "It is admitted in every case, that foreign assignees, duly appointed under foreign ordinances, are entitled, as such, to sue for debts due to the bankrupt's estate" (Ibid. 485). In Raymond *v.* Johnson (11 Johns. [N. Y.] 488), it was held that, although the court would recognize and protect the rights of an assignee, under the insolvent laws of another state, yet an action brought in New York must be in the name of the insolvent. But that rule of pleading is now abolished by the code, which requires every action to be brought in the name of the real party in interest. Another controversy came before the courts of New York between Holmes and Remsen (Holmes *v.* Remsen, 20 Johns. [N. Y.] 229), where Platt, J., expressed views upon the question somewhat different from those of Chancellor Kent. In an opinion of exceptional learning and strength, he, in substance, annexed to those views the following qualification, which is quoted from the concluding argument of Mr. Caines for the attaching creditors, and which is now generally accepted by American tribunals: "We admit that the bankrupt assignment passes all the property of the bankrupt, here and everywhere, provided always that there are no creditors here having claims on that property. We admit the right of the assignees of the bankrupt to collect his property here and take it to England, if there are no creditors of the bankrupt here, but not otherwise. If there are creditors attaching here, there is a *conflictus legum*, and the foreign law must yield" (Ibid. 254). Subsequently it was held by Chancellor Walworth that an assignment in

But it must not escape attention that the *rights* of citizens of the state of the forum,

which are protected by this principle, consist chiefly in the right to get a *preference* over other creditors of the insolvent, by seizing, under attachments, any property of the insolvent which may be found within the state of the domicile of such creditors. The rule of comity under consideration is, therefore, never allowed to operate, as a national bankruptcy law would operate, to secure a *ratable distribution* of all the assets of the insolvent, among all his creditors, without reference to their domicile, provided there are in any state local creditors and local assets. The insolvents whose assets pass into judicial administration are now, in most cases, incorporated companies. It is a doctrine constantly reiterated by American judges, and seldom dissented from, that the assets of a corporation are a trust fund for its creditors. This necessarily means that they are a trust fund for all its creditors, and not for particular creditors who may chance to get preferences over the others. But the rule which allows ravenous local creditors to pounce upon and appropriate all the assets of a non-resident corporation which may be found within the state of the residence of such creditors, turns this trust fund doctrine into a mere mockery. But where the right of the domestic creditor to secure a preference out of the assets of the so-called foreign insolvent is not involved, the decisions of the most enlightened American courts, in dealing with this subject, proceed on lines of comity and justice. The liberal genius of the courts of New York has conceded the principle that a judicial transfer, *in invitum*, of the property of an insolvent debtor, such as will estop the debtor in the jurisdiction where the proceeding takes place, will estop him everywhere.[1]

It is also to be noted that, contrary to the doctrine recently held by the Supreme Court of Indiana in the decision already referred to, several of the courts hold that, as between a foreign receiver, assignee, or other representative of creditors, suing in his representative character, and a particular cred-

bankruptcy, made in England, was good to pass personal property situated in New York, *as against the bankrupt himself and his creditors residing in England*" (Plestoro *v.* Abraham, 1 Paige [N. Y.] 236). And such is the generally conceded law. In 1835 the Court of Appeals of New York, in a learned and laborious opinion by Earl, J., went over the decisions in that state relating to this question, analyzed them with care, and announced the following doctrine: "1. The statutes of foreign states can, in no case, have any force or effect in this state, *ex proprio vigore*, and hence the statutory title of foreign assignees in bankruptcy can have no recognition here solely by virtue of the foreign statute. 2. But the comity of nations, which, Judge Denio said in Petersen *v.* Chemical Bank, 32 N. Y. 21, is a part of the common law, — allows a certain effect here to titles derived under, and power created by the laws of other countries, and from such comity the titles of foreign statutory assignees are recognized and enforced here, when they can be without injustice to our own citizens, and without prejudice to the rights of creditors pursuing their remedies here, under our statutes; provided also, that such titles are not in conflict with the laws or the public policy of our state. 3. Such foreign assignees can appear, and, subject to the conditions above mentioned, maintain suits in our courts against debtors of the bankrupt whom they represent, and against others who have interfered with or withhold the property of the bankrupt." Re Waite, 99 N. Y. 433, 448. The court regarded these propositions as a legitimate deduction from the following decisions: Petersen *v.* Chemical Bank, 32 N. Y. 21; Kelly *v.* Crapo, 45 N. Y. 86; Osgood *v.* Maguire, 61 N. Y. 524; Hibernia National Bank *v.* Lacombe, 84 N. Y. 367; Re Bristol, 16 Abb. Pr. (N.Y.) 184; Runk *v.* St. John, 29 Barb. (N. Y.) 585; Barclay *v.* Quicksilver Mining Co., 6 Lans. (N. Y.) 25; Hooper *v.* Tuckerman, 3 Sandf. (N. Y.) 311; Olyphant *v.* Atwood, 4 Bosw. (N. Y.) 459; Hunt *v.* Jackson, 5 Blatch. (U. S.) 349.

[1] Thus, an assignment under the English bankrupt law was held to estop the bankrupt in respect of personal property situated in New York, though emphasis was laid on the fact that the bankrupt appeared in England and *voluntarily assented* to the proceeding. Matter of Waite, 99 N. Y. 433. So, it has been held by the chancery court of New Jersey, that that court will, on principles of comity, extend its aid to a receiver of a foreign corporation, seeking to obtain the possession of the property of the corporation situated in New Jersey, as against the officers of the corporation, who are endeavoring, by fraud or subterfuge, to withhold the possession of such property from the receiver, — no claims of domestic creditors being involved; and that, to that end, it will set aside a judgment at law, rendered in a court of New Jersey, fraudulently and collusively concocted by such officers, for the purpose of protecting them in the possession of the property as against the receiver, the creditors and the stockholders of the corporation. Bidlack *v.* Mason, 36 N. J. Eq. 230; cited with approval in National Trust Co. *v.* Miller, 33 N. J. Eq. 155, 159.

itor *of the same state* as the foreign receiver or assignee, the domestic tribunals will give preference to the foreign receiver or assignee. In other words, as between two citizens of the same foreign state, one of them entitled to the assets under the laws of that state, and the other struggling to get a preference not allowed by the laws of that state, the domestic tribunal will extend this comity so far as to give effect to the laws of that state.[1]

The theory of these decisions is that an assignment, made by operation of law, *in invitum*, of the property of an insolvent debtor, operates as an *estoppel* upon the citizens of the state wherein the assignment has been made, and that this estoppel will be allowed to operate in the state of the forum, where to give it scope will not prejudice the rights of domestic creditors. It is also to be noted that the refusal to extend comity to the representatives of foreign insolvents, as against the rights of domestic creditors, does not, according to the best view, extend to *voluntary assignments* to trustees or assignees for the benefit of creditors. The distinction is clearly brought out by Mr. Justice Story in the following language: "It is therefore admitted that a *voluntary* assignment, by a party, made according to the law of his domicile, will pass the *personal* estate, whatever may be its locality, abroad as well as at home. The law distinguishes that which results from the exercise of power under the law, from that which comes from the free will of the party; the former is limited in its effect to the country where the law is in force, whilst the latter is given universal and general operation, under the comity of nations."[2]

[1] Gilman *v.* Ketchan (Wis.) 54 N. W. Rep. 395; Cole *v.* Cunningham, 133 U. S. 107; Reynolds *v.* Adden, 136 U. S. 348, 353 (doctrine recognized); Bagby *v.* Atlantic etc. R. Co. 86 Pa. St. 291; Bacon *v.* Horne, 123 Pa. St. 452.

[2] Story's Conflict of Laws, § 111. The distinction is also clearly stated in Smith's Appeal, 104 Pa. St. 381, 389, where the above language is quoted. See also Lowry *v.* Hall, 2 Watts. & S. (Pa.) 129, 131; Speed *v.* May, 17 Pa. St. 91; Dundas *v.* Bowler, 3 McLean (U. S.) 397; Livermore *v.* Jenckes, 21 How. (U. S.) 126.

This principle rests upon the effect which is given to contracts made in foreign jurisdictions. The *jus disponendi* is essential to the very idea of property, and every owner of property has a right to alien it at his mere pleasure for any lawful purpose; and his deed, or other act of alienation, will receive effect in foreign jurisdictions, not upon the mere principle of comity, as stated by Story, but rather on the theory of operating *ex proprio vigore*.

IV. Observations on the State of the Law on this Subject.

The fact remains that no state allows an assignment of property, *in invitum*, under the insolvent laws of another state or country, to operate to the prejudice of its own citizens and that such an assignment is deemed to operate to the prejudice of its own citizens whenever it prevents them from getting a preference over other creditors of the insolvent, by seizing his assets within the local jurisdiction. The further fact remains, that some of the states refuse to allow such assignments to operate at all within their limits, without reference to the inquiry whether so to do will be prejudicial to their own citizens, or whether the foreign insolvent has any creditors within their own jurisdiction. The further fact remains that one hundred years of struggle in the American state courts have scarcely served to relieve this subject of the conflicts with which it was originally attended; that there is no uniform principle of American law upon the subject, but that every new decision, instead of tending to produce uniformity, adds to the confusion. In view of these facts, I ask whether the American state courts are giving "full faith and credit to the judicial proceedings" of other states, when they deny the operation of such proceedings entirely within their own limits, in so far as their operation is necessary to secure a ratable distribution of the assets of

[1] First National Bank *v.* Hughes, 10 Mo. App. 7, 23.

insolvent debtors? I am not speaking with reference to the settled construction which the constitutional provision has received. I am asking for conclusions as to its obvious meaning. Is it not plain that the courts of every state refuse all faith and credit to proceedings under the insolvency laws of other states, whenever such proceedings touch the interests of their own citizens? Is there not an assumption underlying every decision upon this question, or an assertion to be read between the lines of every opinion, that no state court is willing to trust the courts of any other state to administer the estate of an insolvent debtor upon the ordinary principles of equity? I need not enlarge upon the obvious injustice of allowing the citizens of a particular state, where the insolvent happens to have assets, by pouncing upon those assets, to get a preference over other creditors who stand in equal right with them. Such a scandalous state of the law would shock the conscience of any people not habituated to injustice. The state of things above depicted calls loudly for a new exertion of the power conferred upon Congress by the Constitution, of establishing a uniform system of bankruptcy. It is true that every bankruptcy law must, in the very nature of things, prove unsatisfactory, and, in the course of time, create an opinion favorable to its repeal. The reason is that, under the operation of such a law, no creditor ever gets paid in full, and that, whatever safeguards may be thrown around its operation, it is found impossible to exclude official corruption. But any national system of bankruptcy, although badly administered, must be, on the whole, more just, and hence, preferable to any state insolvency system, in which the assignee or trustee has no power beyond the jurisdiction of his own state, and which leaves assets situated in other states to be seized upon by local creditors. But there is a consideration still more important. The conflict of judicial opinion upon the rights of foreign receivers, assignees, etc., admitted in almost every judicial opinion which can be taken up to be irreconcilable, will never be reconciled, and we will never have a uniform American law upon the subject until the final decision of every such conflict shall be submitted to the decision of *one* court of last resort. Under the federal Constitution, as at present interpreted, no such court exists having jurisdiction of the subject. But I submit that, in this regard, the Constitution has received too narrow an interpretation; and that the Supreme Court of the United States should hold that the refusal to allow the judicial assignment of the property of an insolvent, made in another state, under the laws thereof, to operate within the domestic jurisdiction, is a refusal to give "full faith and credit to the judicial proceedings of such other state," within the meaning of the constitutional provision already quoted. I submit further, that it would not be a strained construction of the commerce clause of the Constitution to hold that the refusal to allow receivers, assignees, or trustees of insolvent debtors appointed in other states, to collect, within any state, the debts which are due to the estate which they represent, is an interference with the powers of Congress to regulate commerce between the states. Of what value is the right to sell goods in another state, free from discriminating excise laws, when the right to collect the purchase price is denied in case the vendor becomes insolvent? I submit further that, the federal union being established by the Constitution of the United States, and by that alone, the question of conflicting rights, within that Union, among citizens of the different states, — in short all questions of *interstate law*, — ought to be regarded as "federal questions," for the ultimate decision of which the Supreme Court of the United States has jurisdiction. I know that, in advancing these propositions, I am arguing against

the settled construction which the instrument has received, and at the hazard of being regarded as unsound and visionary; but I am asking whether that construction was necessary, and whether the time has not come for taking a step forward in its construction, for the purpose of avoiding intolerable evils? But if, as is no doubt the fact, the taking of that step by the supreme national tribunal is hopeless, then I submit that the time has arrived when the legal profession — who must take the lead in matters of this kind — ought to consider the question of so amending the federal Constitution as to enlarge the power of the Supreme Court of the United States to that of a tribunal organized, not merely for the decision of "federal questions," but for the *settlement of conflicts* among citizens of different states, where no federal questions are involved. The men who framed the federal Constitution were able, wise, and patriotic; and so were its first interpreters. But to them the whole project was tentative; they were without experience; they reasoned from narrow analogies; they knew nothing of the steamboat, the railway train, the electric telegraph, or the telephone; and we, after a century of experience of the workings of the instrument, ought not, influenced by a reverential timidity, to shrink from reforming its obvious defects. It is but a short political code, — one of the shortest, — and yet, no doubt, the most complete that was ever thrown off at a dash by the hand of man. Nevertheless, it must have been intended by its framers, and especially by the states which ratified it, none of whom understood all its provisions in the same sense, that *latitude* would be allowed for judicial interpretation, and for the application of its various provisions according to the teachings of experience. Codes have arrested, but have never permanently impeded the progress of jurisprudence. Under them, judicial interpretation has supplied the place of original exposition; and they have been *glossed* into new meanings, suited to new modes of thought and to the demands of successive ages.

I do not approve of interpretations of the federal Constitution which involve plain departures from the meaning of the instrument; but I do believe that the highest federal court can find, in the instrument itself, the power to do much toward relieving the conflicts suggested in this sketch, and that what the court cannot find in it should be supplied by earnest and thoughtful political action.

THE MONEY-LENDER'S ROMANCE.

MR. QUASIMODO, as I will call him, was scrupulously particular as to his personal appearance, and always dressed in glossy broadcloth of raven hue; and in the centre of his spotless lawn shirt-front glistened a large diamond solitaire. His hat was very tall and very shiny, and was always provided with a shallow crape hatband; but on being interrogated as to what bereavement he had recently undergone, he would return evasive answers; and it was generally understood by Mr. Quasimodo's intimates that the sign of mourning was a general and not a particular one, and that he wore it in sorrowful remembrance of clients who had fled to Boulogne, or who had passed through the court for the relief of insolvent debtors. He wore the nattiest little black kid gloves imaginable, and his feet were shod with unimpeachably elegant boots of French kid with varnished tips. The only thing which he needed to complete

his engaging aspect was, say, a couple of feet in height, for, to tell the truth, Mr. Quasimodo was a dwarf.

His physical shortcomings stood him once in unexpectedly good stead. Mr. Quasimodo — who was about fifty when I knew him — was by no means insensible to the tender passion, and on one occasion a handsome but wily widow brought an action against him for breach of promise of marriage; he being, as it happened, a very much married man, with a wife as tall as a life guardsman and two strapping daughters. The case was tried before Mr. Justice Martin, and Mr. Quasimodo's leading counsel was that once extremely popular advocate Mr. Serjeant Wilkins, who, after reading his brief, told the defendant that the case was one that must be "bounced" through. And the serjeant did bounce it through in a truly remarkable manner. "Gentlemen of the jury," he said at the close of a most eloquent speech, in which he endeavored to persuade the twelve honest men in the box that they were about the most intelligent and most patriotic jurymen that had ever been empanelled since the trial of the seven bishops, "you have heard the evidence for the plaintiff; and, gentlemen of the jury, you have seen and have admired that most bewitching plaintiff herself. Gentlemen, do you believe that this enchanting, this fascinating, this captivating, this accomplished lady, would for one moment favor the advances or listen with anything save scorn and indignation to the amorous protestations of the wretched and repulsive *homunculus*, the deformed and degraded defendant?"

Mr. Quasimodo looked up from the well of the court and piteously murmured: "Mr. Serjeant Wilkins! Oh, Mr. Serjeant Wilkins!"

"Silence, sir!" replied the serjeant, in a wrathful undertone. "Gentlemen," he continued, bringing his fist down heavily on the desk before him, "do you think that this lovely lady, this fair and smiling creature, would ever have permitted an offer of marriage to be made to her by this miserable atom of humanity, this stunted creature, who would have to stand on a sheet of notepaper to look over twopence?"

The jury at once gave a verdict for the defendant.

Mr. Quasimodo's exiguity of stature was assuredly no fault of his; but it must be mournfully conceded that, so far as the discounting of bills went, a more flagitious little villain rarely existed. He came to deserved grief at last; and after an interview with the magistrate at a police court, and making some very complicated arrangements to repair certain wrongs which he was accused of having done, he retired from the kite-flying line of business, and subsided into private life, from which he did not emerge until the period of his decease.—*G. A. S. in London Telegraph.*

THE SUPREME COURT OF VERMONT.

V.

By Russell S. Taft.

THE father of HERMAN R. BEARDSLEY came from Connecticut to Grand Isle soon after 1800. Herman was placed in charge of Asa Lyon, a more learned and accomplished classical scholar than whom did not live in those times; under his tuition Mr. Beardsley entered the University of Vermont in 1819, but left in his Junior year and studied law with Bates Turner of St. Albans, and afterwards with Asa Aldis, both of whom were judges of the Supreme Court. He settled and thereafter lived in St. Albans. His practice was great for a period of more than fifty years. In 1865, upon the resignation of Judge Asa Owen Aldis, he was appointed judge. His life had been passed in the active engagements of the advocate; and the duties of the judicial position were not congenial. As an advocate, he was successful, and his place was evidently within the Bar, not upon the Bench.

He was a genuine scholar, a brilliant lawyer, and an eloquent advocate. He resigned his position as judge in November, after the election of William C. Wilson as his successor, to take effect on the 1st of December. He never sat in the Supreme Court.

WILLIAM C. WILSON, a native of Cambridge, studied law with Homer E. Hubbell of Fairfax and afterwards at Mr. Turner's law school in St. Albans. During his professional life he resided in Bakersfield. He was appointed judge in the place of Mr. Beardsley, resigned November, 1865, having at the session of the Legislature that year been elected for the term beginning on the 1st of December. He removed to St. Albans in the summer of 1867, but after a residence of two or three years, returned to Bakersfield. He served as judge until 1870, and then removed to Minnesota, residing there until his death.

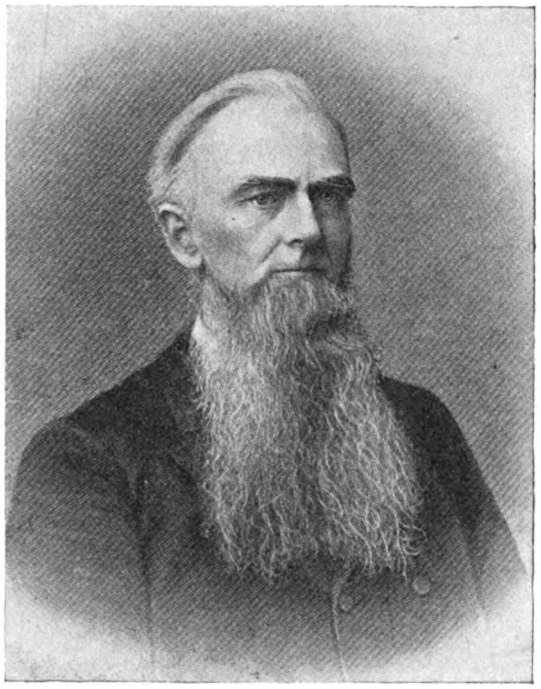
During his professional life in Bakersfield, he established a law school there, and educated in it, and in his office, a large number of students, probably in the vicinity of eighty. After leaving the Bench, he did not resume professional work. His son, W. D. Wilson, is in the profession in this State, and a son-in-law, Mr. Tyler, in Minnesota, and another son-in-law, Judge Start, holds a judicial position in the latter state.

BENJAMIN HINMAN STEELE at the time of his election was the youngest person ever given a seat upon the Bench of the Supreme Court. He was born in the Province of Quebec, the only judge of foreign birth, although not a foreigner, for his parents were of Vermont origin and citizens of the State, temporarily residing abroad.

During youth, he was frail in body, of a peculiar temperament, silent and thoughtful, and at times quite social. His mind was clear and analytic, and when a boy, could state his propositions with remarkable clearness, skill and force. He had a marked fondness for books and study, and when quite young, was a teacher in the advanced schools; was a student at the academies of Stanstead and Derby, had a Catholic priest for a tutor, was months learning French at the college of St. Pierre, was at Norwich University, and then at Dartmouth College, at which institution he graduated at the early age of twenty. He was principal of the Barton academy, studying law at the same time; was compelled to leave his school and studies by typhoid fever, and upon his recovery went to the Law School at Harvard, was examined at Boston for admission to the Bar by Benj. F. Butler, who took occasion, in recommend-

ing him, to suggest the remarkable manner in which he had acquitted himself, and pointed him out as an example of thorough training.

He was a fluent French scholar, and read civil law in Sherbrooke, Quebec. He soon located in Derby, and although called "the boy lawyer," took high rank among the ablest and most experienced, and after six years' practice was appointed judge, when Judge Poland resigned to accept a seat in the United States Senate.



JONATHAN ROSS.

In court, he presided with great ease and dignity, and was very patient in his investigations. He disposed of questions with promptness, care and accuracy. His opinions were finely written, the result of his education, his literary taste, and accuracy of expression.

The settlement of the large estate of his wife's father demanding his attention, he resigned his judgeship after five years' service.

JOHN PROUT was of Addison County origin, practicing until 1854 in Salisbury. He then removed to Rutland, and continued there until his death. He was one of the most studious of men, studying law and but little else. During the latter part of his life, he purchased substantially all the text-books issued, especially everything of a new kind or upon new subjects. He was counsel for the great corporations in his vicinity, and at the time of his death was regarded as one of the leaders of the Vermont Bar. Without any of the graces of oratory, his manner of speech was direct, pointed and concise; in his low tone of voice he would state to the Court, when about to speak upon the most important questions, that he desired about thirty minutes time, and he seldom exceeded it. Upon the declination of Judge Loyal C. Kellogg to continue longer upon the Bench, he was elected and served two years. He declined further service. He was in comfortable circumstances, his income from his profession was great, and he was disinclined to make the usual journeys about the State, most of which came in the winter months. He was as well fitted for the discharge of the duties of a judge in the Supreme Court as any one probably who ever occupied the position. He was not as gifted in county courts. His voice was low, and at times he could with great difficulty be heard by those present. After his instructions to a jury in one case, the noted David E. Nicholson, counsel, said that he could take no exceptions to Judge Prout's charge, upon the ground that the jury would probably be misled by it, for they hadn't heard a word that he said.

HOYT H. WHEELER, United States judge in the Vermont District, is so well known that little need be said of him. He was born in Chesterfield, N.H., and when young his father removed to Newfane, Vt. He

received an academical education, read law at Newfane and Brattleboro, and was admitted to the Bar when twenty-six years of age, locating and practicing his profession in Jamaica, representing that town in the Legislature and Windham County in the State Senate.

In 1868 he was vigorously supported for the judgeship, and the succeeding year, upon the retirement of Judge Prout, was elected his successor with great unanimity. The last day of March, 1877, he resigned the judgeship, having been appointed by President Hayes United States judge for the Vermont District, and is now holding that position. There is so little business in the United States Courts in this district that a large part of his services are performed in the other districts of the second circuit. He did excellent service when upon the State Bench; in the Supreme Court, although he occasionally disagreed with his brethren, he seldom appears as dissenting in the reports. He is much of an antiquarian and well versed in early local history, and is as well an antiquarian in legal matters, possessing most of the early books of the law. He undoubtedly has a better knowledge of the early English law books and decisions than any other Vermonter living.

HOMER E. ROYCE obtained his education in the common schools and at the academies in St. Albans and Enosburgh, studied law with Thomas Child, was admitted at the age of twenty-four, and until 1856 practiced law at East Berkshire. He was State attorney for Franklin County, represented Berkshire in the Assembly, and was a member of the State Senate for several years, — the first time, senator as soon as he had reached the constitutional age, and the last, the session prior to his election as judge. At the time of the change in the judicial system in 1850, although the youngest member of the Senate and but thirty years of age, he was nominated by the representatives from the third judicial circuit for the circuit judgeship, but declined the position. He was elected congressman in 1856 and re-elected, retiring in 1860. During his first term, he was the youngest member of the House. In 1870 he was unanimously elected judge and served for twenty years, and aware of his declining health, refused another election. In 1882, the degree of LL.D. was conferred upon him by the University of Vermont.

He was a man of massive, powerful brain, a graceful and most effective speaker. His written opinions were not always as well guarded as necessary to make the statements always technically correct. He said the most difficult thing for him to do was to write opinions in the Supreme Court. He shone best in the trial of jury causes and when orally disposing of questions of law. His charges to the jury were pointed, concise and never liable to be misunderstood. He sentenced prisoners in so tender and pathetic terms, that I have seen them overwhelm him with such profuse thanks that one would think they supposed he had done them the greatest favor by consigning them to a few years in the penitentiary.

He was bold and stubborn in his views upon all questions; he cared little for public clamor and was independent in all respects. He was true and genuine in all his actions, and if there was anything that he disliked, it was what passes in modern times under the phrase of "sham and shoddy." The proposition that the judges wear silk gowns was never made to him by anyone a second time.

TIMOTHY P. REDFIELD was one of twelve children, six sons and six daughters of Dr. Peleg Redfield, an early settler in Coventry. He prepared for college at Peacham Academy, and to save his funds, walked most of the way from Coventry to Dartmouth College. He stood well in his class and graduated in 1836; the degree of LL.D. was

conferred upon him by Middlebury College and his *alma mater*.

He practiced at Irasburgh from his admission in 1838 to 1848; represented his town and county in the Legislature, and in the latter year removed to Montpelier. He took high rank in his profession, was advisor and director in many important corporations. He was of dignified and courtly bearing, of great fairness and candor.

During his professional life at Montpelier, he was often associated in jury trials with the late Paul Dillingham, who, when the testimony was closed, would remark to Redfield, "Now, Timothy, you preach, while I, Paul, will pray." He appreciated wit and humor in others and had an abundant fund of droll and interesting stories of the early Bar and Bench. He was a fine classical scholar, exceedingly accurate in the repetition of anything that another had said or of what he had read. He was voted for, for judge, at the elections in 1857. He would have rendered better service to the State had he been elected then or in 1860, when he would have willingly accepted the place upon the retirement of his brother, the Chief Judge, but at the latter date, Judge Peck, the greatest Vermont jurist, was a member of the Legislature and his standing was such with the members that his election went without question.

RUSSELL S. TAFT.

In 1870, when Judge Steele retired, he was elected his successor and served until he voluntarily retired in 1884. In 1883, on account of poor health, he visited Europe; after his return his health to some extent gave way, affecting his mind slightly, and he declined further service.

He was a more concise writer in his opinions than his brother, the Chief Judge, but he resembled him in many particulars. He had a tenacious and most accurate memory of the cases, and seldom misapplied them in their application to the case at hand.

It is not for me to write of the present members of the court. They are all, save Judge Rowell, natives of the State, and he has been a resident since childhood. They have all represented their respective towns in the General Assembly, and all save Judge Tyler been members of the State Senate, and he represented his district in Congress.

It may be that it is for the reason that they have had so much legislative experience that they can evidently divine what the intention of the Legislature in enacting a statute is, although such intention is not expressed in the words of the act, as in Legg *v.* Britton, 64 Vt. 652.

Judges Munson and Thompson have been judges of the probate court, and all have been State attorneys, with the exception of Judge Munson. Their average age, at their first election was forty-five years; at the present time (December, 1893), fifty-four.

JONATHAN ROSS, present Chief Judge, after graduating at Dartmouth, studied law with William Hebard, of Chelsea, and located in St. Johnsbury. He was elected judge in 1870, and Chief Judge in 1890, upon the retirement of Judge Royce.

H. HENRY POWERS, of Morristown, graduated at the University of Vermont, in 1855; was admitted to the Bar and resided for a time in Hyde Park, afterwards returning to his native place, where he now resides. He represented both towns in the General Assembly, was State attorney for the county, member of the Council of Censors in 1869 and of the Constitutional Convention in 1870; was in the Senate in 1872; in 1874 was Speaker of the House, and at that session was elected judge, and continued in office until 1890, when he was elected member of Congress from the first district, was re-elected and is now in service.

Mr. Powers, by his service upon the Bench, has demonstrated the fact that an astute politician may possess excellent judicial qualities; he has the reputation of having been a good judge, and of being a good politician. He is not like the musical lawyer whose friend, when inquired of as to what the former's business was, replied that the lawyers said he was a musician, but that the musicians called him a lawyer.

WALTER C. DUNTON, a native of Bristol, fitted for college at Franklin Academy, Malone, N.Y., and graduated at Middlebury College in 1857. He read law with Mr. Dillingham at Waterbury, and Linsley and Prout at Rutland, and was admitted to the Bar at Rutland in 1858. He then resided for two years in Kansas, prior to its admission as a state, and was a member of the last territorial legislature. He returned to Rutland in 1861, and was for a time partner with Mr. Prout and subsequently with Mr. Veazey. He was judge of probate for the Rutland District for twelve years, and a member of the Constitutional Convention in 1870. In April, 1877, he was appointed by Gov. Fairbanks to fill the vacancy occasioned by the appointment of Judge Wheeler to the United States District judgeship. Judge Dunton resigned in October, 1879, on account of ill-health, and was succeeded by his former partner, Mr. Veazey. After his resignation, his health was to a great extent restored, he resumed practice, and for one year was professor in the law school at Iowa University.

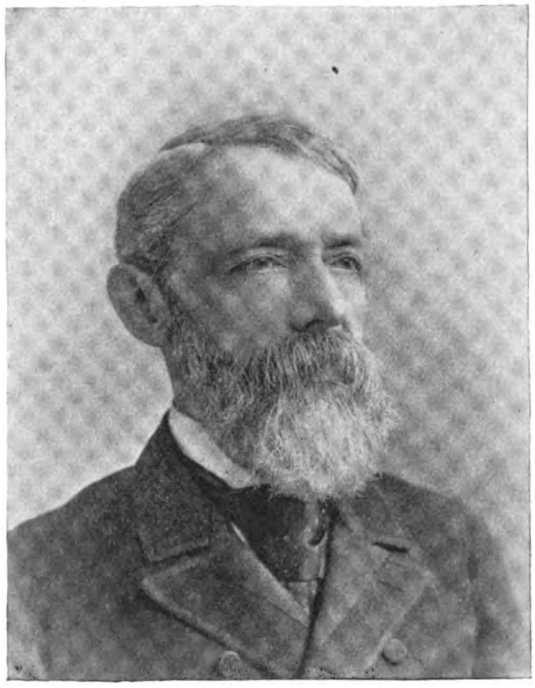
Judge Dunton and Judge Prout were both natives of Addison County; they were both born in November, and died the same year. Both of Mr. Dunton's partners, Prout and Veazey, were also judges.

WHEELOCK GRAVES VEAZEY, of New Hampshire origin and education, graduating at Dartmouth College, studied law at the Albany Law School and opened an office in Springfield, this State. At the beginning of the Civil War, he enlisted as a private in Company A, but left the regiment as lieutenant-colonel and was made colonel of the Sixteenth Vermont Regiment; he led the latter at Gettysburg, where he performed brilliant and distinguished service. Since the war, he has been at the head of the Grand Army of the Republic and is a distinguished member of that organization.

After the war, he settled in Rutland; was reporter of the decisions of the court from 1864 to 1872; was State senator in the latter year; for several years served as register in bankruptcy, and when his former partner, Judge Dunton, retired in 1879, Veazey was appointed in his place and remained a member of the court until his appointment as one of the Interstate Commerce Commissioners in September, 1889. He is now serving as such commissioner.

The last judicial act of Judge Veazey was

the examination of the opinion in State *v.* Augustine Freeman, 63 Vermont, for profanely swearing at a woman, heard at the May term, 1889, of the Orange County Supreme Court. The opinion was sent him for examination after his resignation, and he writes to the judge sending it: "Your letter weighted down with an opinion, which I approve before reading, lest I could not conscientiously afterwards, was a welcome visitor. It brought to mind the court as it was, and the fact of the rapid changes since we began playing judge . . . After reading your opinion, I shall never 'profanely' swear. I think it is dangerous, especially to a woman. Augustine will know more if he doesn't look so well. Had you not better remit his fine and submit a reading of your opinion? The only criticism I could pass upon it would be, that there is too much learning for so small a 'swear,' but Augustine ought to be grateful because he thereby becomes immortal."



JOHN W. ROWELL.

RUSSELL S. TAFT, a native of that part of Williston originally in Burlington, was elected in 1880. After an academical education he read law at Burlington, and was admitted to the Bar in 1856.

JOHN W. ROWELL pursued his legal studies in the law offices at West Randolph, and for a time at a law school in Ohio; he practiced law at West Randolph, except for a year or two, when he was absent in Chicago. He was elected reporter of decisions in 1872, and held the position until he declined it in 1880. Upon the death of Chief Judge Pierpoint, in January, 1882, he was appointed judge by Gov. Farnham.

WILLIAM HARRIS WALKER, of Ludlow, was educated at the Black River Academy, in that town, and Middlebury College, from which he graduated at the age of twenty-six. He practiced his profession in Ludlow, represented that town and his county in the Legislature, was State's attorney for Windsor County, and for several years judge of probate in the district of Windsor. He was elected assistant judge at the session in 1884, and re-elected in 1886. In the autumn of the latter year he resigned the position, his health having become impaired, and since that time he has remained quietly at home, unable to perform any serious labor. He was an excellent judge in both the county and Supreme Courts, and gave great promise of usefulness.

JAMES M. TYLER, of Brattleboro, a native of Wilmington, studied law in Brattleboro and at the Albany Law School, where he graduated in June, 1860. He was a member of the 46th and 47th Congress, and was appointed Judge by Gov. Ormsbee upon the resignation of Judge Walker, in September, 1887.

LOVELAND MUNSON, of Manchester, was appointed in September, 1889, to the vacancy caused by the resignation of Judge Veazey to accept the appointment of Interstate Commerce Commissioner.

HENRY R. START, of Bakersfield, and LAFORREST THOMPSON, of Irasburgh, were elected in 1890, when Chief Judge Royce and Judge Powers declined further service.

The only foreign born of the judges was Judge Steele, born in Canada, in reality a Vermonter, as his parents were Vermonters, residing temporarily in Canada at the time of his birth. The native places of the others have been New Jersey, one; New York and Rhode Island of three each; New Hampshire, of four; Connecticut and Massachusetts have contributed equally, furnishing twenty-one each; while Vermont, excluding Judge Steele, has been the birthplace of twenty-two. Of the Massachusetts born, nine were natives of Worcester County. Hardwick in that county has the honor of furnishing four, the two Robinsons and the two Fays. Litchfield, Conn., was the birthplace of three, Litchfield County of eight. Worcester and Litchfield Counties furnished seventeen of the seventy-six judges. Of the Vermont born, two are natives of Bakersfield. Franklin County has furnished four, Bennington County three; the other counties one or two each, except Washington, Essex, and Grand Isle, no native of which has ever sat upon the bench.

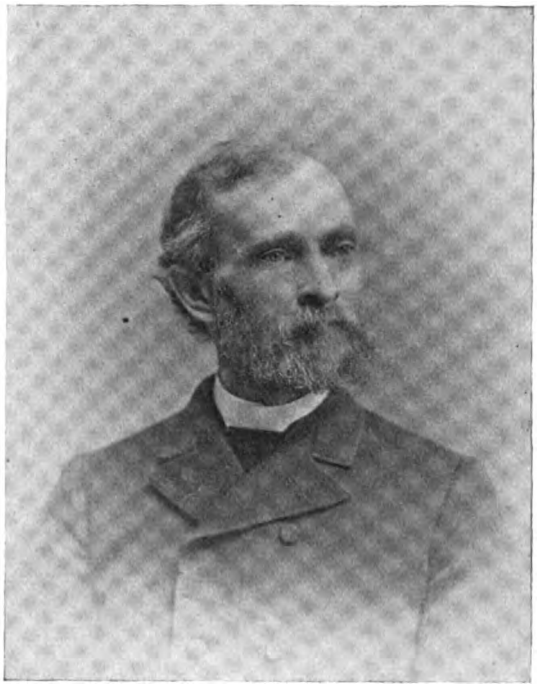
The earliest born of the judges was Samuel Knight, Feb. 10, 1730; the latest, Judge Thompson, Jan. 6, 1848. Five of the judges, Powers, Veazey, Taft, Rowell, and Tyler, once serving at the same time, were born in 1835. Van Ness, Williams, and Prentiss were born in 1782, the year of birth of Webster, Calhoun, Cass, Benton, and Van Buren. The average age of the judges at the time of their first election has been forty-five years, the youngest one, Judge Steele, twenty-eight years of age. He died nearly nine years younger than the average age of the judges when elected, being in his thirty-seventh year. William Brayton was thirty, Isaac F. Redfield thirty-one; Luke P. Poland and Noah Smith, thirty-two; Nathaniel Chipman, Stephen R. Bradley, and Elijah Paine, thirty-four. Some of the judges have been advanced in life before taking a seat on the bench. Judge Pierpoint was fifty-two; Mattocks, fifty-three; Hutchinson and Galusha, fifty-four; Davis and Peck, fifty-seven; Timothy P. Redfield, fifty-eight; Knight, fifty-nine; Baylies, sixty-three; Beardsley, sixty-five; while the patriarchal Bates Turner was sixty-seven; and of these eleven, elected at such advanced ages, five served but an average of between one and two years each. While some of the ablest ones have been well along in years at the time of their election, the judicial service of the State would have been greatly improved had they been elected twenty years younger. It would have been much better if the judges had been elected at an average age of from thirty to thirty-five, for it must be conceded that, as a class, those who have been elected at ages under forty have averaged better and done much better judicial work for a longer time than those elected after attaining the age of fifty. A long practice at the bar is not necessarily an important qualification for a judge. For one, I am not certain but it would be better to elect judges with no prior professional training.

The average age of the judges at death has been seventy years; the youngest, Judge Steele, aged thirty-seven; the oldest, Judge Porter, in his hundredth year. Three died in office: Paul Spooner in 1789, John C. Thompson, 1831, John Pierpoint, 1882.

Many of the early judges were more prominent in other positions than as judges, owing to their short term of service and holding the position temporarily. Four — Moses Robinson, Tichenor, Israel Smith, and Palmer — were also governors and

United States senators; ten of the other judges were senators, eight governors, while twelve have represented their districts in Congress. Ten have been Speakers of the Vermont House of Representatives; three, lieutenant governors; ten, presidential electors; and twenty-eight, members of the Council of Censors. Four of the six United States judges in the District of Vermont, serving over seventy-five years, had prior judicial experience in our Supreme Court.

Upon the first organization of the court, there were five judges; in 1787 the number was reduced to three, and it so remained till 1825, when the number was made four; the fifth was added in 1828, the sixth in 1846, and the seventh in 1870. At each time the number was increased, the incumbent was taken from Caledonia County, and no resident of that county has been chosen judge except upon an increase in the number, save Mattocks of Peacham. Nine of the judges having served for a time have retired from the Bench, and after an interim been elected to the same position. Moses Robinson was out of service in the year beginning October, 1784; Nathaniel Chipman was elected in 1786 and 1796, serving one year at each time; in 1789 and 1813, serving two years at each term. Noah Smith first served from 1789 until January, 1791, and was again elected in 1798 and twice re-elected. Richard Skinner served two years beginning in 1815, and again from 1823 to 1829. Joel Doolittle served from 1817 until 1823, and after an interim of one year served another term, 1824 to 1825. Charles K. Williams was elected in 1822, serving two years and again in 1829, serving until 1846. Stephen Royce's first elections were in 1825 and 1826, declining service for the next two years, he was then re-elected and served until 1852. Bennett and Poland were judges when the circuit system was established in 1850 and were elected circuit judges. They were again chosen Supreme Court judges, the former in 1852 and the latter upon the reorganization of the court in 1857.



JAMES M. TYLER.

There have been five complete changes in the personnel of the court: in 1789 when the judges elected were for the first time lawyers. This change could not have been for political reasons. Prior to this election, two lawyers had served for one year each, Mr. Chipman in 1786 and Mr. Bradley in 1788. It was the desire of the Legislature to elect a court composed of strong men and good lawyers, and they obtained one in the election of Nathaniel Chipman as Chief, with Samuel Knight and Noah Smith, assistants. In 1801, the Republicans gained control of the Legislature, and elected Israel Smith Chief, but he declining, they chose Jonathan Robinson and elected Royall Tyler and Stephen Jacob, assistants. This change was not for political reasons, for but one of the judges was then a Republican.

The next complete change was in 1813, when the Federalists having regained control of the State elected three of their own party, Chipman, Farrand and Hubbard; but losing it in 1815, the Republicans elected Asa Aldis, Skinner and Fisk. The only other complete change since that time was in 1817, when Dudley Chase, Chief, Joel Doolittle and William Brayton, assistants, were elected. This was not a political change. Judge Fisk was elected senator. Judges Skinner and Palmer were re-elected and declined. Robert Temple of Rutland was elected and declined. Dudley Chase, who was elected Chief, was then serving as United States senator, a position which he resigned to accept the judgeship.

In these five complete changes, but one member was elected at either who had previously served as judge, Nathaniel Chipman in 1789 and in 1813. In the other complete changes no one of the new judges had ever acted as such, prior to his election.

Three judges, who had never performed judicial service, were chosen at each election, when the courts were reorganized in 1825 and 1857. Except in these instances, there has never been, since 1817, a change of two judges at the same time, save when Hutchinson and Baylies retired in 1833, Wilson and Steele in 1870, and H. E. Royce and Powers in 1890. There was no change in the personnel of the court from 1852 to 1857; that was under the system when there were but three members of the Court. There was no change from 1860 until the summer of 1865, nearly five years; there was no change from 1817 to 1821, from 1838 to 1842, and none from 1870 to 1874.

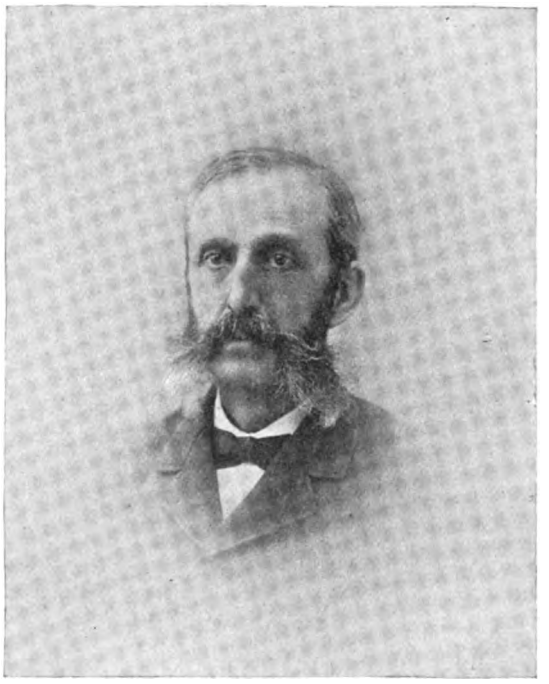
The court remained the same for three years, from 1835 to 1838, and from 1842 to 1845. The above are the only instances when the judges have remained the same for three years and longer save the present court, which has remained unchanged since Dec. 1, 1890.

Thirty-eight of the judges, one-half the number, have been educated at colleges; some, however, did not graduate. Owing to the early great emigration from Connecticut, Yale leads the list with ten; Dartmouth educated eight; the University of Vermont and Middlebury College, five each; Princeton and Williams, three each; Harvard two; Amherst and Brown one each. Judge Niles was the first college-bred man upon the Bench. For the first two years of his course, he was at Harvard, but graduated at Princeton. Judge Aikens was at Middlebury three years, but at the United States Military Academy at West Point the last year of his course. Judge Bennett, who graduated at Yale, spent the first two years of his college life at Williams. There is but one college-bred man upon the present Bench, the Chief Judge.

The judges have been selected from both political parties, and there is more than one instance when the minority party furnished the majority of the court. In 1801, the Republicans elected one of its own party and two Federalists; in 1850, the Whigs elected Judge Royce of its own party and Judges Redfield and Kellogg, Democrats. Timothy P. Redfield, a Democrat of the most pronounced type, was unanimously elected when the Legislature stood 237 Republicans to 28 Democrats and Conservatives. He was unanimously re-elected until his voluntary retirement in 1884.

At first the judges were all laymen; in 1786 Nathaniel Chipman was elected and served one year; in 1788, Stephen R. Bradley was elected and served one year. Until 1789, they were the only lawyers elected. The laymen were Moses Robinson, Spooner, Fasset, Jonas Fay, Olcott, Porter, Niles and Knowlton. Theophilus Harrington, in 1803, was not at the time of his election a member of the Bar, but was admitted the following month. Jonas Galusha, the last layman elected, was chosen in 1807–8. In these early days, it was the practice of each judge to express his views of the law to the

jury, and that the lay judges were not at all backward in the presence of their legal brethren is evident from a letter written by Chief Judge Tyler after the conviction of Cyrus B. Dean in August, 1808, of murder committed in an attack upon revenue officers on the Winooski River, in which he says: "Brothers Harrington and Galusha have given me substantial support. Judge Galusha's maiden charge will do him honor in print, and Judge Harrington forced principles upon the most ignorant in his peculiar, energetic way."



LOVELAND MUNSON.

Until 1850, a judge who tried causes at *nisi prius* could sit *in banc* upon the hearing of any legal questions reserved, except one year. In 1837 an act was passed prohibiting it, but was repealed the following year. Since 1850 no judge could sit in the hearing of any question upon which he had passed in the court below, save at one time there was an exception in case three of the judges were disqualified in a cause.

The most religious man, undoubtedly, among the judges, was the first chief, Moses Robinson; it is related of him that, at one time, there being a delay in some proceedings in court, before commissioners in the settlement of an estate, he organized and conducted a prayer meeting in the interim. It was remarked by a wicked bystander, after the proceedings closed, that the claimants, whose claims were disallowed, took an appeal notwithstanding prayers.

There are but five ex-judges living,—James Barrett, in his eightieth year; Hoyt H. Wheeler, United States District Judge; H. Henry Powers, M.C.; Wheelock G. Veazey, Interstate Commerce Commissioner, and Wm. H. Walker, who retired in consequence of ill health.

The only instance of father and son among the judges is that of Asa Aldis and his son, Asa O.; Daniel Kellogg was a son-in-law of Asa Aldis, his second wife was a granddaughter of Judge Bradley; of brothers-in-law, there have been Asa O. Aldis and Daniel Kellogg; Moses Robinson married a sister of Jonas and David Fay, Jonathan Robinson the sister of Judge Fasset, and Judge Jacob the sister of Judge Farrand; of uncle and nephew, the two Royces; of brothers, there have been Moses and Jonathan Robinson, Noah and Israel Smith, Jonas and David Fay, Isaac F. and Timothy P. Redfield. Samuel S. Phelps and John Pierpoint were cousins, and Judge Isham was the son of a cousin of the two latter.

FREQUENCY OF ELECTIONS.

The judges have been elected at every regular session of the Legislature. The mode of election, in respect to its frequency, has often been adversely criticised, but it has been found to work well in practice, and no judge, since 1825, with two or three exceptions, has failed of an election,

if he desired to continue. This matter was once criticised by a Massachusetts judge in a conversation with the late Judge Poland; the latter said he could see no objection to annual elections, "for" said he, "we have the advantage of you in Massachusetts; we are sure of one year anyway, while you are in for good behavior only."

Objection is often made that the Legislature frequently elects one of its own members to a judicial position; there is no disqualification of a member in this respect, and it is certainly true that our best judges have been obtained frequently in that manner; e. g., Chipman, Paine, Prentiss, Phelps, Pierpoint, Peck, Wheeler, etc.

Of the seventy-six judges, forty-three were members of the legislative body at the time of their election; of the thirty-three remaining judges, seven were appointed, in the first instance, by the executive, in case of vacancy.

Of the seventeen elected prior to 1800, Lot Hall was the only one who was not a member of the Legislature at the time of his election.

Four of the present Bench were members when elected, and the other three were, in the first instance, appointed by the executive.

Since the change in 1857, of those who had not served prior to that time as judges, Barrett, Homer E. Royce and Timothy P. Redfield are the only ones that have been selected from outsiders; the others have either been elected from among the members, or appointed by the Governor.

It must be confessed, however, that if a member is of an "electioneering disposition," he has a great advantage over an outsider.

REPORTS.

In 1793 Nathaniel Chipman issued what is undoubtedly the smallest volume of law reports ever printed in America. There are but two volumes older, Kirby of Connecticut, which I think deserves to be ranked as the first, and Hopkinson's Judgments in Admiralty, both printed in 1789.

There are twenty-five cases reported in the Chipman volume, principally jury trials. Mr. Chipman was Chief Judge, and his assistants at first were Noah Smith and Samuel Knight, and later, Mr. Knight and Elijah Paine. The reports covered the two years in which Mr. Chipman was Chief, from October, 1789, until October 1791.

The little volume must have been valuable at the time of its publication, for although the cases were reports of trials at *nisi prius*, the judges were recognized among the ablest of the day, and the charges of the court were clear and able statements of the law.

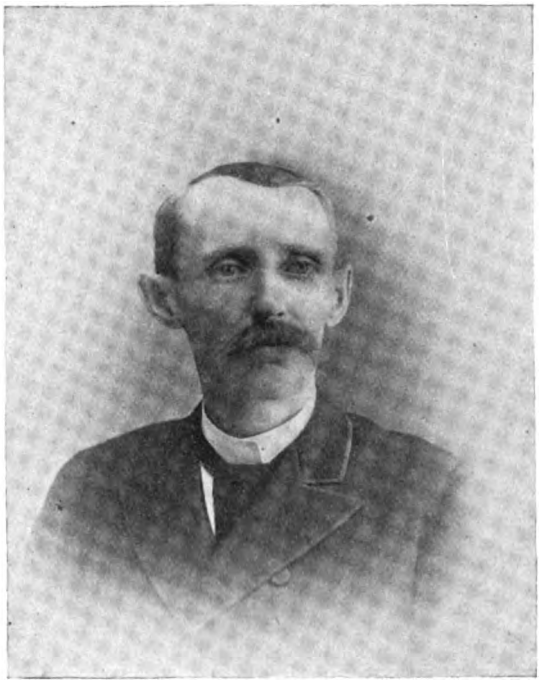
In Rhodes *v.* Risley, the defendant's counsel cited a case from Kirby's reports, then lately issued, and the Court said: "Kirby's reports are not to be cited as authority here, nor are the determinations of courts in other states, but you may cite their reasons."

Included in the volume are dissertations on the statute adopting the common law of England, the statute of conveyances, and of offsets, and on the negotiability of notes, with an appendix containing the rules of the Supreme Court and forms of special pleadings.

Royall Tyler, who served as judge from 1801 till 1813, published two volumes of reports, principally of jury trials during the years 1800 to 1803 inclusive. It is said that Tyler's reports are not considered good authority even in his own State, but this is not a just criticism; the cases were tried by jury and contained the substance of the law as stated to the jury, and while the opinions are not necessarily as complete and thorough as in well considered cases of a later date, they contain much that is valuable and at the time must have been a great aid to the profession and the courts

as statements of what was then the law of the land. They were published in 1809 and 1810.

The next volume, by William Brayton, is in the nature of a digest, the subjects being arranged alphabetically, and contains cases tried in 1815–19. In October, 1823, the Legislature authorized the Governor to appoint a reporter of the decisions, providing for him the salary of $400 annually; he was entitled to the profits arising from the publication of the reports. It was his duty, by his personal attendance, and by other means in his power, to obtain true and authentic reports already made or which might be made thereafter, as he thought were of sufficient importance, and to publish the same annually. In November, 1825, $200 were added to his salary, and he was required to faithfully attend the Supreme Court in person at every session, for the purpose of learning the decisions.



HENRY R. START.

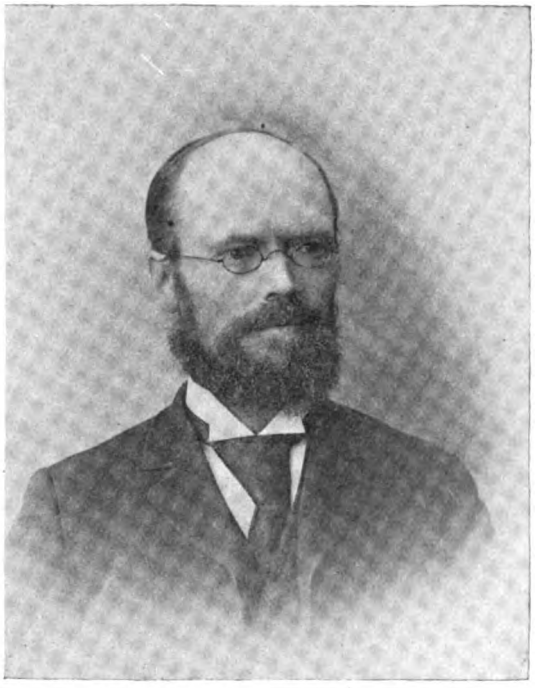
Under the act of 1823, Daniel Chipman was appointed reporter, and he published Vol. I. of his reports in four parts. They were issued separately, bound in paper, and upon the completion of the fourth part an index was prepared, and the parts bound in one volume. Included in the first part are twelve cases reported by N. Chipman, and several that were heard in 1797. The remaining part of Vol. I. and the first part of Vol. II., which is the only part of that volume printed, and which now is called Vol. II. of Daniel Chipman's reports, contain reports of cases from 1813 to 1824. The volumes named contain cases prior to the reorganization of the court in 1825; they are principally jury trials, including some writs of error which were brought to the Supreme Court.

Upon the change in the jurisdiction of the Supreme Court, when it became exclusively a court for the disposition of legal questions, Asa Aikens of Windsor, who had served as one of the judges, was appointed reporter, and two volumes were issued by him and called by his name, the 1st and 2d Aikens.

In 1828 it was made the duty of the judges of the court to prepare their opinions for publication, and deliver them to the Secretary of State, and the sum of $125 per annum was added to their salary, and in the following year the Governor was authorized to appoint some suitable person to prepare the cases for publication, and when bound to deposit the same in the office of the Secretary of State. Under these acts, several volumes of reports were issued, but in 1837, the Legislature were required to elect a reporter of the decisions, whose duty it was to edit and publish the cases heard in the Supreme Court, and in 1876 the appointment of the reporter was given to the Supreme Court. A volume of reports has been prepared and issued annually since 1828, the last volume being No. 65. The present reporter is Charles A. Prouty of Newport.

COURTS OF EQUITY.

In October, 1779, the Superior Court was constituted a court of equity in all matters if the amount involved £20, and did not exceed £4000 lawful money, and in case the "demands, dues, matters or cause in dispute" exceeded the sum of £4000, the case should be heard by the Governor and Legislature; an appeal from the Superior Court was permitted in all cases if "no title of land is concerned," and it was further provided that all causes then pending before the General Assembly in matters not exceeding £4000 should be referred to the Superior Court. The first Council of Censors, criticising the powers assumed by the Legislature, especially the act constituting the Legislature a court of equity, that part of the act authorizing the Legislature to hear equity causes was repealed. Courts of law were given authority, in many cases, to chancer bonds, recognizances, etc. In 1788 a court of equity was constituted with sessions, as to time and place, as those of the Supreme Court, and the judges of that court were made chancellors. The process in equity causes was to be governed conformably to the rules and precedents established in the courts of chancery in the kingdom of Great Britain. In 1797 a court of chancery was constituted, with the judges of the Supreme Court as chancellors, to possess "all powers incident to a court of chancery," the issuing of equitable process regulated, and it was provided that proceedings should be "conformable to the rules and precedents established in courts of chancery in the kingdom of Great Britain, so far as the same shall be consistent with the constitution and laws of this State."

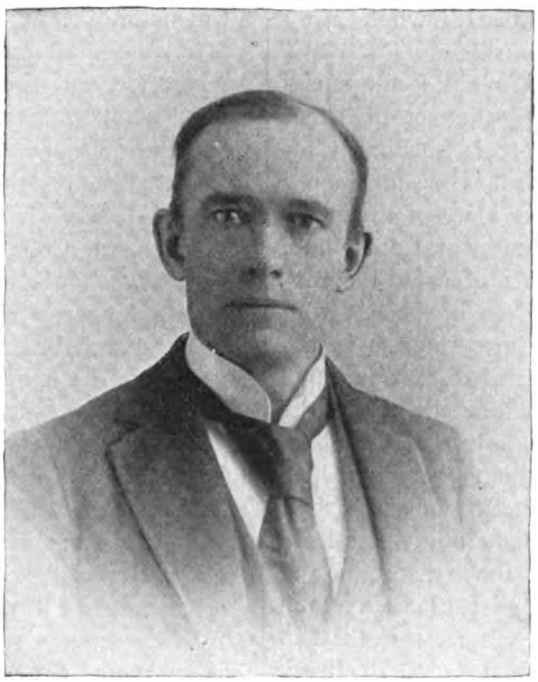


LAFORREST H. THOMPSON.

The Supreme Court continued a court of equity until the revision of the statutes in 1839, each judge being a chancellor, and the court at its sessions hearing the causes. At the time of the revision in 1839 a court of chancery was constituted in each county, with two sessions annually, held at the same time as the county court sessions. Each judge of the Supreme Court was constituted a chancellor, and the court was held by the judge who presided in the county court. An appeal was allowed from the court of chancery to the Supreme Court, and such is now the present system. The Supreme Court, sitting as an appellate court, can hear a chancery cause and dispose of all the questions of fact upon testimony taken before a master, and the law; but the court of chancery has power upon the application of either party to appoint a master, whose duty it is to hear the evidence and report the facts; in such case, only the legal questions arise in the Supreme Court, sitting as a court of equity. From 1850 to 1857 the circuit judges were chancellors, the Supreme Court judges sitting only as a court of appeal.

COMPENSATION.

The judges were originally paid as follows: the Chief Judge while on circuit was entitled to eighteen shillings per day; an assistant, fifteen shillings. They were paid in addition to the *per diem* eighteen shillings for each action tried, and ten shillings for each default or confession. The fees were divided equally among the judges in attendance. In 1783, the fees for each action tried were made fifteen shillings, and for each default or confession six shillings. In 1787, four shillings were allowed a judge for taking a recognizance, and eight shillings for signing a writ of error, *audita querela*, and *certiorari*. In October, 1789, it was enacted that fees paid the judges in lieu of those theretofore allowed, should be to the Chief Judge £1 7s. per day, while on circuit, and to each assistant £1 2s., and on each motion in arrest of judgment, four shillings. In 1798 the fees were first allowed in the currency of the country, the Chief Judge on circuit was paid $4.50 per day, each assistant $3.60; and there was paid to the clerk for the benefit of the judges, certain sums for the hearing of motions in arrest, for new trial, for signing judicial writs, and taking recognizances and for each trial, non-suit, default, or confession. The amount of fees which each judge received in 1804 were substantially $1200; when the Legislature met at Rutland, an act was introduced with a magniloquent preamble stating, "Whereas it is important to the due administration of justice that the judges of the Supreme Court of this State should receive adequate and honorable compensation, etc., therefore, be it enacted, etc., that the chief judge receive a stated salary of $1000, and each assistant $900." The effect of this ostentatious legislation was to reduce the compensation two to three hundreds of dollars.



CHARLES A. PROUTY,
Reporter of Decisions.

A violent attack was made upon the judges during the session, and they were threatened with impeachment for taking illegal fees. The discussion of the subject lengthened the session, which began the first part of October, far into November, and the Legislature adjourned without passing a resolution affirming that fees were taken in accordance with the fee bill, and those favoring the impeachment carried the law giving the judges salaries. The Chief was sick at home, but Judge Tyler was at Rutland, and the Chief wrote him: "I hope you will not leave, and shall cheerfully make allowance in your expenses to watch and pray for us. Send for Brother Harrington; he can do as much as any one in the present storm."

The following year, at the session in Danville, it was resolved, by a vote of one hundred to eighty-two, after several days of acrimonious debate, that it was the sense of the House that the fees taken by the judges were taken with upright views, and that no

further order ought to be taken on the subject, and none was.

In 1826 the salary was made $1050; in 1827 an extra sum of $125 was allowed each judge for furnishing opinions in the cases heard by them; in 1839, the salary was made $1375; in 1854, $1500; in 1858, $1800; in 1864, $2100; in 1866, $2500; in 1886, $3000, and in addition a sum not exceeding $300 was allowed each judge for necessary expenses when away from home on judicial business.

It must be conceded that the compensation of the judges, until the act of 1886, was ridiculously low. It is now fairly respectable, but can hardly be considered extravagant; the greater part of their services are performed when away from home, and until the latter modes of rapid locomotion, they were required to be absent from home weeks and sometimes months in the discharge of their duties in distant parts of the State. More than one third of the whole number, and the ablest of them all, have declined the position or resigned, in consequence of the inadequacy of their compensation, while many able men have refused the position for that reason, among them, Robert Temple of Rutland, Heman Allen of Milton, and Timothy Follett of Burlington, who were elected and declined. Mr. Edmunds was offered the appointment upon the resignation of Asa O. Aldis in 1865, but declined it. He was probably then in receipt, from a single client, of a larger sum annually than the salary of a judge.

This is the reason why so many judges have been elected at an age when really unfit to discharge the duties of the office; elected after their active business life was over, and when more than sixty years of age.

The palmy days of the court were in 1833–35; during this period too high an eulogium can hardly be pronounced upon it. Williams, Phelps, Royce, Collamer, and Mattocks composed the Bench. Three of them subsequently became governors and two United States senators. If the court, at that time, had been transferred as a body to the judgment seat of any tribunal, wherever the common law and equity was administered, it would have been found fully and remarkably adequate to discharge all its duties. Its opinions, only a part of which are reported, are its sufficient monument, but they fail to show, after all, the sound, prompt, wholesome, and effective justice that was always administered wherever they sat.

They were all men of striking personal appearance, and their proceedings were attended with great dignity and decorum; they were all lawyers in the front rank, and intellectually of a high order.

As *nisi prius* judges, Williams, Phelps, Royce, and Collamer were unexcelled. Mattocks as an advocate and lawyer was without a peer, while Collamer was one of the wisest, and Phelps the most gifted man, ever in the State.

Vermont is a small State, and was not then connected, as now, with its neighbors in business relations. The work of its courts rarely concerned people or interests beyond the State; there were few newspapers and legal periodicals, and no reporting of decisions, except to a partial extent in the regular State reports. But little was therefore known about the court in other jurisdictions. Its judges at the time named were great beyond their celebrity.

The judges continued substantially the same for a few years, Redfield taking the place of Mattocks in 1835, and Bennett that of Phelps in 1838. The nearest approach to the court of 1833–5, in point of ability, was that of 1857, upon its reorganization, when Judges Isaac F. Redfield, Bennett, Poland, Aldis, Pierpoint, and Barrett were the members. Besides those named as serving the two years 1833–35, the best "all round judges" were probably Poland, Steele, and Wheeler. The two greatest jurists have been Prentiss and Peck, the former however more varied and learned in his acquirements.

Rank.	NAME.	Place of Birth.	Residence when First Elected.	Date of Birth.	Date of Death.	Where Educated.	Time of Service.	Years of Service.	Age when first Elected	Age at Death.	Rank.
1	MOSES ROBINSON *	Hardwick, Mass.	Bennington	26 Mar., 1741	26 May, 1813		1782–4, 1785–9	6	41	72	1
2	PAUL SPOONER *	Dartmouth, "	Hartland	20 Mar., 1746	4 Sept., 1789		1782–9	7	36	43	2
3	John Fasset, Jr.*	Bedford, "	Arlington	23 June, 1743	2 April, 1803		1782–6	4	39	59	3
4	Jonas Fay *	Hardwick, "	Bennington	28 Jan., 1737	6 Mar., 1818		1782–3	1	45	81	4
5	Peter Olcott *	Bolton, Ct.	Norwich	25 April, 1733	12 Sept., 1808		1782–5	3	49	75	5
6	Thomas Porter *	Farmington, Ct.	Tinmouth	14 Feb., 1734	30 May, 1833		1783–6	3	49	99	6
7	Nathaniel Niles *	South Kingston, R.I.	West Fairlee	3 April, 1741	31 Oct., 1828	Harv., Princ.	1784–8	4	43	87	7
8	NATHANIEL CHIPMAN *	Salisbury, Ct.	Tinmouth	15 Nov., 1752	13 Feb., 1843	Yale	1786–7, 1789–91, 1796–7, 1813 5	6	34	90	8
9	Luke Knowlton *	Shrewsbury, Mass.	Newfane	24 Oct., 1738	12 Dec., 1810		1786–7	1	48	72	9
10	Stephen R. Bradley *	Cheshire, Ct.	Westminster	20 Feb., 1754	9 Dec., 1830	Yale	1788–9	1	34	76	10
11	Noah Smith *	Suffield, "	Bennington	27 Jan., 1756	23 Dec., 1812	Yale	1789–24 Jan., 1791; 1798–1801	4 1/4	33	56	11
12	SAMUEL KNIGHT *	Woburn, Mass.	Brattleboro	10 Feb., 1730	23 July, 1804		1789–94	5	59	74	12
13	Elijah Paine *	Brooklyn, Ct.	Williamstown	21 Jan, 1757	28 April, 1842	Harvard	27 Jan., 1791–94	3 3/4	34	85	13
14	ISAAC TICHENOR *	Newark, N.J.	Bennington	8 Feb., 1754	11 Dec., 1838	Princeton	1791–6	5	37	84	14
15	Lot Hall	Yarmouth, Mass.	Westminster	2 April, 1757	17 May, 1809		1794–1801	7	37	52	15
16	ENOCH WOODBRIDGE *	Stockbridge, "	Vergennes	25 Dec., 1750	14 July, 1805	Yale	1794–1801	7	43	54	16
17	ISRAEL SMITH *	Suffield, Ct.	Rutland	6 April, 1759	2 Dec., 1810	Yale	1797–8	1	38	51	17
18	JONATHAN ROBINSON *	Hardwick, Mass.	Bennington	11 Aug., 1756	3 Nov., 1819		1801–7	6	45	63	18
19	ROYALL TYLER	Boston, "	Brattleboro	18 July, 1757	16 Aug., 1826	Harvard	1801–13	12	44	69	19
20	Stephen Jacob *	Sheffield, "	Windsor	7 Dec., 1755	27 Jan., 1816	Yale	1801–3	2	45	60	20
21	Theophilus Harrington *	Coventry, R.I.	Clarendon	27 Mar., 1762	17 Nov., 1813		1803–13	10	41	51	21
22	Jonas Galusha *	Norwich, Ct.	Shaftsbury	11 Feb., 1753	24 Sept., 1834		1807–9	2	54	81	22
23	David Fay	Hardwick, Mass.	Bennington	13 Dec., 1761	5 June, 1827		1809–13	4	47	65	23
24	Daniel Farrand	Canaan, Ct.	Burlington	9 Sept., 1760	13 Oct., 1825	Yale	1813–5	2	53	65	24
25	Jonathan H. Hubbard	Tolland, "	Windsor	7 May, 1768	20 Sept., 1849		1813–5	2	45	81	25
26	Asa Aldis *	Franklin, Mass.	St. Albans	14 April, 1770	16 Oct., 1847	Brown	1815–6	1	45	77	26
27	RICHARD SKINNER *	Litchfield, Ct.	Manchester	30 May, 1778	23 May, 1833		1815–7, 1823–9	8	37	54	27
28	JAMES FISK	Greenwich, Mass.	Barre	4 Oct., 1763	1 Dec., 1844		1815–7	2	52	81	28
29	William A. Palmer	Hebron, Ct.	Danville	12 Sept., 1781	3 Dec., 1860		1816–7	1	35	79	29
30	DUDLEY CHASE	Cornish, N.H.	Randolph	30 Dec., 1771	23 Feb., 1846	Dartmouth	1817–21	4	46	74	30
31	Joel Doolittle *	Russell, Mass.	Middlebury	April, 1773	9 Mar., 1841	Yale	1817–23, 1824–5	7	44	67	31
32	William Brayton *	Lansingburgh, N.Y.	Swanton	22 Aug., 1787	5 Aug., 1828	Williams	1817–22	5	30	41	32
33	CORNELIUS P. VAN NESS *	Kindershook, "	Burlington	26 Jan., 1782	15 Dec., 1852		1821–3	2	39	70	33
34	CHARLES K. WILLIAMS	Cambridge, Mass.	Rutland	24 Jan., 1782	9 Mar., 1853	Williams	1822–4, 1829–46	19	40	71	34
35	Asa Aikens	Barnard, Vt.	Windsor	13 Jan., 1788	12 July, 1863	Mid., W. Point	1823–5	2	35	75	35
36	Samuel Prentiss *	Stonington, Ct.	Montpelier	31 Mar., 1782	15 Jan., 1857		1825–30	5	43	74	36
37	TITUS HUTCHINSON *	Grafton, Mass.	Woodstock	29 April, 1771	24 Aug., 1857	Princeton	1825–33	8	54	86	37
38	STEPHEN ROYCE	Tinmouth, Vt.	St. Albans	12 Aug., 1787	11 Nov., 1868	Middlebury	1825–7, 1829–52	25	38	81	38
39	Bates Turner	Canaan, Ct.	St. Albans	Oct., 1760	30 April, 1847		1827–9	2	67	87	39
40	Ephraim Paddock	Holland, Mass.	St. Johnsbury	4 Jan., 1780	27 July, 1859		1828–31	3	48	79	40
41	John C. Thompson *	Westerly, R.I.	Burlington	About 1790	27 June, 1831		1830–27 June, 1831	3/4	40	41	41
42	Nicholas Baylies	Uxbridge, Mass.	Montpelier	9 April, 1768	17 Aug., 1847	Dartmouth	1831–3	2	63	79	42
43	Samuel S. Phelps *	Litchfield, Ct.	Middlebury	13 May, 1793	25 Mar., 1855	Yale	1831–8	7	38	61	43
44	Jacob Collamer	Troy, N.Y.	Woodstock	8 Jan., 1791	9 Nov., 1865	Univ. of Vt.	1833–42	9	42	74	44

Rank.	NAME.	Place of Birth.	Residence when First Elected.	Date of Birth.	Date of Death.	Where Educated.	Time of Service.	Years of Service	Age when first Elected	Age at Death.	Rank.
45	John Mattocks	Hartford, Ct.	Peacham	4 Mar., 1777	14 Aug., 1847		1833–5	2	56	70	45
46	ISAAC F. REDFIELD	Weathersfield, Vt.	Derby	10 April, 1804	23 Mar., 1876	Dartmouth	Oct., 1835–60	25 5/6	31	71	46
47	Milo L. Bennett	Sharon, Ct.	Burlington	28 May, 1789	7 July, 1868	Williams, Yale	1838–50, 1852–9	19 1/2	49	79	47
48	William Hebard *	Windham, Ct.	Randolph	29 Nov., 1804	22 Oct., 1875		1842–5	3	38	70	48
49	Daniel Kellogg *	Amherst, Mass.	Rockingham	13 Feb., 1791	10 May, 1875	Williams	1845–51	6	54	84	49
50	Hiland Hall	Bennington, Vt.	Bennington	20 July, 1795	18 Dec., 1885		1846–50	4	51	90	50
51	Charles Davis	Mansfield, Ct.	Danville	1 Jan., 1789	21 Nov., 1863	Middlebury	1846–8	2	57	74	51
52	LUKE P. POLAND	Westford, Vt.	Morristown	1 Nov., 1815	2 July, 1887		8 Nov., 1848–50; Nov., 1857–65	10 1/6	33	71	52
53	Pierpoint Isham	Manchester, Vt.	Bennington	5 Aug., 1802	8 May, 1872		1851–7	6	49	69	53
54	Asa O. Aldis	St. Albans, "	St. Albans	2 Sept., 1811	24 June, 1891	Univ. of Vt.	4 Nov., 1857–Sept., 1865	7 5/6	46	79	54
55	JOHN PIERPOINT *	Litchfield, Ct.	Vergennes	10 Sept., 1805	7 Jan., 1882		4 Nov., 1857–7 Jan., 1882	24 1/6	52	76	55
56	James Barrett	Strafford, Vt.	Woodstock	31 May, 1814		Dartmouth	4 Nov., 1857–80	23 1/12	43	..	56
57	Loyal C. Kellogg *	Benson, "	Benson	13 Feb., 1816	26 Nov., 1872	Amherst	1859–67	8	43	56	57
58	Asahel Peck *	Royalston, Mass.	Burlington	6 Feb., 1803	18 May, 1879	Univ. of Vt.	1860–1 Sept., 1874	13 2/3	57	75	58
59	Herman R. Beardsley †	Kent, Ct.	St. Albans	21 July, 1800	9 Mar., 1878	Univ. of Vt.	Sept.–Nov., 1865	1/6	65	77	59
60	William C. Wilson *	Cambridge, Vt.	Bakersfield	23 July, 1812	16 April, 1882		1865–70	5	53	69	60
61	Benjamin H. Steele †	Stanstead, Que.	Derby	6 Feb., 1837	13 July, 1873	Dartmouth	1865–70	5	28	36	61
62	John Prout *	Salisbury, Vt.	Rutland	22 Nov., 1816	28 Aug., 1890		1867–9	2	53	73	62
63	Hoyt H. Wheeler *	Chesterfield, N.H.	Jamaica	30 Aug., 1833			1869–31 Mar., 1877	7 1/3	36	..	63
64	HOMER E. ROYCE	Berkshire, Vt.	St. Albans	14 June, 1819	24 April, 1891		1870–90	20	51	71	64
65	Timothy P. Redfield	Coventry, "	Montpelier	3 Nov., 1812	27 Mar., 1888	Dartmouth	1870–84	14	58	75	65
66	JONATHAN ROSS *	Waterford, "	St. Johnsbury	30 April, 1826		Dartmouth	1870	23	44	..	66
67	H. Henry Powers *	Morristown, Vt.	Morristown	29 May, 1835		Univ. of Vt.	1874–90	16	39	..	67
68	Walter C. Dunton †	Bristol, "	Rutland	29 Nov., 1830	23 April, 1890	Middlebury	13 April, 1877–27 Oct., 1879	2 17/24	47	59	68
69	Wheelock G. Veazey †	Brentwood, N.H.	Rutland	5 Dec., 1835		Dartmouth	29 Oct., 1879–13 Sept., 1889	9 7/8	43	..	69
70	Russell S. Taft *	Williston, Vt.	Burlington	28 Jan., 1835			1880	13	45	..	70
71	John W. Rowell †	Lebanon, N.H.	Randolph	9 June, 1835			10 Jan., 1882	11 5/6	46	.	71
72	William H. Walker *	Windham, Vt.	Ludlow	2 Feb., 1832		Middlebury	1884–14 Sept., 1887	2 11/24	52	..	72
73	James M. Tyler †	Wilmington, Vt.	Brattleboro	27 April, 1835			17 Sept., 1887	6 5/24	52	..	73
74	Loveland Munson †	Manchester, "	Manchester	21 July, 1843			13 Sept., 1889	4 5/24	46	..	74
75	Henry R. Start *	Bakersfield, "	Bakersfield	28 Dec., 1845			1890	3	44	..	75
76	Laforrest H. Thompson *	Bakersfield, "	Irasburgh	6 Jan., 1848			1890	3	42	..	76

Names in SMALL CAPITALS denote Chief Judges. * Members of Legislature when elected. † Appointed by Governor.

ERRATUM. — The birthplace of John Throop, one of the Superior Court Judges, as given in table on p. 564, vol. V., should be Woodstock, Ct., instead of Lebanon, Ct.

LONDON LEGAL LETTER.

LONDON, March 3, 1894.

EVEN in a legal letter it is impossible to avoid some reference to the political situation, which is engrossing all our minds at present to the exclusion of almost everything else. It would be difficult to exaggerate the excitement which Mr. Gladstone's resignation has occasioned, as is most natural on his withdrawal from an arena where he has played so conspicuous a part for more than sixty years. His disappearance as an active factor in public life will seriously affect many personal ambitions, for the upward career of not a few well-known men mainly depended on the favor with which they were regarded by this veteran statesman. Everything points to his place being taken by Lord Rosebery, although a considerable section of the party would prefer Sir William Vernon Harcourt; it will certainly be a bitter disappointment to the latter to miss the highest place, which he has certainly coveted for long, although of late it must have been borne in upon him that fate had not this garland in store. Sir William Harcourt in his earlier days aimed at the woolsack, for which his position as Solicitor-General seemed to prepare him, but he drifted into politics pure and simple, and his allegiance to a strictly legal ambition dwindled. I should not care to say exactly how the shuffling of the official cards will affect legal appointments, but the impending dissolution and subsequent appeal to the country must cause at least one of our great advocates some concern. I mean the Attorney-General Sir Charles Russell; he is no longer a young man, and as his party are not likely to secure a second term of office in succession, his elevation to one of the higher posts in the judiciary might be postponed for a long time. Since Mr. Gladstone came into power in 1892 it has always been supposed that some arrangement would be made whereby Lord Coleridge would retire, and enable Sir Charles Russell to become Lord Chief Justice, for Lord Coleridge is not only an ardent Liberal in politics but personally a great friend and admirer of the Attorney-General. It has persistently been rumored that the Lord Chief Justice was willing to withdraw on condition of his son Mr. Bernard Coleridge, Q.C., securing a puisne judgeship, but that since the government declined to give any undertaking on the subject he refused to acquiesce in the scheme for his own retirement. Mr. Bernard Coleridge is a clever young man with no inconsiderable gifts of platform oratory of the lighter description, but his intrinsic position at the Bar would certainly not justify his elevation to the Bench for some time to come. As you are aware Sir Charles Russell is precluded from occupying the woolsack on account of his being a Roman Catholic. A bill was introduced in 1891 for the removal of the religious disabilities which attach to the viceroyalty of Ireland and the Lord Chancellorship, which its enemies playfully described as the Sir Charles Russell relief bill; the measure was however defeated on its second reading by the comparatively narrow majority of thirty-two. Mr. Gladstone's speech in its support is considered one of the finest he has delivered in his later years.

Great interest has been excited in social circles by the betrothal of Mr. Asquith, the Home Secretary, to Miss Margot Tennant, daughter of Sir Charles Tennant, a wealthy Scotch Liberal. Mr. Asquith is a widower, and his matrimonial ambitions have been constantly canvassed since his sudden rise to a political position of the first rank. Miss Tennant is one of the most striking personalities in London society, where she has always been one of the foremost figures; besides intellectual endowments of an exceptional order, she is an accomplished horsewoman and hunts regularly; she only the other day met with an accident in the field from which she has now almost recovered. Every one agrees that her social prestige will be of immense advantage to her future husband. The marriage will probably take place in June. Comparatively few of our great lawyers succeed in achieving much social distinction; probably one reason is that the absorbing nature of their vocation is incompatible with the exigencies of West End life; there are some exceptions however, of whom the most notable are Sir Charles Hall, the Recorder of

London, Sir Henry James, Lord Esher, the Master of the Rolls, and the late Attorney-General Sir Richard Webster. Lord Esher in his younger days, when Mr. Baliol Brett, was one of the most fashionable young men about town, and the most casual observer recognizes in him a type of the old time grandee. Sir Charles Hall and Sir Henry James are among the Prince of Wales's most intimate friends. The British Empire Club, which I have described before in your columns and which consists of members of any Bar within the British dominions, is to be honored by the presence at its next dinner of His Excellency the United States Ambassador, Mr. Bayard. The occasion is naturally anticipated by the members of the Club with much pleasure, and difficulty is being experienced in restricting to convenient proportions the number of those who desire to be present.

* * *

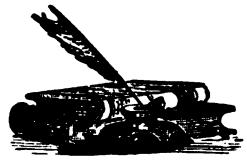
TO HIM WHO WAITS.

By Samuel R. Ireland.

HE who can humbly wait upon the Law
In outer court or at her regal throne,
May not at once her kindest glances draw
Nor proudly stand her favorite alone.

But, some day, for his steadfast faith will see
That loyalty, when to a jealous Queen,
Will honor win and immortality—
The rank of Noble and the laurel green.

The Lawyer's Easy Chair.



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

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS.

JUDGE DILLON'S NEW BOOK. — A new book by this distinguished gentlemen is an event in legal literature which calls for special comment. "The Laws and Jurisprudence of England and America, being a series of lectures delivered before Yale University," is the title of a work which ought to commend itself to every reader of THE GREEN BAG because it is "entertaining." The title would not indicate that, and indeed we must take leave to say that the title gives but a very imperfect idea of the contents. The title is indictable for false pretences; it smacks of heaviness and dullness, but there is not a dull line nor a heavy page in the volume. It is a book to keep one from his bed. If the author had consulted this Chair on the subject of a title, he would have suggested what appears in so many words in the text — "Our Law in its Old and in its New Home." Judge Dillon begins with a review of the various attempts to define Law, and substantially offers a definition of his own; then he treats of the education and discipline of the English bar and herein of the Inns of Court, and gives a charming chapter on Westminster Hall and the Royal Courts of Justice, and speaks of trial by jury and of judicial precedent; then he skips back across the ocean and speaks of law in its new home, and herein of our political and judicial systems; then he pays a great deal of attention to the evils of the vast and increasing bulk of case-law, and defines his idea of proper and necessary codification, herein dwelling much on Blackstone and Bentham, and concludes with a view of the century's legal progress and development, reviews changes on great and permanent subjects, and sums up the present condition and forecasts the evolution of our law. This is a very dry and hasty analysis of a volume of unique interest, characterized by the author's sound thinking and vigorous reasoning, expressed in an almost faultless style, marked always by earnestness and gravity, occasionally by enthusiasm and eloquence, exhibiting vast research in the field of literature as well as of law, and forming an invaluable treasury of wisdom and information fit for constant resort and reference as well as for the entertainment of a few evenings' recreative reading. One can sincerely say all this without falling in with some of the author's opinions, as for example, his recommendation of the life tenure of judges, his preference for the unanimity of verdicts, and his belief that it will necessarily require a long period to construct a code out of the ascertained and settled principles of the common law. On these points we listen with patience and respect, but we are not converted. On two other matters we cannot refrain from expressing an entire adherence to his views, namely, his judgment that our land laws are still needlessly intricate, and that the paternalism of the Pennsylvania oleomargarine act is abominable. From no other source can one so conveniently get an adequate comprehension of the monstrous and indefensible proportions of our case-law. When one considers that the author is one of the busiest lawyers in this country, constantly engaged in litigations of vast magnitude and importance, the book is an amazing monument to his scholastic acquirements and research as well as to his professional learning. Above all and most admirable of all is the elevated and patriotic tone of the work, bearing testimony to the good citizenship of the man whom we all know for a most accomplished lawyer and a most judicious jurist. Typographically the book is a joy to the eyes — one of the handsomest law books ever published in America, and unless we are greatly mistaken there is not a misprint in it. The old house of Little, Brown & Company have given the treatise a fitting dress.

EFFECT OF CULTURE ON VITALITY. — In a recent striking article under this heading, the "London Spectator" remarked:—

"So far from intellectual work diminishing vitality, the chiefs of all intellectual professions are, and in recent times have been, men who have passed the ordinary term of years with undiminished powers. In politics, the principal leaders whom this generation has known, have been Earl Russell, Lord Palmerston, Lord Beaconsfield and Mr. Gladstone, and every one of the three was at seventy in full vigor, while the last, at eighty-three, is coercing a reluctant party to endorse a policy which the people of England determinedly reject. The great statesman of the continent, Prince Bismarck, remains at seventy-eight a force with which his government has to reckon; while the will of

Leo XIII., an exceptionally intellectual pope, at eighty-three, is felt in every corner of the world. The most intellectual and successful soldier of our time, the man who has really thought out victories, Marshal von Moltke, was an unbroken man at ninety and more years. No men dare compare themselves in literary power with Tennyson or Carlyle, Victor Hugo or Von Ranke, and they all reached the age which the author of Ecclesiastes declared to be marked only by labor and sorrow, as also did Professor Owen, whose life was one long labor in scientific inquiry, and so has Sir William Grove, one of the most strenuous thinkers whom even this age has produced. We might lengthen the list indefinitely, but to what use, when we all know that the most intellectual among lawyers, historians, novelists, theologians, physicists, politicians and naturalists survive their contemporaries, usually with undiminished powers. In statistical accounts the clergy, whose occupation is wholly intellectual, rank first among the long-lived."

This might be corroborated by reference to this country, especially in the ranks of the clergy and the lawyers. It was only the other day that the Rev. Dr. Furness, of Philadelphia, delivered a discourse remarkable for physical and mental power, at the age of ninety-three, and a Troy lawyer argued a cause in the highest court of New York at the age of nearly eighty-four. Mr. Justice Field still sits with undiminished powers in the Federal Supreme Court at the age of seventy-seven. Longfellow, Bryant, Lowell, and Whittier were shining examples of mental power preserved to old age, and the beloved "Autocrat" is as lively as his own "Katydid," at eighty-four. To the English list might well have been added the great name of Tyndall, whose life was prematurely cut off by accident at the age of about seventy-three. Browning died at nearly eighty, and Ruskin is almost seventy-five. Very few men have ever worn out by simple mental work, and the worst thing an intellectual man can do himself is to "shelve" himself. At the age of about sixty, a clergyman, the father of the present writer, thus expressed himself:—

SHELVED.

"I've toiled so long and in so grand a cause,
I've learned to love the labor for itself,
But in accordance with great Nature's laws
I must ere long be laid upon the shelf.

I have not toiled for power nor for fame,
Nor to accumulate a hoard of pelf,
But for humanity and in Christ's name;
But still I must be laid upon the shelf.

I feel approaching, stealthily and still,
Old Age, the sly and frozen-footed elf;
He saps the strength, but cannot crush the will,
And I shall lie uneasy on the shelf."

But he is still writing poetry, at the age of almost eighty-four.

MATURITY OF INSOLVENTS' DEBTS. — There has been and still is so much excitement in the New York Senate over political matters, that nothing seems yet to have come — at least, nothing to our knowledge — of Mr. O'Conor's curious bill proposing that when a man becomes insolvent and suspends payment, all his debts shall be deemed immediately due, without regard to the fact of their maturity or to any credit which may have been given on the contracting of any of his debts. This would certainly have the advantage of equality, and it would relieve lazy lawyers from any consideration of the time-honored maxim, "Vigilantibus," etc., but we suspect that Mr. O'Conor might run against a snag of constitutional law which prohibits legislation impairing the obligation of contracts. His bill would certainly affect trade very seriously, for vendors would not be able so easily to seduce buyers by the credit bait. If a man should fail to meet one payment at maturity he would inevitably be ruined, for there would be a general rush of his creditors upon him. On the whole, it is pretty safe to predict that the bill will not become a law.

A CORRECTION. — A prominent member of the Virginia Bar informs us that in a recent paragraph we attributed the proceedings of the Virginia Bar Association to that of West Virginia. This came about, he thinks, and correctly, from the fact that the said proceedings were held in the latter State, as has usually been the case, for hygienic or epicurean reasons. He also says that "no matter what the president may have said," no such number as 439 ever attended a meeting, but the largest attendance was 162, and that the present total membership is between four hundred and five hundred. An attendance of 162 lawyers is larger than was ever called out by the American Bar Association or that of this State.

CREDIT WHEN CREDIT IS DUE. — As we are an habitual and careful reader of that excellent periodical, the "Central Law Journal," we are pained to observe an occasional neglect to credit this Chair with paragraphs copied from it. The most cruel instance of this is its recent copying of a paragraph on "Widows not Favored," without credit, and putting it under "Jetsam and Flotsam." Of course this is unintentional, but we hope that hereafter when the "Central" finds our writings creditable it will give us credit for them.

TOO MUCH LATIN. — We clip the following from the "Law Gazette": —

"There is something quite thrilling in the news that a

Scottish judge (Sheriff Brown, of Aberdeen) has insisted on having the ancient Latin tag *quoad ultra* put into English in an indictment. He seems to have hurt the feelings of the Sheriff-Clerk by so doing. And no wonder; for in every Scottish legal document in which it is possible to say *quoad ultra* it has always been said. While a hundred other Latin forms of the days of Peter Peebles have disappeared, *quoad ultra* has survived, like *quoad sacra*, a sort of symbol and motto of a profession. The question comes, Can it be got rid of, and that by a mere Sheriff? Sheriff Brown made the Sheriff-Clerk write that Peter Riley plead guilty to assault, 'otherwise not guilty,' instead of '*quoad ultra* not guilty.' Now 'otherwise' is not an exact translation of *quoad ultra;* and if an unlearned clerk were to take it as such he might make a sad mess of the good old formula '*quoad ultra* denied' in an 'answer to condescendence.' After all it might be well to leave *quoad ultra* alone. Like *bona fide* and *ultra vires*, and a few more old friends, it fills a place in the order of things; and it is a venerable and harmless monument of antiquity."

In the State of New York the old Latin phrases have been ostracised for more than forty years. But they prevail to an amusing extent in Pennsylvania, at least in civil pleading, and so do the old French phrases. It is in the Pennsylvania reports that one reads of *nil debet*, trespass *quare clausum fregit* and *vi et armis*, *nul tiel* corporation, etc., or rather, and so forth. Really it is time to banish all that lingo. It is well enough perhaps to keep up *Magna Charta* and *Habeas Corpus*. "Great Charter" would do just as well for the former, but "Produce the Body," we must confess, would sound queer. But it would be better to send all the other foreign phrases to Lord Coleridge's Yellowstone Park of Special Pleading.

MOTHER'S RIGHT TO GUARDIANSHIP. — After a good deal of backing and filling on the part of the Legislature of New York in respect to this subject, the mother's right to a voice jointly with the husband in appointing her child's guardian has been at last statutorily declared. By the original Married Women's Acts of 1848, etc., the father could not appoint without the mother's written consent. Some twenty years ago, probably to fit some special case, this was abrogated, and by several later changes the mother's right has been gradually restored, until now it stands as it ought. The original repeal was a curious instance of the evils of special legislation.

SUBZER AND HIS CATS. — Another name must be added to the list of great men who have been fond of cats. Montaigne draws an alluring picture of himself dangling a garter to amuse his cat, and Bozzy tells us how the great Ursa Major fed "Hodge, his cat," with oysters. Mr. Dana is said to possess an office cat. Whittington had some kind of a cat. And now comes Subzer, the leader of the Tammany Democracy in the New York Assembly. Several years ago we picked him out for distinction. We saw the shadow of a laurel hovering over his brow. The first we ever heard of him he made a great speech in the Assembly against Codification, filled with such asseverations of the mischief which "experience" showed that this measure had wrought, and such vaticinations and personal pledges of woe should it prevail, that we were led to inquire about this patriarchal sage and prophet, and ascertained that he was bowed by the weight of some thirty summers. Then we marked him for Fame. Subzer, we said, is "one of the few, the immortal names that were not born to die." (By the way, it seems indisputable that a thing that is immortal cannot die. But we must not quarrel with "Marco Bozarris.") Now Subzer has vindicated our forecast. He has procured the enactment of a law for the protection of Cats in the city of New York. As a Tammany man, he is naturally partial to the Cat, being mindful of its far-away Tiger ancestry. Perhaps he hopes to become, like Whittington, Lord Mayor by reason of his Cat. We can imagine his speeches on this high occasion. Perhaps he even treated the Assembly to the popular topical song, in which it is asserted:

> "I love my little cats,
> I'm very fond of thats."

All that we can learn of this law is that it provides that cats in the metropolis shall wear collars, and that each shall bear a name (cat's or owner's, or both?) and be registered. The enforcement of the Statute is put into the hands of the Society for the Prevention of Cruelty to Animals. The "Troy Times" says that "The position of official registrar and regulator of cats will be an important one, and there will be rich purrquisites in the way of cat pelts and fur"; and that "Tammany will be sure to have one or more cat inspectors as well as a superintendent of registered felines." These are very unfeline remarks. We cannot believe that the humane author of this measure had any such unhandsome ulterior motives. But as he has displayed such tenderness toward Cats, we invoke his better consideration of Codification. They both begin with C. Let Subzer be decorated with a Maltese cross.

NOTES OF CASES.

ACCIDENT INSURANCE — EXTERNAL VIOLENCE. — In American Accident Co. *v.* Reigart, Court of Appeals of Kentucky, September, 1893 (21 L. R. Ann. 651), it was held that death caused by choking on food, which, in an attempt to swallow it, accidentally

passes into the windpipe, is covered by an accident insurance policy which provides that the insurer's liability shall only attach when the injury is through "external, violent, and accidental means." The Court said:—

"That the death of the insured was accidental is conceded, but it is contended that the contract of insurance only embraces accidental injuries caused by external violence, or accidents brought about by means externally violent. It is argued that the act of chewing or eating food is natural and harmless, and if in eating, a part of the food passes into the windpipe, causing death, it cannot be said that death was produced by means of external violence or force; in other words, that the plain meaning of the language of the policy, 'through external, violent, and accidental means,' is that the accident causing death must have been caused by an external force. The very object of insuring in such companies is to obtain indemnity where injury or death results from accident; and while the policy provides that the liability arises when the injury 'is through external, violent, and accidental means, independently of all other causes,' it was not designed that there should be such external violence as a fall, a kick, or a blow, on the person, as would cause death or an injury, before the liability of the company could arise. This language was inserted in the contract to protect the company against hidden or secret diseases, resulting in injury, where there was no manifestation of harm to the external body. They were not attempting to restrict their liability to a particular kind of accidents, but were guarding the contract by the use of such terms as would prevent liability for injuries not originating from accidential causes, and that were liable to occur at any time from natural causes. If the steak had been putrid, causing the stomach to revolt at it, or so tough as to interfere with digestion, or to completely stay the operations of nature in such a manner as to produce disease, no one would contend that the pain or the disease was the result of accident, or that the terms of this policy embraced such a case; but when the substance causing the death is visible, and placed in the mouth of the assured, lodging by accident in the windpipe, instead of the stomach, producing injury or death, it is as much an accident as if the assured had taken arsenic under the belief that it was some harmless medicine. There is no external force or violence from the poison, and the injury internal in its character, and yet the authorities hold that the insurance company is liable in such a case. Healey *v.* Mutual Acc. Asso. 133 Ill. 556, 9 L. R. A. 371. It is plain, we think, that the means or that which caused the injury should be external, and not that the injury should have been external.

It is said, however, that if the injury is not to be external, the death must have resulted from 'violent and accidental means.' It is universally understood, when it is said that one died a violent death, that it was unnatural, — a death not occurring in the ordinary way; and, in fact, the definition of the word 'violent' is 'unnatural,' and in using this word the insurance company was attempting to prevent the assured from asserting a claim when the injury or death was the result of some natural cause. In the case of Paul *v.* Travelers Ins. Co., 112 N.Y. 472, 3 L. R. A. 443, on a similar policy, it was held 'that a death unnatural, the result of accident, imports an external and violent agency as the cause.' This same view was taken by the Illinois Supreme Court in the case of Healey *v.* Mutual Acc. Asso. already cited. A similar construction to the verbiage of like policies has been heretofore given by courts of last resort, and if companies organized as this is intend that actual external force causing the accident must be shown before a recovery could be had, it would be easy to so frame the language of the policy as to leave no doubt as to its meaning."

FOULING A STREAM. — A rather novel question of rights in watercourses was decided in Barnard *v.* Shirley, Supreme Court of Indiana, June 6, 1893, holding that persons using the water of an artesian well to bathe patients at a sanitarium, the well and sanitarium being on their own premises, are not liable to an adjoining owner for allowing the water so polluted to flow into a stream which is the natural watercourse of the basin in which the well is situated; there being no negligence or malice, and all due care being used to avoid injury. The Court said:—

"The natural right to have the water of a stream in its pure state must yield to the equal right of those above. Their use of the stream for mill purposes and the other manifold purposes for which they may lawfully use it will tend to render it more or less impure. The water may thus be rendered unfit for many uses for which it had before been suitable; but so far as that condition results from a reasonable use of the stream in accordance with the common right, the lower riparian proprietor has no remedy. When the population becomes dense, and towns or villages gather along the banks, the stream naturally suffers still greater deterioration. Against such injury, incident as it is to the growth and industrial prosperity of the community, the law affords no redress. So in cities and towns, with their numerous inhabitants and diversified business, with their mills, shops, and manufactories, with their streets and sewers, all the products and means of a high civilization, it would be impossible that the pure streams that flow in from the farmsides should remain uncontaminated; and those that live upon the lower banks of such streams must, for the general good, abide the necessary results of such causes. Merrifield *v.* City of Worcester, 110 Mass. 216.

"In the case before us the stream flowed through the heart of the city of Martinsville before it reached the lands of appellee. Will it be said that there is any liability for contamination from the city? Must it be that one who lives on the lower lands on the banks of a stream shall forbid forever the founding of a city on the lands above, forbid the grading of streets, the building of sewers, the erection of mills, factories, hospitals, or other means of livelihood, comfort and convenience of the inhabitants? A case in many of its features resembling that now before the court is the well considered case of Coal Co. *v.* Sanderson, 113 Pa. St. 126.

"In both cases the owners cause water to rise from the earth, to become foul, and then to be carried by an artificial drain, and discharged into a running stream, the natural watercourse of a basin or valley in which the water arises, and into which stream the water would naturally flow if left to itself. In both cases the owners were engaged in a lawful and necessary work, of great advantage to mankind at large, and particularly to the community in which they operated; the one in mining out of the earth and distributing coal for heating and industrial use, and the other also taking out of the earth mineral water for healing and curing the infirm. Both were free from fault or negligence in conducting their business, and in avoiding, so far as possible, all injury to others; the injury in each case being but the necessary incident of a lawful business. In each case there was no other place but the stream for the water to go, so that, if it was unlawful to discharge the water into the stream, then the enterprise itself of a necessity would be at a standstill, and a lawful business thus come to an end because it could not be lawfully carried on. It would seem that the decisions show that when a business is dangerous, unhealthful, or otherwise greatly injurious to a community or to an individual, and it is possible to avoid the injury by a more careful management, or even, if necessary, by a removal of the works to a more secluded or less objectionable place, then the owners of the noxious business will be mulcted in damages, and if necessary, restrained by the courts. We have seen that in the case of Parker *v.* Larsen *supra*, when it appeared that the defendant could flow water from his artesian wells over his fields without injury to his neighbor, but did not do so, he was enjoined. In the case of Indianapolis Water Co. *v.* American Strawboard Co., 53 Fed. Rep. 970, where there was a discharge of refuse matter from a strawboard factory into a non-navigable river used by a water company as a source of supply for furnishing a city with water for domestic and other purposes, it was held that injunction would lie to restrain such pollution of the water supply. In Kinnaird *v.* Oil Co., 89 Ky. 468, defendant had stored petroleum which leaked and percolated through the ground until it reached the plaintiff's spring of water. Gas Light & Coke Co. *v.* Graham, 28 Ill. 73, was a similar case, the offensive substances percolating from the gas works into plaintiff's well. Also Gas Co. *v.* Murphy, 39 Pa. St. 257. Either of two courses could have been followed by the offending defendants in these last three cases. They could improve their works so that the oils would not leak and percolate through the earth to the fouling of the water, or they could remove their works to another locality. Accordingly damages were assessed in each case for the injury. So of various kinds of dangerous or offensive mills, factories, or other establishments or occupations. If they are conducted in such a manner as to materially and essentially injure adjoining proprietors, the owners may be subject to suits for damages, or, in case the injury is continuous, the business may be enjoined. But in this class of cases either a change in the method of conducting the business so as to avoid the injury, or else a total removal of the works to another and safer locality, may be had. But the case before us does not belong to this class. Railroads must reach our cities and the marts of trade. They cannot do business elsewhere. Mines and mineral springs, natural gas and oil-wells cannot be removed. They must be operated where they are, or totally abandoned. Where, therefore, a work is lawful in itself and cannot be carried on elsewhere than where nature located it, or where public necessity requires it to be, then those liable to receive injury from it have a right only to demand that it shall be conducted with all due care, so as to give as little annoyance as may reasonably be expected; and any injury that may result notwithstanding such care in the management of the work must be borne without compensation. It is then a case in which the interests and convenience of the individual must give way to the general good."

VOLUNTARY SERVICES. — In Cole *v.* Clark, 85 Me. 336; 21 L. R. Ann. 714, it was held that a friendly loan of tools and a trifling service rendered as a courtesy, without expectation of payment therefor, cannot be regarded as labor for the purpose of extending the time for filing a mechanics' lien based on previous services. The Court said:—

"If in a particular case, it satisfactorily appears from the situation, conduct, and mutual relations of the parties that the service was proffered as an act of friendly accommodation or otherwise, rendered without expectation of payment at the time, no promise to pay will afterwards be implied, though a new exigency may arise from the changed relations of the parties. Bishop, Cont. §§ 219, 220; Metcalf Cont. 4; Brown *v.* Tuttle, 80 Me. 162; Godfrey *v.* Haynes, 74 Me. 96; Potter *v.* Carpenter, 76 N.Y. 157; Woods *v.* Ayres, 39 Mich. 345, 33 Am. Rep. 396. The law will not thus permit what was intended at the time as an act of kindness or courtesy to be subsequently converted into the foundation of a pecuniary demand.

"In the case at bar the plaintiff's loan of his unused tools for a few minutes was manifestly but an act of friendly accommodation, granted to a fellow workman without expectation of reward. In like manner, the trifling service performed by the plaintiff in receiving from the foreman's hand a board which might otherwise have been allowed to fall to the floor without danger of injury was unmistakably one of those natural and spontaneous acts of courtesy which daily mark the friendly intercourse of men, and enter into the amenities of all social life. It was unquestionably a voluntary and gratuitous act of kindness and civility, performed without thought of compensation on the part of either, and under circumstances which distinctly repel any implication of a promise to make payment."

The ancestor of all such cases in this country is Brown *v.* Bartholomeu, 20 Johns. 29, which was an action for services in removing the defendant's stack of wheat endangered by a fire set in a wheat stubble field by the plaintiff himself. The Court said: "If a man humanely bestows his labor and even risks his life, in voluntarily aiding to preserve his neighbor's house from destruction by fire, the law considers the service rendered as *gratuitous*, and it therefore forms no ground of action."

"JUNK SHOP." — An interesting case of definition is City of Duluth *v.* Bloom, Wisconsin Supreme Court, 21 L. R. Ann. 689, in which it was held that a store in which furniture, both new and second-hand, is exclusively dealt in, is not a "junk shop" within the meaning of an ordinance requiring "any person keeping a second-hand store or junk shop" to take out a license. The Court said: —

"The first section of the ordinance provides that no person shall carry on or conduct the business or calling of pawnbroker or dealer in second-hand goods without first having obtained a license so to do, but does not attempt to define who shall be considered pawnbrokers or dealers in second-hand goods. Again, the word 'junk' is one neither used nor referred to in the first section, so that it seems to us that in using the phrases 'a second-hand store or junk shop' the city council must have used the latter as definitive of the former, thereby intending to limit the ordinance to that class of second-hand stores known as 'junk shop.' Every junk shop is a second-hand store, but not every second-hand store is a junk-shop. The term 'second-hand store,' if not qualified or limited, would include any store in which any kind of second-hand goods are dealt in, as for example second-hand furniture or second-hand books; but stores in which these articles are dealt in would not necessarily be junk shops. The word 'junk,' which is of nautical origin, originally meant old or condemned cable and cordage cut into small pieces, which, when untwisted, were used for various purposes on the ship. Hence the word afterwards came to mean worn out or discarded material in general, that still may be turned to some use, especially old rope, chain, iron, copper, parts of machinery, bottles, etc., gathered or bought up by persons called 'junk dealers.' A junk shop — a place where junk is bought and sold — has been defined as a place where odds and ends are purchased and sold; a store where old metals, ropes, rags, etc., are bought and sold. 12 Am. & Eng. Encyclop. Law, 243; Charleston *v.* Goldsmith, 12 Rich. L. 470. It is our opinion that it must be held that the city council intended the provisions of the ordinance to be limited to second-hand stores of the class commonly known as 'junk shops.' This is the class of second-hand stores over which police regulations are peculiarly needed, for the reasons that they and pawnbrokers' shops are the places where thieves most usually attempt to dispose of stolen property, and whose keepers not unfrequently become fences for such goods, — reasons which do not apply with anything like the same force to second-hand stores of other kinds, as, for example, second-hand furniture or second-hand book stores."

FOX-HUNTING. — When this Chair gets enough leisure — say in eternity — he is going to write a treatise on the influence of the interests and occupations of each State upon its judicial decisions. Thus in Maine we should expect great tenderness toward ice, in Pennsylvania toward iron, in Louisiana toward sugar, in Florida toward the alligator-skin business, and so on. In England one would naturally look to see the judges approving the noble industry of fox-hunting, and so in Gundry *v.* Feltham, 1 T. R., Lord Mansfield and Mr. Justice Buller unhesitatingly and very briefly declared that when a man starts a "noxious animal," to wit: a fox, on his own land, he may pursue it over the lands of others, with horses and hounds, doing no unnecessary injury, without liability to respond in trespass. In the endeavor to find the American doctrine in this matter, we naturally thought of the great fox-hunting State of Virginia, where the Father of his country used to ride to hounds, and applied to a learned professional brother who occupies a seat in the Washington and Lee Universitv, for light on the subject. Strange to say he could only refer us to a case in Illinois — Glen *v.* Kays, 1 Bradwell, 479, which holds precisely the contrary doctrine in respect to hunting the noxious wolf. The English case was not cited, but the present Comptroller of the Currency vainly endeavored to cajole the court into the adoption of that view. To this the Court responded: —

"We shall not enter upon the assumed difficult task proposed by appellees to the opposite counsel, of producing 'some authority against the right of any person to pursue wolves or other animals *feræ naturæ*, and dangerous to mankind, for the purpose of their destruction, across the enclosed fields of another' — although it is said to have been 'one of the main legal questions mooted before the jury,' and it appears was the idea acted upon by the defendants in their treatment of the plaintiff's possessions, but shall rest content with a simple observation upon the subject, that whenever the law shall be so construed as to permit parties to trespass with impunity on the enclosures of their neighbors under such a plea, the fundamental principle upon which it is based should be so changed as to read that every man shall be protected in the enjoyment of his property, except in cases where hunters, with their animals, may desire to make use of it in the pursuit of game that is considered dangerous."

We cannot conveniently learn whether the case ever went up to the Supreme Court. We have examined a three-volume Illinois digest under Animals and Trespass, but can find nothing on the point. That digest has no tables of cases, — an omission for which both author and publisher ought to be indicted.

A DEFINITION. — The question whether baking-powder is an article of "food," within a statutory phrase, "anything used for the food or drink of man," was recently decided in the negative by Hawkins and Lawrence. JJ., in England. It was argued that the powder was akin to pepper, mustard, or salt. But it was adjudged that the test was whether the article *when* sold is an article of food or not. The question was once before debated, but not authoritatively decided, in an English case of Wawm *v.* Philips, 68 Law T. Rep. (N.S.) 246. See Stroud's Jud. Dict., "food."

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.

THE EDITOR once again requests the readers of THE GREEN BAG to send him contributions of legal reminiscences and anecdotes. Each State has had, and still has, many lawyers noted for their wit and humor, whose bright sayings certainly ought to be preserved. Let every reader send in one or two of the best anecdotes he has ever heard, and by so doing add to the entertainment and pleasure of his brother lawyers.

LEGAL ANTIQUITIES.

TERRIBLE as the old methods of punishment seem to us, it is perhaps doubtful whether they would be considered by criminals as severer than those at present in vogue. Here is a case in point:—

"At a session of the Court of Oyer and Terminer held at Norristown, Pa., Oct. 11, 1786, a bill was presented against Philip Hoosnagle for burglary, who was convicted on the clearest testimony. He was, after a very pathetick, and instructing admonition from the bench, sentenced to five years hard labour, under the *new* act of Assembly. It was with some difficulty that this reprobate was prevailed upon to make the election of labour instead of the halter.... A convincing proof," the report says, "that the punishments directed by the new law are more terrifying to idle vagabonds than all the horrors of an ignominious death."

FACETIÆ.

MR. FRANK LOCKWOOD, the eminent English Q.C., has a well deserved reputation as a humorist, as the following incidents will show: —

There are certain Scotch lairds who take the name of their estate, and usually use that appellation in place of a surname. One of these is "Cluny" Macpherson, to whom Mr. and Mrs. Lockwood recently paid a visit. During their stay, Mr. and Mrs. Macpherson and their guests were invited to lunch at a neighboring country house, where a visitors' book was kept. The head of the Clan Macpherson, in accordance with Scotch custom, wrote in the book, —"Cluny and Mrs. Macpherson." Mr. Lockwood was not to be outdone by any northern chief, and was prepared for the emergency, even if he could not claim to be the leader of a highland clan. Underneath "Cluny's" signature appeared, —"26, Lennox Gardens, and Mrs. Lockwood."

In England, when a country residence is some miles from a telegraph office, any telegrams addressed to that residence are forwarded by mounted or foot messenger, at a cost usually varying between eight pence and a shilling per mile.

Mr. Lockwood, having been invited to stay for a couple of days at a friend's country house, decided to accept the invitation if his host were willing to extend his hospitality for an additional two days. The genial Q.C. therefore telegraphed, "May I make it four days?" and the message was duly delivered to Mr. X., who, after paying six shillings for its delivery, replied, "Yes, of course, but don't telegraph." Towards evening the mounted telegraph messenger again appeared, and once more demanded a further six shillings for his services. The telegram, when opened, read as follows, "Why not? Lockwood."

THE most persistent man at the English Bar is a newly-created Q.C. named Oswald, who enjoyed a large practice as a junior, and is likely to increase it as "a silk."

About a year ago, Mr. Oswald was before the

Court of Appeals arguing in favor of a new trial for an important civil case, which the lower court was unwilling to have re-tried. The judges had intimated more than once that they agreed with the learned counsel, and that he was entitled to a new trial, but Mr. Oswald still continued to argue. At last, Lord Esher, the President of the Court, said, "Mr. Oswald, why did you not urge these arguments in the court below?" Mr. Oswald, "I did, my Lord, but their Lordships stopped me." Lord Esher (much surprised that anybody could stop this learned counsel): "They stopped you, did they; pray how did they manage to do it?" Mr. Oswald (who always *will* have the last word): "By fraudulently pretending to agree with me, my Lord."

COURTS of law are now and then enlivened by the unintentional comicalities which will occasionally crop up even in most serious cases. In a certain lunacy case, tried in the Court of Queen's Bench, the last witness called by Mr. Montague Chambers, leading counsel for the plaintiff, was a doctor, who, at the close of his evidence, described a case of delirium tremens treated by him, in which the patient recovered in a single night.

"It was," said the witness, "a case of gradual drinking — sipping all day, from morning till night."

These words were scarcely uttered when Mr. Chambers, who had examined the witness, turning to the Bench, and unconsciously accenting the last word but one, said: —

"My Lord, that is my case."

Roars of irrepressible laughter convulsed the Court.

ONE of the pipes which heat the Supreme Court building at Raleigh, N.C., runs under the platform upon which the judges sit when court is in session. They must differ in temperament, however harmonious their rulings may generally be, for a visitor inspecting the building lately, seeing the pipe asked the engine-man if he could make the court comfortable. "Well," said he "I can *het* 'em hot an' I can *het* 'em cold, but how I can *het* some of 'em hot an' some of 'em cold an' all five of 'em a-setting in the same line is beyond my peravention."

MEETING a person of not immaculate character, clad in black, Judge Vose (of New Hampshire) asked him for whom he was in mourning. "For my sins," answered the man jocularly. "Have you lost any of them?" inquired the Judge.

NOTES.

I'VE been list'nin' to them lawyers in the court house where they meet,
An' I've come to the conclusion that I'm most completly beat.
Fust one feller riz to argy, an' he boldly waided in,
As he dressed the tremblin' pris'ner in a coat o' deep-dyed sin.

Why, he painted him all over in a hue o' blackest crime,
An' he smeared his reputation with the thickest kind o' grime,
Tell I found myself a-wond'rin', in a misty way and dim,
How the Lord had come to fashion sich an awful man as him.

Then the other lawyer started, an', with brimmin', tearful eyes,
Said his client was a martyr that was brought to sacrifice;
An' he gave to that same pris'ner every blessed human grace,
Tell I saw the light o' virtue fairly shinin' from his face.

Then I own 'at I was puzzled how sich things could rightly be;
An' this aggervatin' question seems to keep a-puzzlin' me;
So, will some one please inform me, an' this myst'ry unroll —
How an angel an' a devil can persess the self-same soul?

"*Themis.*"

JOHN C. CHAMBERLAIN once inquired of James Wilson of New Hampshire, why he did not address the *reason* instead of the feelings of jurors. "Too small a mark," replied Wilson,— "too small a mark for me to hit."

ACCORDING to annual custom, on the first Monday after the Feast of the Epiphany, or "Plough Monday" as it is generally called, a Grand Court of Wardmote is held at Guild Hall, London. The court is summoned for the purpose of receiving the returns from the several wards of the city of the election of members of the Court of Common Council and for hearing petitions against those returns, and of admitting the City Marshall, the ward beadles and the extra constables. According to Ashe, the appellation of

"Plough Monday" was given to this particular day as being the day on which a return was made to the duties of agriculture after enjoying the festivities of Christmas. Another writer states that on Plough Monday, the ploughman of the north country used to draw a plough from door to door and beg plough money to drink.

A JUDICIAL DRAMA. — Lord Coleridge recently wished to be informed what was the meaning of the phrase, "coming to grief," Mr. Justice Lawrence had never heard the expression "Going Tommy Dodd," whilst Lord Halsbury asked, "Who is Pigott?" This ignorance of what, outside the judicial world, is common knowledge, has suggested the following drama to the *Referee*: —

SCENE. — *A Court of Justice.*

Witness. — I noticed that she had a black eye.

Lord Coleridge. — One moment, I don't quite follow you. What was the color of her other eye?

Witness. — I mean her husband had blackened her eye.

Lord Coleridge. — What an extraordinary thing to do! Did he use paint or burnt cork or soot, or what?

Witness. — No; I mean he fetched her one and that made her eye black.

Lord Coleridge. — Fetched her one! I presume you mean he fetched her a black glass eye from a dealer in such articles?

Counsel. — No, your Lordship. The witness means that the woman was struck in the eye, and that the result was discoloration of the adjacent flesh.

Lord Coleridge. — O! *Now* I understand.

Witness. — She went out, and said, "I'll be back in half a jiffy."

Lord Coleridge. — I don't know what kind of conveyance that is, but why didn't she come back in a whole one?

Witness. — It isn't a conveyance, my Lord.

Lord Coleridge. — O, is it a — er — garment?

Counsel. — No, your lordship. It is a common expression for a short space of time.

Lord Coleridge. — Dear me! How very confusing! Go on.

Witness. — She gave me a bob.

Lord Coleridge. — Dropped you a curtsey, you mean, eh?

Witness. — No, a shilling.

Lord Coleridge. — I never heard a shilling called a bob before. Go on.

Witness. — And I took my hook.

Lord Coleridge. — You had brought a hook with you, then?

Counsel. — He means he took his departure. Go on.

Witness. — When I saw her again she'd been on the booze.

Lord Coleridge. — Is that a river?

Witness. — I mean she'd been drinking.

Lord Coleridge. — Then why didn't you say so?

Witness. — I saw a policeman, and I went up to him and said, "I say, bobby —"

Lord Coleridge. — You knew the policeman intimately, then?

Witness. — Never saw him before in my life.

Lord Coleridge. — And yet you knew his Christian name and addressed him by it in its most familiar form.

Counsel. — A policeman is frequently called a bobby, my lord.

Lord Coleridge. — Dear me! I was not aware of it, I never heard the expression before.

Counsel. — Great Scott!

Lord Coleridge (looking inquiringly round the court). — Where? I have heard so much of him, I should like to see him.

Counsel (to witness). — And you gave her in charge?

Witness. — Yes; but the policeman, he said, "What's your game?"

Lord Coleridge. — What had you in your hand, then — a brace of pheasants, or a hare, or what?

Counsel. — O, skittles!

Lord Coleridge. — O, that was the game! But how could the witness be playing skittles in the street?

The Witness (to counsel). — O Lor'! Ain't he a treat!

Counsel. — Yes. You'd better stand down till I can get a sworn interpreter. It's not my business.

Ourselves. — At the time our reporter left Lord Coleridge was asking a witness, who said he had told the lady to go to Bath, what the lady was suffering from to make him recommend that well-known health resort.

THE following is an extract from a complaint in a late North Carolina action for malicious prosecution: —

"5. That the said defendants employed some seven or eight law firms or individual attorneys to prosecute said action from September Term, 1885, until Fall Term, 1889, when dismissed finally. That by the employment of so vast an array of legal talent of this and other States, by their technical pleadings, perseverance, delays, obstructions, caused the plaintiff

a vast amount of labor, expense and time in defending said suit, in attendance at courts, etc. etc., the employment and payment of attorneys in defending said action to its final termination, and for the *worriment of mind and labor of body*, plaintiffs claim damages three thousand dollars.

6. That the charge made in the complaint in that action was false, revengeful in spirit, maliciously made without probable cause, and intended to damage and defame both the good name, honor, honesty and commercial standing of this plaintiff, and to *scatter broadcast the cloud of defamation of character through the channels of information that should be held* the most sacred, to wit, the records of proceedings in court, *to be held up forever thereby* against them the infamous charges of fraud and attempted fraud, without having probable cause, to the damage of the plaintiffs in their minds, in their occupations, in their commercial standing and relations to public intercourse, ten thousand dollars.

LITERARY NOTES.

THE legal profession will be greatly interested in a sketch of the late Henry W. Paine, by William Mathews, published in the NEW ENGLAND MAGAZINE for April. Mr. Paine was a very remarkable man, and since the days of Webster and Choate there has been no one at the Suffolk Bar who excelled or even equalled him in all the attributes which go to make up a great lawyer.

IN the nature of a revelation to most readers is the article in the April CENTURY on "A Comet-Finder" (W. R. Brooks, of Geneva, N.Y.), written by Frank W. Mack, and illustrated with views of the comets discovered by Mr. Brooks, who is perhaps better known to the astronomical world as "The Red House Astronomer." An entirely novel interest also attaches to Mr. John G. Nicolay's paper on "Lincoln's Literary Experiments," being in the nature of advance sheets of the forthcoming volumes of Lincoln's Speeches and Writings. Mr. Nicolay includes a considerable amount of hitherto unpublished material, including a lecture and verses written by Lincoln. This article has the advantage of being in a field hitherto but scantily reaped. This number is strong in papers of adventure, including, under the title of "Driven out of Tibet," Mr. W. Woodville Rockhill's account of his attempt to pass from China through Tibet into India, a narrative very fully illustrated. There is also in the Artists' Adventures Series an account of a balloon ascension by Robert V. V. Sewell, the American painter; and William Henry Bishop contributes a unique paper on "Hunting an Abandoned Farm in Connecticut," giving his mildly flavored adventures in search of what proves to be very scarce game.

THE complete novel in the April number of LIPPINCOTT'S is "The Flying Halcyon," by Colonel Richard Henry Savage, author of "My Official Wife." Gilbert Parker's serial, "The Trespasser," reaches its twelfth chapter. Other stories are "Cap'n Patti," by Elia W. Peattie, who touches upon the Salvation Army, and "For Remembrance," by Elizabeth W. Bellamy. P. F. de Gournay supplies an interesting account of "The F. M. C.'s of Louisiana," a class which lost its distinctive existence by the war. Under the heading, "The Librarian among his Books," Julian Hawthorne describes the Library of Congress and its distinguished custodian. Chief-Justice Abraham Fornander tells about "Hawaiian Traditions." H. C. Walsh explains an interesting experiment in "Co-operative House-keeping," now being made at Brookline, Mass., and George J. Varney writes learnedly of "Storage-Battery Cars."

THE catholicity and the high average character of the selections which make up the contents of that invaluable eclectic of foreign literature, LITTELL'S LIVING AGE, may be estimated by the following partial list of titles of articles which have appeared in recent issues: "The Queen and Her Second Prime Minister," by Reginald B. Brett; "Roman Society a Century Ago," by Charles Edwards; "The Ireland of To-morrow"; "The letters of Sir Walter Scott"; "A Brahmin's Impressions at the Chicago World's Fair," by Mulji Devji Vedant; "Wolfe Tone," by Augustine Birrell; "The Samaritan Passover," by Rev. Alex. R. Macewen, D.D.; "Railway from Jaffa to Jerusalem"; "On Modern Travelling," by Vernon Lee; "The Revolt of the Daughters," by B. A. Crackanthorpe; "The Expedition to the West Indies, 1655" by J. W. Fortesque; "The Chemical Action of Marine Organisms," by John W. Judd; "Dean Stanley of Westminster"; "Bores," by Sir Herbert Maxwell; "The Portrait of a Moonshee," by J. W. Sherer, etc., etc. The fiction is of the best and includes translations from the French and German, as well as short stories by English writers.

WILL the House of Lords last much longer? In the April HARPER'S George W. Smalley, the New York *Tribune's* London correspondent, discusses the place of the Peers in British legislation, and contends

for a reorganized and reformed House of Lords as a necessary upper chamber of Parliament. The paper views the Lords from the contemporary standpoint of their present influence on English politics.

ONE of the most impressive short stories that Thomas Nelson Page has written is "The Burial of the Guns" in the April number of SCRIBNER'S MAGAZINE. It is a dramatic episode of the very end of the Rebellion. This issue contains installments of George W. Cable's serial, "John March, Southerner," and "A Pound of Cure," by William Henry Bishop. A group of clever artists is described by Arsène Alexandre in "French Caricature of To-day." He is the author of a recent French work on Caricature, and is, by acquaintance and study, particularly well-fitted to write of these bright men who satirize the follies of the hour. The illustrations represent some of the striking work of Caran d'Ache, Forain, Chéret, Steinlen, and others.

THE April ATLANTIC is decidedly "Warlike" in tone. Besides Mrs. Elizabeth Stuart Phelps Ward's story, "The Oath of Allegiance," Mr. Eben Greenough Scott contributes a historical paper, "General Lee during the Campaign of the Seven Days," and there is a paper on "War's Use of the Engines of Peace" — railroads, electricity, and inflammable oils — by General Joseph L. Brent, of the Confederate army. Mr. Richard Burton's article on "Nature in Old English Poetry," and Mrs. Olive Thorne Miller's "Secret of the Wild Rose Path," are both delightful. A very clever horse stands for his portrait in Mrs. Elisabeth Cavazza's "Jerry: a Personality," and Miss Repplier contributes a characteristic little paper on "Opinions." Mrs. Catherwood's strange story of "The Windigo," and the continuation of Mrs. Deland's "Philip and his Wife," give strength to the fiction of a strong number.

THE singular good fortune has fallen to the lot of The COSMOPOLITION MAGAZINE of presenting one of the most remarkable pieces of fiction ever written — remarkable because of its author and remarkable because it has remained unsuspected and undiscovered for more than a hundred years, only to be given to the world at last in an American magazine.

This is a Corsican story, published in the April number, written by a no less distinguished person than Napoleon Bonaparte. There appears to be no doubt of its genuineness, and it is certainly a most lucky "find" for the magazine.

JUST now Americans are intensely interested in everything pertaining to the recent movements in British politics, and particularly in whatever relates to Mr. Gladstone's resignation. No one is better fitted to treat of this and related topics than Mr. W. T. Stead, who contributes to the April number of the REVIEW OF REVIEWS a most brilliant tripartite character sketch of Gladstone, Rosebery, and Harcourt, the Liberal leaders. Any one who wishes to become informed on the distinguishing traits of Liberal leadership as brought out in the careers of these three men will be immensely helped by reading Mr. Stead's articles. The whole past, present, and future of British Liberalism passes under review. The analysis of character and policy is keen and skillful in the highest degree.

BOOK NOTICES.

LAW.

A SHORT ACCOUNT OF THE LAND REVENUE AND ITS ADMINISTRATION IN BRITISH INDIA; with a Sketch of the Land Tenures. By H. BADEN-POWELL, C.I.E., F.R.S.E., M.R.A.S., Late of the Bengal Civil Service, and one of the Judges of the Chief Court of the Punjab. With Map. Macmillan & Co., New York, 1894. Cloth. $1.50.

In this work the author attempts, and very successfully, to describe the Land Revenue Administration of British India and the forms of land-holding on which that administration is based, in the compass of one small volume. While designed especially to answer the purposes of the ordinary student of Indian affairs and to give sufficient practical information to serve as a text-book for Forest Officers and others outside the Land Revenue Department, it contains much to interest American readers, particularly those of the legal profession. The chapters on Land Tenures, which deal largely with the rights of landlord and tenant, are well worthy a careful reading, while the account of "The Revenue Administration and Public Business connected with Land Management" opens up a subject of more than ordinary interest. The book should be in every law library for purposes of reference.

MEDICAL JURISPRUDENCE, FORENSIC MEDICINE AND TOXICOLOGY. By R. A. WITTHAUS, A.M., M.D., and TRACY C. BECKER, A.B., LL.B. Vol. I. William Wood & Co., New York, 1894. Law sheep. $6.00 a volume.

This is the first volume (the publication will con-

sist of four volumes) of what promises to be the most important contribution to medico-legal literature ever given to the profession. Written by an eminent doctor and chemist, and a well-known lawyer and professor of medical jurisprudence, aided by numerous lights of both the legal and medical professions, the work is a much more comprehensive and exhaustive treatise upon the subject than any of its predecessors. This first volume treats exclusively of pure medical jurisprudence and forensic medicine (*thanatological*) and to these two branches papers are contributed (in addition to those furnished by Mr. Becker) by Doctors H. P. Loomis, I. C. Rosse, George Woolsey, Roswell Park, E. V. Stoddard, W. N. Bullard, D.S. Lamb and Hon. Wm. A. Poste and Chas. A. Boston, Esq. As these gentlemen have devoted especial study and research to the specialties they discuss, their opinions are of great value and importance. To one engaged in criminal practice the work will be almost invaluable, and to the general practitioner as a book of reference its value can hardly be overestimated.

The volumes are to be illustrated wherever desirable by "line" and "half tone" engravings and chromo-lithographic plates. The work is sold by subscription only, and no single volume will be sold. We recommend it cordially to the legal profession, believing, from a careful examination of this first volume, that it is of sterling merit and by far the best contribution upon the subject which has yet been published.

THE PARIS LAW COURTS; Sketches of men and manners. Translated from the French by GERALD P. MORIARTY, B.A. Charles Scribner's Sons, New York, 1894. Cloth. $3.75.

A study of the French judicial system is of peculiar interest to English and American lawyers, the whole method of procedure in the French courts being so different from that to which we are accustomed. A perusal of this interesting work will, we think, leave but little doubt in the reader's mind that justice is more fairly meted out to the whole people in America than in France. This book, which is a translation of "*La Palais de Justice de Paris*," a work written in collaboration by certain members of the association of journalists attached to the Paris law courts, gives an excellent description of the courts, the form of procedure, and the history and customs of the Paris Bar. Interesting accounts are given of many famous advocates, the greatest among them being Maître Lachaud. Of him it is said: —

"Lachaud was not a defender, he was *the* defender of accused persons. An orator if you like, and a great orator, skilled in all vocal harmonies, in all modulations of tone, with ten, nay twenty different voices at his command, according as he was called upon to convince or to persuade, to touch or to terrify; but, before all, he was a tactician of the very highest rank, and a psychologist by whose side specialists of that name were mere stammering babes. . . . His knowledge of a jury was extraordinary. Lachaud would make twelve separate speeches if he had to deal with twelve jurymen of different conditions. . .With a marvellous intuition, he would find his way into every man's heart. Executing variations on the same theme with incomparable vivacity, speaking to each juryman in turn, fixing him with an eye which saw everything, never letting him go till he was thoroughly convinced."

The book is finely and profusely illustrated, and should be eagerly sought for by the legal profession, giving, as it does, the best idea of French courts and lawyers yet published.

THE CRIMINAL CODE OF CANADA and the Canada Evidence Act, 1893. With an extra appendix containing the Extradition Convention with the United States, the Fugitive Offender's Act, and the House of Commons' debates on the Code. And an Analytical Index. By JAMES CRANKSHAW, B.C.L. Whiteford and Theoret, Montreal, 1894. Half calf. $10.00.

This work of Mr. Crankshaw's is of importance and value not only to Canadian lawyers, but to all those interested in criminal law and proceedings. The annotations are admirably prepared, and are very full and exhaustive, while the citations are apt and directly to the point, evincing unusual good judgment and discrimination on Mr. Crankshaw's part. That the work will be thoroughly appreciated by the Bench and Bar of the Dominion there can be no doubt, and it will find a welcome from many libraries and practitioners on this side of the line.

WILLS AND HOW NOT TO MAKE THEM, with a selection of leading cases. By B. B. WEST. Longmans, Green & Co., New York, 1893.

We are inclined to agree with the author of this little book in his statement that "if the plain truth were told, it would be acknowledged that more misery and injustice have been worked by wills than by the series of wars the country (England) has waged since the modern system of will-making came into use." The work is a plea for the exercise of common sense and discretion on the part of testators in making their wills, if wills they must make, and the errors hitherto committed are held up before them as warning examples of the consequences of lack of

sound judgment and due forethought in the disposition of one's earthly possessions. The book is written in an exceedingly interesting style, and is well worthy a careful perusal by both lawyers and laymen.

INDIVIDUAL, CORPORATE AND FIRM NAMES. By HON. DAVID MCADAMS. The Diossy Law Book Co., New York, 1894.

"What's in a name?" The reader of this little pamphlet of Judge McAdam's will ascertain that there is considerable in it, and that it plays a very important part in the affairs of man. The author gives a succinct summary of the different provisions of law as to changing names, continuing the use of names after death or dissolution of a firm, etc., with forms. Much valuable information has been collected, and Judge McAdam has invested the subject with considerable interest, enlivening it with numerous apt quotations.

MISCELLANEOUS.

THE POLITICAL ECONOMY OF NATURAL LAW. By HENRY WOOD. Lee and Shepard, Boston, 1894. Cloth. $1.25.

In these times of pessimistic treatises upon matters pertaining to political economy, it is a pleasure to meet with a book which presents a bright and cheerful view. The volume before us deals with a political economy which, according to the author, is natural and practical, rather than artificial and theoretical. Mr. Wood is a most delightful writer and succeeds in investing what would usually be a dry subject with much interest. His thorough acquaintance with and knowledge of his subject is evident, and his treatment of it is thoroughly original. We wish the book could be read by every capitalist and every laboring man in the country, It gives each class much to reflect upon, and its wide circulation could not fail to be productive of much good.

The titles of a few of the twenty-four chapters will give some idea of its contents. Among them are, The Law of Co-operation, The Law of Competition, Combinations of Capital, Combinations of Labor, Profit Sharing, Socialism, Economic Legislation, Can Capital and Labor be Harmonized, The Distrubution of Wealth, The Centralization of Business, Booms and Panic, Money and Coinage, Tariffs and Protection, Industrial Education, etc., etc.

ALLEGRETTO. By GERTRUDE HALL. Illustrated by OLIVER HERFORD. Roberts Brothers, Boston, 1894. Cloth. $1.50.

This little volume is a delight to the eye and feast for the imagination. Miss Hall's verses are captivating in the extreme and positively scintillate with genuine wit, while Mr. Herford's illustrations are in every way admirable and form an exquisite setting for the author's dainty bits of poetry. Miss Hall is already well known as a charming writer of fiction, and her poems display all the freshness and originality which has characterized her prose writings.

THEOSOPHY OR CHRISTIANITY? WHICH? A Contrast, by Rev. I. M. HALDEMAN. Croscup & Co., New York. Cloth. 40 cts.

Theosophy, which, after becoming practically extinct in India, the land of its birth, seems to have gained a very considerable foot-hold in our western land, is but little understood by any outside of its votaries. Volumes of mystic lore contain its doctrines and beliefs, the perusal of which only serves to confuse and perplex the ordinary mind. It is therefore a great satisfaction to find in this little book of Mr. Haldeman's a clear and concise description of the beliefs which make up this "wisdom-religion," and to be able, from a half-hour's reading, to obtain an excellent idea of the claims of the theosophists. Without attempting to discuss theosophy itself, the author has most ably succeeded in his wish to present its pith and substance, shorn of its scientific, metaphysic and philosophic pretentions, in all its native ugliness and repulsiveness. Stripped of all its oriental imagery and glamour, theosophy stands forth a hideous object indeed, and it is difficult to believe that any sane man or woman would willingly subscribe to such monstrous beliefs as this little book sets forth. The "wisdom-religion" is dreary, hopeless, cheerless beyond all conception. The work is a timely one and should be widely read.

CARTIER TO FRONTENAC. Geographical Discovery in the interior of North America in its historical relations, 1534–1700, with full cartographical illustrations from contemporary sources. By JUSTIN WINSOR. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $4.00.

This book is a valuable and interesting addition to the history of the discovery of North America. Covering that period which resulted in the opening up of the St. Lawrence and Mississippi Valleys, it deals with subjects of more than ordinary importance and is filled with much curious and valuable information. Much study and research must have been required for such a work, but by such a student and writer as Mr. Winsor, the task could not be otherwise than thoroughly and exhaustively performed. The illustrations are particularly interesting,

containing many reproductions of rare and curious maps and charts, together with portraits of the famous discoverers of that period. To all loves and students of history, the book will prove of exceeding value and interest.

IN EXILE, and other Stories. By MARY HALLOCK FOOTE. Houghton, Mifflin & Co., Boston and New York, 1864. Cloth. $1.25.

If one desires an hour of solid enjoyment, he can find no surer way of obtaining it than by the perusal of these stories by Miss Foote. They are all of them delightfully fresh and original, and written in a charming style. Besides the title story the contents include "Friend Barton's 'Concern,'" "The Story of the Alcazar," "A Cloud on the Mountain," "The Rapture of Hetty," and "The Watchman."

THE STRIKE AT SHANE'S, a Prize Story of Indiana. American Humane Education Society, George T. Angell, President, Boston.

This book, which is a sequel to "Black Beauty," is not only an interesting story capitally told, but it is a contribution to the cause of humane treatment of dumb animals, which cannot fail to do incalculable good. Every child will be delighted with it, and to those of maturer years it will prove of equal interest. It is a powerful, impressive appeal in behalf of a noble object, and should be scattered broadcast throughout the land.

A PROTÉGÉE OF JACK HAMLIN'S and other Stories. By BRET HARTE. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.25.

Bret Harte has given us many portrayals of Californian and Western life and character, but none better than those contained in this little volume. The opening story, "A Protegee of Jack Hamlin's," shows the author in his best vein, and a more artistic bit of pathos it would be hard to find. "An Ingenue of the Sierras" is indescribably humorous, while the other contents, which include "The Reformation of James Reddy," "The Heir of the McHulishes," "An Episode of West Woodlands," and "The Home-coming of Jim Weekes" serve to make up a most readable book.

David Dudley Field

The Green Bag.

VOL. VI. No. 5. BOSTON. MAY, 1894.

REMINISCENCES OF DAVID DUDLEY FIELD.

BY A. OAKEY HALL.

WHILE I was a mourner in Calvary Church in New York City upon the beautiful April Sunday during which funeral services were being held over the bier of the great jurist, I reminded myself of the occasion upon which I first saw him. It was over half a century ago, when I was a schoolboy preparing for the University. I had been taken to the court room of the Supreme Court by a relative who as a suitor had employed in a pending case the brothers Field as his attorneys and counsellors. Inasmuch as it was my first attendance upon a trial the incident was likely to make, as it did make, a profound impression — one refreshed and deepened in after life when I became honored with his friendship, professional companionship and frequent association. My relative and I first visited the Field law office en route to the City Hall. It was in one of the narrow streets crossing Broadway near Trinity Church. I remember the narrow tin sign on the outer door bearing the inscription, "Law offices of D. D. & S. J. Field." No passer-by in that day and generation was prescient enough to foretell that the senior member would acquire a world-wide reputation as an advocate and law giver second to none in any country, or that the younger member would become a justice in the high court which had then recently lost John Marshall as its Chief Justice and in his place had received an incumbent destined to be an assistant in writing a legal preface through a Dred Scott decision to a volume of civil war.

Behind and through the picture in the GREEN BAG of the deceased lawyer now before me I bring to recollection the tall, erect, alert form of a young man dressed in the height of fashion addressing Circuit Judge Ogden Edwards in an animated manner, rather conversationally than oratorical, and with grace of gesture and posture. The court room was crowded, for it was the first day of term, and my relative busied himself in pointing out to me the celebrities of the Bar, whose names were to me then strange and which of course I cannot recollect. Doubtless among those pointed out or within sight were young William Kent, soon to take the place of the presiding judge, to edit his father's commentaries and die as professorial successor of Joseph Story at Harvard, or George Wood, or Daniel Lord, Charles O'Conor, David Graham, Charles P. Daly, John Van Buren and James T. Brady — each then in their heydey of youthful promise. What was the subject of the Fieldien speech I did not understand, but that it gratified my relative was obvious from his after remarks when we left court. What most impressed my youthful mind was the bearing of the lawyer and the magnetism of his presence. Years afterwards my relative, when I had joined the Bar, referred to this occasion and said: "I was much criticised by some of my business friends for giving so important a case to whom they called a couple of Yankee lawyers who had not been long in this city. But I had been a juryman in one of the

courts when Mr. Field addressed us, and I became so impressed with his perseverance and adroitness coupled with readiness, that I determined if ever I had occasion for a lawyer to employ the young Fields." My relative not very many years afterwards, as a member of the New York Legislature, had occasion to remember David Dudley Field when he began his fusillade on the law makers with an early *feu de joie* of codification.

The next occasion when I saw David Dudley Field was when I was a student in the Cambridge Law School in the class of which Rutherford B. Hayes and George Hoadley were fellow members. Judge Story, in his capacity as Federal Circuit Judge, was in the habit of hearing chamber arguments in one of the class-rooms wherein he or Professor Simon Greenleaf (of blessed evidential memory) lectured. And on one of these occasions it was bruited among the students (who were always welcome upon their occurrence) that Boston's famous Rufus Choate was to be argued against by two New York lawyers. These were soon ascertained to be David Dudley Field and Joseph T. Bosworth, afterwards judge and reporter in the Superior Court.

I vividly recall the personal rather than legal impressions that Messrs. Choate and Field made upon me. The great Bostonian was nervous in his utterances, and although the subject-matter was evidently dry and technical he threw great earnestness into his argument, until the veins of his temples seemed to throb with eagerness, while Mr. Field had a coldness and impassiveness — although he was fluently persuasive — that I fancied more or less irritated his emotional adversary. Again I noticed the gracefulness and elasticity and the magnetism in Mr. Field that the first occasion had brought into prominence.

After leaving Harvard Law School I entered the New York law office of a conservative aged lawyer who was prosecuting a suit that the brothers Field were defending. My preceptor was very bitter against the elder, and I listened to many severe criticisms of David Dudley from his lips. These are worthy of a reference because they voiced the prevailing opinion of the judges and veterans of the New York Bar at that time. The bitterness of my preceptor was manifested in remarks of the following purport: "David Dudley Field wishes to overturn and unsettle the law and legal procedure of the land by a crazy codification, and so overturn our traditions and deprive common law of its elasticity and adaptability to changing circumstances."

This was at the time when Mr. Field was bombarding the press and legislators and the members of a forthcoming constitutional convention with monographs and pamphlets and leaders in newspapers arguing for a simplification of legal pleading and a uniformity of statutory system. In after years, when I came to know Mr. Field familiarly, the topic of this Bourbonic opposition of veteran judges and practitioners came into our conversation.

"I was treated," said Mr. Field, "with opposition such as assailed Romilly when he undertook to ameliorate in England the barbarity of the penal procedures and statutes that consigned poachers and petit larceners to the scaffold; or such as Parker, Phillips, Garrison and Sumner had to withstand when they sought to change and ameliorate the procedure and statutes against slavery; or such as hounded John Quincy Adams on the floor of the House of Representatives when he moved to amend the procedure that barred the right of petition."

"Were you never discouraged, Mr. Field, in your early struggles for codification?"

"Never once. I never attended a prize fight, but I became familiar with some of the pugilistic lingo; and I took an early fancy to the phrase, 'he was knocked down but he came up smiling in the next round.'"

"In short, Mr. Field, whatever was the result of one round in the codification prize

ring, you always came up smiling in the next round and — "

" — and never struck a foul," continued Mr. Field. "I was candidate for the Assembly, hoping to force a hearing for my reform, and was beaten by the lawyers, who perseveringly canvassed against me. I did not blame them. They did not wish to lay aside traditions and usages and old-fashioned rules, or in short, to work into a new system. But I never made a foul."

This conversation occurred in the winter of 1857 in the room of his then younger partner, the late James T. Sluyter, who had been elected assemblyman, and who was in that capacity as a member of the judiciary committee engaged in aiding Mr. Field as to amendments to the code of civil procedure; for Mr. Field was ever alert to make his codification perfect by conforming old or inserting new provisions to meet fresh emergencies. The code of civil procedure was then nearly at the end of its first decade. Yet some lawyers, mainly of the rural districts, were even then engaged in thwarting Mr. Field's reforms. He was also at the same sessions knocking with his other codes upon the legislative doors — and vainly. I remember an assemblyman asking Mr. Partner Sluyter what compensation Mr. Field got for all his trouble.

" Compensation indeed," was the retort; " to my personal knowledge Dudley is many thousands of dollars out of pocket for clerical hire and expenses of printing and travel."

There was a look of disgust on the inquiring assemblyman's face, for the Legislature of the day became famous, or rather infamous, for its jobbery. It was during this time that, to my own personal knowledge, Mr. Field was offered very large fees by city railroad corporations to address a committee in behalf of proposed charters, but he declined them, averring as his reason that he did not wish in any way to antagonize or endanger his cherished codification plans. In his life work of ameliorating and advancing jurisprudence he made not only sacrifices of professional employment, but at this time he was busied aiding his brother Cyrus with advice and means in the first laying of the Atlantic cable. His codifying labors were enormous; and it must be remembered that then was not the era of stenography and type-writing — those labor-saving systems of the present for the author and commentator. I dare say that in preparing his various codifications David Dudley Field's hand and pen traced millions of words. Fortunately he was gifted with great constructive ability, which lightened his labor of compilation and arrangement, but nevertheless his mere labors with pen, ink and paper during the thirty years of his toil and anxiety deserve to be ranked with those of Dr. Johnson in the making of his dictionary. During this time also — and this is not generally known — he was suggesting to the Federal authorities at Washington the codification of the Federal statutes. And practically he is the artificer of the large volume divided into sections that the whole legal profession so well know.

During thirteen years of my district-attorneyship in New York City I was honored with frequent consultations by Mr. Field in respect to the preparation, revision and final report of the codes of criminal procedure and penal code. I beg to testify to his utter absence of pride of opinion in that work, and to his marvelous knowledge of the ins and outs of the science of criminal jurisprudence. Beccaria, Bentham (who owed so much to Beccaria), and all the English-writing authors on criminal jurisprudence from Chitty and Archbold to the days of Stephens, Wharton and Bishop, were his very familiars. He seemed to hold in his accurate memory all the leading cases in that jurisprudence as fully as evidently Mr. Smith held when he sat down to prepare his celebrated book of leading cases in common law. Yet he was ready to hear and to entertain any suggestion from any

legal source that could aid him towards writing *Finis coronat opus* on his penal code and code of criminal procedure. Although eminently a legal Gamaliel at whose feet any disciple of criminal jurisprudence might valuably sit, he never thought of a *nunc dimittis* to any suggestion towards fully crowning his life-work.

I can recall many useful hints that I received from him and many epigrammatic sayings. "In preparing your case for trial or summing up, treat your brain as a sponge and saturate it with your facts and legal principles. Then you have but to squeeze and the gray fluid will flow copiously to irrigate judge and jury — but first get the sand out of the sponge!"

On another occasion, when asked if he had not fretted over an adverse result in a legal case, he told me that he never fretted over results, if he did his duty to his client. Laying his hand across the median line of his body he said, "all above this — bronchials, throat, voice and brain belong to the client, but nothing below — heart, stomach, bowels or liver — does"; and he once told me he thoroughly endorsed Henry Brougham's description, in his celebrated Queen Caroline speech, of the attitude of counsel to client, as he thoroughly disapproved of the attitude of Charles Phillips in the Courvoisier-Russell murder case in pledging to the jury belief in his client's innocence after the latter had privately confessed his guilt. Many thought Mr. Field's imperturbability and occasional frigidity proceeded from insensibility to strong emotion and callousness toward duty, but while he never fretted over adverse results he often keenly felt them, and particularly if they were unjust. He always impressed me as a deep hater of injustice. This innate hatred it was that made him so warm and zealous an advocate of Mr. Tilden's cause during the famous presidential tilt before a commission that he believed to have been packed against his client; and which inspired his great and successful effort in the Milligan case. Long before that argument I heard him strongly inveigh against the Stantonian doctrine of military trial in a district where could not be and ought not to be quoted the maxim *inter arma silent leges*. I can also bear witness to his reprobation of the trial and execution of Mrs. Surratt.

It was his strong sense against injustice that made him an Anti-Slavery, Van Buren, Fremont and Lincoln politician. And I use that word in its truest sense: for in all my dealings with Mr. Field there was nothing of the wire-puller to be detected in his composition. He was mentally and morally fashioned for a statesman; and he proved this as a would-be compromiser with honor of peace in the early history of the war, and by his short career in Congress, where perhaps he was too great a lawyer to shine — taking perhaps therein rank with Henry Erskine, who did not shine in Parliament.

Mr. Field was counsel for James Gordon Bennett, senior, in defending the "Herald" against a libel suit brought by a musical composer and critic. He was always a master of the law of torts and was especially learned in that of libel. His habitual persistence and indomitable will were conspicuously shown in that litigation, and he keenly felt the injustice of some of the rulings in the lower courts.

With all his ordinary coolness and *sang froid* he could wax righteously indignant, and I never saw him more so than when he heard his notable client William M. Tweed cumulatively sentenced upon separate counts for misdemeanor in one indictment whereof he was convicted by a general verdict of guilty. The Attorney-General demanded the cumulative sentences, and the doctrine received the assent of no less an authority than Charles O'Conor, who collaborated with the State prosecution. Into a battle for reversal Mr. Field threw himself with indignant ardor, but with calm and careful logic of argument and vivisection of doctrine. He

was successful in the Court of Appeals. While morally acquiescing in the general conviction and guilt of his client, he was contentious that only technical law should direct sentence. When congratulated on the result in my hearing — the while a united press was vituperating Mr. Field for his success — he simply quoted, "*Sed justitia fiat.*" And he immediately drew a section for the criminal code of procedure which prohibited, "on all fours," with the decision any cumulative punishment of a convict in the future under similar circumstances.

I have frequently met David Dudley Field in private and social life — at banquets, private dinners, receptions and conversaziones. I was ever impressed with his courtier-like bearing, chivalry and courtesy — shown even to some *sic volo sic jubeo* guest or some imitator of Shakespeare's character, "whom the music of his own vain tongue did ravish like entrancing harmony." I especially recall a rhetorical gallery — so to speak — that he erected in a banquet hall while replying to a toast — a gallery of patriots. In this he hung for France Lafayette, for old Rome Brutus, for Greece Pericles, for Great Britain the elder Pitt, for Ireland Robert Emmett, for the United States Washington and Lincoln, for Italy Garibaldi and for Hungary Kossuth. Mr. Field could not be called an orator in its widest sense: he was rather a persuader; but on this occasion I recall that he was really eloquent; and his voice, seldom mellifluous, took on a tender undertone when referring to Lincoln, whom he almost idolized and whose promotion of his beloved brother Stephen he ever held in gratitude.

I have met with Mr. Field's tender side. I have heard him sigh and shed a tear when I happened to speak in praise of his son and namesake who had recently died. I have seen him tenderly lifting from a carriage one of those grandchildren in whose memory he erected a tower with chimes in Stockbridge — chimes that appropriately pealed when his remains were being transferred to the cemetery of that historic town under April sunshine.

I have heard Mr. Field quote the poets.

On one occasion when I quoted a verse of Longfellow's Psalm of Life he added the ensuing verse. On another occasion I heard him quote Longfellow's Swedenborgian lines beginning "Call it not death."

Still keeping this poet in mind let us believe that the deceased jurist has left "foot-prints on the sands of time"; and in "fields Elysian" has taken place with the first great codifying law giver who ascended Mount Sinai.

ON A PORTRAIT OF HENRY W. PAINE.

By Wendell P. Stafford.

LOOK on a Lawyer, here, *par excellence!*
If, in your judgment, that should mean that he
Must needs be sinewy and adroit in fence,
Bold in assault, sudden in repartee —
So, in good truth, he was. But if you deem
He must be likewise shrewd to over-reach —
One man to be, another man to seem —
So was he not. He matched his thought with speech.
He came, at manhood, to the lists and threw
His gauntlet down with modest courtesy.
For two-score years, whatever trumpet blew,
None took the gage up with impunity.
Yet not in sword or shield he put his trust:
He was thrice armed, having his quarrel just.

THE COURT OF STAR CHAMBER.

By John D. Lindsay.

III.

In 1453 a statute was passed (31 Hen. VI., c. 2) to give effect to the process by which persons were brought before the council. The act is very particular in its terms, and as it throws some light upon the nature of that jurisdiction, it may be proper to state it minutely. It recited that upon suggestions and complaints made as well to the king as to the lords of his council, against persons for riots, oppressions, and grievous offenses, by them done against the peace and laws, he used to give commandment, by writs under his great seal, and by his letters of privy seal, to appear before him in his chancery, or before him and his council, to answer for the above offenses; and because these writs had not been met with regular obedience it was now ordained, that where such writ or letter issued commanding anyone to appear before the king or his council, and the person refused to receive it, or withdrew himself, or did not appear, and such disobedience was duly certified to the council, then the chancellor should have power to direct writs of proclamation into the country where the party dwelt, or the next adjoining county, and also into London, commanding the sheriff, under the penalty of £200 to make open proclamation in the shire town, and in the city, three several days immediately after delivery of the writ for the party to appear before the council, or the chancellor, within a month after the last day of proclamation, the writ to be returned into the chancery within seven days after the proclamation under the same penalty.

If the party did not appear within the prescribed time he was to forfeit, if a lord, all offices, fees, annuities and other possessions that he, or any one to his use, might have of grant from the crown, and if upon a second writ and proclamation he still made default, he forfeited his estate and name of lord, and place in parliament.

If he had no grant from the crown, then he was to forfeit his name and estate of lord, and place in parliament, and also all his lands and tenements — but these forfeitures were only for life. If a commoner he was to be punished for disobedience of the first writ by a fine at the discretion of the two chief justices, but if he had no livelihood whereof to pay a fine he was to be put out of the king's protection.

While Parliament thus gave new vigor and energy to the authority of the council, they did not forget the regard which should be paid to the courts of common law, for the statute in conclusion declares that no matter determinable by the law of the realm should be determined otherwise than by the course of the law in the king's courts.

It appears from these parliamentary proceedings that as the constitution of the English legal polity had become more settled, efforts were made to limit the extraordinary power of the council. But on the other hand, notwithstanding this apparent popular jealousy and disfavor, Parliament had at other times restored to it some of its ancient power by referring to its cognizance many enormities which were inquirable at common law, and which as such were not under the more modern theory to be examined by the council.

Yet compared with its original almost unlimited powers the judicature of the king in council had been much restricted by the letter of positive statutes, and from being in

some degree above the law, it had shrunk into such comparative insignificance that Henry VII., who desired to have an effective instrument for the exercise of his judicial prerogative always at his command, thought it expedient to procure parliamentary aid to give support and sanction to the Star Chamber. This resulted in the enactment of 3 Hen. VII., c. 1, — a statute which did not erect, as some have supposed, the court of Star Chamber, but remodeled it.

The preamble recites that the "king, remembering how by unlawful maintenances, giving of liveries, signs and tokens, and retainers, by indentures, promises, oaths, writings, or otherwise, embraceries of his subjects, untrue demeanings of sheriffs in making of panels and other untrue returns, by taking of money by juries,[1] by great riots and unlawful assemblies, the policy and good rule of this realm is almost subdued; and for the not punishing of these inconveniencies, and by occasion of the premises little or nothing may be found by inquiry," that is by the ordinary proceeding of an inquest by jury; "whereby the laws of the land in execution may take little effect, to the increase of murders, robberies, perjuries, and unsureties of all men living" etc., for the reformation of which it was now ordained, that the chancellor, treasurer, and privy-seal, or two of them calling to them a bishop, and a temporal lord, being of the council, and the two chief justices, or in their absence, two other justices, upon bill or information put to the chancellor for the king, or any other, against any person for any misbehavior above mentioned, *have* authority to call before them by writ or jury seal, the offenders and others, as it shall seem fit, by whom the truth may be known; and to examine and punish after the form and effect of statutes thereof made, in like manner as they ought to be punished, if they were convict after the due order of the law.

This is the substance, and nearly the very words of the statute, which plainly points out the occasion of this new regulation, the objects of cognizance, the judges, the process and proceedings, with the power of punishing — from which it is manifest that the king's council derived from this statute an enlargement of its judicial authority. There is nothing prohibitory of the former jurisdiction or mode of proceeding here, but that is, on the contrary, recognized and affirmed by the very ingenious wording of the act, for instead of declaring that the officers named *shall have* power etc., it merely declares that they *have* such power, thereby clearly intimating a recognition of an already existing authority, and specially insuring its preservation and application in later specific cases.

Coke seems to attribute to the statute no other effect than that of varying the procedure of the Star Chamber by enabling the judges to examine defendants; but this seems impossible both because such was the regular procedure of the court, and because that procedure does not appear to have been confined after the statute to cases which fell within it.[1]

[1] There is a curious error in the print in Pulton of this portion of the act. The act runs, "by taking of money by juries" (i. e. embracery), or in the French of the statutes of the realm — "pruise dargent par jurrez." Pulton prints it "by taking of money, by *injuries*," etc. Coke in 4 Inst. 62, in his account of the jurisdiction of the Star Chamber, follows the mistake of Pulton and appends a comment on the "large word" injuries. The 4th Just. was not published till the year after the abolition of the Star Chamber, but Pulton was an eminent authority. Coke long acted as a judge in the Star Chamber upon this reading of the Star statute, — "an error," says Wright, "which may have had political as well as legal consequences." Wright, Crim. Consp. 7.

[1] Hudson refers to the subject in such a way as to show that at one time it was a moot point whether the council had any criminal jurisdiction other than that which this statute conferred upon them, but that the court held that it had. He says: "I well remember that the Lord Chancellor Egerton would often tell that in his time, when he was a student, Mr. Sergeant Lovelace put his hand to a demurrer in this for that the matter of the bill contained other matters than were mentioned in the statute 3 Hen. 7, and Mr. Plowden, that great lawyer, put his hand thereto first, whereupon Mr. Lovelace easily followed. But the cause being moved in court, Mr. Lovelace being a young man, was called to answer the error of his ancient

Lord Bacon in speaking of the statute says that "the authority of the Star Chamber, which before subsisted by the ancient common laws of the realm, was confirmed in certain cases by it."

Stephen offers the conjecture that "the statute was meant to give an indisputable statutory authority to that part of the Star Chamber jurisdiction which appeared at the date of the statute most important, but that as it was found that the wider authority of the old court was acquiesced in, the statute fell into disuse. This conjecture is strengthened by the circumstance that the statute of Hen. VII. is silent as to the jurisdiction of the court over several offenses which at the end of the fifteenth century were comparatively of very little importance, but which in the sixteenth and the beginning of the seventeenth century gave the court its principal value in the eyes of the government; of these, libels are the most important."

Before the statute, the king and council did not admit any complaint except such as was preferred under circumstances admitting of a probability of its being supported: but now it was provided that besides the ancient authority of the council, three only of its members, namely, the chancellor, treasurer and privy seal (taking to their assistance others thereby appointed), might hear and determine ordinarily the eight offenses enumerated, and that without any manner of suggestion or surmise whatever.

Some defects of this statute were supplied by the statute 21 Hen. VIII., c. 20, by which the president of the council was added to the former three principal officers. A doubt which arose upon the act, soon after passing it, whether the bishop, lord of council, and justice were only assistants or had equal authority with the three great officers, was removed by this later act which declares that they were only there for their advice. Lastly the bill or information which by the former act was to be put in to the chancellor, was by the later to be put in generally, viz. to the king, as formerly.

Thus by the operation of these two statutes, the above mentioned eight offenses, which before were mostly cognizable by indictment or action, might now be arraigned and tried without any inquest or jury, on the bare examination either of witnesses or of the parties themselves. This innovation was devised, says the statute, because the common law did not satisfactorily reach the offenders. However, the punishment to be inflicted was to be such as might be inflicted had the prosecution been at common law.

Stephen says: —

"The praises of trial by jury as a bulwark of individual liberty are a familiar topic. It is less commonly known, but it is certainly no less true, that the institution opened a wide door to tyranny and oppression by men of local influence over their poor neighbors. In feudal times the influence of a great land-owner over the persons who were returned as jurymen to the assizes was practically almost unlimited, and the system of indictment by a grand jury, which merely reported on oath the rumors of the neighborhood, might, and no doubt often did, work cruel injustice. The offense which was long known to the law as maintenance or perverting justice by violence, by unlawful assemblies and conspiracies, was the commonest and most characteristic offense of the age. One of its commonest forms was the corruption and intimidation of jurors. Signal proof of this is supplied by the repeated legislation against this offense. The nature of the offense itself and the manner in which it was to be corrected by the Court of Star Chamber are fully described in the preambles and first section of the act."

The alterations made as to these offenses by the statute consisted principally in the

Mr. Plowden, who very discreetly made his excuse at the Bar that Mr. Plowden's hand was first unto it, and that he supposed he might in anything follow St. Augustine. And although it were then overruled, yet Mr. Sergeant Richardson, thirty years later, fell again upon the same rock, and was sharply rebuked for the same."

circumstances of process, judges and trial, the nature of the crime and its punishment remaining as it was before. If therefore the Star Chamber departed from the measure of the penalty, or in any consideration of the crime varied from the judgment of the common law, it must be understood that the judges acted under their inherent authority as the council of the king and not by virtue of the statute; for that authority still remained, and the council, in the view of the law, sat and acted in both its capacities. It is to this combination of judicial authority that the Star Chamber owed the enormous power which it began to exert soon after this time. While the statute of Henry VII. gave vigor and efficiency to its proceedings, the immeasurable scope of its ancient judicature afforded an almost inexhaustible source of crimes and punishments, to be called forth on all occasions, and for every purpose. It became, on that account, the happiest instrument of arbitrary power that ever fell under the management of a sovereign.

Under the Tudors the Star Chamber was a numerous and comparatively mild body, resembling in its constitution and proceedings a deliberative council rather than an ordinary court of justice,[1] and the proceedings which led to its abolition and made its name infamous were carried on at a time when it had come to consist of a small number of what we should call cabinet ministers, who abused its powers to put down opposition to their policy.

The Star Chamber exercised a criminal jurisdiction almost without limitation, and altogether without appeal; taking upon itself to pass judgment upon everything in which the government felt itself interested. It became, in truth, as much a court of state as a court of law, by punishing all obnoxious persons, who, though they had been guilty of no recognized breach of the law, had, nevertheless, offended the prince or his ministers. As the members of the tribunal were the confidential officers of the crown, there was no difficulty in those times of procuring a sentence against offenders of that description. The penalties inflicted latterly became so extravagantly severe, and the exercise of its judicature so repugnant to the spirit of a free constitution, that it was viewed with the greatest abhorrence by the subject.

[1] Hudson says that in the reigns of Henry VII. and Henry VIII. the number of members present was at times thirty or even forty, as also in the time of Elizabeth. — "But now much lessened since the barons, not being privy councillors, have foreborne their attendance."

He also says that in these times the punishments were far less severe than they were afterwards, fines being then imposed with due regard to the "*salvo contenemento suo*" of Magna Charter, and the "slavish punishment of whipping" not having been introduced "till a great man of the common law, and otherwise a worthy justice, forgot his place of session and thought" (it) "in this place too much in use."

MUNICIPAL SCRAPS.

By C. W. Ernst.

IT is a pleasing fiction to think that municipal corporations are the creature of the State, and that we have found the origin of our municipal institutions when we trace them to old England. To be sure, most of our municipal thinking has come from England, and well it is. But municipalities were not invented in England. Is it an accident that most of our municipal terms are Latin or French, rather than English? Is it all an accident that Boston in Massachusetts was made a market town from the beginning (1 Mass. Rec. 112); that it chose clerks of the market in 1649–50; and that the laws of its Faneuil market have much in common with the earliest institutions of the city that arose in central Europe after the great migrations? The early state was not so strong that it could look after all matters now entrusted to it; it tried hard to hold things together against foreign and domestic foes, and to preserve the peace. It visited dire vengeance upon the peace breakers, when caught; but when were they caught? Letters and charity were left to the church, and every neighborhood established social order as well as might be. It was the city that first undertook to establish a good police, and the crown was quick to perceive the great help to be expected from self-governing cities. The city wanted good order for trade and higher objects, and the crown consented. Hence the early charters; hence their vast privileges in matters of trade and local jurisdiction. Perhaps it was the market that occasioned our municipal corporations.

Early in the tenth century Edward the Elder ordained that no man should buy without the town, and that every trade should be witnessed by the portreeve, which means the reeve of the town or the later mayor. 1 Merewether & Stephens, Mun. Corp. 29. The charter given to Freiburg i. B. begins: "Notum sit tam futuris quam presentibus, qualiter ego, Cunradus, in loco mei proprii juris s. Friburg forum constitui anno ab incarnatione Domini MCXX": Be it known to those present and to future generations, that I, Conrad, in the place of my own law, have constituted Freiburg a market town this year of our Lord 1120. A great many mayors were at first nothing but clerks of the market, and in England they so continued until the municipal reform of Lord John Russell, in 1835. Even the Common Council appears to have begun in market requirements. The town or its incorporators were given power to regulate the market, to make by-laws for that purpose, to regulate weights and measures, and to hold market courts, pipoudre courts, for the summary settlement of petty causes. The market theory is not without some attractions, and apparently supported by the early charters of cities. These early cities certainly had the highest inducement to establish a good police, and they certainly tried it, although the meaning of the term police officer, as now used, is entirely modern, and hardly a century old. Blackstone did not apparently know it.

Like all his predecessors, Blackstone used the term *police* in the sense of administration. Johnson's dictionary defined police as the "government of a city or country," and Webster retained this definition in his famous dictionary of 1828, adding that "the word is applied also to the government of all towns in New England." This sense survives in the term "police powers" of the State, while the narrower term police officer is recent. Boston did not receive permission to appoint police officers until 1838, and

Massachusetts towns not until 1851. The powers exercised by police officers used to be in the hands of the constable, the tithingman, the warden, and the watchman. The London police force was not organized until 1829, its predecessors being parish officers, local constables, and miscellaneous indescribables. The Boston police force in the modern sense began in 1854, in the autocratic act of a Knownothing mayor. The great Mayor Quincy used the term police in the sense of sanitation, and made the city marshal superintendent of sewers, believing that sewers and marshals were intended to promote the public health. The Boston charter of 1854 vested "the administration of police" in the mayor and aldermen. The usual interpretation of the phrase is "management of the police force"; but Chief Justice Shaw, who wrote the clause, meant the "administration of the government powers vested in the city." Apparently the modern city was incorporated for reasons of police, and yet the term police officer was not evolved until about sixty or fifty years ago. Bentham, who was good at coining terms, complained that there was not a good name for the force that had for its object the prevention of mischief and crime.

If the term "police" came from the French, the term "alderman" is purely English and originated in England. It is very honest English, and corresponds to the Latin "senior" and the Greek "presbyter," but was applied to secular officers only, dividing into the modern "earl" and the less noble "alderman." When gilds came up, their head was usually called "alderman," and from England the term passed to the European continent. London had twenty-five aldermen as early as 1200, and the number has never been changed. They are still called the court of aldermen, and the early aldermen were very generally executive as well as judicial officers. The term "mayor" came after the Conquest, and replaced the Saxon "reeve" or "portreeve." The term "portreeve" has nothing to do with harbor, but means town reeve as distinct from the king's reeve or sheriff. The spelling of mayor is apparently Spanish, but possibly due to the accident that the early writers used a *y* where we use an *i*. The term "reeve," which occurs in sheriff, hogreeve, and other forms, is more difficult. It is the Anglo-Saxon *gerefa*. The first meaning of this Anglo-Saxon term is companion or associate, and suggests the derivation of the obscure term from *ravo*, which meant roof. At any rate the Anglo-Saxon *gerefa* was borrowed, apparently from the Franks, and is yet to be fully traced (Grimm, Weist. 753). It has nothing to do with the German *Graf*, as Skeat is right in pointing out. But the term "reeve" is not confined to England.

By-law, of course, means town law, the word *by* being the same as in Whitby, Derby, Rugby and many others. But the term "inhabitant" is difficult. The Massachusetts Constitution of 1780 undertook to define the term, but did not remove the difficulty. It runs through the great treatise of Merewether & Stephens as no other term, and yet comes out wholly undetermined. In Boston the inhabitants are incorporated, but they are not defined. The Colony of Massachusetts incorporated "the freemen of every town" (1 Mass. Rec. 172), and treated mere inhabitants as inferiors. Municipal suffrage is now associated with citizenship, but until 1811 an alien could vote at Boston town meetings, provided he had paid a tax and acquired inhabitancy. As cities depend on immigration from the country, the term "inhabitant" becomes important to every city, for only inhabitants are corporators, and persons not legal inhabitants are not entitled to poor-relief. The term "inhabitants," as a law term, appears to have originated in Lombardy after the northern invasion. The invaders, after whom Lombardy is named, were aliens who

suddenly became the legislators and administrators of a Latin-speaking country. The Lombard law appears to have called *habitatores* or *inhabitantes* all persons lawfully living in a city, while the voting citizens, who served in the army, assisted in the administration of justice, and helped in the government of cities, were called *arimanni*, *exercitales* or *cives*. The term occurs in the ninth century, and Hegel, the chief authority on early Italian cities, refutes the Savigny statements that have been rather generally accepted, even in Du Cange, Gloss. The term "inhabitant" is a sore trial to every overseer of the poor, and one smiles in reading of like difficulties in conquered Lombardy.

The term "warden" presents no difficulty, but it is worth pointing out that in Massachusetts alone it means the chief election officer. This odd meaning was bestowed by Chief Justice Shaw, in 1821, and is now current throughout Massachusetts (St. 1893, ch. 417, sec. 106, 108). When Shaw drafted the Boston city charter, it was intended that elections should be held in ward meetings. Each ward had a clerk, but more was required to conduct elections properly. It was then that a jingle led the learned jurist to coin the new term, and to provide that "it shall be the duty of such warden to preside at all meetings of the citizens of such ward, to preserve order therein" (St. 1821, ch. 110, sec. 3). Gradually the term passed into the general laws of Massachusetts, and acquired much the same meaning as another Massachusetts term, "moderator," both denoting the presiding officer at certain public meetings. From 1761 to 1820 the Sunday police officers in Massachusetts were called wardens (4 Prov. Laws, 417; general town act of March 23, 1786).

The term "selectman" may be called another Massachusetts invention. Selectmen are the standing committee of the town, and date back to the earliest period of the Colony. The Boston Town Records first used the term on Nov. 27, 1643; but Charlestown is supposed to have had it in 1635, and Dorchester, Mass., voted on Oct. 8, 1633, that "there shall be twelve men selected out of the company that may, or the greatest part of them, meet as aforesaid," etc. Ward's "Body of Liberties," 74, called them "select persons," in 1641, and a year later the General Court called them "the selected townsmen." The term was not wholly indigenous. Queen Elizabeth vested the power of municipal corporations in few persons, because she thought it easier to control a few than a great many. The persons that wielded the municipal power were called "select bodies," and the famous case of corporations, 4 Co. 77, uses the term "selected number" three times, meaning those that held the power of the municipalities, as distinct from those not members of the close corporations Elizabeth and the justices meant to establish. The governing bodies were popularly known as select bodies, and the term was familiar to the early settlers of Massachusetts. For obvious reasons the leaders avoided the phrase, which was not without a touch of reproach; but the plain men used it indiscriminately and without reserve when they referred to their town officers, and in a few years the term "selectman" passed into the law of Massachusetts, where it has remained ever since. The precise powers of a selectman have never been defined. He has no powers except those committed to him by the General Court or the town meeting. And the town meeting has charge of the *prudentials*.

This term is another Massachusetts — well, crotchet? The Boston city government has charge of "all the fiscal, prudential, and municipal concerns of said city." In 1642 the General Court described selectmen as "appointed for managing the prudential affairs" of towns, and the "Body of Liberties," 66, used the term, in 1641, as

opposed to criminal. Whitmore's edition of the Massachusetts Colonial Laws of 1660 (Boston, 1889, 12–14) gives further quotations of the odd term, which appears to be due to Nathaniel Ward, the "cobler of Agawam," and had reference to such town matters as did not come under the immediate control of the General Court, which was the sovereign power in legislation, administration and the administration of law. Prudentials, then, were municipal affairs, as distinct from general Colony matters, and administrative as distinct from judicial matters, the judiciary being vested in the Colony alone. Ward may have picked up his term prudential in his continental travels. There the term was very common. Municipal officers were usually addressed as "prudentes viri ac honesti," and the charter given to Vienna, the Austrian capital, in 1221, says: "Denique statuimus ut 24 civium qui prudentiores in civitate inveniri poterunt, juramento confirment quod disponant de mercatu et de universis que ad honorem et utilitatem civitatis pertinent, sicut melius sciverint": It is ordained that twenty-four of the more prudent citizens to be found in the city shall act under oath and to the best of their discretion in whatever they may decide as to trade or whatever pertains to the honor and good government of the city. The Massachusetts prudentials, then, have something in common with the charter of Vienna; our selectmen with Queen Elizabeth's method of securing a loyal House of Commons; and our term "inhabitants" manifestly arose in conquered Lombardy. The term "mayor" is French; and Ireland, too, has given our municipal governments a name.

OLD-WORLD TRIALS.

IV.

"THE STRANGE CASE" OF MRS. LYON AND MR. HOME.

AMONG the many curious litigations to which Spiritualism has given rise, the strange case of Lyon *vs.* Home occupies a place of undoubted pre-eminence.

The plaintiff, Mrs. Jane Lyon, a childless widow of more than seventy years of age, and the natural daughter of a tradesman at Newcastle, was left at the death of her husband in 1859, absolutely entitled to a very considerable fortune, a great portion of which had been transferred to her by him during his lifetime; she had also received a fortune of from £15,000 to £20,000 from her father, and her income at the date of the transactions in question was upwards of £5,000, while her modest expenditure did not exceed £600 a year. She had no relations of her own, and did not greatly covet the society of those of her husband, and lived in London, lodging at a rent of about thirty shillings a week out of, and forty shillings a week during the season. She had no servant, saw little company, and had no friends about her who were capable of giving her good advice. Mrs. Lyon was of a fanciful and visionary turn of mind; was very devoted to her dead husband, and was under the impression, from something that he had said to her before his death, that she would not survive him for more than seven years. In July, 1866, she called upon a Mrs. Sims, a photographer in Westgrove, to get a photograph taken from a portrait of her husband, and mentioned to her in the course of conversation both what the deceased had said and her conviction that she would speedily join him beyond the grave. Mrs. Sims replied that it was not necessary for

her to die in order to meet her husband again, and that if she would only become a Spiritualist, the communion, which death had interrupted, might be at once renewed. Mrs. Lyon was attracted by this specious promise; and Mrs. Sims, pursuing her advantage, lent the plaintiff some books upon the subject, spoke to her of "The Head Spiritualist," the defendant Home, who had recently opened an *Athenæum* at 22 Sloane Street, and suggested that she should write to him for a prospectus and particulars. Mrs. Lyon accordingly made some inquiries in Sloane Street, but without success. On the 28th of September she wrote to a Mrs. Burns, a librarian at Camberwell, and a vendor of books upon Spiritualism, asking for Mr. Home's address, and stating that she was a firm believer in everything contained in his book, "Incidents of My Life." Having obtained Home's address from Mrs. Burns, the plaintiff wrote to him, stating her wish to become a subscriber to the Spiritual Athenæum. As no answer came from the medium, Mrs. Lyon called at his lodgings in Sloane Street, and there met him for the first time. After a little preliminary conversation, Home undertook the task of recalling the departed Mr. Lyon. The *modus operandi* is thus described in the official report of the case: "They sat down at the table in the sitting-room, and raps came almost immediately. The defendant said: 'That is a call for the alphabet,' and then repeated the letters of the alphabet, from time to time a rap being given as he arrived each time at the letter intended to be indicated, and so on until a complete word or sentence was spelled out." In this way the supposed spirit was made to say: "My own beloved Jane, I am Charles, your own beloved husband; I live to bless you, my own precious darling; I am with you always; I love, love, love you as I always did." Mrs. Lyon, being much gratified with the result of her first visit from the spiritual world, invited Home to call upon her at her lodgings, and promised a subscription of £10 to the *Athenæum*. On the following day the defendant duly appeared to secure the redemption of this promise. He had hardly entered the apartments of the plaintiff when a chorus of raps were heard, indicating, as Home induced the plaintiff to believe, the presence and the pleasure of the dear departed. Mrs. Lyon at once tripled her proposed donation to the *Athenæum*. Of course Home called again, and on his second visit the late Mr. Lyon was even more demonstrative than before. The following message was spelt out: "My own darling Jane, I love Daniel" (meaning the defendant); "he is to be our son; he is my son, therefore yours. Do you remember before I passed, I said a change would take place in seven years? That change has taken place; I am happy, happy, happy!" The spirit also declared that he wished Daniel to be independent, but undertook to indicate the manner at another time. Mrs. Lyon at once wrote a cheque in Home's favor for £50. At an interview on the following day the spirit of the deceased directed the plaintiff to adopt the defendant, and to hand over stock worth £700 a year. Mrs. Lyon and Home accordingly drove in a cab from Bayswater to the city, constant sharp raps being heard in and about the cab all the way in testification of the spirit's approval, and on her arrival at the Bank of England she executed a transfer to the defendant of stock representing in value £24,000. On the same or the following day, Home left London for Brighton, and afterwards went to Malvern, being absent from town for a few weeks, during which the plaintiff sent him a cheque for £20, and was in constant correspondence with him, addressing him as "My dear Daniel," "My dear son," "My darling boy," signing herself, "Your affectionate mother." In one letter she spoke of her late husband as "the best of men, your spiritual father, Charles Lyon." In his replies to these effu-

sions, "Daniel" commenced, "My darling mother," and ended, "Your loving son." On 1st November, 1866, Home returned to town; and the plaintiff stated to him that his "spiritual father, Charles Lyon," had directed her to make out a will in his favor. A solicitor named Wilkinson, an intimate friend of Home's, prepared the will, which was duly signed by the plaintiff and attested. On the 3d of December, 1866, the defendant executed a deed poll whereby he declared that he had taken the surname of Lyon in lieu of Home. Further transfers of stock, and assignments, all of which were in Home's favor, followed; and at last he was made "independent," by having become the owner of practically the whole of the wealthy widow's property. On the 26th of January, 1867, however, he left town for Hastings. On February 13 he returned, but on the 10th of March he went to Torquay, and afterwards to Plymouth. During these absences Mrs. Lyon's love towards him underwent a sensible alteration; she still corresponded with him, but no longer signed herself, "your affectionate mother." The explanation was soon forthcoming.' While Home was away, Mrs. Lyon had met another medium, by whom "Charles' was once more summoned back to earth. But, alas! the deceased was no longer "happy, happy, happy!" He denounced Daniel as an impostor, and "in a mundane spirit unworthy of Paradise," recommended immediate proceedings at law. Faithful as ever to her spiritual monitor, the widow placed herself in the hands of "the gentlemen of the robe," and after a protracted suit her successive gifts to "Daniel" were set aside. In pronouncing judgment, Vice-Chancellor Gifford said: "I know nothing of what is called *Spiritualism*, otherwise than from the evidence before me, nor would it be right that I should advert to it except as portrayed by that evidence. It is not for me to conjecture what may or may not be the effect of a peculiar nervous organization, or how far that effect may be communicated to others, or how far some things may appear to some minds as supernatural realities which to ordinary minds and senses are not real. But as regards the manifestations and communications referred to in this cause, I have to observe in the first place, that they were brought about by some means or other after, and in consequence of, the defendant's presence; how, there is no proof to show; in the next, that they tended to give the defendant influence over the plaintiff, as well as pecuniary benefit; in the next, that the system, as presented by the evidence, is mischievous nonsense, well calculated on the one hand to delude the vain, the weak, the foolish, and the superstitious; and on the other, to assist the profits of the needy and of the adventurer; and lastly, that beyond all doubt there is plain law enough and plain sense enough to forbid and prevent the retention of acquisitions such as these by any medium, whether with or without a strange gift; and that this should be so is of public concern, and to use the words of Lord Hardwick, 'of the highest public utility.'"

"This judgment," says Mr. Hume Williams in his essays on "Unsoundness of Mind" (p. 59), which well describes a trans-Atlantic reputation, proved social death to such exhibitions. They ceased to be fashionable, and were accordingly denounced. Home became the guest of foreign courts, where he continued to find favor in the eyes of many. This is but one instance in which the veil of imposition was rent, and frauds of no mean character exposed; and yet "the great spiritualist had and continued to have, numerous influential patrons and friends, who lent willing aid to that they wished to believe, accepting as truths the subtle outpourings of self-constituted speculators in mysterious revelations for the better trading on the superstitious weakness of mankind and the deceiving of many."

LEX.

THE COURT OF APPEALS OF MARYLAND.

I.

By Eugene L. Didier.

To write the history of the Court of Appeals of Maryland, we must go back one hundred and fifteen years — we must pass from this present nation of fifty states and territories, whose magnificent domain stretches across this vast continent, from the Atlantic to the Pacific, — from the great lakes in the North to the Gulf of Mexico in the South — we must turn from this mighty republic of more than sixty-five millions of people to the darkest hour of the glorious struggle in which thirteen weak colonies, containing scarcely three millions of inhabitants, dared in freedom's cause the wager of battle with the most powerful nation on earth.

BENJAMIN MACKALL.

The original Court of Appeals of Maryland was created by an Act of the General Assembly passed in February, 1778, under which the court was to consist of a Chief Judge and four associate judges. The first appointees were made by the next General Assembly when it met in extra session in October of the same year. On the 22d of December, 1778, the newly appointed judges were commissioned by Thomas Johnson, Jr., the first governor of the State of Maryland, who, when a member of the Continental Congress, had the distinguished honor of nominating George Washington to be the Commander-in-chief of the American Army.

The first judges of the Court of Appeals were Benjamin Rumsey, Chief Judge; Benjamin Mackall 4th, Thomas Jones, Solomon Wright, and James Murray, associate judges. At the time of the creation of this court, as already mentioned, the affairs of the American colonies were at their gloomiest: Congress had been driven from Philadelphia, Washington had retreated through New Jersey, and with his little band of patriots, who were half clad, half fed and wholly unpaid, had taken up his winter quarters at Valley Forge, where they were encamped "in cold, comfortless huts. Barefooted, they left their tracks in blood on the frozen ground. Few had blankets; straw could not be obtained, and they were compelled to sleep, half-clothed as they were, on the bare earth. The sick had no change of clothing, no suitable food, and no medicines." The French alliance, from which so much had been expected, had resulted in nothing but disap-

pointment. The finances of the country were in a deplorable state, and, altogether the winter of 1778 was the gloomiest since the first gun was fired at Lexington.

BENJAMIN RUMSEY, the first Chief Judge of the Maryland Court of Appeals was, prior to his appointment, a prominent and active member of the body known as the "Council of Safety," which was composed of citizens of the colony who had organized in view of the approaching revolution, which everybody felt was in the air. It finally devolved on this committee to inform the British governor that "in the judgment of the Convention of the people of this colony," the public quiet and safety required imperatively that he should leave the province, and that he was at liberty to depart at once with all of his effects." The future Judge bore a leading part in the execution of this somewhat delicate mission. He was at a later period foremost in the councils of the Continental Congress, and well represented the determination and zeal of his State in the cause of liberty. Judge Rumsey was especially remarkable for his knowledge of the intricacies and complications of real-estate law, with which the early courts had to deal extensively.

Judge SOLOMON WRIGHT was born on his father's estate, "Blakeford," near Queenstown, Queen Anne County, Maryland, in 1721, and lived to be about seventy years of age. In 1777 he was offered a position on the existing "Court of Appeals," but declined. In 1778, however, he accepted a commission on the bench of the reorganized court which he filled till the time of his death in 1791. He received his academic education at what is now called Washington College and studied law under the famous Luther Martin. He was a member of the Legislature for several terms during the colonial days, and also of the "Committee of Correspondence" for Maryland, which made the arrangements for united action among the colonies in the exciting times at the beginning of the American Revolution. His name is to be found among the signers of the "Maryland Declaration of Independence." He was the real originator of the "Eastern Shore senator idea," which is perpetuated to this day in the law requiring one of the United States senators to come from that portion of the State — a fact, by the way, alluded to by Mr. Bryce, in his late work "The American Commonwealth," as a remarkable instance of the American devotion to the theory of "local self-government." This Judge was the fifth of a direct line of eight generations of his family to occupy a seat on the bench.

Judge Wright married Miss Mary Emory, whose mother had been Miss Mary Tidmarsh, prior to her marriage to Solomon Wright, Sr., who was himself a member of the Colonial Legislature for a number of terms. The subject of this paragraph left four sons and one daughter. His son Robert Wright was a member of the House of Delegates and State senator. He served with Captain Kent's company in the expedition against Lord Dunmore. Subsequently he commanded a company in the Continental army, and the "Maryland Line" was under his orders at the battles of Paoli and Brandywine. His son, Gustavus W. T. Wright, married Eliza Clayland, and among their children was the father of Hon. Daniel Giraud Wright, one of the justices, at the present time, of the Supreme Bench of Baltimore city.

One of the most honored judges of the Maryland Appellate Bench was BENJAMIN MACKALL, whose portrait by Peale is reproduced here. He was commissioned judge in December, 1778, and sat for more than a quarter of a century. He also bore a prominent part in the proceedings by which the colony became practically an independent state without waiting for the National "Declaration" to pass.

Although the Court of Appeals was duly organized on the 22d of December, 1778, with a full bench of judges, the Maryland reports do not show any cases of record until the May term of 1782. During those eventful years, the people of Maryland were fighting the battles of freedom. The Maryland men were winning glory on the fields of Cowpens, Guildford Court House, Hobkirk's Hill, Eutaw, and, at the finale of the glorious struggle, Yorktown. While the men were fighting bravely, the women of Maryland were making clothes for their gallant fathers, brothers, husbands, sons, and neither men nor women had time, inclination, or money for the expensive luxury of litigation.

JEREMIAH T. CHASE.

When the Maryland Court of Appeals was established, Luther Martin was the Attorney General of Maryland. A sketch of this celebrated lawyer was published in the GREEN BAG, April, 1891. His brilliant genius and extraordinary legal learning were frequently displayed in the Court of Appeals. He was not only the head of that Bar, but was the recognized head of the American Bar, at a time when there were legal "giants in the land." For more than a century, the Bar of the Court of Appeals has been distinguished by an unrivalled galaxy of legal stars. It is necessary to mention only such names as Daniel Dulany, Charles Carroll, Benjamin Tasker, Luther Martin, William Pinkney, Samuel Chase, John Beale Bordley, Reverdy Johnson, William Winder, Robert Goodloe Harper, William Wirt, John Nelson, Francis Scott Key, John V. L. McMahon, William Schley, S. Teackle Wallis, etc. Annapolis was a polished capital, and famous for its charming society, while Baltimore was as yet a mere village. This brilliant and cultured society was composed chiefly of lawyers and their families. The members of the Maryland Bar in those early days were men of pleasure as well as men learned in the law. They fought, drank, gambled, patronized the theatre, the cock-pit and the race-course.

One of the most famous of the early Maryland lawyers was Daniel Dulany, the younger, of whom the accomplished William Pinkney, who saw him only in his declining years, said: "Even among such men as Pitt, Fox, Sheridan, he did not find his superior." Another of those eminent lawyers was Samuel Chase, one of Maryland's signers of the Declaration of Independence, afterwards one of the associate justices of the Supreme Court of the United States. Other distinguished Maryland lawyers of this early period have been mentioned in "The Golden Days of the Maryland Bar," an article which was published in the GREEN BAG in July, 1891. Those famous old lawyers threw so brilliant a lustre over the Bar of Maryland that its reflected glory is still visible even towards the sunset of the century in which they flourished.

There were very few changes, either by death or resignation, during the first twenty-five years which followed the organization of the Court of Appeals. Solomon Wright and James Murray retired from the court in 1791 and 1786 respectively, and Richard Potts and Littleton Dennis were appointed to the Supreme Bench of the State. In 1805, the General Assembly of Maryland reorganized the Court of Appeals, and the appointment of the judges was placed in the hands of the governor of the State. Under this law, Gov. Robert Wright made the following appointments of judges: Jeremiah Townley Chase, Chief Judge, Gabriel Duvall, Robert Smith, James Tilghman, John Thomson Mason and William Bullock.

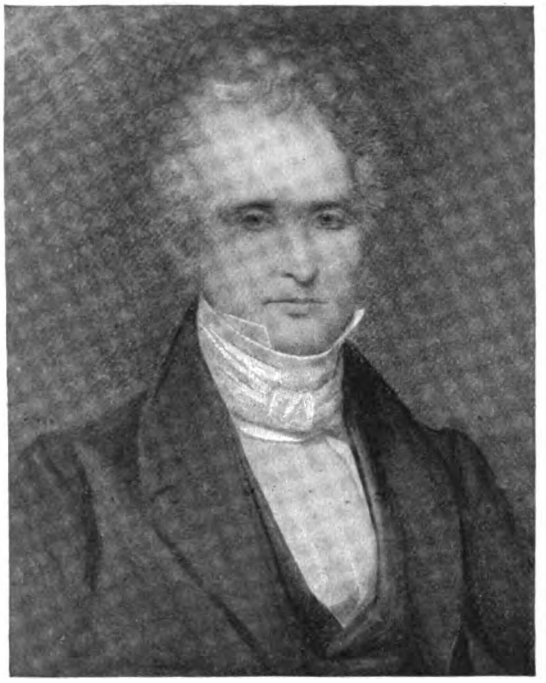
JEREMIAH TOWNLEY CHASE was one of the most distinguished men of Maryland for fifty years from 1775. Born in Baltimore in 1748, when it was a village of two hundred inhabitants, he lived to see his native place become the metropolis of the South, with a population of seventy-five thousand. His father, Richard Chase, emigrated from England between 1732 and 1740, and settled in what was the then village of Baltimore, in the Province of Maryland. He was a lawyer, and practiced his profession, in Calvert, Anne Arundel, Frederick and Baltimore Counties. On the 24th of February, 1742, he married Catherine Strudwick of Calvert County. They had two children, a daughter and a son. The latter, the subject of this sketch, was a member of the Baltimore Bar until 1779, when he removed to Annapolis, Md. In 1774 he was one of the "Committee" for Baltimore town and County, and a member of the Maryland Convention which met at Annapolis on the 22d of June the same year. This body, which was composed of the most distinguished men of Maryland, was animated by the most determined opposition to the obnoxious measures of the British government. They proposed the cessation of all intercourse with the mother country; directed subscriptions to be raised for the relief of the Bostonians and, having elected delegates to the Continental Congress, declared that the Province of Maryland would break off all trade, commerce, intercourse or dealing of every kind with any colony, province or town that refused to join the common league.

On the 18th of July, 1781, Jeremiah Townley Chase was one of the committee of citizens of Annapolis, of which city he was, in 1783, elected Mayor; the same year he was one of the Maryland representatives in Congress. In 1789, he was appointed one of the judges of the General Court of the State, and, on the 8th of February, 1799, became Chief Judge of that court. When the Court of Appeals was reorganized in 1805, as already mentioned, Judge Chase was appointed its Chief Judge, which office he held until his resignation in 1824. He continued to live in Annapolis until his death on May 11, 1828.

JOHN JOHNSON, father of Reverdy Johnson, the senator, and John Johnson, the last Chancellor of Maryland, was born in Annapolis, September 12, 1770, and died suddenly in Hancock, Maryland, July 30, 1824. He was then engaged in adjusting the boundary between Maryland and Virginia. At the time of his death he was Chancellor of Maryland, having been appointed on October 15, 1821. Prior thereto he was Chief Judge of the county court for the first judicial district, embracing St. Mary's, Charles and St. George's Counties, and member of the Court of Appeals, to which office he was appointed March 15, 1811. From 1806 to 1811 he was Attorney-General. His father was Robert Johnson, who by tradition is said to have been a Revolutionary officer. His mother was Anna Whitcroft, a widow at the time

of her marriage to Robert. John Johnson married Deborah Ghiselin, daughter of Reverdy and Mary Ghiselin, January 9, 1794. Their son Reverdy, afterwards Attorney-General of the United States and senator from Maryland, was born May 21, 1796. The second son John, afterward Chancellor of Maryland, was born August 5, 1798.

A grandson of the latter is a very promising member of the Baltimore Bar, and at present represents Baltimore City in the State Legislature, having been elected as a Reform Democrat on what was known as the compromise ticket from the third district.



JOHN BUCHANAN.

One of the most prominent of the early judges of the Court of Appeals of Maryland was the Honorable LITTLETON DENNIS, who was born on July 21, 1765, and died August 16, 1833. He married Miss Elizabeth Upshur, the daughter of Colonel John Upshur of "Upshur's Neck" in Northampton County, Virginia. The father of the Judge was Littleton Dennis, the fourth generation of descent in this country, and Susanna Upshur, daughter of Abel Upshur and Rachel Revel of Northampton County, Virginia, was his mother. The Judge resided and is buried at "Essex" in Somerset County, Maryland; "Beverly," the main family seat, being at that time owned by his brother John. Judge Dennis was a lawyer, as well as a judge, of distinction, and was an able and eloquent speaker. Tales of his oratory and of its effect on juries and political gatherings are still plentiful on the "Eastern Shore." The venerable John M. Crisfield declares that the most powerful political speech he ever heard was one which Judge Dennis delivered on the hustings. The Judge was an ardent and uncompromising Whig in politics and was very popular with his party. In those days Maryland chose her Presidential electors by popular vote and Congressional districts, and Judge Dennis was honored by the suffrages of his party in 1801, 1813, 1817, 1823 and 1829, in each case winning his success after a very hard and hot fight. He was never defeated before the people. He was a Federalist elector when the election was thrown into the House of Representatives in the year 1801, and the "dead-lock" ensued between Jefferson and Burr. His brother, John Dennis, was a member of the House at that time, and was one of the five Federalists who, by refusing to vote, enabled the "dead-lock" to be broken, and made the election of Jefferson possible. Judge Dennis took his seat on the bench of the Court of Appeals in the year 1801, and was for a number of years one of its most distinguished and honored members.

Upon the retirement of Chief Judge Chase in 1824, Judge JOHN BUCHANAN, who had been one of the associate judges of

the Court since 1806, was appointed to the first place on the Bench. John Buchanan was born in Prince George's County, Md., in 1772. He was the second son of Thomas and Ann Buchanan. His father was an Englishman, a younger brother of Sir Francis James Buchanan, a colonel of his Majesty's Royal Artillery; his mother was the beautiful Miss Cook, sister of the affianced wife of Charles Carroll of Carrollton. Both of John Buchanan's parents died when he was quite young, and he was sent to Charlotte Hall Academy in Charles County, Md. After receiving the rudiments of his education at this school, he was while still a youth placed in the law office of Judge White at Winchester, Va. From Winchester, he was soon transferred to Washington County, Md., where he continued his legal studies under the care of John Thomson Mason, a famous Maryland lawyer of that time. After passing the Bar, he entered at once upon a successful practice. He married Sophia Williams, daughter of Col. Elie Williams and niece of Gen. Otho Williams, one of the Maryland heroes of the Revolution. They were married at Springfield, Washington Co., on the 4th of October, 1808. Their residence was Oakland, eight miles from Hagerstown, in the same county.

Judge Buchanan sat on the bench of the Court of Appeals for thirty-eight years, during twenty of which he was its Chief Judge. His legal learning, his high character, his profound reading as well as his singularly attractive manners and elegant accomplishments, won the admiration and respect of such eminent men as William Pinkney, Luther Martin, Roger B. Taney, Reverdy Johnson, William Wirt, and others who were his contemporaries, and knew him both in his professional and private life.

In 1837, Judge Buchanan was appointed a commissioner on the part of Maryland, to negotiate a loan in London for the building of the Chesapeake and Ohio Canal. Aided by George Peabody, and other prominent financiers, ample funds were obtained, and the completion of Maryland's splendid work of internal improvement secured. During this visit, Judge Buchanan was warmly entertained by the celebrated "American Graces," the Misses Caton, the three granddaughters of Charles Carroll of Carrollton, who were known in the British peerage as the Duchess of Leeds, the Marchioness of Wellesley, and the Baroness Stafford. By these ladies, Judge Buchanan was introduced into the highest circles of English society, including the Duke of Wellington, Sir Robert Peel, Lord Palmerston, Lord Melbourne, Lady Byron, Lord Lansdowne, Lord Aberdeen, and the brilliant coterie of Holland House. One evening, an amusing incident occurred during an entertainment at the Marquess of Hertford's. It was a grand musicale at which some of the musical celebrities of the day were present, including Rubini, La Bache, Jamburini, and others. Among the guests was the Duke of Wellington. At a late hour, when the feast was at its height, Judge Buchanan — surrounded by admiring friends, all "feasting and making merry," — was suddenly startled by hearing a familiar voice bawling out: —

"Lord Chief Justice Buchanan's carriage stops the way!" There was silence — but only for a moment — when, with his characteristic grace and urbanity, he offered an explanation, and withdrew. This contretemps was caused by Judge Buchanan's valet, who admired his master excessively. Upon being reprimanded for this offense, he replied: "Sir, I was proud to announce you as such — your position is as high as any of theirs."

During this visit to England, Judge Buchanan was entertained at Holkholm, the seat of the Earl of Leicester; also, by the then reigning prince of the ancient house of Este. From a letter written by Judge Buchanan, during his residence, in England, I quote the following: "I dined yesterday with the Duke of Sussex, brother to the

late King William IV., where I met a party of twelve or fifteen people of the first rank, and passed a very pleasant evening, breaking up at twelve o'clock. The Duke is a very intelligent, agreeable man. He asked me when coming away to come and see him whenever I should find it convenient; and offered me any letters I might wish to use either in England or on the Continent. I had before been at the prorogation of Parliament by Queen Victoria, his niece, in person, and was, afterwards, presented to her at St. James Palace at her first levee. In reply to some questions she asked me, I had ventured to offer her a little compliment, which appeared to be well received, and was responded to in a very modest manner, and in a somewhat lower tone of voice than she had before spoken in, accompanied by a smile and bow. Her manner was such that I was disposed to say more, but was restrained by the occasion, and the many handsome eyes that I perceived to be upon me; for the apartment was filled with all the high officers of court, and foreign ambassadors waiting to be presented, to few, if any, of whom did she say a word. Immediately after leaving the Queen, the Duke of Sussex called out: 'Mr. Buchanan, you must shake hands with me' (at the same time holding out his hand), and when he had mine said: 'When all this bustle is over, in which I take an interest, for this young Queen is my niece, you must come and see me; I want to have a long and close talk with you.'" When presented to the Queen at the time of her coronation, Judge Buchanan ventured to say: "Madam, may your reign be as happy as its beginning is auspicious!" The Queen received the remark most graciously, smiling instead of frowning, which he had almost a right to expect, as it is against court etiquette to address a remark to royalty, unless spoken to first.

STEVENSON ARCHER.

After a delightful and interesting visit of nine months to England, Judge Buchanan returned home, and resumed his place as Chief Judge of the Court of Appeals of Maryland. At that time the constitutional limitation of seventy years was not in existence in Maryland, and Judge Buchanan continued to fill the office for seven years longer, with honor to himself, and to the entire satisfaction of the Bar and people of Maryland. His death took place at his home in Washington County, Maryland, in 1845.

EZEKIEL F. CHAMBERS, one of the most distinguished associate justices of the Maryland Court of Appeals, was born in Kent County, Md., on the 28th of February, 1788. After passing the Bar, he entered at once into a large practice, which in the course of a few years extended over the whole of the Eastern Shore of Maryland. For fifty years from 1817, he was one of the leading lawyers of the State. In 1826 he was elected

to the United States Senate, and served in that body until 1834, when he was elected to the Court of Appeals. For seventeen years, Judge Chambers was one of the most prominent members of Maryland's highest court. He retired in 1851, upon the adoption of the new constitution, under which the entire judiciary system of the State was reorganized. He again returned to the practice of the law, which he continued until the Civil War. Judge Chambers was an able speaker as well as a learned jurist. One of his most remarkable speeches was on the Judiciary Tenure, which was delivered in the Maryland Convention, in April, 1851. He said the necessary elements in the character of a judge were first, a consciousness of perfect independence; a freedom from all motive to do wrong; an exemption from all fear to do right. These principles guided his own career on the bench.

Honorable STEVENSON ARCHER, who succeeded Judge Buchanan as Chief Judge of the Court of Appeals, was born in Harford County, October 11, 1788. After a preliminary course of education at a private academy in Baltimore, he entered Princeton College and graduated in 1805. After leaving college, he commenced the study of the law, first in Bel Air, Md., and afterwards, at Annapolis, under the Hon. John Johnson, Chancellor of Maryland. In 1809, soon after passing the Bar, he was elected to the State Legislature as an independent candidate, and was re-elected the following year as a Democrat. In 1811 he was elected to Congress when only twenty-five years old, being one of the youngest men that ever sat in the House of Representatives. He was re-elected in 1813, and in 1815. He served in Congress during the eventful period of the War of 1812, and was a staunch supporter of all the war measures of the Government. At the expiration of his third term in the House, he declined a renomination, and was appointed by President Madison judge of the Mississippi Territory, which included what are now the states of Alabama and Mississippi. He made an arduous journey through the wilderness to the scene of his new duties, which were both gubernatorial and judicial. After holding this dual position for a year, he resigned and returned to Maryland. In 1819 he was elected to Congress for the fourth time. In 1824 he was appointed one of the associate judges of the Court of Appeals, and in 1845, as already mentioned, he was elevated to the Chief Judgeship, upon the death of Judge Buchanan. Judge Archer presided over the court for only three years, having died on the 26th of June, 1848. Stevenson Archer was one of the most distinguished Marylanders of the first half of this century. He won honor both as an associate and Chief Judge of the highest judicial tribunal of his State.

THOMAS B. DORSEY, who had been appointed an associate judge of the Court of Appeals, in 1824, to supply the vacancy caused by the resignation of Jeremiah Townley Chase, was commissioned Chief Judge July 3, 1848, upon the death of the honorable Stevenson Archer. Judge Dorsey served only three years, and gave place to one of the most remarkable men that ever sat upon the bench of the Maryland Court of Appeals.

JOHN CARROLL LE GRAND was born in Baltimore, in 1814. He was educated in private schools. His first intention was to be a merchant, and he entered a counting-room, but a short experience in business caused him to change his mind, and he commenced the study of the law. As Reverdy Johnson said, "he prepared himself for the profession, which he was destined so soon and so signally to honor, under difficulties that would have proved insurmountable to most young men; with laud-

able ambition and mental energy, and that almost intuitive confidence that nature would seem ever to impart to her favorite intellectual sons, he persevered until — though even without much practical experience at the Bar, and at an early comparative age, he became, in the judgment of the profession and of his judicial associates, an accomplished and able judge." He studied law under the direction of the late Hon. James M. Buchanan, minister at the Court of Denmark under the administration of President Buchanan. He entered upon his legal studies with enthusiasm, and his bright mind and quick intelligence soon enabled him to pass the Bar. In a year or two, he was elected a member of the State Legislature from Baltimore.

JOHN C. LE GRAND.

His rise was rapid and brilliant. Although one of the youngest members of the House of Delegates, he was immediately elected Speaker of that body. In this position, he displayed a wisdom, a prudence and administrative ability far beyond his years. His remarkable talents for public affairs attracted the attention of the Governor of Maryland, Francis Thomas, who, at the expiration of his term in the Legislature, offered him the position of Secretary of State. He accepted the place, and for two years performed its duties with zeal, energy and intelligence. His leisure hours were devoted to the study of the law and the cultivation of letters. He accumulated a vast store of legal and general learning during those studious years, and when he was appointed associate judge of what was then known as the Baltimore County Court, he was well fitted for the position, although only twenty-seven years old. He displayed such learning, such talents, such genius in this new field, that the highest expectations of his friends were more than realized, and, as was said by Reverdy Johnson, in pronouncing his eulogy: "During the whole period of his service, his eminent fitness for the Bench was more and more displayed, and won for him, not only the confidence, but the admiration of the Bar."

In 1851 a new constitution went into effect in Maryland, under which a new bench of judges for the Court of Appeals was elected in November of that year. John Carroll Le Grand was one of the judges elected to the Court of Appeals. The Governor of Maryland appointed him Chief Judge of the court. He held this exalted position for ten years, during which his shining talents and profound learning shed a new lustre upon the Court, the Bar and the State of Maryland. The Maryland Reports are enriched with his luminous opinions in cases of vast importance, and to them the student turns for guidance and the judge for precedent.

Chief Justice Le Grand died in his native city of Baltimore on the 28th of December, 1861, within a few weeks after his retirement

from the Court of Appeals. His death was announced in all the courts in Baltimore, and a meeting of the Bar was held in the Superior Court room, including leading members of the profession. A committee of seven was appointed to prepare resolutions, who reported the following: -

"*Resolved*, That we mourn the loss of John Carroll Le Grand, late Chief Justice of Maryland, as the departure of one whose mind and culture have ennobled his name in the judicial ministry of his native State.

"*Resolved*, That lost though as he now is to our cordial converse, and to the light of jurisprudence, there is consolation in offering to his memory the expression of our admiration for his commanding and philosophic intellect, his ample and well digested learning, and for his judicial independence, impartiality and efficiency, which ever had truth and justice for their end, and that have secured for him the fame that shall brightly live in the records of our highest judicature.

"*Resolved*, That not less for his intellectual and official honors is he in remembrance endeared to us for his soul of kindness and his unpretending manner, and for the impulses of a good and tender heart, always and practically swayed by the claims of right and of suffering."

Then followed expressions of sympathy for his family, and the resolution to attend his funeral in a body, and to wear the usual badge of mourning for thirty days.

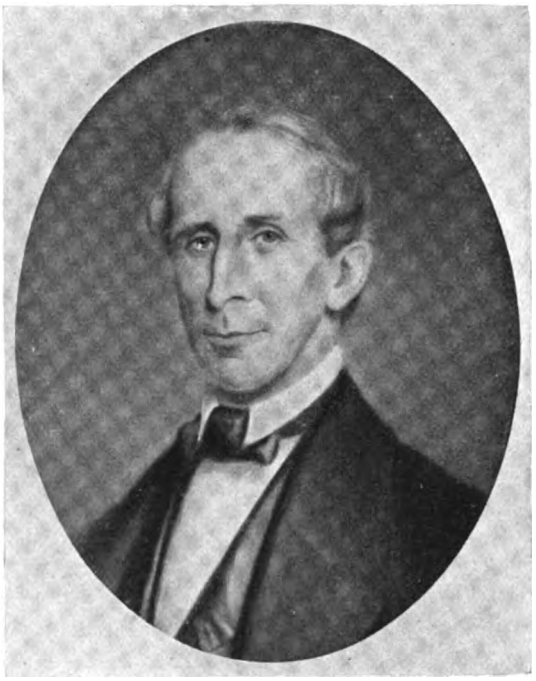
In presenting the resolutions, Charles F. Mayer, Esq. said: "The death-roll in our forum has again been called, and the shrouded 'Who next?' has been answered. John Carroll Le Grand has been summoned from our fellowship — from the toils and the honors of life's little, fretted hour — to the home of the soul — into the vast awe of eternity. As closed his official day, so in the same horizon was the sunset of his life. Thus in his last vision of earth has he made up his memorial of public service, and inscribed himself upon the record of our civil history. Let us read that tablet, not seeking to deck it with undeserved eulogy which mocks the dignity of the tomb and profanes the sincere solemnity of death; but let us rehearse the imprint of his career as merit alone there traces truth, and gives light that should live above his grave. Let us contemplate our departed brother as he was in his mind, his culture, and his heart — in the service of his public functions, and in the kindness of his nature." Mr. Mayer went on to give an elaborate sketch of Judge Le Grand's career as a lawyer and as judge, dwelling specially upon the analytical cast of his mind, and of his independence as a thinker.

John P. Poe, at that time a most promising member of the Baltimore Bar, now the Attorney-General of Maryland, paid a very feeling tribute to the deceased Chief Justice. He said: "His career was, in many respects, a remarkable one. Called at an early age to a seat on the Bench, he soon exhibited that clearness and force, that quickness of comprehension and that power of analysis which were the leading characteristics of his mind. The Governor of the State, recognizing his peculiar fitness, gave him the position of Chief Justice, and it is to his decisions, while holding that high office, that his friends take pleasure in referring as the best eulogium upon his character. There will be found the existence of those qualities of mind and heart which are claimed for him. There will be seen the operations of a comprehensive mind, eliminating from long records the vital questions involved, and clothing in vigorous, clear and precise language the result of his reflection and study. There will be seen the principles of the law, aided, though not encumbered by its authorities, invoked in the settlement of protracted suits upon the firm foundations of justice. In them may easily be traced broad generalization, searching analysis, lucid arrangement, and vigorous argument.

"Judge Le Grand was not more distinguished for quickness of apprehension than for uprightness and impartiality. He never suffered his feelings for the parties or the

counsel engaged to interfere with his judgment; and his decisions show that they were always given upon the merits of the case as his own mind understood them, without reference to his favorable or unfavorable estimate of those by whom they were presented.

"In private life he was amiable and affectionate, kind and courteous. Those who knew him well, will ever hold in cherished recollection his honesty of purpose, his directness of mind, and his contempt for all that was not straightforward, and manly and true. He has been taken from us in the full glory of his manhood, and in the maturity of his intellect. He has died almost in harness, and the public, whom he has so long and faithfully serve d will remember his services and his virtues. 'Of his frailties,' — in the language of that most graceful member of our Bar (S. Teackle Wallis), the accomplished scholar, the eloquent orator, the learned lawyer and pure patriot, now (1862) languishing in a distant fortress — 'of his frailties which of us shall speak? If he had survived us, he would have been the last to have mentioned ours.'"



JOHN B. ECCLESTON.

On the 9th of January, 1862, Reverdy Johnson, at that time the head of the Bar of Maryland, and one of the most distinguished American lawyers, announced to the Court of Appeals the death of the late Chief Justice Le Grand in an eloquent speech. At a subsequent meeting of the Bench and Bar of the Court of Appeals a committee of five was appointed to draft and report appropriate resolutions, and the following were adopted:

"*Resolved*, That the Bench and Bar of the Court of Appeals have heard with deep emotion of the death of the late Chief Justice of Maryland, the Hon. John Carroll Le Grand; and they cherish with tender regard the memory of his shining qualities, his valuable learning, his spirit of justice, and his able, impartial and dignified deportment, as presiding officer of this Court.

"*Resolved*, That in the death of Judge Le Grand many losses are united: the State of Maryland has lost one of her most accomplished and public-spirited citizens — the profession of the law one of its most brilliant ornaments — literature one of its most valuable contributors — the galaxy of friendship, one of its brightest stars — and the poor and distressed a cordial sympathizer and friend."

These resolutions were presented by the Hon. John Thomson Mason, who delivered a most eloquent eulogy upon the deceased.

Hon. JOHN BOWERS ECCLESTON was born in 1794 in Kent County, Maryland. He received his principal education at Washington College, near Chestertown, and studied law with Mr. Reddingfield Hand, of that place. Soon after his admission to the Bar, he was elected, in 1819, to the Legislature. Subsequently, however, he retired, practically, from public life, and devoted himself to the practice of his profession. Like all

of his family, he displayed, from his earliest life, a great interest in religious affairs, and was always remarkable for his generous, charitable and kindly disposition. It was said of him more than once, among his associates, that he was indeed "an Israelite, in whom was no guile." On April 23, 1821, he was chosen one of the vestrymen of "Chester Parish," and on February 9, 1824, he was made one of the "Visitors and Governors" of Washington College. He was appointed, on February 8, 1832, one of the associate judges of the second judicial district of Maryland, consisting of Cecil, Kent, Queen Anne, and Talbot Counties, and when the judiciary of the State was reorganized, in 1851, he was elevated to the Bench of the Court of Appeals, which position he filled until his death. Judge Eccleston was the son of Samuel Eccleston, who married Miss Ann Bowers, daughter of Thomas Bowers, and had by that wife three children — John Bowers Eccleston, the subject of this sketch; Ann Elizabeth Eccleston, who married, in 1815, John Ringgold Wilmer, son of Simon and Ann (Ringgold) Wilmer; and Mary Louise Eccleston, who married, in 1819, Elias March. Samuel Eccleston married a second time, his wife then being Martha Hybson, and had by her a fourth child, the Most Reverend Samuel Eccleston, D.D., of the Roman Catholic Church, who was consecrated, on September 14, 1834, the fifth Archbishop of Baltimore, and died in 1851. The venerable Archbishop is remarkable for having been not only mainly instrumental in the establishment of Catholic educational institutions within his province, but also for having been the only Catholic prelate who ever extended to the Pope a formal invitation to make the United States his place of refuge — the occasion being the exile of the Holy Father from his traditional domain by the fury of Italian persecution.

Judge Eccleston married twice — first, on July 26, 1827, Miss Ann Maria Peterson Clarkson, of Chestertown, and had by this marriage one son, Rev. John Clarkson Eccleston, D.D., who is at present an Episcopal clergyman, stationed on Staten Island, New York.

The Judge's second wife was Miss Augusta Chambers Houston, daughter of Judge James Houston, whose wife was Miss Augustine Chambers. By this marriage, the Judge had the following children: —

Rev. James Houston Eccleston, Rector of Emmanuel Protestant Episcopal Church, in Baltimore City.

Augusta Chambers, who married, Dec. 23, 1853, Samuel Shoemaker, a prominent citizen of Baltimore City, who died a year since; and also Miriam, now Mrs. M. E. Harpes of the same city.

Judge Eccleston died at his residence in Chestertown on Nov. 12, 1860. His descendants are still noted in Baltimore for their possession and exercise of the kindly and charitable traits which were so strongly marked attributes in the character of the Judge.

JOHN THOMSON MASON was born at "Montpelier," in Washington County, Maryland, a large estate belonging to his father, in the year 1815. He graduated at Princeton, and studied law in Hagerstown. He took an active interest in politics; was a member of the State Legislature and the Federal Congress, and was finally elected to the Court of Appeals — all before he had attained his fortieth year. He remained on the Bench for ten years, and resigned to accept the position of Collector of the Port of Baltimore, tendered him by President Buchanan. He was arrested and confined for some time in Fort McHenry during the Civil War, while General Wool was in military command of his State. During Governor Whyte's administration, Judge Mason was his Secretary of State, which office he filled at the time of his death. Judge Mason resumed his law practice after the close of

the war, and formed a partnership with Mr. John Thomson Mason of R. in 1872. In the following year he was trying a case at Elkridge Landing. He had finished his speech to the jury, and was sitting at the dinner table in the hotel, when he was stricken with apoplexy and became unconscious. A few hours later he died, having never recovered the possession of his faculties. He married Miss Cowan Pitts. His wife and three children survive him. One of his daughters married Lieutenant Commander Terry of the United States Navy, and another married Lieutenant Theodore Porter, a lieutenant in the same service, who died recently. Judge Mason was fond of a joke, and never hesitated to tell one on himself. He used to narrate with great gusto a little incident in which he figured at a hotel in Hagerstown. It was here that the Judge came to the Bar, and it was only a short distance from "Montpelier," his father's estate and his birthplace. It happened that the Judge proposed to remain all night at the hotel on one occasion, and as he was sitting in the parlor he dropped a remark to the effect that his horse was showing some symptoms of lameness. A gentleman in the room at once spoke up, and announced that he was agent for an infallible "horse liniment," and insisted on the Judge's acceptance of a "sample-bottle" free of charge. This the Judge consented to receive, and shortly afterwards went to bed, putting his sample-bottle on the mantelpiece in his room and thinking no more about it. During the night he was awakened by an intolerable pain in one of his legs. Now, the Judge had always had a great dread of paralysis, and when to the pain he found considerable stiffness added, he was seriously alarmed. He bethought himself of the bottle of "horse liniment" with which he had been presented during the evening, and made up his mind to try its efficacy on the afflicted limb. With some difficulty he made his way in the dark to the mantelpiece, and felt around till he found the bottle, and poured out a liberal quantity on his leg, rubbing it carefully over the skin. Then he went to bed. Although the liniment did not burn as he expected, the pain and stiffness soon afterwards subsided, and the Judge slept tranquilly till morning. He was horrified on waking to find that something very like mortification had set in, and his leg was of a deep bluish-black tinge. Hastily leaping up, and glad, though mystified, to find that notwithstanding its alarming hue, the leg was still useful, he took down the offending bottle of liniment, determined to throw all that was left of the contents into the fire. To his great surprise, it appeared that the bottle had never been uncorked. A glance at the other end of the mantel-piece explained the mystery and the color of his leg. In his half-awake and altogether disturbed state of

JOHN T. MASON.

mind, the Judge had gone to the wrong corner and carefully anointed himself with a good quality of writing ink. Imagination had done the rest, and the ink had really been of quite as much service to him as the liniment could have been, though of course the marks of the strange treatment remained for some time.

Judge Mason was very good natured and always ready to help anybody he saw in trouble. He was also somewhat absent-minded, at times. He once observed a lady sitting opposite to him on the cars, with two children and so many packages that she was obliged to put one large package on the seat in front of her. He had not seen her get on, and was perfectly sure that the package in question was too heavy for her to carry. Finally he saw the woman get ready to leave the train, and made up his mind that if the brakeman did not wait on her, he would volunteer his services to lift the package off. The woman, however, forgot the big package altogether, and left the car before the Judge could call her attention to it. But, as the Judge would say of himself, he was a man of readiness in emergencies, and a little thing like that was not enough to balk his determination to assist a fellow-creature and save trouble and uneasiness. So he jumped across the aisle of the car, seized the bundle as the train began to move, hastily raised the window, and threw the big package out at the woman's feet upon the platform. Then he sank back in his seat, full of the calm consciousness of a duty and a kindness well done. His tranquil state of mind, however, was not destined to last long. A large and testy-looking gentleman appeared in a few moments from the smoking-car ahead and walked to the seat where the big package had been. The moment he noted its absence he began to make remarks. The Judge deemed it expedient to plead guilty before any one else in the car got a chance to turn state's evidence. It had been, it appeared, a purely gratuitous and unfounded assumption on his part that the big package belonged to the woman, and his hasty action, instead of being a means of saving trouble to her, caused a good deal to himself, as well as to the testy gentleman, who received his profuse apologies rather ungraciously, though he finally recovered his package.

THE JURY SYSTEM.

A LAYMAN'S POINT OF VIEW.

ONE day I received a jury notice. I laid it on my desk and regarded it with suspicion. It seemed to be genuine, and as nearly as I could gather, I was instructed to appear on a certain Monday morning in the Court of Something or Other, part three, and await developments. I had been bred in the belief that a well-regulated man avoided association with the law and its meshes as he would the wiles of Satan. I had never been in a court room in my life, and I had a most unreasonable dislike to breaking my record. I had also that rooted aversion, characteristic of the patriotic American, to serving my country in the capacity of juror. The summons, therefore, filled me with terror. I had heard of men who had been called to jury duty, but who had "arranged" not to serve, so I cast about in my mind for someone whose influence might help me to this desirable result. I called on all sorts and conditions of men in official positions, and most of them laughed at me and said, "Old chap, serves you right; you are the sort of man we want on our juries; go ahead and serve." One good friend of mine took high moral grounds; said it was my duty to serve; said it was a disgrace that decent class men were so reluctant to aid the administration of law. I thought it over with fasting and prayer, and I began to feel myself becoming public spirited. I decided that I would brave the terrors of the law, and do my duty as best I could in that sphere to which it had pleased the all-powerful Commissioner of Jurors to call me. I commenced preparation by reading all the court proceedings I could find in the papers. It did not seem to me that the jurors were always treated with politeness by the lawyers or the Court, but that was a mere detail; one must not expect the path of duty to be entirely strewn with roses. I am bound to say right here that, later, my expectations in this direction were entirely realized.

Monday came; it's a way Mondays have, and I repaired to the Court House. I was nervous, but firm. I had heard much of the majesty of the Law (with a capital L), and I felt that my first appearance in the halls of Justice was an occasion of importance. I entered the court room; there were a great many people there, and they were all talking. The scene was not as impressive as I expected. I sat down near the door and looked about; everyone seemed to be very busy, and the noise waxed louder. There were a lot of men with bundles of papers in their hands, talking to a lot of other men similarly burdened, and they seemed to be making or unmaking dates, and trying to induce each other to lay something over because they wanted to go duck shooting, or a witness had married a wife and must be excused, or their client was dead, or something of that sort. As I gained courage, I moved down inside a rail and took a chair more in the midst of things. I regarded the jury box, with its twelve chairs, with awe. A motley crew now began to collect. I had forgotten that there would of necessity be other jurors than myself, but now I suddenly realized that these others were bidden like myself to the proud service of their country. Most of them did not look pleased, but neither did they look anything else, so that was all right. After a little I began to yearn for sympathy, and I looked over the men near me for one who might be approachable. I selected the cleanest, and took a chair beside him. "Are you a juror?" I asked. "Yes!" he answered explosively. He was a very pos-

itive young man, and he said some things which, as this article may be read by the youth of the profession, I think I will not transcribe. He was a very nice young man from Harlem, and later, in the trying times that ensued, we became great friends, and clung to one another with the enthusiasm of despair. I told him he ought to be glad to help administer the law, and proud of his citizenship, but he had been a juror before, and he said rather discourteous things expressive of a doubt as to my sanity.

Just here there was a commotion at one side, and His Honor came in and took his place. The room became silent and men removed their hats. The scene became more impressive. I now looked at the judge and was surprised to find that he was a gentleman whom I knew well in private life. I wanted to go up and shake hands with him, and talk about a dinner at which we had met a few nights before, but the young man from Harlem advised me not to, and added, with what I feared was sarcasm, that probably His Honor would come down and speak to me as soon as he saw I was there. I thought with our pleasant American simplicity that was quite probable, and I saw no reason for the sarcasm. Things now commenced to happen in rapid succession. In fact so rapidly that I could not follow the proceedings intelligently. It seemed to me to be a little commercial in method, and somewhat lacking in dignity, but I always believe that people in a profession, or trade, know more about it than we who are out of it, so perhaps these law gentlemen knew what they were about. A lot of the jury gentlemen wanted to be excused, and they were given an opportunity to talk it over with the Judge. It didn't seem to make much difference, for none of them went away. Presently some one said, "Swear the jurors," and the clerk read a lot of names very rapidly. My name is a short one, and I suppose it got slipped in between some of the others; anyway, I did not hear it, so I sat still. The others went away with the clerk, over in a corner back of the jury box, and had a quiet little swear by themselves. Then they came back looking much refreshed. I felt rather overlooked, but feeling that knowledge never comes amiss, I decided in the absence of active duty to absorb all I could. After some preliminary business the Court arranged to discuss a case which seemed to be of considerable importance. A lot of jurors' names were called, and the clerk seemed to derive some mild amusement from the confusion he created in the reading of the names. Eventually twelve members of the collection were secured and shut in the box, with a portly and athletic-looking person standing guard over them. The young man from Harlem was in the assortment. The jurors not in the box were excused until one o'clock, and they went solemnly away. I elected to remain and learn things. I watched and listened, but the case was all about an engine run by gasoline, or something of that sort, which a man had bought and didn't want to pay for, because it would not do the things which an engine run by gasoline ought to do. It seemed quite clear on the face of it, that of course if a machine would not do what its manufacturers contracted that it *should* do, the purchaser was released from his obligations. But now came in a lot of technical evidence about the structural incapacity of this particular engine; the various qualities of naphtha which would produce various results, and a lot of other things, which threw me into a dreadful state of mind. I don't know anything about mechanics, and I never could see why anybody else should want to, so I was very glad when the court took a recess for luncheon, and I could talk to my young man from Harlem. As we were leaving the court room, one of the other jurors came along, and I said to him pleasantly, "Seems rather a difficult case, doesn't it?" "Naw!" responded he, "it's jest a rich bloke trying

ter beat a poor devil out 'en his dues; he'll have ter pay, don't yer fear." I said I didn't, and asked the young man from Harlem to come away to lunch with me. As we walked along I tried to talk about the case and asked the young man if he knew anything about the properties of naphtha, and the mechanics of engines, and he said, "No," and other things. Then I asked him if he didn't think we ought to go to some place and ask questions about these subjects so he could give his verdict justly, but he said he would rather eat, so we went to lunch. While we lunched he told me many wonderful things about Harlem, and the people there, and later I wrote a story about him and sold it for ten dollars, which is a very good price for a story about any young man in Harlem. After recess the case was resumed, and by and by the jury were taken away upstairs, and I rather hoped they were going to be hanged. After a while, however, they came back, and the one who sat in the first chair got up and said in somewhat composite English, which being translated, was to the effect that the rich man must pay for the engine which wouldn't work. I was the only person who seemed dissatisfied with the verdict, and we were adjourned until the next morning at ten o'clock.

I thought over things during the silent watches of the night, and I concluded that there was something wrong in my missing an opportunity to swear. So in the morning when I reached court, I interviewed the clerk. He was not altogether civil about it, and said I must swear at once. Then he said some things very rapidly, and looked as if he expected me to agree with him, which I said I did for politeness' sake, and then he said that was all, for which I was very glad. I think that clerk liked me very much, for whenever he had to call a jury, I was in it. My first case was most interesting. It was about a man who had walked into a coal hole, and got a bit shaken up. I couldn't discover that he had been at all hurt, but his friends had suggested that it would be a suitable occasion for suing somebody, so he had brought a suit for large damages, away up in the thousands, against the owner of the house. The owner, who lived on the first floor of the house, said the coal belonged to a tenant on the top floor. The top-floor tenant said it was the janitor's business to look after coal holes, and the janitor said the man who put in the coal and left the cover off the hole was the proper one to sue. It seemed to me a very complicated case indeed. The two lawyers had a great many things to say. One of them was a very nice gentleman, the other was from Brooklyn. They objected to pretty nearly everything that seemed to me to have any bearing on the subject. Finally, after the lawyers had said a great many rude things to each other, and had had as much of the case as they wanted, they turned it over to the jury and told them to go upstairs and settle it. We were led up to a stuffy, bare room, furnished with twelve chairs and a table, all of which had seen better days, the door locked, and we left to general results. We all lighted cigars, and as some of them were very bad, the atmosphere was not pleasant. The foreman made us a little speech and discovered that eight of the jurors were for awarding damages, amount to be decided by discussion, while four saw no reason why any damages should be awarded. I was one of the latter. My constituents were the one other free-born American in the crowd, a man who said his "bizness was cloe's," and who was inherently opposed to anybody giving up anything, under any circumstances, and a young grocer's clerk, who spoke English by inspiration only. We argued the case violently for two hours; that is, if advancing absurd, unintelligent, personal views, and exploiting the unutterable ignorance of the men gathered in that room could be called *argument*. At the end of that time I would have agreed to any ver-

dict; I would have found the house owner guilty of murder, arson, or larceny, with perfect impartiality. The general impression seemed to obtain that damages of some sort really should be awarded. I therefore suggested that we award the man twenty-five dollars. I urged this with all the eloquence at command, and it being only a question of mind over matter, I soon induced an agreement. We returned to the court room, the verdict was rendered, court adjourned, and I went away to take a Turkish bath. The days that followed were merely repetitions of these two. My public spirit was dissipated under the pressure; my reverence for the machinery of the law went into the hands of a receiver; and could I have been held for my feelings during those awful days, I should have been continually under arrest for contempt of court. When I was off duty, I sat in the court room and listened and pondered. I remembered to have heard somewhere about the privilege of being tried by a jury of one's peers. Then I watched the head of a publishing house and a gentleman representing a big corporation awaiting the adjustment of their differences by this jury gathered in from the highways and hedges, this group of ignorant, illiterate men, and I knew I must be mistaken about that peer business. I wondered why it was not possible to have merchants' difficulties adjusted by a jury of merchants; professional men's by a jury of adequate mental calibre; trades-people's, by a jury also in trades, and women's — above all things have the differences of women adjusted by juries of women. The more I pondered the more inefficient to my mind seemed the present service, the more farcical the idea of turning over to a group of such conglomerate and insufficient mentality, questions of serious import for adjustment. I began to fear that after all, Law and Justice were not the Siamese twins that I had always believed them.

At the end of the term, we of the jury of peers received our *pay*. This seemed to me another bit of farce comedy. If working men are taken from their bread-winning to serve the State, why not pay them what they lose by absence from their labors, or else pay them nothing at all? I received five dollars for several weeks' toil, with nothing for the exhaustion of nerve tissue, and the shattering of ideals. I said to the young man from Harlem, "Come to Del's and blow it in for a dinner." We had a nice little dinner and the bill was eight dollars and a half, and I was glad of it, because it emphasized the humiliation.

I now regard jury summons with more intelligent disapproval than ever. I remember hearing of an old man who, while watching his house burning, turned to the crowd and said, "Really someone ought to brace up and do something." And so in regard to the present jury system, I say, from my very finite and extremely lay point of view, "Oh, gentlemen of the most learned and brilliant and most exhaustive profession on earth, really some of you ought to brace up and do something!"

BRUMMEL.

LONDON LEGAL LETTER.

LONDON, April 7, 1894.

THE Annual General Meeting of the Bar took place this afternoon in the spacious hall of Lincoln Inn. The Attorney-General, Sir Charles Russell, presided; on his right sat Sir Henry James and Sir Edward Clarke, on his left the Solicitor-General and Sir Richard Webster. Other eminent men clustered round, and every inch of space was occupied. The occasion of so much interest in these usually dull and formal proceedings was the intimation that Mr. Crump, Q.C., was at last to submit to the Bar of England his cherished project of a Bar association. I have so often obtruded this topic on the attention of your readers that I must not do more than refer to this afternoon's gathering. Those in favor of superseding the Bar Committee by a great central organization which should gradually absorb the powers of the Inns of Court and educe order out of chaos, assembled with high hopes at Lincoln Inn; a smile of coming triumph played on the pleasant countenance of the leader of the movement, for the agitation now purports to rank as a movement, and it was whispered that the hearts and imagination of English lawyers were stirred at the prospect of their scattered segments being at last fused into an imposing unity. It was not long before the facts of the situation were revealed; the audience at least maintained its gravity and indicated its respect while Mr. Crump developed his now familiar ideas on the subject with an ardor of manner well calculated to represent the depth of his personal conviction; but when the course of the subsequent discussion disclosed that the so-called movement was almost entirely supported by the babes and sucklings of the profession, who seemed to be utilizing the occasion as an opportunity of practicing public speaking, loud merriment became the prevailing rule. One callow youth after another rose to demand further organization for the profession, and as the tide of juvenile indignation against existing systems ebbed and flowed, one profound conviction swayed the legal throng, to wit, that no further oratory should be tolerated. Accordingly loud shouts of applause greeted the chairman when he rose and called on Mr. Crump to reply to his adversaries. Sir Henry James and Sir Richard Webster had proposed an amendment referring the present constitution of the Bar Committee to the consideration of a special committee, which of course was equivalent to politely shelving the question. When the vote was taken, Mr. Crump was left in a hopeless minority. The Bar went solidly for use and wont. The pros and cons of the matter I have wearied you with often enough before without repeating them now.

Since last I wrote we have lost Lord Hannen and Sir James Fitzjames Stephen. The character of the former is now too familiar to require an appreciation of one of the most dignified figures that ever graced any bench. As to Sir James Stephen, he was one of the foremost lawyers of his time, and yet his greatest admirers would not style him a great judge. He was an exceptionally strong man; if one may be paradoxical, with certain weaknesses of intellect and heart he would have been greater and stronger; but he was what he was, one of the most unique figures that have sat on the English bench in recent times, yet not one of the greatest judges. An intellect wider than was necessary for being even a great judge, rather that of the man whose business it is to determine the legal rules which other men as judges are to interpret than to be an interpreter of such himself. What has been said is not for the purpose of enabling a bystander to go away and allege that Sir James Stephen was unfit for the bench; he was admirably fitted for that exalted vocation, but on a critical estimate of his character and attainments it must inevitably be recorded that *inter judices* he was not of the foremost; moreover, it must not be forgotten that he was one of the first journalistic writers, one of the most considerable thinkers of our day, while the writings which bear his name authenticate his rank as the most accomplished and scientific exponent of the criminal law of England and a jurist of whom the ancient or modern world would have been proud.

Does the Lord Chief Justice sleep while engaged in the discharge of his exalted functions? Such is the impious question which most English

lawyers who have occasion to practice before him would answer in the affirmative, relying on the accumulated experiences of mankind as to the physical appearance of persons in that restful state, for Lord Coleridge in the course of a trial will close his eyes, and allow his head to fall on the desk, and subsequently appear unconscious of much that has taken place in the meantime. Can anyone wonder under these circumstances that the accusation finds currency?

It is only just, however, to state that the Lord Chief Justice himself denies the imputation, alleging that he is never more acutely receptive of the argument presented to him or more alive to the forensic situation than when he adopts this demeanor, which ordinary mortals have thoughtlessly regarded as incompatible with due judicial vigilance. A problem thus insoluble in our own day we present for elucidation to the legal historian of the future.

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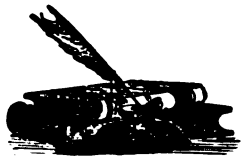
The Lawyer's Easy Chair.



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

BY IRVING BROWNE.

CURRENT TOPICS.

DAVID DUDLEY FIELD. — The death of this great lawyer and jurist took his family and the world by surprise, although he had passed his eighty-ninth year. He had just returned from a visit in England to his daughter, Lady Musgrave, and a sojourn in Italy, and was apparently full of vigor and his usual high spirits. But a serious attack of the grip two years ago had insidiously sapped his strength, and he fell a victim to pneumonia in a few hours. Except for a slight stoop and a little deafness, and the failing of sight ordinary in persons of his years, Mr. Field seemed in perfect health and strength, and not unlikely to achieve his often declared purpose of living to the age of a hundred years.

Our estimate of Mr. Field was fully and honestly expressed in volume third of the GREEN BAG, page 49, and it is not necessary to reiterate it. In him has passed away the most conspicuous legal figure of the world for the last half century. Undoubtedly he was the best known and most widely celebrated lawyer of that period, at home and abroad. His labors in domestic law reform had made his name the most familiar and his reputation the most commanding in this country, and his achievement in international law and law reform had given him an extensive influence in England, on the continent of Europe, and indeed in almost every part of the world where law is prevalent and respected and where there is any desire to make laws better.

Mr. Field was in a great legal practice and had a commanding influence in our courts until he retired, less than ten years ago. In his later years he took only such cases as he desired, and was in constant request as a counsellor where vast financial interests were involved, either of an individual or a corporate character. It is understood that he had accumulated a large fortune in the active practice of his profession and by judicious ventures and investments. He had an extremely practical mind, and was a very sagacious man of business, not only as an adviser but in his own affairs — a combination not very often occurring, for lawyers are quite generally, we believe, rather inferior in judgment in their own business matters. Mr. Field by habit, induced by the necessities of his early years, practiced the New England thrift in small things, while in larger affairs he did not scruple to spend money liberally. He was aware that he had the reputation of being parsimonious and grasping, and several years ago he confided to us a fact which he would not have allowed to be heralded in his life, but which his death allows us to divulge: when Chief-Justice Taney died in penury, and leaving a daughter without means of support, there was a proposal among the national Bar to make some provision for her, but it moved so sluggishly and seemed so likely to fail, that Mr. Field voluntarily came forward and gave his personal bond to the clerk of the Supreme Court of the United States, conditioned to pay the daughter an annuity of five hundred dollars. This covenant he kept for eighteen years. It must be borne in mind that Mr. Field knew neither the Chief Justice nor the daughter at all, and that he did not at all approve the Chief-Justice's political sentiments, but what he did was for the honor of the Bar and to save the nation from discredit. The act was like him, and the omission to proclaim it was also like him. But he would not submit to imposition because he was a rich man. So when a pair of his old shoes was lost at the Delavan House in Albany, when he was a guest there — they were stolen from his door by some drunken assemblymen for a lark — he made the landlord send out and buy him a new pair of four dollar shoes. The landlord subsequently found the missing shoes and sent them to him with a sarcastic note, and Mr. Field returned the new ones, observing that he liked the old ones a great deal better. His stalwart and noble figure, clad in that old gray suit, with that time-honored blue or red necktie — the one gaiety he indulged in dress — and in those old shoes, was one that commanded respect, and there were few indeed fit to stand in those shoes.

Mr. Field had a perfectly adequate estimate of his own powers and the value of the exercise of them, and he was not at all modest in his charges. He believed thoroughly in giving the very best of his talents to his clients and then in charging them what he thought they were worth. On one occasion, as he told us, he was employed by a great corporation

to write an opinion on a matter of vital moment to its interests. He bestowed several days on it and charged, as we recollect, five thousand dollars for it. The corporate officers were astounded by the amount. Mr. Field said: "Why did you come to me? You knew that I am not a cheap lawyer. You knew that you could get an opinion to the same effect for a fifth of the money from any one of half a dozen lawyers" — naming them — "which would have commanded respect, but for some reason you came to me. Now I think you came to me because you believed that my opinion would be more influential in effecting the result which you desired, and I believe that end has been accomplished, and that my opinion contributed largely toward it. Am I not right?" The officers could not gainsay these allegations. "Very well, then, gentlemen, you have benefited to a vast amount through my opinion, and you must pay me my charge, which, all things considered, is a very small one." They paid, and they kept on paying his charges.

Among Mr Field's most striking personal peculiarities was his violent hatred of tobacco. He could not endure tobacco smoke, and he was shut out from many public occasions by his sensitiveness in regard to it. It was very amusing to smokers to hear him rail against smoking, and especially his comments on the slavery of mankind to a habit which compelled public carriers to furnish separate vehicles for their indulgence in it — "worse than cattle cars," he used to call them. One of his best written papers is a diatribe against tobacco.

This leads us to speak of his rhetorical style, which is remarkable for its beauty and simplicity, its originality, vigor, and absolute clearness — an absolutely flawless style, peculiar to the man, and as characteristic as that of Lincoln or of Grant. His written style, considering the intense earnestness of his nature, the strength, not to say violence of his convictions, and the antagonisms which he aroused, and gloried in arousing, was noticeable for its moderation and large minded candor.

Another characteristic of Mr. Field, which we believe we have never alluded to, was his optimism. He believed that the world was better than in former times and constantly growing better. He was no *laudator temporis acti*. He was almost always hopeful, and if ever despondent, only for a moment. He even thought it wonderful that the city of New York is not worse governed! Could anything be said more indicative of his intense optimism? Once when the writer of these lines was dining with him and his brother, the Reverend Henry, the conversation turned on some recent disheartening public event. With a deep sigh, the great lawyer exclaimed, "I tell you, Henry, it is a bad world, a bad world!" Just then his eye rested on a glass of wine at his elbow — he drank wine in moderation — and taking it up, he added, with a beaming face, "But there *is* a great deal of good wine in it!"

Of course it is as a law reformer that Mr. Field has earned his chief celebrity, and must live, and will live, in history. He was of the intrinsic stuff of which great reformers are made — such as Bentham and Brougham — independent, fearless, resolute, uncompromising, obstinate, indomitable, untiring, combative, enjoying intellectual strife, but with a high, pure, and unselfish moral end in view. Of what other man of this century can it be said that he devoted fifty years to the amelioration of the laws and the advocacy of national brotherhood and humanity, and that too without one cent of compensation or reward? He hated, with a holy hatred, all things cruel, barbarous and oppressive. He hated war and preached national arbitration. He hated cruelty to animals and children, and advocated their efficient protection. He hated craft and inequality in the frame and in the administration of the laws, and fought for and brought about their simplification and amendment. He may be said, without any exaggeration, to have stamped his impress on the laws of twenty-six of these States and Territories, to have furnished the model for much of the prevailing English system, and to have inspired the great and growing preference for a scheme of written and certain law which must in time be universally substituted for our present codeless chaos.

LORD JUSTICE BOWEN. — Quickly following the death of Lord Justice Stephen, and almost simultaneous with that of Mr. Field, comes the death of Lord Justice Bowen. The career of this distinguished and very accomplished man is a cogent evidence that literary tastes and accomplishment need not stand in the way of complete success at the Bar. Of the last generation of lawyers, this gentleman was perhaps the most celebrated for the successful mingling of law and literature. Not only was he remarkable for an excellent rhetorical style and a fondness for engrafting the graces of literature on the somewhat arid stock of the law, but he also had marked poetical gifts and a deep affection for the classics, which led and enabled him to make a rhythmical version of the first six books of the Æneid which will always command a highly respectable rank in poetical translation. It is noteworthy that the great public Englishmen have frequently evinced this taste and somewhat of this talent, as in recent days has been observed in Gladstone and Derby. Lord Justice Bowen had a sound legal sense and a very correct power of dis-

crimination, as well as a temperance of judgment and a considerateness of temper which rendered him a just and useful magistrate — not perhaps of the very highest rank, but eminent in the second class. He was also a brilliant wit, we infer; at least, considering the solemn and insincere formality of the meetings of lawyers in memory of recently deceased brethren, nothing wittier was ever uttered than his *sotto voce* aspiration, at a late assembly of this kind: "Let there be no moaning of the Bar when I go out to sea." That ought to be capable of making even Tennyson laugh, although he probably regarded parody of his verses as little less than sacrilegious. Judging from the tone of the London legal press, Lord Justice Bowen must have been very highly esteemed at home as a man, a lawyer, and a judge, and certainly in this country he has been regarded with the highest respect and admiration.

A NEW TOOL FOR LAWYERS. — So long as the curse of case-law rests on our profession, so long it will be necessary to provide new and constantly improving tools for digging it out. Every year brings report of twenty-five or thirty thousand new cases, and these must be presented and arrayed, from time to time, in some accessible form and convenient manner. The very latest endeavor toward this end is a series of English "Ruling Cases" (we should here call them Leading Cases), arranged topically, and annotated with English notes by Mr. R. Campbell, a well-known associate editor of the new Revised Reports conducted by Sir Frederick Pollock, and with American notes by Irving Browne. This great undertaking will begin with "Abatement" and end, we suppose, with "Witness." There are manifest and essential advantages in the topical over a chronological arrangement. It dispenses with the constant tedious "harking back" and a tiresome handling of many volumes, and down to the date of issue presents one consecutive and comprehensible view of the law on the particular subject. The annotation in question will be specific rather than excursive and monographic, as it should be under this form of arrangement. The dimensions of the work will allow this, inasmuch as leading judgments on every general legal doctrine will be furnished; and repetition of annotation will be avoided. This we have always believed to be the right theory of annotation. Notes cannot usefully take the place of text-books. There is something speciously attractive in the sound of "monographic notes," but our practical experience leads us to be rather impatient with them when we are busily and hastily in search of the doctrine on a subordinate point of a somewhat extensive branch. For imperious family reasons it is not permitted us to comment on the notes of the American editor in the present series, but we may without offense be allowed to speak well of those of the English editor, which seem to us models of this kind of writing. The work is from the press of Messrs. Stevens & Sons, of London, and is internationally copyrighted; the first volume is nearly ready for market, and the Boston Book Company are the agents in this country.

QUEER CASES. — To our recollection there never before were so many strange and novel lawsuits waged as during the last year, both in England and America. A good many of these we have commented on in these columns last month and in the present number. The offensive and demoralizing action of Pollard *v.* Breckenridge, recently concluded at Washington, may perhaps not properly be termed a queer case, for there is nothing queer in the unsavory disclosure of human nature made in it, but it is certainly a very remarkable case of the stripping off the disguising robes of piety and respectability from a sensual old humbug. It must be "nuts" to Professor Briggs to witness this exposure of his prosecutor and persecutor in the recent great heresy trial, whose Calvinism was so much better than the Professor's, but whose morality is apparently so much lower. But the very queerest case of all ever waged in courts of justice is that of Russell Sage, sued by the gentleman whom he interposed as a shield between himself and the dynamiter's bomb, under the guise of a friendly hand-shake. Since this was chronicled in these columns the new trial has taken place and resulted in a verdict of $25,000 for the plaintiff. It may be that it was a question of fact whether the defendant's act was designed for the purpose of his own protection, or whether it was involuntary, nervous, and hysterical, so to speak. At all events, it has thus far proved a very expensive "put" for Mr. Russell Sage, and is a loud "call" from the plaintiff. Sage should economize enough to make it up, in that building-gift which he is bestowing on the Troy Female Seminary.

THE SOUTH CAROLINA LIQUOR LAW seems to have come to sudden grief in the courts. Nothing remains but for the governor and the temperance party to contrive a new law which shall avoid the unconstitutional features of this. Such a law however would apparently prove very much less efficient and much more readily evaded. It has thus far seemed impracticable to devise and enforce any law which shall defeat the appetite for strong drink with which one half the community are afflicted, at least, one-

half the adult males of every community, and a good many of the females. It is observed that in Vermont there is lately a great deal of discontent with the working of the liquor laws, many asserting that the expense is out of proportion to the results. Thus far in the history of the world it has proved idle to legislate strictly against the sexual passion and the thirst for strong drink.

SPECIAL COMMITTEES OF THE CONFERENCE ON UNIFORM LEGISLATION. — Mr. Henry W. Beekman, of the city of New York, president of the conference of commissioners for the promotion of uniformity of legislation in the United States, held at Milwaukee, last year, has appointed the following special committees. The residences of the members may be ascertained by reference to volume five of the GREEN BAG, page 476: —

COMMITTEE ON WILLS. — Messrs. Browne, Spring, Pattee, Woodward, and Sullivan (Oxford, Mississippi).

COMMITTEE ON MARRIAGE AND DIVORCE. — Messrs. Richberg, Bennett, Snyder, Parker, and Cutcheon.

COMMITTEE ON COMMERCIAL LAW. — Messrs. Beekman, *ex officio*, Brewster, Stimson, Green, Meldrim, Monaghan, Bennett.

COMMITTEE ON DESCENT AND DISTRIBUTION. — Messrs. Brewster, Jones, Chapman, Corbet, Buckalew.

COMMITTEE ON DEEDS AND OTHER CONVEYANCES. — Messrs. Jones, Smith, Thomson (Brookhaven, Mississippi), Newton, and Hill.

COMMITTEE ON CERTIFICATES OF DEPOSITIONS AND FORMS OF NOTARIAL CERTIFICATES. — Messrs. Leeper, Smith, Spring, Johnson, Green.

COMMITTEE ON UNIFORMITY OF STATE ACTION IN APPOINTING PRESIDENTIAL ELECTORS. — Messrs. Buckalew, Browne, Cutcheon, Crouse, Chapman.

COMMITTEE ON WEIGHTS AND MEASURES. — Messrs. Stimson, Meldrim.

EXECUTIVE FIMANCE COMMITTEE. — Messrs. Beekman, Snyder, Bennett, Brewster, Buckalew.

FINANCE COMMITTEE. — The Chairman of the respective State Commissions constitute a Finance Committee for the Conference.

THE PARIS LAW COURTS. — This is the title of a recent book, translated from the French and published in England. The authorship is anonymous, but it purports to be the production of a number of young advocates who are engaged in journalism. There is a certain advantage in this suppression of names and in the joint authorship; for the authors, not having the fear of judges before their eyes, are unsparing in criticism, and institutions are scrutinized from different individual points of view. The work has a solid foundation of history; indeed it is an exhaustive and comprehensible account of the somewhat complicated judicial system of France from the lowest to the highest courts. The historical view also embraces the famous buildings in which justice is dispensed, the court houses and the prisons, some of the latter having an extremely pathetic interest. The course of French legal education is also admirably described, and to an English or American reader is very curious. Not the least interesting part is that descriptive of the social habits of the Bar and Bench, which shows that human nature is a good deal alike on both sides of the channel and of the ocean. The forensic talents and habits of the Bar are also acutely portrayed. There could be nothing more admirable than the typical arguments here given on a proceeding in eminent domain — the only civil proceeding in France in which a jury is allowed, and it consists of ten — intended to disclose the peculiarities of the French modes of thought and reason and the French vivacity and exuberance of rhetoric, and yet showing the solid and serious substratum of argument which would be naturally addressed as well to an English or an American tribunal on such an occasion. On every page the book bears evidences of the acuteness, humor, candor, fearlessness, and devotion of a group of young, lively, and rather "briefless barristers" pronouncing their opinions upon their chosen and beloved profession and its ministers and agencies. Very striking is the observation made of one celebrated advocate, that in an important criminal case he would make twelve separate speeches to the jurymen, addressed to their respective characteristics and prejudices and all in widely different manners, acutely calculated to sway each peculiar understanding so appealed to. The volume is most admirably and copiously illustrated with cuts of buildings, persons and scenes, all in a masterly and striking manner. The book should be read in connection with Judge Dillon's new work, on which comment was made here last month. Each would lend interest to the other, and the comparison between the two systems and the national characteristics on which they are based will prove very impressive. They have no precedents nor civil jury in France, but one rises from the perusal of this charming volume with a strong impression that the French get on very well without them and that French justice on the whole is well conceived and effectively and impartially administered.

RURAL ADVERTISEMENTS. — "A bill is pending before the English parliament," says the "Michigan Law Journal," "which the legislators of this country would do well to consider. It is to prohibit advertisements in public places in rural districts. The preamble states that it is expedient to prohibit the

raising of unsightly erections which destroy the beauty of rural scenery in Great Britain and Ireland. No more laudable object could be sought. If some similar measure can be adopted to protect not only the rural scenery but also the 'suburban scenery' in this country, it will be appreciated by a disgusted public. The advertising fiend has placed his blighting mark upon both. Unsightly bill-boards have been erected at the most prominent points along every popular drive. Glaring circus bills cover the buildings within sight of the road. From the car windows, and from the cottage door at the resort, one can look on the beautiful scenery only to find it marred by an advertisement of some kind. Near every large city the highways, suburban and elevated railways, are lined with all kinds and varieties of signs and advertisements, oftentimes disgusting in character. Every State Legislature could not do better than to enact a law similar to the bill referred to." An act of this kind has been — we were about to say, in force, but more accurately should say — on the statute book, for many years in the State of New York, but we do not observe any diminution in the sign and advertisement nuisance. Bridges, fences, trees, rocks, are still debased with the appeals and puffs of hustling tradesmen and quack nostrum vendors.

NOTES OF CASES.

DANGEROUS PREMISES. — "In the recent Indiana case of Woodruff *v.* Bowen (34 N.E. Rep. 1113), it was held that the widow of a fireman cannot recover damages for his death caused by the collapse of a defective and dangerous building on which he was standing while fighting the flames. The fire had caught in the defendant's building and the plaintiff's husband went there at the call of duty. The building was weak in construction, and being stored with paper goods which absorbed the water that was poured in, it collapsed under the heavy weight. The court based its decision on the ground that the fireman was a mere licensee, and therefore the defendant had no responsibility towards him, except that of "abstaining from any positive wrongful act," the fireman being regarded as a licensee merely because the law gave him a right as against the defendant to intrude upon the premises for the public good. This from the "Central Law Journal," which continues: "It certainly accords much more with our sense of justice that the fireman's widow should recover some compensation for the loss of her husband. In the case of Law *v.* Railway Co., 72 Me. 313, decided by the Supreme Court of Maine, damages were awarded to a custom-house officer, who was injured by a defect in the defendant's wharf, while watching there to prevent smuggling. The case of a fireman who is killed or wounded, owing to the defective construction of the defendant's building, while endeavoring to save the defendant's property, seems in principle much stronger." We think the decision was right, but should prefer to put it on the ground that the defendant was only bound to make his building strong enough for ordinary purposes, and was not bound to foresee and provide against the additional weight of of water in case of fire. He is no more bound to do so than to make his building strong enough to resist an earthquake. In the wharf case the structure was dangerous even in ordinary circumstances, and the officer's errand was an ordinary one. A recovery in the principal case would be too fanciful. In White *v.* Colorado Cent. R. Co., 5 Dillon, 429, however, the defendant, storing goods carried over his line, at the end of his route, in a warehouse, was held liable for their destruction by a fire which the firemen were deterred from extinguishing, by the fear of a large quantity of gunpowder stored by the defendant in the same building.

THE SALOON NUISANCE. — Another novel Indiana case is Haggart *v.* Stehlin, 35 N.E. Rep. 997. A business block was built in a street previously used for private residences, and a saloon licensed by the county commissioners was opened in it, against the protests of the owners and occupants of the houses in the vicinity. The owner of an adjoining residence sued to recover damages for the injury caused by the proximity of the saloon, and produced testimony proving that her property had suffered damage on its account. The plaintiff's attorney took the ground that carrying on such a business is a nuisance of itself, tending to depreciate the value of property situated near it, and that damages must be given for such depreciation. The counsel for the defendant maintained that his license from the county commissioners, in accordance with an act of the Legislature of the State, was a sufficient answer and justification. If he violated his license, the law could punish him, but the incidental injury to property in the vicinity, resulting from the presence of a licensed saloon, was not sufficient ground for a suit to recover damages — otherwise the law must treat as an injury what it expressly authorized and sanctioned. The plaintiff recovered damages, and this was sustained, the Court observing that "the liquor business is immoral, licensed on that account by the State so that the community may have legal safeguards against the damages by the unrestricted sale of liquor. The rights of the citizen are not to be sacrificed because the liquor traffic is regulated by act of the Legislature,

and though the law licenses the saloon, it does not thereby confer the right to injure adjacent property. The law cannot authorize the creation or maintenance of what is confessedly injurious to any man's property unless a public benefit transcending the particular injury is thereby received. A saloon is a nuisance at law, and the person whose property is injured thereby is entitled to recover from the keeper damages equal to the injury sustained." This seems to us sound, except the assertion that "a saloon is a nuisance at law." This is certainly incorrect. The law cannot deem any business a nuisance absolutely when it is licensed by the Legislature, and the government derives a profit from it. It *may* be a nuisance in spite of all that, but it may *not* be, and *prima facie* it is not. Everything depends on the circumstances of its situation and the manner of conducting it. But radically the decision is right, because such a business is certainly not entitled to any more favor than a perfectly lawful business, like a livery stable, a slaughter-house or a brick-kiln, and if these injured adjacent property their proprietors would be answerable in damages.

WAGER INSURANCE. — Another very novel case is Trinity College *v.* Traders' Ins. Co., North Carolina Supreme Court, 18 S.E. Rep. 176, in which it is held, very properly, that a church has no insurable interest in the life of an attendant upon its services such as will sustain an insurance upon his life procured and paid for by the church. If the insured himself took out the policy and paid the premiums, and assigned it to the church, it would be valid under the decisions of New York, Massachusetts, Wisconsin and Pennsylvania, but invalid under those of the United States Supreme Court, Indiana, Kansas and Michigan. The principal case presented a very dangerous industry — it afforded an irresistible temptation to the clergymen to scare the insured to death by preaching of "judgment to come."

"OPEN AND UNBUILT UPON." — The dangers of definition are strikingly illustrated in Graham *v.* Corporation of Newcastle-upon-Tyne, 67 L. T. (N.S.) 790 where a conveyance was made to the purchaser of a house situated on one side of a square, the centre of which was much higher than the street, and was supported by a retaining wall. The conveyance contained an agreement by the Corporation of Newcastle, the vendors, that the garden or open space in question was for ever thereafter to be kept "open and unbuilt upon." The corporation afterwards cut a hole in the wall opposite the plaintiff's house, and excavated from the garden a space of about forty-six square yards for the construction of an underground urinal, with a roof of brick, cement, and glass, and having its entrance through the retaining wall. The corporation contended that this structure was no breach of the covenant, as the garden or open space would still remain "open and unbuilt upon" so as to allow of the free access of light and air, which was all that the covenant meant or implied, and this was the view which the Court of Appeal, affirming Mr. Justice Kekewich, adopted. "There is no covenant," said the Court, "that there shall be no building underneath the surface. We cannot read this covenant as restricting building below the surface. Why might not the defendants have built vaults beneath the surface if they only dealt with the surface as they were empowered to do?" The case would obviously be met by the addition of two words to the common form, making it run "open and unbuilt upon or under." A little more prepositional foresight was needed.

A NOVEL COPYRIGHT CLAIM. — Decidedly the most singular copyright claim ever urged was that described in the following, from the "London Law Journal": —

"In the case of Hanfstanegl *v.* Empire Theatre Company (Lim.) Mr. Justice Stirling last week decided, upon an interlocutory application, an interesting point under the Copyright Act, 1862. The plaintiff moved for an interim injunction to restrain the defendants from infringing his copyright in five pictures painted by foreign artists. What the defendants, according to the plaintiff's case, had done was to represent the principal figures in the pictures in question by living persons, with backgrounds painted in imitation of those in the originals. Was there an infringement on the plaintiff's copyright? Mr. Justice Stirling held that, in so far as the live figures were concerned, it was not; and we agree with him. The backgrounds, of course, may be an infringement if they are colorable imitations of the originals. We need not linger over that point. But for the suggestion that the representation of the figures in the originals by living persons was, or could be, an infringement of the copyright no authority was given; and there is, if we mistake not, tolerably strong authority on the other side, apart from the question whether, under the Copyright Act of 1862, reproduction in a form of sufficient permanence to permit of 'multiplication' is not a *sine qua non* to infringement. Dicks *v.* Brooks, 49 Law J. Rep. Chanc. 812; L. R. 15 Chanc. 22, in which a Berlin-wool pattern of an engraving of Millais' 'Huguenots' was held not to be an infringement, as it did not imitate anything that constituted the work of the engraver, is practically on all-fours with the present case."

In our judgment the plaintiff ought to have encouraged the show: it was an excellent advertisement of his paintings.

The Green Bag.

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

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 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 are indebted to an Oregon correspondent for the following: —

Editor of the "Green Bag":

DEAR SIR, — It has been truthfully stated, that law is not an exact science; its fundamental principles in innumerable cases have been passed upon and settled, yet there are constantly arising new circumstances, making necessary the interposition of our highest tribunals; and while our Supreme Courts are made up of the best of the profession and voice the collated learning of centuries, the very nature of our institutions has established a *quasi* judiciary, perhaps as remarkable for stupid legal misconstructions as the former are exact and just.

Until our entire system of inferior courts has been revolutionized, committing magistrates or justices of the peace, shorn fortunately in many of the older States of the importance of and extent of their civil jurisdictions, will remain and perform their humble part in the administration of justice.

Doubtless there are few lawyers, whose practice in early years may have taken them into country districts, but who will have recollections of the country justice; an intellectual type, whom none better than a lawyer can appreciate. Blessed with a profound confidence in his own knowledge, now and then cracking a joke with counsel, and as the hour for action approaches, seating himself upon a rickety chair behind a small table which has apparently done service in the family for at least two generations, surrounded by an open mouthed, expectant audience, baring his noble brow to the vulgar gaze, and with apparent feelings of regret, temporarily arraying himself with all the attributes of judicial dignity, he resolves himself into a court.

A tale, perhaps now twice told, is related of a certain justice of the peace from the State of Iowa, most learned in the law, who previous to the trial, having arrived at a conclusion upon a question of law highly satisfactory to himself, refused to entertain an argument by the opposing counsel. "If your Honor pleases," counsel pleaded, "I should like to cite a few authorities upon the point"; here he was sharply interrupted by the justice who stated "The Court knows the law, and is thoroughly advised in the premises, and has given his opinion, and that settles it." "It was not," continued counsel, "with an idea of convincing your Honor that you are wrong, but I should like to show you what a d——m fool Blackstone was."

To intrust men of little learning and no legal attainments with a jurisdiction of two hundred and fifty dollars, as is done in many of the States, often works many hardships, and seldom justice to litigants. Unjust claims brought by irresponsible persons, too trifling to appeal, are made to assume the dignity of judgments, for as is often remarked they are distinctively plaintiff's courts, and thus the administration of law becomes a parody upon justice.

A judgment record in a recent case before a "country justice" presents a most logical example of the possibilities of human misunderstanding and misconstruction of the laws. John Doe sued Richard Roe upon a promissory note, principal and interest amounting to one hundred and ninety-five dollars, and garnished forty-three and eighty one-hundredths dollars in the hands of one Smith, due to the defendant, also the further sum of one hundred and eighty and fifty one-hundredths dollars in the hands of one Brown, which by his return into court he owed to Smith. It also appeared that Smith owed the defendant the sum of three hundred and fifty dollars. Judgment upon the note having been granted, and after the examination of the garnishees, the justice gave and entered exactly the following: "The evidence being closed, the *course* was submitted to the court for consideration and decision and after due *deliveration* thereon the Court find, that there is sufficient money in the hands of the garnishees, viz.: 'Brown' in the sum of one hundred and eighty and fifty one-hundredths dollars, and in the hands of 'Smith' the sum of forty-three and eighty one-hundredths dollars, and ordered that judgment be entered herein in favor of plaintiff, John Doe, in accordance therewith.

—— this third day of January, 1894.

Justice of the Peace,"

From which it appears that because 'Brown' and 'Smith' are so unfortunate as to possess the sums mentioned, and despite the fact that no privity existed between 'Brown,' and the defendant, yet judgment should be entered against them, and in favor of the plaintiff.

There can be no question that, in all communities, a certain degree of intelligence and standard of legal knowledge should be required from those elected or appointed, and for the time invested with the dignity and authority of a justice of the peace.

CHARLES FREEMAN LORD.

PORTLAND, OR., March 12, 1894.

RECENT DEATHS.

PROFESSOR WILLIAM G. HAMMOND, Dean of the Saint Louis Law School, died at Saint Louis on April 12. Dr. Hammond was educated at Amherst, practiced law for a time in New York, and then went to Iowa and opened an office at Anamosa.

A year after the organization of the Iowa Law School in Des Moines, he was called there as a member of its faculty. In June, 1868, the Board of Regents passed resolutions establishing a Law Department in the University. At a special meeting of the Board in September some changes were made in the organization of the department by incorporating with the Law Department the Iowa Law School, which had for three years been in operation in Des Moines. The Faculty of the Iowa Law School became, by action of the Board, the Faculty of the Law Department of the University, and Wm. G. Hammond was made the head Chancellor of the Department and University Professor of Law.

In 1881 he became the Dean of the Saint Louis Law School.

Dr. Hammond was one of the leaders in legal education in the United States from the time of his taking charge of the Law Department of the State University of Iowa until his death, and his labors in connection with the committee on legal education in the American Bar Association and in the organization of the section on legal education in that association are well known to law educators.

His published works include, A Digest of Iowa Reports, issued in 1867; an edition of Saunders' Justinian with an elaborate introduction on the nature of law in general and of the civil law; an edition of Lieber's Hermeneutics; and his edition of Blackstone of a few years ago containing elaborate notes principally on the history of the law. His lectures on the history of the Common Law, about thirty in number, have been delivered at the Boston Law School, at the Law Department of the State University of Michigan and at the Law Department of the State University of Iowa. They were planned, and to some extent written, while he was still the Chancellor of the last named school and were given to his students as a part of his course of instruction there. His design was to complete this course of lectures and publish it as a student's "History of the Common Law," and it is believed that they have been so far perfected that they may be published substantially in the form in which he intended them to appear. He was pre-eminently the authority in this country on that subject, and his lectures if published would be of the highest and most permanent value.

His loss will be sorely felt by all his old students, between whom and himself there existed the warmest friendship. It will be felt in the profession who have learned to know him through his writings. It will be felt in the world of letters in that an author and man of eminent scholarship is no more. It will be felt by all who knew him in that so much that was good and true in him goes from us in his death.

FACETIÆ.

SCENE ON A RAILROAD CAR. — Mr. Knowlittle (stranger traveling in New York): "Why! what do they have that ax, saw and crowbar up there for? I never saw them on trains in the West." Jackson Dean (*en route* court of appeals). — "Well, when they have a collision, the brakeman has orders to take down the ax and kill the injured, because in case of death five thousand dollars is the limit of damages." — *Judge.*

THE following is a true copy of an indictment found a few years since by the grand jury of Lawrence County, Ky.:

"Lawrence Criminal Court.

Commonwealth of Kentucky against —— Defendant. —— Indictment. The grand jury of Lawrence County in the name and by the authority of the

Commonwealth of Kentucky, accuse —— of the offense of malicious mischief, committed as fellows: The said ——, on the — day of —— A. D. 18—, in the county and circuit aforesaid, did unlawfully, willfully and maliciously kill and destroy one pig, the personal property of George Pigg, without the consent of said Pigg, the said pig being of value to the aforesaid George Pigg. The pig thus killed weighed about twenty-five pounds and was a mate to some other pigs that were owned by said George Pigg, which left George Pigg a pig less than he (said George Pigg) had of pigs, and thus ruthlessly tore said pig from the society of George Pigg's other pigs, against the peace and dignity of the Commonwealth of Kentucky."

THE following incident in which the jury understood the game and justice was administered despite the ignorance of judge and solicitor, took place at the term of Rowan Superior Court, held in Salisbury, N.C., in February, 1894: —

"John Jones, come to the stand. Have you been sworn?"

"Yes sir."

"Now, if you saw this fight go on, in your own way tell the court and jury how it started."

"Well, you see, Will Brown, John Simons and Whack Lamper was playin'. Brown opened a pot for five, Simons stood and Whack he riz him five and they all stayed. Then cards were call — "

"See here, we don't know what you are talking about. Begin over."

"They was a playin' and Brown he opened a jack and Simons stood. Whack, he riz — "

"Now stop. You say Brown opened a jack. What did he do with it when he opened it?"

"Jest nothing. Jest opened it, and Simons he stood and Whack riz —— "

"Now wait. What was Whack doing before he 'riz,' as you call it?"

"Whack never did call it; he was skeered."

"Answer my question. What was Whack doing before that?"

"Nothin', just a sittin thar."

"Oh well; go on and tell what you know, if you know anything, and then be seated."

"Brown stood pat, Simons drew to an inside straight and Whack drew to threes. Brown said he was ten velvet and would bet that Simons wouldn't call it and Whack thought Brown had a full house and said a dealer couldn't open a jack. Brown said he could and then they got into it."

The defendants having no counsel, and in further consideration of his absolute ignorance of what they were playing, the solicitor left it to the charge of the judge, which was about as follows: —

Gentlemen of the jury, Will Brown and Whack Lamper are indicted for an affray. John Jones testified that Brown opened his jack knife and Lamper arose from his chair and after a few words struck Brown. If you believe the evidence of Jones they are both guilty. Take the case.

One of the jury who knew the game explained it to the rest, and the verdict was that only Lamper was guilty, as a dealer did not have the right to open a jack.

NOTES.

IN an old English chronological work, under the heading "Tea," may be found the following brief notice: —

"Tea destroyed at Boston by the inhabitants, 1773, in abhorrence of English Taxes; for which they were severely punished by the English Parliament, in April, 1774."

THE use of the telephone to intimidate prisoners is the invention of a police inspector at Odessa. A man was one day brought into the police station, charged with having committed a serious robbery. The inspector had some difficulty in proving the case, and had recourse to an ingenious stratagem. He went to the telephone in another room, and asked the clerk at the central office to speak into the instrument the following words, in a solemn tone: "Istno Smelianski, you must confess the robbery; if you don't you are sure to be sentenced, and your punishment will be all the more severe."

He then sent for the prisoner and questioned him again, threatening to appeal to the "machine" to get at the truth. The thief burst into a laugh, but the inspector held the telephone to his ear, and gave the preconcerted signal. The result was as expected. The rogue, terrified by the warning uttered by the uncanny "machine," at once made a clean breast of it.

THE following sample of equity pleading in the courts of the far West is to be found in a voluntary petition by a debtor in insolvency: The learned counsel in citing the causes that led to the financial downfall of his unfortunate client, alleged the following: —

"That in consequence of wet season, grain drounding out, and dry season, and depreciation of the circulation of money, and low prices for wheat, your petitioner has become, and is insolvent."

A HINT TAKEN.

STRANGE a successful lawyer should be shy!
And yet how often, in affairs of love,
The tongue its happy cunning will belie;
As pretty Claire's experience may prove.

She knew that Jack adored the very ground
Her dainty feet had walked on. Yet in vain
She gave him hints, and sweet excuses found
Long arguments most tender to maintain.

At last a happy thought! She asked, one day,
If he choice books upon the law would lend.
"Be sure," she told him in the gravest way,
"Delighted I shall be with all you send."

"Pray name," he said, "the books you wish to read,
And them with utmost pleasure I'll procure
For you." "'The Laws of Partnership,' indeed,
And 'Marriage,'" she replied with smile demure.

Then as she stood with half averted head,
Her laughing eyes by wondrous lashes hid,
"Supposing," with a sudden fire, he said
To her, "we make them for ourselves?" They did.

CAROLINE H. THAYER, *in Munsey's Mag.*

THE following clipping from "Reynold's Newspaper," published in London, in the issue of February 4, 1894, would seem to indicate that in England not only must a suitor come into court with "clean hands," but also with a clean face: —

FINED FIVE SHILLINGS FOR A DIRTY FACE. — "CONTEMPT" OF COURT. — At the Colne Police Court the other day, Thomas Barley, moulder, Colne, ignorant of the shock he would inflict on the judicial mind of the administrative Bench, appeared before their worships fresh from the moulding shop. He turned up "as black as a nigger," and gave one the impression that he had just been sweeping his dwelling-house chimney, which, as a matter of fact, he was summoned for having on fire. However, he had to listen to an indignant flow of language from the chairman's lips, and instead of only being ordered to pay the costs, got 5s. put on the top of it for not washing his face.

LITERARY NOTES.

HARPER'S MAGAZINE for May is strong in fiction. Besides the fifth installment of Mr. Du Maurier's novel, "Trilby," which grows more delightful at each step, there are the first chapters of a charming two-part tale of Kentucky life before the war, by James Lane Allen, and six short stories. These are "The Miracle of Tisha Hofnagle," by R. C. V. Meyers; "At Chenière Caminada," by Grace King; "A Note of a Philogynist," by Marion Wilcox; "The Exiles," by Richard Harding Davis; "A Kinsman of Red Cloud," by Owen Wister; and "The End of an Animosity," by L. Clarkson.

THERE are several contributions to the May ATLANTIC worthy of more than common note. One of them, "From Blomidon to Smoky," is the first of a series of four articles by the late Frank Bolles. The papers represent his last studies of nature, and were his last literary work. They were all the outcome of a summer excursion through Nova Scotia in 1893. The memory of Francis Parkman is honored by articles from his fellow-historians, Justin Winsor and John Fiske. Gilbert Parker, the young Anglo-Canadian, whose stories are coming more and more into notice, contributes a tragic tale of the Hudson Bay Company, "Three Commandments in the Vulgar Tongue." Mrs. Deland's serial, "Philip and his Wife," proceeds, in company with attractive papers of literature, art, and travel.

IN the May SCRIBNER'S MAGAZINE, F. J. Stimson writes a brief essay on "The Ethics of Democracy" with particular application to liberty — an essay that is of unusual significance at the present time when socialistic laws are so much discussed. Mr. Stimson has classified the laws of this kind which have been recently added to the statutes of various States.

A GREAT Grant number, in token of General Grant's birthday, April 27, describes in a word McCLURE'S MAGAZINE for May. General Horace Porter, a member of Grant's staff, his Assistant Secretary of War, and, during the first term of his Presidency, his private secretary, writes of his personal traits, particularly of his truth, courage,

modesty, generosity, and loyalty. An interview with Colonel Frederick D. Grant records the impressions of the son who was General Grant's daily companion in the field through a good part of the war, and who lived always near him to the end of his days. General O. O. Howard and General Ely S. Parker supply some reminiscences; and an autograph letter written by Jesse R. Grant, General Grant's father, in 1865, gives a most interesting glimpse into Grant's life and character. Finally, under the apt title of "General Grant's Greatest Year," Mr. T. C. Crawford tells the story of the noble and heroic last year of Grant's life. Scattered through these articles and making up also the department of "Human Documents," is the most remarkable series of Grant portraits ever published, if not ever collected, many of them being from rare photographs supplied by Colonel Grant.

THE May "ARENA closes the ninth volume of this leader among the progressive and reformative reviews of the English-speaking world. The table of contents is very strong and inviting to those interested in live questions and advanced thought. Among the important social and economic problems discussed and ably handled in a brave and fundamental manner, characteristic of this review, are "The First Steps in the Land Question," by Louis F. Post, the eminent Single-Tax leader; "The Philosophy of Mutualism," by Professor Frank Parsons of the Boston University Law School; "Emergency Measures for Maintaining Self-Respected Manhood," by the editor of "The Arena." The Saloon Evil is also discussed in a symposium.

BOOK NOTICES.

LAW.

"THE PATTEE SERIES." Illustrative Cases for Law School Use. By W. S. PATTEE, LL.D., Dean of College of Law, University of Minnesota, assisted by PROF. JAMES PAIGE, LL.M. of the same college. T. & J. W. Johnson & Co., Philadelphia.

The author's design in presenting this series to the profession is to furnish "Illustrative Cases" upon all the important branches of the law. The volumes already issued cover Contracts, Personalty, Domestic Relations, Land, Realty, and these are to be followed by Torts, Pleading, Agency, Criminal Law, Commercial Paper, etc.

Prof. Pattee says: "It is the object of this entire series to make a clear and accurate statement of that part of jurisprudence with which the several volumes respectively deal, and to accompany each statement with a case illustrating its application. Such a combination of principle and 'Illustrative Case' aids both the understanding and the memory. In addition to this advantage, the numerous cases and authorities cited, which the student is expected to read, furnishes an opportunity for him to examine the principle in its applications to facts and circumstances greatly varying in their nature, interest and importance.

"Being 'Illustrative' of the principles considered, I have deemed it desirable to select American cases rather than English, as the student will find an advantage in being familiar with the reports of his own country in the early days of his practice. English authorities, however, are not ignored. They are frequently cited in the notes, it being our object to familiarize the pupil with the history and growth of each principle to which we direct his attention."

From a somewhat limited examination of the volumes already issued, we should judge that the cases had been carefully selected and that they well and fully illustrate the points in question. Used in connection with standard text-books the series should prove a valuable aid and assistance to the law student. We commend them to the attention of teachers in our law schools, believing they will find them worthy a careful examination.

CASES ON CONSTITUTIONAL LAW. With notes. Part I. By JAMES BRADLEY THAYER, LL.D. Charles W. Sever, Cambridge, 1894. Cloth. $3.00.

This is the first part of a collection of cases on Constitutional Law which will soon be followed by a second volume completing the work. Of the value of these cases both to the student and the practitioner there can be no doubt, and when to a most admirable selection are added such exhaustive notes as those of Professor Thayer the work becomes an invaluable guide to this important branch of the law.

HAND-BOOK OF CRIMINAL LAW. By WILLIAM L. CLARK, JR. West Publishing Co., St. Paul, 1894. Law sheep. $3.75.

This work is just what it purports to be, a hand-book of Criminal Law. It contains a concise statement of the general principles of criminal law, and these principles are discussed and illustrated in the subsidiary text, While it will not take the place of the standard treatises upon the subject, it will be found of value to both student and practitioner as containing within a moderate compass a great deal of practical information.

A Treatise on the Law of Mortgages of Real Property. By Leonard A. Jones. Fifth edition. Houghton, Mifflin & Co., Boston, 1894. Two vols. Law sheep. $12.00, net.

The numerous editions through which Mr. Jones's works pass are the best possible evidence of their sterling worth. Few, indeed, of our law writers can boast such a record of unqualified success in legal literary work as the author of this treatise on Mortgages of Real Property. The reason is not far to seek. Painstaking, conscientious work, combined with good judgment and excellent discrimination, are the traits essential to the making of a good law book, and these Mr. Jones possesses to a remarkable degree. The present work is so well known to the legal profession that any comment on the treatise itself would be superfluous. It is sufficient to say that it is by far the best treatise on the subject of which it treats. Although it is but five years since the last edition appeared, the necessity for another is apparent when it is stated that during that time some four thousand decisions have been rendered which are now embodied in the new edition. Other changes and improvements have been made, and, in its present form, the work is practically perfect. It will be cordially welcomed by both Bench and Bar.

MISCELLANEOUS.

Out of Bohemia, a Story of Paris Student-life. By Gertrude Christian Fosdick. George H. Richmond & Co., New York, 1894.

Her evident acquaintance with the "Latin Quarter" has enabled the author of this little book to give a delightful description of that most "Bohemian" of all localities. Under the guise of a charming love story, the reader is given an insight into artist life in Paris, and the perils which beset a young girl who visits that city alone for the purpose of studying art are plainly set forth. The book is well written and there is a thoroughly French flavor to it which gives a decided piquancy to its tone.

By Moorland and Sea. By Francis A. Knight, illustrated by the author. Roberts Brothers, Boston, 1894. Cloth. $1.50.

That Mr. Knight is a keen lover of nature, no one, after reading this book, can doubt. Its pages are filled with delicious bits of description, and are pervaded with the very spirit of out-door life. Whether on the open sea, on the moorlands or in the forest, the author is equally at home, and finds in all real inspiration. The book is a delightful one in every way, and the author's illustrations are in keeping with the text.

Abraham Lincoln's Complete Works. Comprising his speeches, letters, State papers and miscellaneous writings. Edited by John G. Nicolay and John Hay. The Century Co., New York, 1894. Two volumes. Cloth.

Rarely, if ever, has a more valuable contribution been made to American historical literature than these two volumes, and certainly no collection of writings could possess a greater interest for the general reader. In every line, from the opening address to the people of Sangammon County, delivered in 1832, to the last public address (April 11, 1865), the strong, rugged character of the "martyr" President shines out clearly, and the tender, loving nature of the man is everywhere apparent. The more we learn of the private life of Lincoln, and in no way can one obtain such a thorough insight as from his letters, the more we are impressed by the strongly marked personality of the man. Messrs. Nicolay and Hay have evidently used much care and discrimination in selecting the letters and papers which make up the volume, and there is hardly one which is devoid of interest. Several poems are included. The following extract from one shows that Lincoln possessed real poetic spirit: —

The friends I left, that parting day,
How changed as time has sped!
Young childhood grown, strong manhood gray,
And half of all are dead.

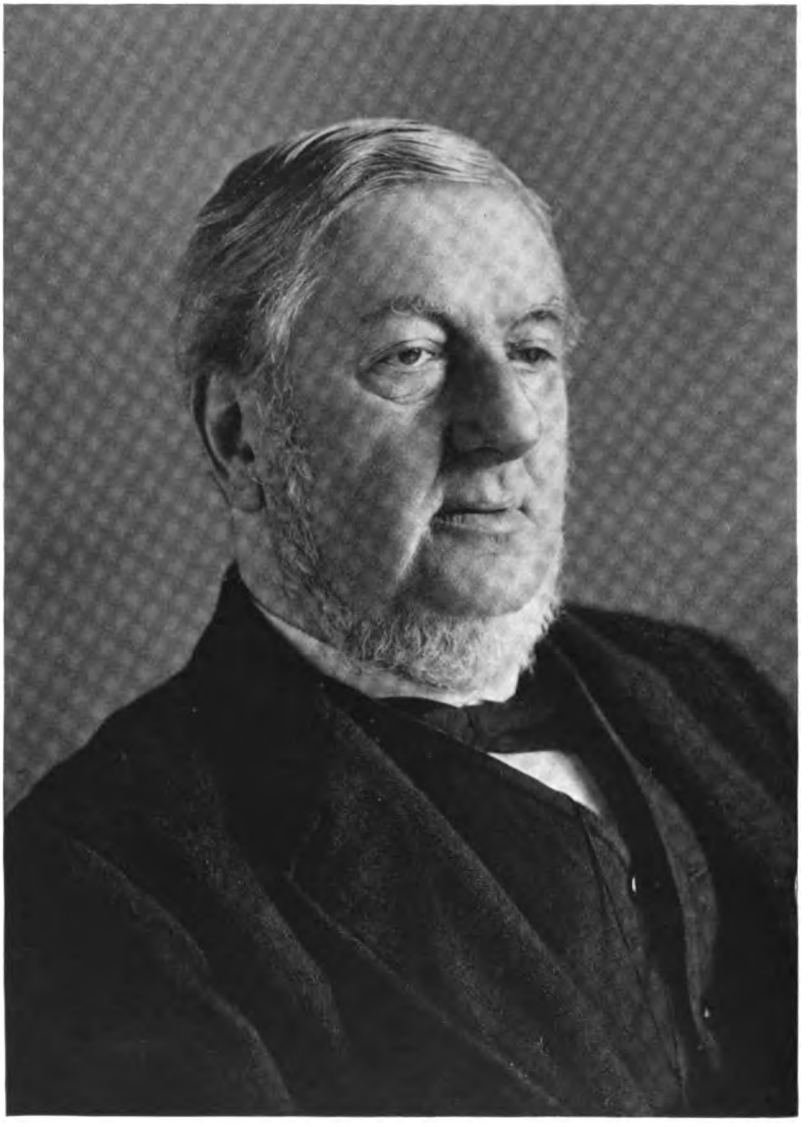
I hear the loved survivors tell
How naught from death could save,
Till every sound appears a knell,
And every spot a grave.

I range the fields with pensive tread
And pace the hollow rooms,
And feel (companion of the dead)
I'm living in the tombs.

We heartily commend the book to all readers. They will find it instructive, entertaining and uplifting.

Total Eclipses of the Sun (Columbian Knowledge Series). By Mabel Loomis Todd. Roberts Brothers, Boston, 1894. Cloth. $1.00.

This little volume gives an interesting description of the phenomena attending a total eclipse of the sun, together with accounts of the total eclipses of the past. The dates of future total eclipses during the next two or three hundred years are given, and it is noticeable that the United States come in for a very small share of them. The volume is profusely illustrated. Mrs. Todd writes in a very clear and lucid style, and invests a scientific subject with much interest for the general reader.



SIR WILLIAM HARCOURT.

The Green Bag.

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GLADSTONE'S SUCCESSOR IN THE HOUSE OF COMMONS.

BY LAWRENCE IRWELL.

SIR WILLIAM HARCOURT, the new leader of the Liberals in the British House of Commons, is a man who has made his position entirely by his own exertions. Indeed, had he relied upon family influence, he would have been found among the Conservatives, his ancestors having, from time immemorial, been supporters of that party.

Sir William was born in 1827, the second son of the Rev. William Vernon Harcourt of Nuneham, Oxfordshire, and was educated at Trinity College, Cambridge, where he graduated with high honors in 1851. About three years later he was called to the Bar, but some years elapsed before he made any great progress in his legal career. During his leisure he wrote for the "Saturday Review" and the "Times," over the signature of "Historicus," and these contributions brought him considerable distinction as a writer upon international legal questions; they have since been published in book form.

Mr. Harcourt, as he then was, devoted his attention to parliamentary practice, which means that he pleaded before parliamentary committees upon railway and other so-called "private" bills, which require a special act of the legislature and are investigated by a joint committee of both Lords and Commons. The nature of this class of practice debars barristers from membership of the House of Commons, and when, in 1866, Mr. Harcourt was made a Queen's Counsel, he retired from active work at the Bar.

In 1868 "Historicus" was elected member of parliament for the city of Oxford; in the following year his own University, Cambridge, appointed him professor of international law; and in 1873 he became Solicitor-General in Mr. Gladstone's government, the honor of knighthood being at the same time conferred upon him.

When the Liberal party was returned to power in 1880, Sir William was nominated Home Secretary, and, upon accepting the appointment, the representation of Oxford became vacant. An election then took place — it was only a few weeks after the general election — and, to the astonishment of everybody, the Home Secretary received 54 votes less than the opponent (Mr. Hall) whom he had defeated quite easily during the previous month. An enquiry showed that the city of Oxford was a very corrupt constituency, and it was disfranchised from 1881 to 1885; Sir William Harcourt was provided with a seat by Mr. Plimsoll, "the sailor's friend," who kindly retired from the representation of Derby.

It will be remembered that from 1881 to 1883 the present Premier, Lord Rosebery, was attached to the Home Office as Under Secretary, a position which he resigned in the latter year, some people say because he found it impossible to work with such an overbearing chief as Sir William Harcourt; other people insist that the young Earl pre-

ferred the race track to Downing Street, and that "Historicus" abruptly informed his subordinate that the post of Under Secretary for Home Affairs was not a sinecure.

Up to 1885, the present leader of the Commons had been one of the strongest opponents of Home Rule for Ireland, and one of the most violent denouncers of Mr. Parnell and all his works. He was never tired of avowing that he belonged to the Whig section of the Liberal party, and he once declared, with evident sincerity, that the proper course to adopt with the Irish members of parliament was "to allow them to stew in their own Parnellite juice." But the general election of 1885 changed many things, including Mr. Gladstone's views concerning Home Rule. The Grand Old Man, as the late Prime Minister is often called in England, had asked for such a majority as would enable him to legislate without the assistance of either the Irish Nationalists or the Conservatives. In other words, he wanted a Liberal majority over the combined forces of Tories and Parnellites, and the constituencies had not seen fit to give it to him. At this time Sir William Harcourt began to grow in political stature; he ceased to be a Whig and became a Radical and, instead of stigmatizing Home Rule as an invention of the devil, he strongly supported it as a just and desirable policy.

After the election of 1885 Mr. Gladstone appointed Sir William Chancellor of the Exchequer, a selection which caused surprise, because that position requires a technical knowledge of financial and monetary questions such as lawyers seldom possess. It was generally supposed that the former Home Secretary would be created a peer and would accept the office of Lord Chancellor. Two reasons seem to have interfered with this arrangement: first, the Liberal side of the elective chamber possesses few great debaters, and Sir William could not be spared. Secondly, the Member for Derby was not anxious to be condemned to political extinction in the House of Lords, even with the Lord Chancellorship and £10,000 a year thrown in as a solatium.

We have lately been told in the newspapers that Sir William will next year display his powers as a financier; it is hinted that his budget is likely to abolish the import duties upon tea, coffee and cocoa, and that a graduated income tax, based upon the principle of equality of sacrifice, will be substituted. The advent of this budget will be anxiously awaited by many people, especially those with very large incomes.

Whether the present Chancellor of the Exchequer is a financier of more than ordinary merit, time alone can show. His most bitter opponents, however, admit that, as a debater, he is *facile princeps* in the present House of Commons; his sarcasm reminds one of the late Robert Lowe, who made himself notorious by placing a tax upon lucifer matches; and his invective recalls Disraeli, of whom, by the way, he was an intimate personal friend, although a political opponent.

Sir William Harcourt is not, generally speaking, a popular man. Indeed he has the reputation of being rather a disagreeable person, unless you know him well and understand his peculiarities. The following anecdote is, in all probability, a malicious invention, but it is worth repeating.

Six members of the House of Commons decided to give a joint dinner party, each host to invite one guest, and one only. A further condition was that in every case the invited guest was to be the most disagreeable person among the hosts' acquaintances. The hour for dinner — eight o'clock — arrived in due course. Sir William Harcourt came a few minutes after that hour. At half-past eight no other guest had appeared, nor did any others appear later. The Member for Derby had received six different invitations from six different men!

Sir William is as large in stature as in intellect — he must weigh over 200 lbs.; in the House he is called "Jumbo." Lady Harcourt is the daughter of the late John Lathrop Motley, the eminent historian, who was United States Minister to England during 1869 and 1870.

SOME THINGS ABOUT THEATRES.

I.

By R. Vashon Rogers.

SOME three hundred and sixty years ago, William Prynne, a barrister of Lincoln's Inn, got into serious trouble by writing on this subject; the Star Chamber passed this sentence on him: that "he be committed to prison during life, pay a fine of five thousand pounds to the King, be expelled Lincoln's Inn, disbarred and disabled ever to exercise the profession of a barrister, degraded by the University of Oxford of his degree there taken; and that done he be set in the pillory at Westminster with a paper on his head declaring the nature of his offence and have one of his ears there cut off; and at another time be set in the pillory at Cheapside, with a paper as aforesaid, and there have his other ear cut off; and that a fire shall be made before the said pillory, and the hangman being there ready for that purpose, shall publicly in disgraceful manner cast all the said books which could be produced into the fire to be burnt as unfit to be seen by any hereafter." (This is a good specimen of the sentences of this famous infamous tribunal.)

We trust that we will not be pilloried even by public opinion for anything we say herein. Master Prynne deserved some punishment for the voluminous title he gave his book. It was this, "Histrio-mastix. The Players Scourge, or Actors Tragedie; Divided into Two parts. Wherein it is largely evidenced, by divers Arguments, by the concurring Authorities and Resolutions of sundry texts of Scripture, of the whole Primitive Church, both under the law and Gospell; of 55 Synodes and Councels; of 71 Fathers and Christian Writers, before the year of our Lord 1200; of about 150 foraigne and domestique Protestant and Popish Authors since; of 40 Heathen Philosophers, Historians, Poets, of many Heathen, many Christian nations, Republiques, Emperors, Princes, Magistrates; of sundry Apostolicall, Canonicall, Imperiall Constitutions and of our owne English Statutes, Magistrates, Vniversities, Writers, Preachers. That popular Stage-playes (the very Pomps of the Devill which we renounce in Baptisme, if we believe the Fathers) are sin-full, heathenish, lewde, ungodly Spectacles, and most pernicious Corruptions, condemned in all ages, as intolerable Mischiefs, to Churches, to Republickes, to the manners, mindes and soules of men. And that the Profession of Play-poets of Stage-players: together with the penning, acting and frequenting of Stage-plays are unlawfull, infamous and misbecoming Christians: All pretences to the contrary are here likewise fully answered: and the unlawfulness of acting, of beholding Academical Interludes, briefly discussed, etc., etc." Mark well the brevity of the lawyer!

Out of consideration for our readers, we will not in this article go further back than the beginning of the Christian era. The Fathers do not appear to have approved of plays as acted in their days. Tertullian wrote on the subject and dwells on the in-

consistency of the same lips uttering the "Amen" of Christian worship and the phrases of an actor: the player, he says, "seeks against the words of Christ to add one cubit to his stature by the use of the cothurnus: he breaks the divine law of Deut. XXII. ver. 5, when he puts on a woman's dress." In fact our first authority will be the Theodosian Code, published A.D. 438. Here (tit. XV. 5, 6, 7) we find it provided that the holy sacraments were not to be administered to actors save where death was imminent, and then only on condition that the calling should be renounced in case of recovery. Daughters of actors were not to be forced to go on the stage provided that they lived an honest life: an actress was allowed to give up acting in order to become a nun.

Justinian's Code (XI. 40) enacted that the statues of actors were not to be placed in the public streets, but only in the proscenium of the theatres. Nowadays statues do not abound anywhere, except in museums. Dramatic performances were forbidden by the code (III. 11, 12). In those days amateurs were thought better of than professionals; those who acted for money were deemed infamous persons and so debarred from filling public offices. (Dig. 3, 2); and by the fifty-first of the Novels of Justinian actresses might break their contracts and retire from the stage, without incurring any penalty. Times have changed since then.

The Canon Law forbade the clergy acting plays, or being present thereat, or even consorting with such wicked people as actors and actresses. It even denied to players the blessings and comforts of the sacraments, and when the unfortunates yielded up the ghost refused to them the rites of Christian burial. When Molière, whose name is greatest in the literature of France, died in 1673, the Bishop of Paris gave orders that he should be interred without any ceremony.

When the drama was first introduced into England it was under the special protection of Mother Church, but before long it outgrew its swaddling bands and became the engine for enforcing views, both of a religious and a political nature, not quite in accordance with the orthodoxy of the time. Henry VIII., to whom his own doxy was alone orthodoxy and every one else's doxy heterodoxy, in 1533 issued a proclamation prohibiting evil disposed persons preaching either in public or private, "after their own brain, and playing of interludes, etc., concerning doctrines in matters in question and controversie"; afterwards he passed an act in the thirty-fourth and thirty-fifth years of his reign (ch. 1) which made it a crime to play any interlude contrary to the orthodox faith declared by that monarch, or to be declared by him.

The preamble states that "divers persons of their perverse, froward and malicious minds, wills and intents, intending to subvert the very true and perfect exposition, doctrine and declaration of the Scripture, after their perverse fantasies have taken upon them to declare and set forth the same by ballads, plays, rhymes, songs and other fantasies": and the body of the act therefore enacts that no person shall "play in interludes, song or rhyme any matter" contrary to the doctrines of the Church of Rome: the penalty to be £10, and imprisonment for three months for the first offence; and forfeiture of all goods and perpetual imprisonment for the second. However songs, plays and interludes which had for their object the rebuking and reproaching of vice and the setting forth of virtue, were allowed, so always that they meddled not with the interpretation of Scripture.

The air of the theatres in those days was oft-times laden with profanity. The first thing the government of that precocious youth Edward VI. did was to enact a statute reciting that the most holy and blessed sacrament was named in plays by

such unseemly words as Christian ears did abhor to hear rehearsed, and inflicting fine and imprisonment upon any person advisedly contemning, despising or reviling the said most blessed sacrament (1 Ed. VI. c. 1): afterwards the King, by proclamation in 1549, forbade for a time the representation of interludes and plays. Here is part of this "proclamation for the inhibition of players": "For as muche as a greate number of those that be common Players of Interludes and Plaies, as well within the Citie of London, as elsewhere within the realm, do for the moste parte plaie suche Interludes as containe matter tendyng to sedition and contemning of sundry good orders and laws, where upon are growen, and daily are like to growe and ensue, much disquiet, division, tumults and uproars in this realme: the Kynges Majestie, by the advice &c. &c. straightly chargeth and commandeth all and every majesties subjectes of whatsoever state order or degree they bee . . . . thei, ne any of them openly or secretly plaie in the English tongue any kinde of Interlude, Plaie, dialogue or other matter set forth in form of Plaie in any place publique or private within this realme, upon pain" of imprisonment and further punishment at his Majesty's pleasure. A couple of years subsequently Edward issued another proclamation "forbicause divers Printers, Boke-sellers and Plaiers of Interludes, without consideratione or regarde for the quiet of the realme" did "print, sel and play whatsoever any light and phantastical hed listeth to invent and devise whereby many inconveniences" had and daily did "arise and follow among the Kinges Majesties loving and faithful subjectes" therefore common players and others, on pain of fine and imprisonment, were forbidden to play "in the English tong" (*sic*) any interlude or play without the King's license.

Mary does not appear to have troubled her parliaments with any legislation on the subject, but she would not allow the repetition of a mask given in honor of Princess Elizabeth, and in 1553 she issued "A Proclamation for reformation of busy meddlers in matters of Religion, and for redresse of Prechers, Prynters, and players" to prevent (among other things) the playing of Interludes concerning doctrinal subjects then in question "touchynge the hyghe poyntes and misteries of Christen religion." In the following year one player was reformed to such an extent that besides being placed in the pillory he had his ear nailed to the post.

As soon, however, as Elizabeth mounted the throne the Act of Uniformity (1 Eliz. c. 2) made it an offence punishable by a fine of 100 marks to speak anything in the derogation, despising or depraving of the Book of Common Prayer in any interludes or plays. This haughty queen does not appear to have had a very high opinion of the histrionic art: in the fourteenth year of her reign it was enacted that "all fencers, bearwards, common players of interludes and minstrels (not belonging to any Baron of this realm, or to any other honorable person of greater degree)" wandering about without the license of two justices at the least, were subject "to be grievously whiped and burnt through the gristle of the right ear with a hot iron of the compass of an inch about."

This act was superseded by 39 Eliz. c. 4, whereby the punishment of the strolling player was lightened. When this law was passed the famous Globe Theatre, in which Wm. Shakespeare was both a partner and an actor, had but recently been built, and neither its appointments nor its patrons were such as were likely to impress the legislators of the day. Let me recall the description given by Mr. Douglass Campbell in his book "The Puritan in Holland, England and America," of the Globe (vol. I., page 325): "Constructed of wood, hexagonal in shape, it was surrounded by a muddy ditch and surmounted by a red flag, which was elevated into place at three o'clock in the

afternoon, when the performance began. Within, the whole space was open to the elements, except that the stage was covered with a thatched roof. Here the gallants sat on stools among the actors, or lay on the rush-strewn floor, eating, drinking, playing cards and smoking the tobacco which Raleigh had just made fashionable. Below in the pit, and the word meant something then, were gathered the common people, standing up, taking the rain when it fell, drinking beer, etc., etc., etc. When the smell became too strong, a cry arose, 'Burn the juniper,' and the air was filled with its heavy smoke. On the stage, a huge scroll attached to a post told in large letters the location of the scene; a bunch of flowers indicated a garden; three or four supernumeraries with swords and bucklers represented an army and the rolling of a drum a pitched battle." For the benefit of our lady readers we must give Mr. Campbell's description of a gallant: "His beard will be cut so as to resemble a fan, a spade or the letter 'T.' He has great gold rings in his ears, set perhaps with pearls or diamonds. About his neck will probably be a ribbon on which he will string his other jewels for exhibition. His dress excites astonishment everywhere. He has no costume of his own and so borrows from all his neighbors. Portia describes him, in speaking of Falconbridge, the young baron of England: 'How oddly he is suited: I think he bought his doublet in Italy, his round hose in France, his bonnet in Germany, and his behavior everywhere'" (p. 336).

The spirit of Elizabeth's legislation and her low ideas of common players of interludes and minstrels prevailed and often showed itself in legislation down to the Vagrant Act of 1744, which statute continued the law of England down to the year 1824. This act (10 Geo. II. c. 28) provides that persons acting plays etc. in any place where they have not a settlement, or without the Lord Chamberlain's license, shall be deemed rogues and vagabonds and treated accordingly; and whether they had a legal settlement or no, if the license was absent each person was liable to a fine of £50.

But to hark back a little and continue our investigations in chronological order. In 1605 the Parliament of James I. passed "An Act to restrain the abuses of players." This made it an offence punishable by a fine of £10 to jestingly or profanely speak or use the holy name of God, or of Jesus Christ, or of the Holy Ghost or of the Trinity, in any stage play, interlude, show, May game or pageant (3 Jac. I. c. 21). This wise Stuart afterwards passed an ordinance forbidding the representation on the stage of any Christian king who had not already been gathered to his fathers. Sir John Yorke was compelled to have some monetary transactions with the Star Chamber, while James was king, because of some private theatricals which he had in his house and which were supposed to exalt some of the peculiarities of Rome.

By the first act of the reign of Charles I. acting on Sunday was forbidden under a penalty of three shillings and four pence. In the library at Lambeth Palace are the records of the presenting of the Lord Bishop of Lincoln for having a play in his house on the Lord's day in 1631, and what purports to be a copy of an order or decree made in the case by a self-constituted court, among the Puritans, for the censure and punishment of such offences (Collier's "English Dramatic Poetry," etc., vol. I., page 462). Here it is: "Forasmuch as the Court hath been informed, by Mr. Commissry General, of a greate misdemeanor committed in the house of the Right Honorable Lord Bishopp of Lincoln by entertaining into his house divers Knights and Ladyes, with many other householders and servants upon the 27th Septembris, being the Saboth day, to see a playe or tragidie there acted, which began about ten of the clock at night and ended

about two or three of the clock in the morning: Wee doe therefore order and decree that the Right Honorable John, Lord Bishopp of Lincolne shall for his offence, erect a free schoole in Eaton, or else at Greate Staughton, and endowe the same with £20 per annum for the maintenance of the school-master for ever. Likewise wee doe order that Sir Sydney Montague, Knyght, for his offence shall give to the poore of Huntingdone £5, and his lady for her offence, five blacke gownes to five poore widdowes, uppon New-yeares day next.

"Likewise wee doe order, that Mr. Williams, Mr. Trye, Mr. Harding, Mr. Hazarde and Mr. Hatton shall each one of them give a blacke coate, and 5 s. in money, unto 5 poore men in Brigden, uppon New Years day nexte. Likewise wee doe order, that Mr. Wilson, because hee was a special plotter and contriver of this business, and did in such a brutishe manner acte the same with an asses head: and therefore hee shall, uppon Tuesday next from 6 of the clocke in the morning till six of the clocke at night, sitt in the Porters Lodge at my Lords Bishopps House, with his feet in the stocks, and attyred with his asse head and a bottle of hay sette before him and this subscription on his breast:

> 'Good people I have played the beast,
> And brought ill things to passe:
> I was a man, but thus have made
> My selfe a silly asse.'"

It was during this reign that our friend Prynne was taken by the ears, as mentioned above: the Queen, Henrietta Maria, had taken part in the rehearsal of a ballet just before, or just after, the sheet of his Histriomastix was passed through the press in which he said that all who danced, or looked on at dancing, assisted in a lewd service of the devil, and also that all who danced shattered the whole decalogue. He also published other remarks still more impolite, such as "woman actors notorious whores," and that "St. Paul prohibits woman to speak publicly in the church, and dares then any Christian Woman to be so more than whoreshly impudent, as to act, to speak publiquely on a stage (perchance in man's apparell and cut haire) in presence of sundrie men and women?" So the court did not approve of Master Prynne. He with his fellow Puritans, however, had their turn a little later; and then, in September, 1642, the Lords and Commons passed an ordinance which, after a brief and solemn preamble, commanded "that while these sad causes and set times of humiliation do continue (i.e., the Civil War), public stage-plays shall cease and be forborne"; afterwards in 1647 stringent ordinances gave summary powers to magistrates against players found performing; and in 1648 the Parliament passed an act or ordinance for the suppression of stage-plays and interludes. The preamble recited that the "acts of stage-plays, interludes and common plays, condemned by ancient Heathens and much less to be tolerated amongst professors of the Christian Religion, is the occasion of many sundry and great vices and disorders, tending to the high provocation of God's wrath and displeasure, which lie heavy upon this kingdom, and to the disturbance of the peace thereof," and so declared that all players were rogues within the meaning of 39 Eliz. and 7 Jac. I.: the act authorized the Lord Mayor, justices of the peace and sheriffs to pull down and demolish all stage-galleries, seats and boxes; it enacted the punishment of public whipping upon all players for the first offence, and for the second offence it declared that they were to be deemed incorrigible and dealt with accordingly; it appropriated all money collected from the spectators for the poor of the parish; it imposed a fine of five shillings upon every person present at the performance of a play; and it ordered all mayors, bailiffs, constables and other officers, soldiers and other persons to assist the authorities in the due execution of its Draconian decrees. Yet even after this act the

Commons found it necessary to appoint a provost marshall, whose duty it was to seize all ballad-singers and to suppress all stage-plays.

However even the Provost Marshall could not prevent all performances, and history tells us that the company at Salisbury Court Theatre was disturbed during a play in December, 1648, by the military who took the players of the fool and of the king to Whitehall in their dresses, insulting his august majesty by taking off and putting on his crown repeatedly as they proceeded through the streets.

But the Muses were not to be suppressed, and even in Oliver's time plays were performed in private houses.

The City Council and authorities in London never took kindly to the theatres in the days of the Tudors and the Stuarts. As early as 1543 the corporation had adopted regulations for the suppression of stage-plays within the boundary of the city, and it is recorded that some who broke the orders were committed to the Counter. In 1574 the Privy Council granted a special license to the players of the Earl of Leicester to go to London; the next year the Common Council published a counter-blast: in the preamble it alludes to the disorders and inconveniences caused in the city "by the inordynate hauntynge of greate multitudes of people, speciallye youthe, to plays, interludes and shewes: namelye occasyon of frayes and quarrelles, eavell practizes of incontinencye in great Innes, having chambers and secrete places adjoyninge to their open stages and gallyries; inveiglynge and allurynge of maides, speciallye orphanes and good cityzens children under age, to previe and unmete contractes; the publishynges of unchaste, uncomelye and unshamefaste speeches and doynges, withdrawynge of the Queenes Majesties subjectes from dyvyne service on Soundaies and holydaies, at which times such playes weare chefely used; unthriftye waste of the moneye of the poore and fonde persons; sondrye robberies by pyckinge and cuttynge of purses, utterynge of popular, busye and sedycious matters and manie other corruptions of youthe and other enormities; besydes that allso soundrye slaughters and mayenynges of the Queenes subjectes have happened by ruines of skaffoldes, fframes and stages, and by engynes, weapons and powders used in plaies: and whear in tyme of Goddes visitacion by the plaigue suche assemblies of the people, in thronge and presse have been very dangerous for spreadynge of Infection." And for these and other great causes the Council enacted, under pain of fine and imprisonment, that no play should be performed "wherein should be uttered any words, examples or doings of any unchastity, sedition or such like unfit and uncomely matter," or without being first perused and allowed by persons duly appointed; that the license of the Lord Mayor should be necessary before every public exhibition; that part of the money taken should be applied to charitable uses, and that no play should be performed "in anie usual tyme of Dyvyne service in the Soundaie or hollydaie." (Collier's Annals, vol. I., p. 203.) The City seems to have won the day and for a time drove the players beyond its jurisdiction. But only for a time; however, in 1583, the Privy Council forbade all Sunday performances. In 1620 the Lord Mayor took upon himself to suppress the Blackfriars' Theatre. Then came the ordinances of the Puritans.

Scotland in the days of its "home-rule" passed some laws to regulate players and actors; even in Queen Mary's days such people were discountenanced, for we find that, in 1855, "it is statute and ordained that in all times cumming, no manner of person be chosen *Robert Hude*, *Abbott* of *Unreason*, *Queenis* of *Maij*, nor otherwise, neither in Burgh nor to Landward, in onie time to come, and gif ony Prevost, Bailiès, Council and Communitie, chuse sik ane Personage

as *Robert Hude*, *Little John*, *Abbott* of *Unreason* or *Queenis* of *Maij*, within Burgh, the chusers of sik, sall tine their freedome for the space of five zeires, and utherwise sall be punished at the Queenis Grace will, and the acceptat of sik like office, sall be banished forth of the realme; And gif ony sik persones, sik as Robert Hude, Little John, Abbottes of Unreason, Queenis of May beis chosen out with Burgh and uther Landward Townes, the chusers sall pay to our Soveraine Ladie, ten Pounds and their persones put in ward, there to remaine during the Queenis Grace pleasure."

Her Majesty's advisers likewise objected to singing women, and enacted "gif onie Women or others about summer trees sing and makis perturbation to the Queenis Lieges in the passage through Burrowes and others Landwarde Townes, the women perturbationers for skafrie of money, or otherwise, sall be taken, handled and put upon the cuckstoles of everie burgh or towne."

In 1579 James VI., following in the track of that "bright occidental star, Queen Elizabeth," declared by act of parliament that "all idle persons, ganging about in any country of the Realme, using subtil craftie and unlawful playes" should be considered and punished as vagabonds. In 1574 the General Assembly considered itself the proper authority to look after theatres, and so enacted that "na clerk playes, comedies or tragedies be maid of the Canonicall Scriptures, as well new as auld, on Sabboth day nor wark day; and that all profaine playes as are not maid upon authentick pairtes of Scripture," should be considered before they were publicly exhibited, and that they should not be allowed at all upon Sunday.

LEGAL REMINISCENCES.

L. E. Chittenden.

VII.

LINCOLN AS A LAWYER.

GREAT success is not to be attained by all men. It is not quite true that "lives of great men *all* remind us, we may make our lives sublime"; and yet there are some lives which the lawyer cannot study attentively without becoming a better man and a much better lawyer.

Abraham Lincoln had the ability to attach other men to him more quickly and more firmly than any American who has ever lived. He could also give expression to an idea or a principle in fewer and more forcible words than any author with whose writings I am acquainted. The love of the common people for his memory has an intensity, a devotion, which has been manifested towards no other man since the advent of our Saviour. His secretary Salmon P. Chase was gifted by nature with a powerful intellect which had been trained in the best schools. No man in writing or conversation had a better command of our mother-tongue or could fashion it into sentences of more exquisite beauty. No man more ardently desired the favor of the people or made greater efforts to secure it. His mind was scholarly and eminently judicial. Closer application to his profession would have made him a lawyer as learned as Story — as a writer of English he might have taken rank in advance of any American or English author. But after all his efforts he never could attach the people to him, while Lincoln almost without an effort, had a temple built for him in every patriotic American heart. Mr. Chase was a student and a most painstaking writer. Possibly the finest sentence he ever wrote was the appeal to Almighty God which was added to the proclamation of emancipation. But he never wrote anything comparable to the Gettysburg speech, the substance of which was pencilled by Mr. Lincoln on the back of a letter, while in the railroad car on his way to the battlefield.

If Mr. Lincoln was born great — if his ability as a writer and his power to secure the love of the common people were his special gifts, there would be little profit to us in giving them much consideration.

But if nature was no more partial to him than she is to the average of men — if he won his fame by hard, honest work, and a strict observance of the golden rule, then is his example a beacon light to the lawyer or the public man, who will find it profitable to study his character as intensely as he pursued the study of the subjects which first brought him into notice and then made him great.

It is rather difficult to separate the study of Mr. Lincoln as a lawyer from his career as a politician. As a lawyer his practice was that of the jury advocate rather than that of counsel in the appellate courts. The fame of the jury advocate is usually ephemeral. His arguments were not reported *in extenso*, and there were no means of preserving them. Still enough has been saved from the wreck of time to show us that Mr. Lincoln gained high rank in his profession by means and processes open to every lawyer in the land.

Mr. Lincoln, until his election to the presidency, never appears to have had any wealthy or influential friends. His temperament was not by nature genial. The

hard circumstances of his childhood and youth — his total failure in all his undertakings, until he commenced the study of the law — the death of the lovely girl who was his first and perhaps his only love — his early defeats as a candidate — his slow advance in the State Legislature, and more than all his bitter poverty, would have discouraged the majority of men, and they made him melancholy and at times morose. He studied the role of the *raconteur*, not for the love of it, but as a means of getting business and of commending himself to his brethren of the profession. But in one point he never failed. When he had a case, however small, he studied and prepared it. He was consequently successful in the most of his cases, just as the reader of these notes may be if he will follow Mr. Lincoln's example.

I shall refer to only two cases to illustrate my view of the reason of Mr. Lincoln's success at the Bar, which I believe was the ground of his success in the higher positions to which he was called. One of them was the Armstrong murder case, or the trial of the son of his old friend on the charge of murder. Others have described the pathetic incidents of this case and its beautiful illustration of the gratitude of the advocate. I refer to it as an illustration of Mr. Lincoln's thoughtfulness and studious preparation.

The murder had been committed in the night time. A party of roughs, all armed, were at a camp meeting for the purpose of disturbing it. Armstrong was one of them. All had been boisterous and riotous. An attempt was made to quiet them; one of them fired a shot, the victim fell and died on the spot. When one of the companions of Armstrong declared that he plainly saw Armstrong fire the fatal shot and the victim fall, he apparently placed the hangman's noose around Armstrong's neck. It was not strange that the popular belief in his guilt was universal, that Armstrong would have been lynched if he had not secretly been removed to a distant county.

A case is seldom so desperate that a sharp eye cannot find some crevice into which the point of the lever of truth cannot be driven. Lincoln found it in the Armstrong case. How, in the darkness, could the witness see who fired the shot? The hour was too late for any possible daylight. Lincoln ascertained that the atmosphere had been thick and murky. There was only one conclusion possible. If the witness saw the murder he must have been one of these described in the old ballad, who "see in the dark," for the moon did not rise until three hours after the murder was committed.

Every one knows the result. To the alarm and distress of the mother of the accused, Mr. Lincoln seemed an indifferent spectator of the trial, until the false witness had given his testimony. He swore that he saw the murder by the light of the moon — he was confronted with the almanac, broke down, and there was a dramatic termination of the trial by a verdict of acquittal. It was one of the few cases which occur where a single point made a conviction impossible.

Whether considered as an illustration of character or in its influence upon the fortunes of the republic, one of the most important controversies ever brought into an American court, was an action which involved the validity of the early patents upon the harvesting or reaping machine, in which Mr. Lincoln and Edwin M. Stanton were counsel on the same side. The title of the suit and the issues involved are unimportant. At that time (1858) Mr. Stanton had a high reputation as a patent lawyer. He was rude and inconsiderate to his associates, overbearing to his adversaries, and no favorite of the judges. Mr. Lincoln by his age and position was entitled to make the closing argument. He had made thorough and exhaustive preparation to that end. Mr. Stanton deliberately forced him out of the way, and

without making any apology himself made the closing argument. Mr. Lincoln felt the act deeply. He knew it was unprofessional and inexcusable. But his was a nature which suffered in silence and waited for his reward. The counsel separated with no expression of regret or word of apology from Mr. Stanton, and the tall, lank Westerner in his ill-fitting clothes returned to his Springfield home.

The suit meantime had been carried into the Supreme Court of the United States. Mr. Stanton made the most careful preparations to argue it in that greatest of sublunary tribunals. In due time, a few weeks before the case would be reached, Mr. Lincoln appeared in Mr. Stanton's office with a large bundle of manuscript in loose sheets, which he said were the rough notes of the brief for the coming argument. Mr. Stanton pointed to a pile of his own manuscript intended for the same purpose. Neither made any reference to the occurrences at the trial. Mr. Stanton asked if Mr. Lincoln would permit him to read the views of the case which he had presented, and Mr. Lincoln handed him the bundle. Mr. Stanton began to read. For a long time the silence was unbroken, except by the ticking of the clock on Mr. Stanton's desk. At length, without raising his eyes from the page, his right hand was extended to his own pile, it seized an indefinite number of his sheets, was retracted, his remaining hand seized the sheets, tore them into narrow strips and cast them upon the floor. The operation was repeated two or three times until a considerable portion of his notes were in fragments. At length Mr. Lincoln inquired what he was doing? He replied that he was destroying waste paper. Then he left his seat, grasped the great hand of the Western advocate and said: "Mr. Lincoln, your preparation so far is admirable. Mine goes into the waste-basket. It is altogether inferior to yours. I wish to finish the reading of what you have written. If it covers the whole case, as I have no doubt it does, no one but yourself shall present our side of the case to the Supreme Court; with my consent!"

Mr. Lincoln argued the case in the Supreme Court and won a great victory. In 1862 the country was in a peril from which it could only be extricated by a secretary of war with the fierce determination and patriotism of Edwin M. Stanton. Mr. Lincoln knew the man, and while members of his cabinet were hesitating, doubting, fearing, he made Mr. Stanton secretary of war, and Mr. Stanton made himself the greatest war minister of the century. The country is beginning to find out, and another generation which is able to read history without prejudice, will know how great a debt the country owes to Edwin M. Stanton.

I cite these two cases to show the value in our profession of thorough preparation. Thoroughness was the chief element in the character of Mr. Lincoln. His preparation saved the life of the innocent Armstrong, and it brought Mr. Stanton into his cabinet. It were an easy task to show that this element in his character made him president of the United States. He had made but little impression during his first congressional term. From 1852 until 1858, while the contest was raging on the Kansas border, his voice was scarcely heard. But on the day of his nomination for the Senate in Springfield; after by careful study he was master of the subject of slavery, and knew its true place under the Constitution, he amazed and terrified his party, and filled the hearts of good men with joy, by his "divided house" speech — his statement that this government could not permanently endure, half slave and half free. After this his letters and his speeches were models of English composition. The Gettysburg speech may have been written in the cars, but it was the ripe fruit of long years of careful preparation.

There is no American life which is so full of encouragement to the young lawyer as that of our own, great Lincoln. To those familiar with it, it almost seems as if there was no form of adversity which he was not compelled to fight and overcome. Many of them are familiar to his countrymen, and yet there are some which should not be hinted at, now. But he came through them all pure, refined, illustrious, the peer of Washington, our great American, the best model for the young lawyer, one whose life has made our country the most powerful upon the globe.

I have recently had an evidence of the genuine, fervent love of our countrymen for the memory of Abraham Lincoln, which your readers may regard as pathetic. On Christmas Day I received through the mail a small package, containing a photograph of Mr. Lincoln, in a very neat frame of olive wood. It now stands on the mantle before me, and is in fact the inspiration of this article. With it was a letter from a young lady, who resides not very far from Boston. She lived near an Almshouse, she wrote, in which there were nine poor men, either totally or too nearly blind to distinguish letters. For a long time she had devoted one afternoon in every week to reading aloud to these men. She had found some difficulty in making selections which would interest them, for they did not care for fiction of any description. They preferred American history. It occurred to her to try them with a chapter from "The Recollections of Abraham Lincoln and his Administration." That seemed to please her whole audience. They had become so interested that she had read to them the entire book, and she was now reading it the second time. As Christmas approached, they all wanted to send me a little present by way of acknowledgment for the pleasure my book had given them. Accordingly each one had contributed out of his slender store a small sum, the aggregate of which had purchased the accompanying picture. "It is not much to you," wrote this New England girl, "but it is a great deal to them, and if you could see the tears in the sightless eyes of these poor old men, as they talk about Mr. Lincoln, I think you would appreciate their present." The young lady holds my acknowledgment for the present, and my assurance that among the numerous letters and compliments which the book has elicited, there is none so touching — not one so valuable to me as this, which shows that I may have brought Mr. Lincoln nearer to these men, who cannot see his face.

THE COURT OF STAR CHAMBER.

By John D. Lindsay.

IV.

In a general way the function of the court as a criminal tribunal was to try cases of misdemeanor, which were not, or were supposed not to be, sufficiently recognized or punished by the common law.

Bacon mentions the following offences as within its cognizance: "Forces, frauds, crimes various of stellionate, and the inchoation or middle acts towards crimes capital or heinous, not actually committed or perpetrated."[1]

They are thus enumerated by Hudson: "Forgery, perjury, riot, maintenance, fraud, libelling, and conspiracy." Besides this he ascribes to the court power to punish offences not defined or punishable at common law, and he mentions instances where jurisdiction was conferred on the court by statutes long since forgotten.

In an interesting work on the Star Chamber, which it is my good fortune to possess,[2] the author thus enumerates the causes properly belonging to its cognizance: "Unlawful assemblies, Routs, Riots, Forgeries, Perjuries, Cozoanages, Libelling, and other like misdemeanors not especially provided for by the statutes."

His definitions of the offences of unlawful assembly, rout and riot, are substantially the same as the modern conception of those crimes at common law.

"Forgery," he says, "is a falsehood committed in or about some writing or Deed: as if a man write or signe a false Testament, or falsely set downe therein some Legacie, or trust in himselfe; or if he make a Deed, or Accompt, or other Instrument; or if he bribe or corrupt a page, or doe raze, change or corrupt any writing, to the defrauding of another man, or doe convey, remove, or take away, suppresse, conceale, or falsely signe a Testament or counterfeit another man's hand in writing, or counterfeit the hands of Magistrates, and Certificates, Testimonials, or Licenses in their names, or corrupt or subborne false witnesses, or make false accompt or reckoning. *West. part.* 2. *Symbol. tract at. Indictments, Sect.* 60.

. . . . . .

"Forgery, is that which the Civillians call *Crimen falsi*, or at least one part thereof: For by them, *Crimen falsi* is extended as well to false measures, or weights, to false accusations and conspiracies, (as wee call them) *ad partus suppositos*, and such like, as to forging of writings or Deeds. That which wee call Forgery, they terme *falsitatem scriptorum*, which is committed by as many wayes as are above expressed in the example of definition set downe by *West.*"

Of perjury he speaks as follows: —

"Perjury is a lye confirmed by oath. This perjurie that is punishable in the Star-Chamber, as I have heard learned men say, is such as is committed in some of the Kings Courts of Record. For if it be an extrajudiciall perjury, or committed in a court christian, or any inferiour and base Court, it is rather punishable by Ecclesiasticall pennance. Such perjury as is commonly punished in the Star Chamber, is corrected by some arbitrary censure, as sometimes by fine to his Majesty, sometimes by losse of an eare or eares, sometimes by imprisonment, and sometimes by more of these punishments

[1] Referring to the general authority of the king's council, he says: "There was nevertheless always reserved a high and pre-eminent power to the king's council in causes that might in example or consequence concern the state of the commonwealth: which if they were criminal, the council used to sit in the chamber called the Star Chamber; if civil, in the white chamber, or white-hall. And as the Chancery had the prætorian power for equity, so the Star Chamber had the censorian power for offences under the degree of capital."

[2] Star Chamber Cases, *Shewing* What causes properly belong to the cognizance of that Court. Collected for the most part out of Mr. Crompton, his Booke, Entituled, *The Jurisdiction of diver's Courts*, London, Printed by I. O., for John Grove, and are to bee sold at his shop in Chancerie Lane, over against the *Sub Pœna* office, 1641."

joyned together, according to the quality of the offence, or of the person."

"We have perjurie committed in England by one means, which in other nations is unknowne. And that is by the Jury or Enquest, that breake their oaths in giving up their verdict. In which case there lyeth a writ of attaint against them, whereby they are summoned to appeare in the Kings Bench at a certaine day, and there being convict of perjury, are according to the ancient Law of England, to undergoe a most ignominous punishment . . . And that is to have their Medowes eared, their houses broken downe, their woods burned up, their Lands and Tenements forfeited to the King, and (as it may be gathered out of *Fitzherb. Nat. Br.* in the writ of Attaints, *fol.* 195) their bodies to be committed to Prison during the King's pleasure, but wee see no example of this in these dayes, but rather in lieu of this, some of these punishments formerly expressed."

"This by the Civill Law is a branch of *Crimen falsi*, and therefore is censured as before is set downe in *Forgerie*, howbeit the best civilians bee of opinion that it hath not any ordinarie punishment, but *juxta arbitrium Judicis, Fachin de controv. Juris, lib.* 1, *cap.* 14, yet other effects doe follow of it, as *Julius Clarus* mentioneth."

Of the criminal aspect of cozenage he says: —

"Cozenage is an offence, whereby anything is done guilfully in or out of contracts, which cannot fitly be termed by any speciall name, *West. part* 2. *Symbol. trad. Indictments, Sectio* 68.

"This is by the Civilians called *Stellionatus, à Stellione, quod est lacertæ genus quo nullum animal homini invidet fraudulentius, Plinius libr.* 3, *cap.* 10.

"The punishment of this is Arbitrarie, as in our Realme, so likewise by the Civill Law, as appeareth by the twentieth title of the 47. book of the Digests, and *Wesenbecius* Barat. upon the same."

Inasmuch as libellers were often dealt with in the Star Chamber, the author thought it not amiss to define that offence, which he does thus: —

"*Famosus Libellus est non modo si dissimulato, vel ficto authoris nomine edatur, veren metiam si expresso.* But then, what is the difference betweene an injurie in writing and a Libell? For *injuria* is either *realis quæ re instigitur, ut per verbera, aut verbalis quæ verbo vel scripto*, or *personalis quæ personæ instigitur ut per verbera vel cruciatum.* The difference therefore betweene a written injurie and a Libell is, *qui a famosus libellus adinfamiam pertinet, hoc est impingit delictu aliquod not abile, injuria fit contumeliæ causa, etiam absque infamiæ nota, ut si quis luscus, spurius, claudus, aliove contumelioso nomine appelletur et traducatur.*"

"They may punish," says the author, "spreaders of false newes, and false messages of Noblemen and others against the Stat. *anno* 12 *R.* 2. *cap.* 2. *R.* 2. *cap.* 5. *Vide parlm.* the case of the Duke of *Buck*, and the Lord of *Darburganie.*"

. . . . . .

"Note that *Knivit* Justice saith, that one who had reported in the countrey, that there were wars beyond Sea; so that none could passe by Sea that yeare, whereupon the price of Woollfels were sold at a lesse rate. And hee, for that cause, was constraned to come before the King's councell, and fined to the King, 43. pounds, Assise 38."

. . . . . .

"They may punish the taking of women under the age of sixteen yeares from their parents against their wills, and contract marriage with them against 4 *et.* 5, *Phil. et. Mar. cap.* 18."

. . . . . .

"They may punish those that obtaine goods and chattells of any other by false tokens and messages counterfeited in other men's names, by 33. *H.* 8. he shall be set on the Pillory, or have other corporall punishment, other than of death, as the Court shall award where hee is convict."

. . . . . .

"They may assesse a greater fine than is assessed by the Justices of Peace upon Indictments in the Countie, as it fell out in the case of Sir *John Conway*, and *Lodovike Grevil*, for that the said *L.* assaulted the said Sir *John*, and struck him to the ground at Temple-Barre with a cudgell called a Bastinado, for which he made fine in this Court C: l: and more about the 27: of *Eliz.* though hee were indicted in the

Countrie for the same assault, and fined before the Justices of Peace there, or found surety for the same fine."

"The rest of the misdemeanours punishable in this Court," he says, "cannot bee comprized under any certaine title but this, for that the most part bee such as receive no speciall punishment, by either the Common or Statute Law. And these in the Civill Law are called, *Crimina Extraordinaria, quia extraordine puniuntur, unde certæ nullæ pœnæ existunt; Sed arbitris Judicis committuntur.*"

The following instances taken from Crompton's work, show some of the more unusual cases in which the Star Chamber exercised its jurisdiction.

"A woman great with childe, which was suspected of incontinency without cause, was commanded to bee whipped in Bride-well, *London*, by the Masters there; and because she fell to travell before her time, etc., they were for this fined in this Court at a great summe: And by order of the Court, it was awarded that they should pay a certain sum to the said woman about the 31 of *Eliz.* See the proceedings there concerning this matter in the yeare aforesaid, set downe more at large."

. . . . . .

"A man tooke the beasts of another, but not feloniously, and held them as his owne in the deceit of the Buyer. This falsehood may bee punished here, if it be a notorious deceit as it seemeth, for hee may have an action upon the case, *Br.* 85. *lib. Ass.* 8."

. . . . . .

"A man hath an *Elegit*, and the Creditour causeth the Jurie to find that the Debtor hath more land than indeed hee hath, insomuch as the Creditour hath all the land in execution; there hee hath no remedy to disanull the execution by the Common Law, because he hath the land by record, *viz.* by the verdict of the Jurie. . . But it seemeth that hee shall be punished in this Court of Star-Chamber; for this dealing is a procurement to the Jurie to bee foresworne, and no attaint lyeth, for it is but an Enquest of office."

. . . . . .

"Master Fleetwood the Recorder of London was assaulted by one of the Queene's house as he was going to Westminster, in the Terme-time, who gave him divers wounds, for which he was fined in this court, and put out of the Queen's service."

. . . . . .

"Note that one tooke upon him to view or survey gentlemens armes in the countrey, as if hee had been an Herald, and had counterfeited a Seale of the same office. And he was fined in the Starre-Chamber, because hee had gotten money of the Queene's subjects by his falsehood, 27, *Eliz. vel circa.*"

. . . . . .

"Note that one G. writes his Letter to a juror to appeare between L. and C. D. and to do his conscience, and he was fined at twenty pounds here, because he had nothing to do in the matter. Here note that no man ought to meddle in any matter depending in suit where hee hath nothing to doe."

. . . . . .

"One Smith in the County of Somerset Esq., was fined in the Court for slandrous words, which he had spoken of one Sir John Yong, Kt., which touched his life, which the said Smith could not prove, and he was committed and gave great damages to the Knight."

. . . . . .

"One L. O. of Kent was punished in the Court for falsely going about to prove one that was his Cousin or Brother to be a Traitor: And for this he was adjudged to ride about Westminster hall with his face to the horse-tayle."

. . . . . .

"Note that one S. of the County of Lancaster for falsely procuring one to be indicted for the death of another, was fined in this Court to a great summe."

. . . . . .

"Divers were set on Pillory in Cheapside in London . . . for cutting out the tongues of certaine living beasts, and for barking of certaine fruit trees and burning of a Farme malitiously of one Greshams."

. . . . . .

"A Knight of the County of Northumberland was fined in a great summe in the Starre-Chamber because he permitted a seditious Booke

called *Martin Marprelate* to be printed in his house."

. . . . . .

"One writes to a Justice of the peace to send his warrant with a blanke, to put in one that he would attach upon suspition of Felonie, and so the Justice did, and because hee sent his warrant with a blanke to put in the name of one hee knew not, neither the matter, before the making of his warrant, hee was fined in this Court . . . and it was one Sir J. R."

. . . . . .

"One spoke of my Lord *Dyer* Chiefe Justice of the Common Pleas[1] that he was a corrupt Judge, for which he was convicted in this Court, and adjudged to stand upon the pillorie, *vide Statut. de Scandal magnatum*, in the which the Judges of the Law are mentioned, and surely this man was a very grave, reverend and upright Judge by the generall report of all men, and by this report greatly abused."

. . . . . .

"Divers of the County of Middlesex had taken money to favour *Lod. Grevill* prisoner in the Tower for suspicion of being accessary to murther if they should be returned upon his deliverance, and of this they were convicted by good proofe: And they were fined in this Court to great fines, and three of them did weare papers from the Fleet to Westminster Hall, and there also; and backe againe to the Fleet."

He finally tells of how a justice who had refused to take surety for the peace because the justice who issued the warrant was not his friend, was for this deprived of his commission by the Star Chamber; and of how in the reign of Elizabeth a number of justices were fined for neglecting to apprehend rioters.

Hudson gives several instances in which, without exactly trying people for common offenses such as treason and murder, they inflicted heavy penalties for acts which might have been punished at common law under those denominations.

The Earl of Rutland, for instance, was fined £30,000 for being concerned in the Earl of Essex's insurrection;—"and," says Hudson, "there are above a hundred precedents where persons that gave countenance to felons were here questioned."

In cases "pending upon felony" the party was not examined upon oath.

These, however, were not the cases which commonly employed the Star Chamber.

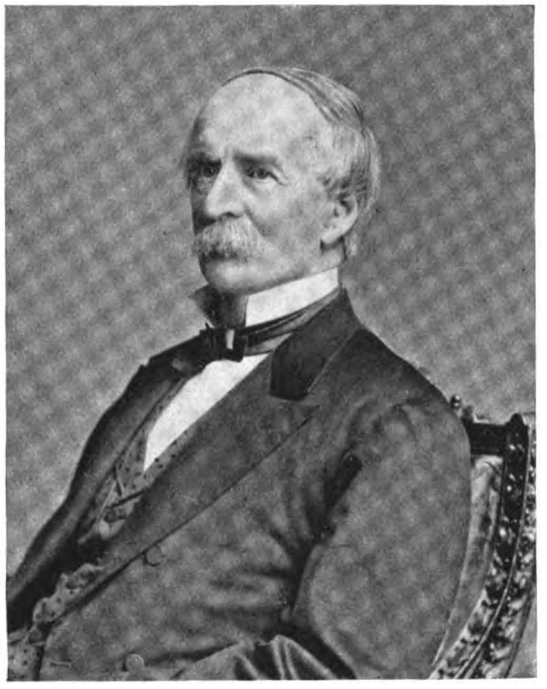
[1] James Dyer, Lord Chief Justice of the Common Pleas in Elizabeth's time, to whom the above has reference,—a man whose admiration of law was, as Foss says, attended "with such efficiency, firmness and patience as not only to secure the confidence and admiration of his contemporaries, but also to fix a glory round his name which three centuries have failed to dim,"—had himself some experience with the Star Chamber. He was a friend of the poor people and their stanch defender against the oppressions of the powerful. This character of his was displayed at the Warwick assizes in 1574 in supporting a poor widow against the oppression of a rich knight of that county, whose illegal proceedings were assisted by the bench of magistrates there. The angry magistrates exhibited articles against him to the privy council for his interference with their schemes. Dyer's reply to the charges appears in the life of the Judge, prefixed to his reports edited by John Valient, but no mention is made of the disposition of the complaint, though it is alluded to by Lord Chief Justice Montague in Wraynham's case in 1618.

THE COURT OF APPEALS OF MARYLAND.

II.

By Eugene L. Didier.

At a general state election in Maryland, on the 6th of November, 1861, Richard J. Bowie, of Montgomery County, was elected one of the judges of the Court of Appeals, and commissioned Chief Justice by the Governor. A long and interesting public and professional career had well prepared him for the highest professional honor in the the State. Born in Georgetown, D. C., on the 23d of June, 1807, he was educated at the university of his native city; and, after acquiring a liberal education, studied law in the office of Clement Cox of Georgetown. He was admitted to the Bar before he had completed his nineteenth year, a circumstance almost unprecedented in the annals of the American Bar. Immediately after his admission, he removed to Rockville, Montgomery County, Md., where his remarkable talents, close attention to business, legal learning, forensic eloquence, and courteous manners brought him, in a few years, a large and lucrative practice.

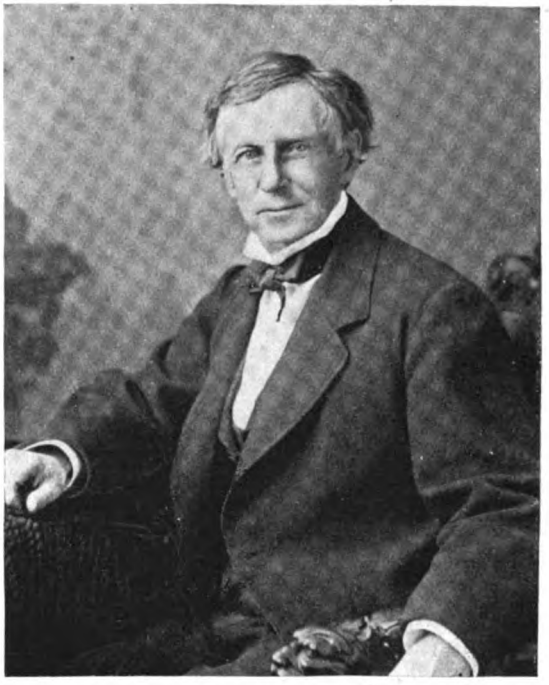


RICHARD J. BOWIE.

In politics, he was a Whig, and Henry Clay was his idol. In 1835–6–7, he was elected to the Maryland Senate, and in 1840 was a delegate to the Whig Convention at Harrisburg, where he made a powerful appeal for the nomination of Henry Clay as a candidate for the Presidency. As all students of our political history well know, William Henry Harrison was nominated. Mr. Bowie took an active part in the exciting campaign which followed; he traversed the whole state, making speeches, urging the election of the Whig candidate. In 1845 Mr. Bowie was elected prosecuting attorney for Montgomery County, and held that office until 1849, when he was elected to Congress. He made his first speech in the House of Representatives in favor of Henry Clay's celebrated Compromise Measures of 1850. He took a prominent part in the discussion of the important measures brought before Congress, during the four years that he sat in the House, from 1849 to 1853. His talents and oratory reflected honor upon himself and credit upon his State during that most eventful period of our country's history.

In 1854 Mr. Bowie was nominated by the Whig party for Governor of Maryland.

The political avalanche which swept over the country that year destroyed the Whig party, and Richard J. Bowie was defeated for the first time in his political career. After the dissolution of the Whig party, he took no active part in politics until the Presidential election of 1860, when he earnestly supported Bell and Everett. He was opposed to all sectional agitation, and declared himself unalterably in favor of the Union at a time when it required great moral courage to resist the wave of Secessionalism that was sweeping over the South from Maryland to Texas. He foretold the impending Civil War, and urged the election of Bell and Everett as the means of averting it. The result is history.



JAMES L. BARTOL.

As already mentioned, Mr. Bowie was elected to the Court of Appeals of Maryland, in November, 1861, and, in recognition of his judicial learning, was appointed Chief Justice of Maryland. He presided over the highest court of the State during the trying times of the Civil War. Those were the darkest days Maryland had known since she became an independent State. In many instances the civil courts were ignored, and martial law ruled. Citizens were arrested without warrant of law, and the Constitution of the United States was openly violated, but not a suspicion of injustice, or partiality, or partisanship was cast upon the Court of Appeals. During all those four years of war, of civil commotion and military usurpation, the purity of Maryland's highest court of law remained unsullied.

In 1867 a new constitution was formed in Maryland, under which the Court of Appeals was reorganized. A general state election took place in November, at which Judge Bowie was a candidate for re-election to the appellant bench. As none but Democrats were elected to any office that year in Maryland, Richard J. Bowie suffered his second and last defeat at the polls.

At the next general state election, held in November, 1871, Judge Bowie was restored to the Court of Appeals, where he sat for ten years longer. In 1876, the Legislature of Maryland extended his time to 1882, as he would have reached the constitutional limit of seventy years before the next Legislature met in 1878, and, consequently, would have been ineligible without a special act of the General Assembly. This graceful compliment was paid to Judge Bowie by a Democratic Legislature, with only three dissenting votes. Thus, the only Republican judge on the bench of the Court of Appeals was retained by a Legislature entirely opposed to him in politics. This was the crowning honor of a life crowded with honors. It was the highest tribute that could be paid to him as a judge, and the greatest honor that could be bestowed upon him as a man.

Judge Bowie died on the 12th of March, 1882, after a few days' illness. Although in the seventy-fifth year of his age, he enjoyed excellent health. His funeral, which took place on the 15th, was one of the largest ever witnessed in Montgomery County. Members of the Court of Appeals, distinguished lawyers from Baltimore, Washington, Georgetown, Annapolis, Frederick, Hagerstown, and prominent people from all the adjoining counties, attended the funeral in great numbers. Large meetings of the Bar were held in Montgomery, Frederick, and other counties of Maryland, at which resolutions were passed expressing high praise of Judge Bowie as a man, as a lawyer, as a judge, as a friend, as a citizen, as a "prince among men."

JAMES LAWRENCE BARTOL, Chief Justice of the Court of Appeals of Maryland, from the adoption of the Constitution in 1867 until his resignation in 1883, was born on the 4th of June, 1813, at Havre de Grace, Harford County, Md. His early education was with a view of becoming a merchant, which was his father's occupation. In 1828, he went to Baltimore to take a place in a mercantile house, but, after a short stay, he decided to continue his studies, and returned home. His father placed him as a private pupil with the Rev. Samuel Martin, an accomplished scholar, who resided at Chanceport, York County, Pa. Here he remained two years, until, in his seventeenth year, he entered Jefferson College, Pa., and, after a most successful course, graduated in the nineteenth year of his age. In 1832, shortly after leaving college, he commenced the study of the law in the office of Otho Scott of Bel Air, Maryland. He was fortunate in having such a preceptor. Mr. Scott was one of the famous lawyers of Maryland in those brilliant days when Reverdy Johnson, Roger Brooke Taney, William Wirt, John Nelson, and John V. L. McMahon threw so splendid a lustre over the Bar of Maryland. Mr. Bartol's health became impaired, and he was compelled to relinquish his studies and take a trip to Cuba and Florida, where he passed the fall and winter of 1835–6. Returning to Maryland in the spring of 1836, he resumed his studies, and was admitted to the Bar in the fall of the same year. For seven years he practiced his profession in Caroline and other counties of the Eastern Shore of Maryland. Seeking a wider field for his talents, he removed to Baltimore in 1845. Judge Bartol's personal tastes and inclinations tended more to study, both legal and literary, than to politics; he had never sought an office either political or professional; it was, therefore, more a surprise than a pleasure when he received the announcement that the Governor of Maryland had appointed him to the seat on the Bench of the Court of Appeals made vacant by the resignation of the Hon. John Thomson Mason. This was in the spring of 1857, and the following fall, the choice of the Governor was ratified by the people at the polls. His term of service expired in 1867, and he was re-elected to the Court of Appeals under the revised constitution of that year, and being the only judge on the Bench prior to its adoption who was returned, he was appointed Chief Judge.

Judge Bartol possessed an eminently conservative and judicial mind, an exquisite courtesy, an unwearied patience. His opinions, which are spread upon the Maryland Reports for a consecutive period of twenty-five years, are models of legal learning and judicial fairness.

A year after the close of the Civil War, Judge Bartol was called upon in a most important crisis in the affairs of Maryland. Governor Swann had removed two of the Police Commissioners of Baltimore, whose extreme radicalism rendered a fair election impossible in that city. They declined to vacate the office; and armed men from neighboring States threatened to uphold

them in their determination. Gen. Grant, the Commander-in-Chief of the United States Army, was sent to Baltimore by President Johnson, with instructions to preserve the peace of the city, and to resist by armed force the violation of the law. Gov. Swann appointed two police commissioners in place of those who had been removed, whereupon the old commissioners ordered the new appointees to be arrested and lodged in jail. This high-handed proceeding caused the most intense excitement in the city. The counsel of the new police commissioners waited upon Judge Bartol, who was at his home in Baltimore, and procured a writ of Habeas Corpus, which was made returnable at nine o'clock on Monday morning, November 5th, 1866, before the judge of the Superior Court. The writ was duly served upon the warden of the jail, who declined to obey, until after the election on the 8th of November, which was a triumph of the Conservative over the Radical element. Judge Bartol decided that the Governor of Maryland, under the Constitution, had the right and authority to remove the police commissioners, and appoint others during the recess of the Legislature. The new commissioners were thereupon discharged from custody, and took possession of the office, and entered upon the discharge of their duties. Thus was the majesty of the law upheld, and mob law averted.

RICHARD H. ALVEY.

A recent writer says with equal truth and beauty, that Chief Justice Bartol "combined with all the qualifications of a profound lawyer and jurist and a great judge, a heart as gentle as any woman's, a disposition so kind, a manner so dignified, courteous and deferential, a mind so fully stored with the treasures gathered in years of study and wide range of reading, that as a companion he was delightful, and he was no less beloved as a man than he was honored as a judge." That this is a tribute as high as it is just, all who knew Chief Justice Bartol will bear witness.

When Judge Bartol resigned the Chief Justiceship in 1883, the Governor of Maryland appointed RICHARD H. ALVEY, one of the associate justices of the Court of Appeals, his successor. Judge Alvey was born in Saint Mary's County, Md., March 6, 1826. After finishing his education, he commenced the study of the law, and while thus engaged he served as deputy clerk of the county court. Soon after passing the Bar, he removed to Hagerstown, where he formed a partnership, first with John Thomson Mason, and afterwards with William T. Hamilton, who was subsequently Governor of Maryland. The year after he removed to Hagerstown, he was nominated to the State Senate against his wishes and personal inclination. His friends advised him to accept the nomination, because in canvassing the county he would become acquainted

with the people and promote his legal practice. His political opponent was Judge French, who had already represented Washington County in the Legislature. The canvass, which was very animated and interesting, resulted in a tie. At the second election Judge French was elected by forty majority. The next year, Mr. Alvey was again persuaded to enter the political field, this time as a presidential elector on the Franklin Pierce ticket. He made a thorough canvass of the State, and was elected. During the Civil War he was arrested as a pronounced Southern sympathiser, and imprisoned at Forts McHenry, Lafayette and Warren. At the close of the war he took a prominent part in reorganizing the Democratic party in Maryland. As a member of the Constitutional Convention of 1867, he was active in framing the present constitution of Maryland. The same year he was elected to the Court of Appeals as an associate justice. He served for twenty-five years upon that Bench, during nine of which he was the Chief Justice. His work both as associate judge and Chief Judge of Maryland's highest court of law has been pronounced "invaluable" by the Attorney-General of Maryland, while one of his associates on the Bench of the Court of Appeals did not hesitate to say that in point of ability and fitness for the judicial office, Judge Alvey has no superior on the Bench of this country or England. His opinions are quoted not only in the courts of the various States, but are accepted with respect in the Supreme Court of the United States. Of Judge Alvey it has been truly said that the Chief Justice of England, with his wig and gown, cannot maintain a greater dignity than the Chief Justice of Maryland did in his simple dress and natural manner; while in point of legal learning, no judge in England or America is his superior, and few his equal. His opinions, spread upon the reports of Maryland, from the twenty-eighth volume down to the seventy-fourth, "contain," says Ex.-Gov. Wm. Pinkney Whyte, "a record of learned opinions, delivered by him as the mouth-piece of the court, which is the grandest testimonial of accurate judgment, lofty principle and great legal knowledge of which any American judge may be proud." Judge Alvey has a marvelous capacity for labor, and his fine natural abilities have been strengthened by years of patient study and laborious research. In dispatch of business he is unsurpassed, and it would be a bold lawyer who would venture to introduce any irrelevant matter when Judge Alvey was presiding over the court.

One of the most important decisions ever rendered in the Maryland Court of Appeals, was that of Judge Alvey in the case of the Chesapeake and Ohio Canal, in October, 1890. Judge Alvey said in his decree in this case: —

> "And it is represented by petitions filed that there are many claims due from the canal company, amounting in the aggregate to a considerable sum, for labor and supplies furnished the company before the great freshet of 1889 to keep the canal in repair and operation, such as were payable out of the tolls and revenues if they had been sufficient under the authority reserved to the company by the proviso to section 2 of the act of 1844, chapter 281. If such claims are established and they be adjudged to be charges or liens upon the canal or its revenues superior to the liens of the bonds of 1844, they must also be provided for. These claims, however, are not now before the court, and therefore no definite determination can be made in regard to them."

Further on Judge Alvey decreed that the failure of the canal, within four years from May 1, 1895, to earn enough money to pay any amount that may be determined to be a preferred lien on such tolls and revenues for labor and supplies furnished to the canal company, such failure in tolls and revenues (along with a failure to pay other claims enumerated in the decree) shall be regarded as evidence conclusive, unless the time be extended by the court for good and sufficient

cause shown, that the said canal cannot be operated so as to produce revenue with which to pay the bonded indebtedness of the said canal company, etc., the decree for the sale shall be enforced.

The capital stock of the Chesapeake and Ohio Canal Company is $3,851,593.67. Of this the United States owns $1,000,000 and the State of Maryland the greater part of the remainder. In addition to this the State holds two mortgages, one for $4,375,000 and another for $2,000,000. These sums were insufficient to complete the canal to Cumberland, and the incomplete canal was comparatively valueless and without earning capacity. That was in 1844, and the Legislature that year passed a law authorizing the canal company to borrow $1,700,000 to complete the canal and waiving the State's lien upon its revenues in favor of that loan. In 1848 the mortgage was executed under the terms of this act, and bonds to the amount of $1,699,600 were issued under it. These are the celebrated bonds of '44, whose trustees are now operating the canal under the decree of Judge Alvey, of October, 1890. Under the terms of that decree the trustees have until May 1, 1895, to show whether or not the canal can earn a sufficient revenue to justify its continuance as a waterway. The decree for the sale has been signed and operation is suspended until the time named. The trustees of the bondholders are required under the decree to file in the courts reports of their receipts and disbursements and a statement of the condition of the work at stated times. It appears that this had not been done and the financial prospects of the work are not known to the public. It has been stated that the present physical condition of the work is better than it has been at any time since its construction. It is under the decree in this case that the trustees of the bondholders of 1844 are now operating the canal.

JOHN M. ROBINSON.

On the 12th of April, 1893, President Cleveland telegraphed to Judge Alvey, telling him he wished to see him, and asking whether it would be convenient for him to come to the White House. The next day the Judge went to Washington, and was most cordially received by the President, who at once offered him the place of Chief Justice of the new Court of Appeals of the District of Columbia, and urged him in the most complimentary terms to accept the position. Judge Alvey replied that if his appointment would be satisfactory to the Washington Bar, he would accept the position. President Cleveland said he was perfectly well assured that his appointment would be entirely satisfactory in Washington, and added that, being familiar with Maryland law, which is the fundamental law of the District of Columbia, and having had a long experience on the Bench, he wished his aid in organizing the new court. Judge

Alvey thereupon signified his willingness to accept the appointment, and warmly thanked the President.

The appointment of Chief Justice Alvey to the District Court of Appeals caused mingled feelings of surprise, regret and satisfaction throughout Maryland, but no person was more surprised than the Judge himself. No one had recommended him, no one had filed any application in his behalf for the place, and no one, so far as he knew, had recommended the appointment to the President. He was not even acquainted with President Cleveland personally, but the President, of course, knew Judge Alvey by reputation, and the selection was entirely due to his high merit and eminent fitness for the place. When Chief Justice Waite died during Mr. Cleveland's first administration, Judge Alvey's name was among those suggested to the President as his successor. Mr. Cleveland, after ascertaining what kind of a man the Maryland judge was, said that no one could be better fitted for the place. But he did not think it expedient at that time to appoint a Southern man to be Chief Justice of the Supreme Court of the United States. But for this, Judge Alvey would probably be in the seat now occupied by Chief Justice Fuller.

On the 20th of April, 1893, Chief Justice Alvey retired from the Court of Appeals, and the occasion was one of the most memorable ever witnessed in that venerable court-room. Never before had so many lawyers been present there. All the judges of the Court of Appeals were present except one: the Baltimore Bar was represented by some of its most prominent members; and lawyers from the various counties of Maryland came to do honor to the retiring Chief Justice.

The speakers were Attorney-General John P. Poe, Hon. John V. L. Findlay, Col. Charles Marshal, and others. It is well to rescue from newspaper oblivion some of the speeches made on this occasion, especially as they express the opinion of the leading members of the Maryland Bar as to the eminent worth of Chief Justice Alvey as a man and as a judge.

Attorney-General John Prentice Poe, as the representative of the Bar of the State, was the first speaker. He said: —

"The public announcement that to-day for the last time we shall have the privilege of seeing our honored Chief Justice in his accustomed place in this court very easily accounts for this unusual gathering of representative members of our Bar. We come to take affectionate leave of him as he quits us to enter upon a new field of judicial usefulness and honor. We come to bear our public testimony to the dignity and purity with which for twenty-five years he administered enlightened justice in our midst.

"We are here to thank him for the serene patience with which he always listened, the laborious thoroughness with which he always investigated, the calm, analytical thoughtfulness with which he pondered and the commanding power with which he embodied the well-considered results of his deep study and reflection in the luminous judgments which, enriching forty-nine volumes of our reports, will connect his name forever with the proudest history of this tribunal.

"We are here to tell him before he steps down from the high place which it has so long been a strength and a consolation for us to know that he filled, how we admired and gloried in his enthusiastic devotion to his work, the absolute surrender of his time and talents to the absorbing demands of his judicial functions and the inestimable benefits to the jurisprudence of our State of his ample legal learning and acquirements.

"We would have him to know also that a life so completely given up, as his has been, to the best and loftiest discharge of the duties and responsibilities of his office has made a deep and permanent impression upon both Bench and Bar, and cannot fail by the simple force of its quiet and unobstrusive example to stimulate to generous emulation the gifted and aspiring of our profession.

"We part with you, Mr. Chief Justice, with the sincerest and profoundest regret. Those of us to whom for a quarter of a century you have been so familiar a figure in this chamber can

never become reconciled to the loss which your retirement brings upon us nor cease to deplore your withdrawal. We feel that we ought to say this to you face to face, with all the emphasis that the highest respect for your intellectual powers, grateful admiration of your judicial work, just pride in the resolute independence of your character and warm appreciation of your unfailing personal kindliness and courtesy to us all can inspire.

"We know, too, that these utterances of ours find full and hearty response in the hearts and minds of your colleagues, and that they deeply share with us in the sense of irreparable loss in the realization that they and we are no more to have the benefit of your wise counsel, ripe experience and vigorous faculties.

"Called from us, as you have been, by President Cleveland in the exercise of that admirable discrimination and judgment that characterize his performance of public duty, under circumstances naturally so gratifying to yourself and to the people of our State, we cannot let you leave us and go among strangers without these earnest expressions of our affectionate regard and this public recognition of your well-earned right to the fullest measure of eulogy for the rare vigor and excellence and absolute uprightness of your judicial career. Ever without fear, it always was without reproach."

WILLIAM S. BRYAN.

Mr. Poe read a letter from Mr. S. Teackle Wallis, in which, after regretting that his health prevented him from being present, Mr. Wallis spoke of Judge Alvey as follows:

"The conspicuous position to which the Chief Judge has been called is, of course, of no more than equal rank with that which he resigns. It nevertheless enlarges so much the scope of his usefulness and opens to him a career of much broader national opportunity that no friend could desire or expect him to make the sacrifice of declining it, even if it had not in other regards the attraction of greater permanency and more tranquil independence. It is difficult, at the same time, to measure the loss which his removal entails upon the citizens of his native State, whose well-founded confidence in his ability and learning and his tried impartiality and courage entered so largely into their respect for the tribunal over which he presides. By none will that loss be felt more sincerely than by the learned judges whose responsibilities he has shared for so many years. "But it would be impossible on the present occasion to say with propriety what we all feel and shall continue to feel and what the universal opinion of the people would so amply justify us in expressing. We can only give voice to our own and the public regret and follow our distinguished friend and brother in his new career with the affectionate pride and gratitude which have accompanied him in the place that he leaves vacant."

At the close of the speeches of the members of the Bar, Judge Alvey made an appropriate response, after which he shook hands with all present, which concluded the interesting ceremony, which will be long remembered by all who took part in it.

OLIVER MILLER was among the very few judges of the Court of Appeals who were not Marylanders by birth. He was born at Middletown, Conn., April 15, 1824. At an early age, he went to live with his sister, Mrs. Converse, whose husband was principal of an academy at Frederick, Md. After an excellent preliminary education, he entered Dartmouth College, and graduated with distinction in 1848, and the same year went to Annapolis, Md., studied law with Hon. Alexander Randall, and was admitted to the Bar in 1850. For ten years from 1852 he was reporter of the Court of Appeals. He was among the small number of Democrats who sat in the Constitutional Convention of 1864, and greatly distinguished himself as a powerful speaker. He represented Anne Arundel County in the House of Delegates in 1865–67, and in the latter year was elected Speaker. In November, 1867, he was elected to the Court of Appeals, and at the expiration of his term of fifteen years, was re-elected in 1882. Judge Miller possessed personal and mental characteristics that made him one of the most remarkable men that have been on the Bench of the Court of Appeals within the memory of living men. His opinions have contributed to sustain the great reputation which the court enjoys throughout the United States. He was a most patient, hard-working, industrious judge, and among his associates the greatest respect was paid to his opinions. After serving twenty-five years on the Bench of the Court of Appeals, Judge Miller retired on account of his declining health, to the regret of all the members of the court and the lawyers who practiced before it. He died in 1892 at Annapolis, which city had been his home for forty-four years.

JOHN MITCHELL ROBINSON, who was appointed Chief Justice of the Court of Appeals after the resignation of Judge Alvey, was elected a judge of the court in 1867, and is the only one of the present appellate Bench elected at that time. He was born in Caroline County, Md., on the 6th of December, 1827. He graduated at Dickinson College, Pa., in 1847, and after studying law for two years, was admitted to the Bar in 1849. He practiced his profession at Centreville, Queen Anne's County. In January, 1851, when only twenty-four years old, he was appointed deputy attorney-general for that county; and in November of the same year was elected State's attorney. In 1864 he was elected judge of the circuit which comprises the counties of Kent and Queen Anne's. In 1867, as we have seen, he was elected to the Court of Appeals. During the twenty-six years that he has been on the appellate Bench, he has delivered upwards of four hundred opinions, covering many subjects of importance, and displaying a profound legal learning, a wide range of thought and an extraordinary variety of reading. Judge Robinson is a hard worker, and never misses a day's attendance during the sitting of the Court of Appeals. He is a man of the highest honor, of unyielding integrity, and of a stern sense of duty. His splendid service on the Bench for fifteen years gave such general satisfaction, that at the expiration of his first term in 1882, he was re-elected without opposition. His present term will expire in 1897, and he will the same year complete the constitutional limitation of seventy years; but he is so vigorous in mind and body that the Legislature will no donbt pass a special act allowing him to enter upon a third term if he should wish to continue on the Bench. He has already been a member of the Court of Appeals longer than any other judge since the formation of the tribunal, except Chief Justice John Buchanan.

Hon. GEORGE BRENT was born in Charles County, Maryland, in September, 1817. His parents were George Brent and Matilda Brent, *née* Thomas. His mother was the daughter of Major Thomas, of St. Mary's

County, and a sister of James Thomas, who was Governor of the State. Judge Brent graduated at Georgetown College in the District of Columbia. He studied law in Washington City with his uncle, William L. Brent, and completed his legal education at the Law School of Harvard University. He then commenced the practice of law in his native county, having settled at Port Tobacco, the county seat, and was soon successful in obtaining a large and lucrative practice in the three counties, comprising the First Judicial Circuit of the State. In 1841, he became State's attorney, and continued in the office until 1850. He was a member of the Whig party until it disbanded, when he united with the Democrats. He several times represented his county in the Legislature, but always manifested a preference for professional rather than political life. He was a member of the State Constitutional Convention in 1850, serving as a colleague of the Hon. William M. Merrick, Hon. Daniel Jenifer, and General John G. Chapman. In 1861, he was elected judge of the First Judicial Circuit. When the judicial system of the State was changed by the Constitution of 1864, he was one of the judges retained under its provisions. The judicial system was again changed by the Constitution of 1867, but Judge Brent was elected without opposition Chief Judge of the circuit in which he resided, thus receiving the high compliment of a Democratic as well as a Republican endorsement of his ability and integrity. He was married in 1849, to Catherine, the eldest daughter of the Hon. William M. Merrick, who died in August, 1877, leaving him with a large family of children.

The Judge died at the age of sixty odd, while occupying his seat on the Bench of the Court of Appeals.

JAMES MC SHERRY.

Hon. JOHN RITCHIE was for a number of years one of the leading lawyers of Western Maryland. He was born in Frederick, Maryland, in the year 1832. His great-grandfather was a Scotch immigrant into Maryland, probably coming from the Cumberland Valley, in Pennsylvania, and settled in Frederick County at an early period. His father was Dr. John S. Ritchie, a well-known and talented physician of Frederick County. John Ritchie, after receiving an academic education, completed his preparation for the practice of the law at Harvard University. He then returned to Frederick County, and entered on the practice of his profession in partnership with the Hon. William P. Maulsby, who was afterwards a Judge of the Court of Appeals. He soon acquired a lucrative practice, and was recognized as one of the best speakers in the State, in the forum of justice as well as on the hustings. His first appearance in the field of public activity, was as captain of a militia company in Frederick County, which was the first militia organization to

offer its services to President Buchanan for the suppression of "the John Brown Raid" at Harper's Ferry. The offer of services was accepted, and the company marched to Harper's Ferry, and assisted in surrounding the Engine House during the storming of that retreat by the United States Marines. In 1860, Mr. Ritchie was one of the Democratic electors on the Breckenridge ticket in Maryland. Some years afterwards, he was elected State's Attorney for Frederick County, and was re-elected at end of his four years' term. He was elected to Congress a little later from the sixth district by a majority of over eighteen hundred. He was the Democratic candidate, and his personal popularity was strongly attested by the size of his majority in a district Republican under normal conditions by a good many hundreds of votes. In the Democratic convention of 1875, he represented the "Hamilton," or reform element of the Democratic party, but did not succeed in his strenuous endeavors to secure the nomination of Mr. Hamilton for the governorship. In 1877, he was more successful, and secured Mr. Hamilton's nomination, as the Democratic candidate, after a most able and eloquent speech. Mr. Hamilton was in due course elected, and appointed Mr. Ritchie to the post of Chief Judge of the Sixth Judicial Circuit of Maryland, thereby, of course, making him a member of the Court of Appeals. The Sixth Circuit comprises the counties of Frederick and Cumberland. Judge Ritchie died in 1887, having served only ten years of the term for which he was elected.

Next in seniority to Chief Justice Robinson is Associate Justice WILLIAM SHEPARD BRYAN. Judge Bryan is a native of New Berne, N.C. He comes of an old and distinguished family which lived in that town for four generations. His father, Hon. John H. Bryan, was a member of Congress from North Carolina when John Quincy Adams was President of the United States. He practiced law for forty years, and it was in his office that his son studied after graduating at the University of North Carolina. Judge Bryan removed to Baltimore in December, 1850, and for thirty-two years devoted himself exclusively to the practice of his profession. During all this time, he resolutely refrained from all participation in politics, except in 1876, when he was induced to become a presidental elector on the Tilden ticket. In 1883, when Judge Bartol retired from the Court of Appeals, Mr. Bryan, without any solicitation on his part, was nominated for the vacant judgeship, and triumphantly elected, although his nomination was made only ten days before the election.

Judge Bryan represents the city of Baltimore on the Bench of the Court of Appeals, and has no circuit duties to perform. He is most regular in his attendance, and assiduous in the performance of his duties. He has delivered the opinion of the court in many interesting and important cases, among others, Linthicum *vs.* Coan, in 64th Maryland, involving the riparian rights on the Potomac River; the case of Tragaser Gray, in which the high license law was decided to be constitutional, and the case of the Lake Roland Elevated Railway Co., in which it was decided that the Mayor and City Council of Baltimore had the power to repeal an ordinance which granted the use of the public streets to a railway company whenever in their judgment the public interest required the repeal.

Judge Bryan is a delightful companion. His wide range of reading in history and general literature has stored his mind with many interesting facts with which he enriches his conversation. He resides at Annapolis during the sessions of the Court of Appeals, and spends his vacation at Staunton, Va.

Hon. JAMES MCSHERRY, who represents

Frederick and Montgomery Counties in the Court of Appeals, is the son of James McSherry, author of the well-known History of Maryland. The great-grandfather of the judge, Patrick McSherry, came to America from Ireland in 1745, and settled in Pennsylvania, where he was for many years a justice of the peace. When the American Revolution broke out, he joined the patriots, and was elected one of the Committee of Safety for York County. James McSherry, the son of Patrick, and grandfather of the subject of this sketch, was a member of the Pennsylvania Legislature for thirty years; he, also, served one term in Congress.

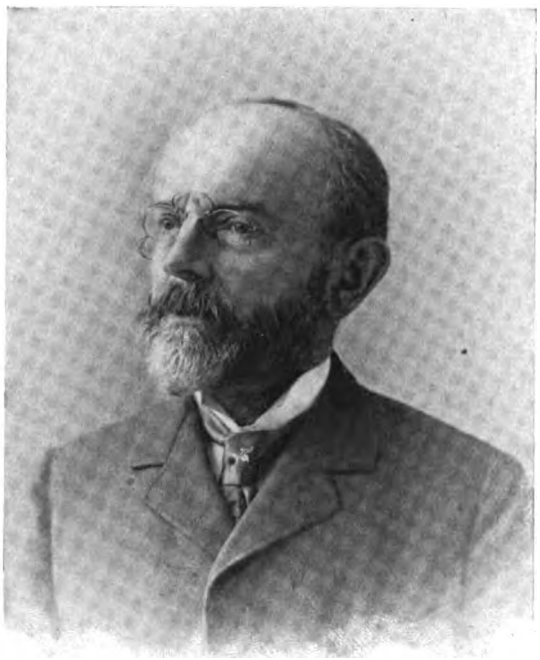
JOHN P. BRISCOE.

Judge McSherry was born in Frederick, Md., on December 30th, 1842, and has lived there all his life. He was educated at Mt. St. Mary's College, Emmitsburg, and would have graduated in 1862, but he left the previous year on account of the war. He was a strong Southern sympathizer, and although only a mere boy, was arrested and confined in Fort McHenry for a short time. He studied law under his father, and was admitted to the Bar on the 9th of February, 1864. He was actively engaged in practice for twenty-three years, until in November, 1887, he was elected without opposition to the Court of Appeals. During the seven years he has been on the Bench, he has won the confidence and admiration of his associates as well as the members of the Bar for his broad and vigorous intellect, his quickness of apprehension, the clearness of his reasoning, his extraordinary capacity for work and his conscientious application to duty.

Hon. JOHN PARRAN BRISCOE was born on August 24, 1853, near Lower Marlborough on the Patuxent river, Calvert County, Maryland. He is the son of James T. Briscoe and Annie M. Parran. His father was a Pierce elector with Judge Alvey, was State senator for his county from 1842 to 1848 and from 1861 to 1869; and a member of the constitutional convention of 1867. His grandfather, Philip Briscoe, was for years president of Charlotte Hall Academy in Saint Mary's County. The Judge's father was in the Federal service under A. Leo Knott, Esq., who was second assistant postmaster-general during Mr. Cleveland's first administration. The Judge received his education at Charlotte Hall Academy, and at St. John's College, Annapolis. He studied law with his father, at that time practicing in Baltimore, and was admitted to the Bar in May, 1875. After practicing in Baltimore for a short while, the Judge moved to Calvert County, where he was three times elected State's attorney, in 1879, 1883 and 1887.

When Judge Stump became disqualified by the constitutional limitation of age, Judge Briscoe was appointed by Governor Jackson Chief Judge of the Seventh Judicial

Circuit, comprising the counties of Prince George's, Calvert, Charles and St. Mary's. This was in February, 1890. In August, 1891, the Judge was nominated by the Democratic convention at Port Tobacco, and he was elected in the following fall to the Court of Appeals, for the full constitutional term of fifteen years. He is a member of his party's State central committee, and an active worker in his official position. During his brief time on the Bench, he has delivered a number of important opinions, among which may be mentioned the famous "oleomargarine" decision, the opinion on the constitutionality of a statute allowing "guaranty companies" to become sole sureties on bonds, the decision of the gambling case in 76 Maryland Reports, holding that the statute of "9th Anne" is in force in this State, and makes a whole debt void where any portion of it was contracted with reference to a "gambling consideration," and many others.



DAVID FOWLER.

ANDREW HUNTER BOYD was born in Winchester, Virginia, July 15, 1849. He was the youngest son of the Rev. Dr. A. H. H. Boyd, a Presbyterian minister, who resided at the time of his death in Winchester, Va. He was educated at private schools in Winchester and at Washington College (now Washington and Lee University) at Lexington, Va., and the University of Virginia. He graduated in the law school of Washington and Lee University in June, 1871. Settled in Cumberland, Md., in August, 1871, and continued the practice of law there until he was appointed Chief Judge of the Fourth Judicial Circuit by Governor Frank Brown, on May 1, 1893. He was elected to that position at the general election held in November, 1893, which position he still holds. As Chief Judge of the Circuit Court he is an associate judge of the Court of Appeals of Maryland. The only office ever held by him prior to his appointment as judge is that of State's attorney for Allegany County, to which he was elected in November, 1875, and held the office for one term of four years.

He married Bessie M. Thurston, of Cumberland, Md., by whom he has three children living in Cumberland.

Judge DAVID FOWLER is the second son of the late Hon. Robert Fowler, for many years an influential and prominent citizen of the State, and at one time treasurer. He was born in Washington County in 1836, graduated at the College of St. James, near Hagerstown, 1858, along with a number of men who afterward became prominent. He came to Baltimore, studied law with Brown & Brune, was admitted to the Bar in 1862, and at once engaged in practice in the city. For some years he occupied an office adjoining that of Mr. Charles J. M. Gwinn, for whom,

in his absence, he transacted a considerable amount of business. Later on Mr. Fowler bore the same relation to Reverdy Johnson that he had formerly with Mr. Gwinn. He wrote the will of that great lawyer at his dictation, and Mr. Johnson devised to him a number of valuable Maryland and other books, which Judge Fowler now has and prizes highly.

Judge Fowler never took to politics and never was much of a politician. His only essay in this direction was as candidate for the House of Delegates in Baltimore County in 1875, when the whole Democratic ticket was overwhelmed by the so-called "potato bug" movement. In 1882, when the terms of the judges elected in 1867 expired, Mr. Fowler was a candidate for the office of associate judge. Judge Yellott was elected Chief Judge and Mr. Fowler associate. Seven years later, in 1889, Judge Yellott arrived at the age of seventy years. The Legislature did not extend his term and he retired. Governor Jackson gave Judge Fowler the appointment in the spring of 1889, and in the fall of that year he was elected for the term of fifteen years over Mr. Keech. Judge Fowler married Miss Brinkley, of Baltimore. His home is at Towson. His circuit includes the counties of Baltimore and Harford, and he does a large amount of circuit duty both at Towson and Belair. Judge Fowler is an industrious and hard-working member of the court. He is a man of excellent judgment, conservative in his views and opinions and is pre-eminently what is called a safe judge. He is a clear reasoner and thinker, and above all things has that exalted sense of honor and strict impartiality so eminently befitting his high office.

The chamber of the Court of Appeals is in the old historic State capitol, Annapolis, where Congress sat during the closing days of the Revolution, and where Washington resigned his commission on the 23d of December, 1783. The Court of Appeals of Maryland has been for more than a century the sure refuge of the people from political despotism, ever holding over them the shield of the Constitution. At present, as in the past, Maryland's highest court stands far above and beyond all political partisanship; the boldest and most reckless "boss" or "manager" has never dared to attempt to "pack" it, or to attack its integrity. The court holds three terms a year, January, April and October, and the dockets altogether generally number about one hundred and seventy-five cases. It is estimated that one-third of the cases that come before the court are reversed. As appears by this article, the Court of Appeals of Maryland has numbered among its members many distinguished men. The present Bench is equal to any of its predecessors in dignity and ability.

THE LAW OF THE LAND.

VII.

THE NORTH STAR.

By Wm. Arch. McClean.

OUR title is somewhat on the order of Josh Billings's lecture on milk. The subject was dismissed with the reflection that the best thing on milk is cream. The most valuable star in the heavens for the purposes of the inhabitants of earth is the North Star, and with this and a few other casual remarks we will dismiss our title. There is something fascinatingly mysterious about that great bright star that has proved the faithful friend and guide of mariners. The north star might be said to be the brilliant jeweled head of the pole or axis of the earth, blazing this information for the use and benefit of mankind. The axis of the earth points to the north star. For practical purposes, the north star is observed for purposes of ascertaining the axis, the true north. The magnetic needle of the compass points to the north, to the axis that points to the north star. What has the magnetic needle to do with it? Ah, that's the rub. It has everything to do with our story, so we are compelled to dismiss our fascinatingly mysterious title.

We all know and have seen that wonderful instrument, a compass, with its poised needle always swinging and vibrating to the north. We know that there is a mariner's compass and a compass used for land surveying. Now this quivering little needle points to the true north, the axis of the earth, and it does not so point. This needle is as contradictory as an Irish bull. On certain lines upon the earth's surface called lines of no variation, the needle points toward the pole. Such a line at the present time passes near Wilmington, N.C., Charlotteville, Va., and Pittsburg, Pa. When the needle points to the north, on these lines of no variation, it is the true north, the pole, the axis, the north star. However, on the eastern side of this line the variation of the needle is toward the west, increasing in amount with the distance from it. On the western side the variation is toward the east. Take for instance the line of no variation above mentioned. The variation of the needle at New York City is six degrees west, while at the Pacific coast it is between fifteen and twenty degrees east.

This variation undergoes a progressive change in amount, and after long periods changes in direction, vibrating, in fact, between certain limits. These lines of no variation are constantly slowly changing. In London in 1575 the variation was easterly eleven degrees, fifteen minutes, in 1657 it was nothing, then it slowly advanced to its maximum in 1815, twenty-four degrees, seventeen minutes and eighteen seconds westerly. In the Eastern States the north pole of the needle is moving westward slowly.

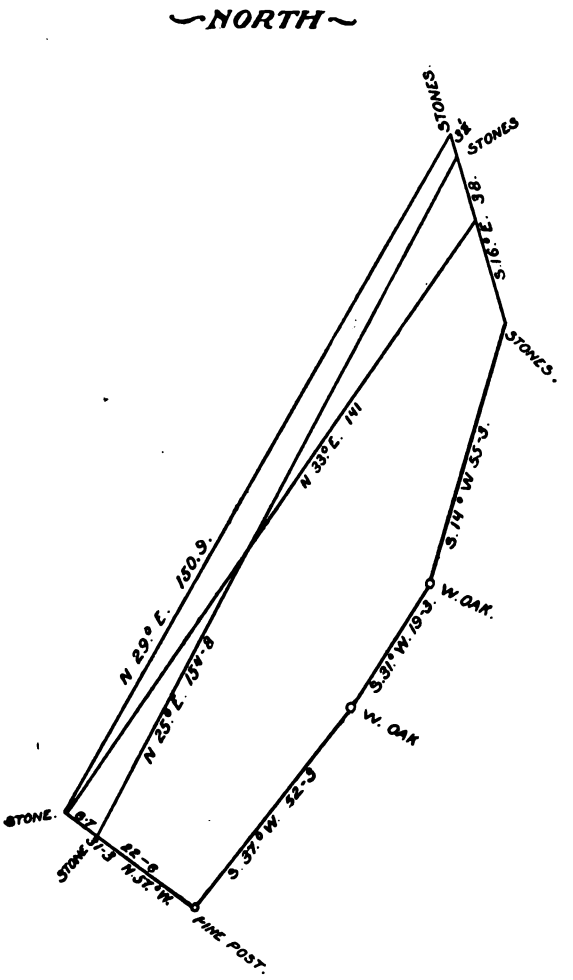
One can readily see the need of great care in surveying. The surveys should always be referred to the true meridian, or the date of the survey be indicated so that such reference may at any time be made. The variation of the needle from the true meridian is corrected by allowing for the amount of this variation as established for the place and time, or as determined by observations made for the purposes at the time. The exact cause of the continued shifting of the needle of the compass is as yet a matter of speculation with science.

This variation becomes a matter of great

importance in rerunning old lines or in making surveys in relation to them. On surveys made years ago due allowance for this variation or declination must always be made to enable the surveyor to follow the original lines. In order to do this the surveyor must turn the forward end of his compass to the right in those sections in which the variation is to the west, just so far as will compensate for the change or variation which has occurred in the time elapsing since the original survey. The variation varies much. It generally is one degree in thirty years, but oftentimes is much greater, or less, which is to be attributed to the differences in compasses, the defectiveness of many of the old instruments, and often to the carelessness and inaccuracy of the work upon the ground when first done, in days when the country was a wilderness and lands of little value.

It is impossible to rerun a survey correctly without regarding this rule as to variation, as otherwise all lines would be different, and as often as surveyed there would be a new set of degrees to designate each line. This would be so although the tract of land surveyed would contain the same quantity of acres and would close on the beginning corner just as it would if correctly surveyed. This difference becomes material when the lines are of considerable length, amounting to about one rod in width at the end of every fifty-seven poles of a line for each degree of error. The surveyor in running any north line of one mile in length, which had been originally run say ninety years ago, without making any allowance for the variation, which would be about three degrees, and running according to the degree of the old survey, would trespass upon the tract lying to the west to such extent as to cut off a wedge which would be nearly seventeen rods wide at the far end and contain about seventeen acres.

We are coming to our story. Look upon this diagram.



This diagram represents a tract of land in southern Pennsylvania of between twenty-five and twenty-seven acres. The lines of the three sides were run many years ago. The corners were all well marked and established. The tract was partly timber land. It was owned by a man by name of Fore. A Mrs. Reece agreed to purchase of Fore twenty-five acres of land and was given a deed for so many acres, three of the sides to be the three old surveyed sides as shown on diagram; the line of the fourth side was to be surveyed and marked.

Fore meanwhile dies. His administrator takes a surveyor upon the ground and makes a survey. In doing so he obtains from the old papers all the lines except one,

makes a calculation to ascertain the course he should run across the tract so as cut off twenty-five acres. He runs the line designated as north twenty-nine degrees, east, one hundred and nine-tenths perches, and marks the beginning and end of this line. In his calculations he forgets to allow for the variation. All the old courses, by reason of the variation from lapse of years, have slipped westward. In consequence this new line veers off and takes in two more acres than it should have done, had allowance been made for the variation. Mrs. Reece goes into possession of the piece surveyed off and remains in undisputed possession thereof for ten years, without being aware that she had more than the twenty-five acres that she agreed to buy.

After the lapse of this decade of peaceful possession, the same surveyor makes the discovery of his mistake of not having made allowance for the variation. A son of the surveyor has become the owner of the adjoining land on the west, consequently the mistake costs this son the loss of two acres of land. However, time by limitation has not placed the mistake in such a position that it cannot be corrected. So the surveyor returns upon the land and makes a new line in the attempt to correct his mistake.

On the trial resulting over the confusion of lines, the surveyor testifies that the variation of the needle of the compass for the period of time elapsing since lines were originally surveyed would be about four degrees. That in running the new line he had forgotten to make allowance for this variation of four degrees, and consequently too much land was embraced in survey of land for Mrs. Reece. That he went back to correct his error and made the correction by going east nine poles on the base line and then running north twenty-five degrees, east one hundred and fifty-four and eight tenths perches, coming out three and five tenths perches west of the original stone corner which had been established when previously run. That Mrs. Reece was thus left twenty-five acres neat measure by the change. That the survey now made differed from the previous one by removing a large wedge shaped piece of land on the south and adding a small wedge on the north.

A peculiar significance is given to the correction as made by the fact that upon the large wedge-shaped piece of land on the south grew a quantity of valuable timber. This timber is added to the son's possessions, who proceeds to cut it down and convert it to his own uses. Mrs. Reece is however not satisfied. She brings an action of trespass for damages against the son under a Pennsylvania statute providing that in case of timber trees of another cut down and of the conversion of the same to the use of offender, the party so offending shall be liable to pay to the owner treble the value thereof as a punishment or penalty. The son denies the trespass, alleging in defense a legal title to the land. The relative surveyor is relied upon to explain the first survey without allowance for the variation and the correction thereof by coming east on the base line and running the line north twenty-five degrees east.

There would have been a verdict for the defendant if the trial could have ended before the surveyor had been cross-examined. The case hangs upon a question pertaining to the science of surveying. The surveyor has had his own sweet way in the explanation thereof. Yet further scientific light is to be developed.

Courts, lawyers and juries can scarcely be expected to know as much about magnetic needles, true meridians and variations as they do about corporeal and incorporeal hereditaments and other legal *et ceteras*. It might easily happen that they might be deceived by the unintentional or intentional errors of those supposed to possess such scientific knowledge. When a blunder is made in the original survey, how are they to

know that a worse mistake would be made in the attempted correction of the original blunder? However it happens in this case that the attorney for the plaintiff, let us call him Lawyer Smith — for that happens to be his real name, and who upon request has kindly furnished many of the facts contained in this article — knows more about surveying than the surveyor himself. Ah, and that proves to be the rub.

After the surveyor is led to briefly review his work, the examination ends with questions and answers somewhat in this style: —

Question. Is the variation of the needle of the compass in this section of country to the east or west?

Answer. To the west.

Ques. Are you sure of that?

Ans. I'm certain of it.

Ques. How came you then to go east on the base line to make the correction of variation?

Ans. (*In some confusion.*) I don't know, I never thought of that before.

Ques. Then it was wrong to go east on base line to correct the variation?

Ans. Yes.

Ques. You should have placed your instrument on the original corner, at west end of base line, turned it four degrees to the right to have made the correction for four degrees of variation?

Ans. Yes.

Ques. Look at this diagram, turning your instrument four degrees to the right from line north twenty-nine degrees east, you would run north thirty-three degrees, east one hundred and forty-one perches, which would be the correct line with allowance for variation, would it not?

Ans. Yes.

Ques. In that case the southern wedge of land would belong to Mrs. Reese?

Ans. Yes.

Ques. That's all.

Ans. Thank you.

And the verdict is for the plaintiff.

LONDON LEGAL LETTER.

LONDON, May 2, 1894.

TO the surprise of most people, Sir Charles Russell has accepted the Lordship of Appeal in Ordinary, rendered vacant by the death of Lord Bowen. The calm and still atmosphere of the House of Lords will certainly afford a change of scene to the greatest European advocate of modern times; he sacrifices an income approaching thirty thousand a year for a humble pittance of six thousand, but he was tired of professional routine and the drudgery of courts; henceforth, from his crimson chair, as Lord Russell he will, occasionally resting from the pleasures of the race course, reverse the decrees of inferior judges. The critics of legal appointments — a feeble folk — have been complaining that there is only one equity lawyer in the House of Lords, which is true enough; but after all it scarcely matters, as the Lords of Appeal are men of sufficient talent to master any strange problem litigants may present them with.

Sir Charles Russell is a man of masterful will and domineering temper, and many are the anecdotes of the crushing snubs he has administered to his juniors and the solicitors at a conference too eager with suggestions. His withdrawal from the forensic arena sets free an immense amount of work for other men; as yet Sir Edward Clarke and Mr. Lockwood seem to be reaping the richest harvest from the retirement of their great competitor. Lord Russell's interest in the race course is well known, a taste he shares with Mr. Justice Hawkins, and he also has always found relief from professional worries in the pleasures of the card table; although he plays whist a great deal, he is not a particularly good player: the game he most excels in is picquet, at which I believe he is one of the first

experts in the country. It has been a good deal the fashion to say that he was no lawyer, but this involves a very serious misconception; it may be true enough that, absorbed as he constantly was, all through his career at the Bar, in the practice of advocacy, his memory was furnished with a less complete equipment of legal propositions than is possible to those who live laborious days in Chambers; but in the opinion of so competent a critic as the late Lord Bowen, he was the greatest legal genius of his generation. The late Attorney-General's promotion, of course, vacates his parliamentary seat: he sat for the metropolitan burgh of Hackney; the Liberal candidate is Mr. Fletcher Moulton, Q.C., our greatest patent lawyer: he was senior wrangler at Cambridge, and any scientific or mathematical problem presents no difficulties to him; science has brought him wealth, but oratory is not his possession; the son of a well-known Wesleyan clergyman, one might have expected some inherited warmth of discourse, but a colder, drearier speaker you would not easily imagine.

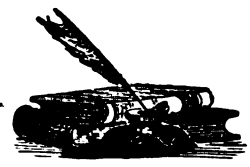
From a spectacular point of view, the English legal system can furnish nothing finer than a session of the Court for Crown Cases Reserved, our nearest approximation to a Court of Criminal Appeal; this morning for instance, eleven of the common law judges sat in the Lord Chief Justice's court, robed in scarlet and ermine, to dispose of some points which would not strike any one as of great intrinsic importance.

A good deal of public interest has been excited by the trial of two miserable anarchists at the Old Bailey. Mr. Justice Hawkins, who generally takes important criminal trials, was the judge; one of the criminals pleaded guilty, but the younger culprit, a youth of nineteen, entered a defense; his counsel was Mr. J. Farrelly, who appeared for the first time before an Old Bailey jury, and everything that legal acumen could devise, he urged on behalf of his client; but it was a hopeless case, and sentences of twenty and ten years' penal servitude were imposed respectively. Mr. Farrelly has hitherto been chiefly known as a very learned writer on questions of international law, but his conduct of this difficult case has shown his equal aptitude for forensic labors.

The members of Grays Inn are endeavoring to arrange a ball; as a rule these functions are given by the Benchers, but the Grays Inn barristers have resolved to try a festivity on their own account, it would of course take place in the picturesque old Hall of the Inn.

* * *

The Lawyer's Easy Chair.



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

BY IRVING BROWNE.

CURRENT TOPICS.

THE NEW YORK CONSTITUTIONAL CONVENTION has assembled. It is an important assemblage, and contains many men of mark and of the first order of professional and administrative ability. The president, Mr. Joseph H. Choate, is one of the leaders of the New York City Bar, and has a wide celebrity for legal attainments and brilliant eloquence. At least two subjects of the gravest importance will be brought before the convention. One is the subject of woman suffrage; at first received with derision, then tolerated with smiles and empty gallantry, the day has come when it must be treated seriously and determined equitably. It remains to be seen whether one-half the community may deny the right to vote to the other half simply on account of difference of sex. But have we not too many voters already? Doubtless, considering the material of which they are composed. But it is a very poor reason for refusing the suffrage to the female sex that it is already granted to the very dregs of the male sex. The vendible and criminal cattle who loaf on our street corners may vote, but the purest and most intelligent and richest woman in the community may not. Fix a qualification if you will, such as property, or intelligence, — there is some reason in that; but do not tell us that sex is a qualification or a disqualification. Another important topic is the judiciary. In respect to this, all other details are insignificant when compared with the importance of enabling the courts to transact their business promptly. The great majority of lawyers in New York believe that it is imperatively necessary to increase the number of judges of the court of appeals, and do not approve of limiting appeals. Doubtless the convention will accept this view, and will not be deterred by the well understood unwillingness of the present members of the court to tolerate accessions to their numbers. It is much more important to have the legal business of the State promptly transacted than to cater to the social preferences or humor the personal wishes of these highly estimable gentlemen. Municipal government and taxation are other topics of great importance that now occur to us. The man who shall devise an effective and impartial system of taxation will prove the greatest benefactor of the present age in a material sense. If taxes were thus administered they would be so light that nobody would feel them nor care to shirk them. The subject of biennial sittings of the Legislature will also come up. Very few States preserve the annual session, but whether the change would afford any relief, or even be practicable, in New York, is quite debatable.

SHAKESPEARE'S HANDWRITING. — Somebody has sent us a circular announcing a forthcoming book designed to demonstrate that Shakespeare could not write. This circular is illustrated by fac-similes of his five known signatures, which it is claimed are extremely illiterate, and show that he could write nothing more than his name, and never wrote it twice alike nor spelled it uniformly. An article in the "Pall Mall Magazine" for May is to the same effect. A highly esteemed lawyer writes us that he never has seen any satisfactory evidence that Shakespeare could write, and argues that if he could not write he could not read, and if he could not read he could not have composed those plays. Among the earliest arguments of the Baconians we recollect the story that the manuscript from which the printers set up the dramas was entirely free from interlineations, additions and changes; therefore it was urged that he must have copied them from another's writing. It has been found convenient to let this tradition drop out of sight in view of the more modern and potent theory that he could not write. On the same course of reasoning, i.e., the argument founded on the signatures, it might be proved that Napoleon could not write. Let the reader consult the fac-similes of his signatures at the end of Prof. Seeley's biography, and note the continual decadence of his "pen-gesture" and the meaningless and illegible character of the the later signatures. If the argument of the disappearance of the original manuscript of the plays is urged, we may retort that there are probably very few manuscripts of the great old authors extant. We do not know, but we will ask, are there any, or

many, of Bacon himself? We know that he once spelled his own name Bakon. How do we know that Shakespeare did not dictate his plays to an amanuensis? We may work ourselves up into a state of doubt on almost any subject, if we listen only to the difficulties and improbabilities. It seems to us that there is much more proof and probability that Shakespeare wrote these plays, than there is of the life and works of Jesus Christ. Certainly there is much more contemporary evidence. If Colonel Ingersoll can credit the Shakespeare legend, we do not see why we should strain at the Gospels. But now there is just one perfectly conclusive piece of contemporary evidence that Shakespeare was not illiterate, but on the contrary was pretty well educated for his time and station, and that is the familiar declaration of Ben Jonson that "he had little Latin and less Greek." We have never seen this contradicted, but it must be discredited before the common world can be made to believe that he could not write. Rufus Choate knew a great deal of Latin and Greek, and yet his signature was an abominable scrawl, and so was all his handwriting. We once kept a letter from David Dudley Field (who wrote a hand that had to be interpreted by faith and not by sight) by us a year in order to translate two words, which at length turned out to be *macte virtute*. A man's signature is ordinarily the most careless and illegible part of his writing. We frequently receive letters, the signatures of which we cannot read, but which are yet evidently the production of educated and intelligent minds. It is to be regretted that the argument founded on handwriting has been imported into this discussion, for it is the most misleading and inconclusive of arguments, as every lawyer knows. An expert in handwriting can prove anything, just as he wishes, or is paid.

JUDGES' WILLS. — The "London Law Journal" publishes Sir James Stephen's last will at length. It is not long. Here it is: "This is my last will. I give all my property to my wife, whom I appoint sole executrix." The "Law Journal" says this is the shortest will ever made by a judge, and Lord Mansfield comes next, who disposed of his estate, amounting to half a million pounds, on half a sheet of notepaper. After a few specific legacies, he gave the rest to his nephew as follows: "Those who are dearest and nearest to me best know how to manage and improve, and ultimately, in their turn, to divide and subdivide the good things of this world, which I commit to their care, according to events and contingencies which it is impossible for me to foresee or trace through all the mazy labyrinths of time and chance." On the other hand, Lord Treasurer Dorset employed line upon line of the most uxorious rhetoric, praising his common-law wife as if *she* were "the superior person," just to confer a very simple gift. Perhaps however Mrs. Dorset had an ample settlement. Probably so, for otherwise my lord would not have had that "unspeakable love, affection, estimation and reverence" which he testamentarily confesses. A short will or deed or contract always testifies to the legal knowledge of the draftsman. Only one who perfectly knew the law, and what he desired, and how to express his wishes, could have afforded to risk so much on so little verbiage. We once knew a distinguished lawyer, who deeming himself at the point of death, employed his brother, his law partner, to draw his will. The draftsman began in the old-fashioned pious way, "In the name of God, amen," etc. The paper was read over to the sick man, who rose up in bed and denounced it, saying, "Do you suppose I am going to leave such a thing as that for the lawyers to laugh at?" and proceeded to dictate a short and simple will. The reaction saved him. From that moment he got well, and is now practicing law at the age of eighty-four. And yet so inconsistent is human nature, that he always insisted on "This indenture witnesseth," in a deed, although the thing and the grammatical form were matters of the past. He used to defend it on the ground that clients were accustomed to it and it was best to humor them. But his will was quite another matter.

CHALLENGING JUDGES. — The "New York Law Journal" and the "Albany Law Journal" concur in disapproving a recent Missouri statute, "allowing an accused person to swear away his case from the legally elected judge on the ground of prejudice, without calling for any proof of the existence of such prejudice." We agree with these writers. Such a practice might very well result in raising an unfounded prejudice against the fairness or integrity of a particular judge, and thus wreck his usefulness. A prisoner may not change the place of trial on his unsupported allegation that he cannot get a fair trial in the venue laid. He must show reasons for his belief. So he ought to substantiate any act which necessarily implies unfairness on the part of the judge assigned.

"BOOK NEWS." — Can any good come out of St. Paul? a good many lawyers are asking, in view of that series of weekly reporters which a grave committee of lawyers have recently stigmatized as a "pestilence." This may be, but we do not exactly see how lawyers are going to avoid "taking it." The West Publishing Company are now putting out a new monthly periodical, under the title at the head

of this paragraph, which deserves unqualified praise. It gives news of all the law books published during the last month, with reviews of many of them signed by the writers — the signatures fac-similed so that there shall be no mistake as to the authorship (take note, Baconians), and a table of important articles in legal periodicals, etc., etc. This is very useful too. The candor and independence of the editor is illustrated by his publication of reviews of books taken from other sources, although they may disagree in part or in whole with the estimate of "Book News." A striking instance of this is a notice of "Parsons on Contracts," from the "Yale Law Journal," which lays violent hands on that awful old ark — and we cannot say, without reason. We commend this cheap little periodical to all lawyers, It may serve a practitioner a good turn in pointing out desirable things and warning against others. It is a capital idea, and thus far is well executed.

DISSENTERS. — We read an article in a Canada law journal, the other day, copied, if we recollect right, from the "Albany Law Journal," although perhaps not originating with it, on the Supreme Court of the United States, which contained one assertion that will be apt to make the Bar, and that august court itself, laugh inextinguishably, namely, that dissent in that tribunal is rare! There is probably no court in this country in which there is more, if as much, dissent. In its early days this was not so common, but in recent times, when there have been so many questions of political and constitutional complexion, the increase of dissent is marked. The judges are not so much afraid of Chief Justice Marshall dead as they were of him living. There is not, nor has there been for a long time, any one personality so overpowering in will, in logic, and in grasp of unprecedented questions, as that great man's. The decision of the very last very novel question, namely, that of the meaning of "high seas," was not unanimous, and so far as we have noted the remarks of legal journalists, including the diffident and measured utterances of our "St. Louis Reviewer," it seems to be the prevailing impression "that the tail wags the dog" in this instance. We do not believe in the policy of publishing the fact or the reasons of dissent, for it always tends to make the law uncertain, and their publication hurts the influence of this, as of any other court — but that is a debatable matter. The fact in this instance is beyond dispute.

NOTES OF CASES.

"CONVICTION."— The "London Law Journal" brings us news of the case of Regina *v.* Blaby, in which "conviction" was defined. The indictment was for a second offense of uttering false coin. The first "conviction" is a misdemeanor, but a second is a felony. On the first offense there was a verdict of guilty, but judgment was suspended and had never passed. It seems that early authorities hold that "conviction" means verdict or plea, and sentence, but the court for the consideration of crown cases reserved now hold that sentence is not essential to "conviction." Of this the "Law Journal" observes: "the decision in Regina *v.* Blaby is to be hailed as in substance adopting the reasonable view, and rejecting ancient technicalities appropriate enough *in favorem vitæ* in days of capital punishment, but based on an insufficient distinction between guilt in law and the amount or fact of punishment." This doctrine prevails in this country. U.S. *v.* Watkinds, 6 Fed. Rep. 158; Blair's case, 25 Gratt. 850. But "adjudged" implies sentence. Blaufus *v.* People, 69 N.Y. 107; 25 Am. Rep. 148.

THE VERY QUEEREST CASE. — Unless some faithless newspaper reporter in New Jersey is trying the credulity of the populace with an invention, Russell Sage's case must yield the palm for oddity. The story comes to us as follows: —

"Paterson, N.J., May 7. — Several months ago Henry Ives, a Bergen County farmer, — not Saint Yves of Breton — wooed Annie Rafferty, a comely young woman living in Manchester township, and a betrothal followed. When about to go away he gave his sweetheart a parting kiss, during which the gold filling in Miss Rafferty's teeth fell out. She told him of the mishap, thinking he would compensate her for the loss. He did not, however, and now Miss Rafferty has brought suit against Ives. She had the tooth refilled and has furnished her lawyer with a bill of expenses. The suit has frightened the farmer and the engagement is off."

This raises several very nice questions. Was not the occurrence purely accidental? Does not a woman impliedly warrant the anchorage of her dental fillings as against a labial collision which she does not forbid? Was not Miss Rafferty guilty of contributory negligence? Could she not maintain an action against the dentist, and if so, is not that her only remedy? And so on. But whether the occurrence is sufficient to justify the farmer in abandoning his contract, is another thing. It might go to mitigate damages — this apparent inability to masticate hard tack and bacon rinds and the other edibles which usually furnish forth the Pennsylvania agriculturist's board. (We say so on the strength of the Pennsylvania case in which the wife had a divorce on account of hard work and poor food, Detrich's Appeal, 38 Alb. L. J.

168.) It might be deemed too arduous an undertaking to endeavor to keep her mouth filled. We must say, however, that the plaintiff was unwisely advised. Had we been her counsel, we should have recommended her to marry the man without any claim for the loss, to fill the cavity temporarily with spruce gum, and spring the permanent necessity on him after marriage. Tooth-filling is certainly a necessary for a wife, although the material employed must be regulated by the station and circumstances of the husband.

ANOTHER TOOTH CASE. — In spite of our last legal assertion, we must call attention to a case in which, according to the "Law Journal," "his Honor Judge Lumley Smith decided that a new set of false teeth was not a necessary for which the separated wife of a Sussex saddler was entitled to pledge her husband's credit. We hope," continues the "Journal," "the teeth supplied were as sound as the law; but in giving judgment, the learned judge hardly gave sufficient effect to the maxim that the luxuries of one generation are the necessaries of the next, and its possible application to the case of artificial teeth, for he said that man had done without them for centuries — in fact, during the reign of the common law — and that no parish doctor would order them to be supplied as parish relief, to which the modern philanthropic politician would, like Bumble, reply, 'The Poor Law's a hass.' We have heard of another husband who took a different view of his rights as to his wife's false teeth. His house was burnt and she within it, whereupon he included in his claim on his fire-policy 10*l.* in respect of his interest in the false teeth." Let our contemporary make a note of a case in this country, Gilman *v.* Andrus, 28 Vermont, 241, which was once metrically reported as follows: —

If A. makes artificial teeth for Mrs. B.,
And B., well knowing it, does not forbid the set,
As matter of estoppel, it is plain to see
It "does not lie in *his* mouth" to deny the debt.

IS A CAB A PUBLIC PLACE? — The "London Law Journal" says: "Three cabmen of St. Luke's were found by a constable at three on a Sunday morning playing at dice for money in a four-wheeler on a public stand, and were charged at Worship Street before Mr. Haden Corser for this heinous mode of whiling away their hours of expectation for East-end fares. The magistrate raised, and has now decided, the question whether a four-wheeler was a public place. A carriage in a train has been held to be a public place (Langrish *v.* Archer, 52 Law J. Rep. M. C. 47), but when in a siding and not in use it has been held not to be so (Regina *v.* Freestone, 25 Law J. Rep. M. C. 121), and an omnibus is also a public place within the Vagrancy Act, 1824. But the magistrate felt posed as to whether a cab on a stand and not actually in use by a fare was in the same position as a railway carriage out of employment. So two further points were argued — viz. whether the business end (for gambling purposes) of a particular cabman was in the street or the cab, and whether the cab itself was in an open place to which the public had access. On the last argument the case was ultimately decided (on April 17), on the ground that the cab was in a public street, and that gaming in it was therefore gaming in a public place. This decision will affect those persons who play cards in breaks and drags on their way to and from beanfeasts or race meetings." We expect that all Boston will rise to inquire what a "beanfeast" is. We do not see any escape from this decision by a court which holds that an open umbrella, a wooden box, an omnibus or a urinal may be a "public place." In Warden *v.* Tye, 2 C. P. Div. 74, it is held that a publican may lawfully get drunk in his own public house after it is shut up for the night. The publican may, but the public can't. Putting up the shutters converts the inn into a castle, and we all know what license is conceded to one in his own castle.

CHAMELEONS. — The changing quality of the laws may well suggest the tradition of the chameleon's altering its hue to correspond with that of the object to which it clings for the time being. The "Canada Legal News" brings us report of a learned argument by Mr. McGibbon, Q.C., of Montreal, to substantiate the claim that the chameleon is a "domestic animal" within the statute against cruelty to animals, the cruelty in question being the selling them as "pets, ornaments and toys," especially for young women to wear alive as breast ornaments. The learned counsel contended that they are not "wild," nor "vicious," nor "ferocious," and hence are domestic. The police magistrate, Mr. Dugas, denied the claim, observing: —

"The craze which temporarily may exist for having possession of such a beast, whether actuated by curiosity, by the novelty of the thing, or by the desire to make a study of an animal really interesting in its nature and its habits, do not, for the time being at all events, make it fall within the category of those animals which have been domesticated in this country. I admit that the category of animals which can be submitted to domestication can be extended or diminished in number, according to circumstances and localities, but it is not sufficient that in order to be considered as having been brought to domestication, on account

of the root of the word, animals should make themselves our guests in our homes, whether by or against our will and interest;' for instance, rats, mice and flies."

The Maine Supreme Court would fall in with this, having decided that the dog is not a domestic animal. State *v.* Harriman, 75 Me. 562; 46 Am. Rep. 423. And the Queen's Bench of England once held the same of parrots, and the same has been held in England of a performing bear. But the contrary has there been held of a linnet used as a decoy, and a Manchester police magistrate once held it cruelty to domestic animals to feed tame rats to an Indian ferret.

ACCORD AND SATISFACTION. — Leeson *v.* Anderson, Michigan Supreme Court, 58 N.W. Rep. 92, decides that the acceptance, by the holder of a promissory note past due, of a less sum than the face of the note, with an agreement to discharge the debt, does not operate fully to release the debtor. This is certainly supported by all the authorities, the reason being the absence of consideration for the agreement. The "New York Law Journal" intimates that this may not always continue to be the law — a safe prediction to make of any legal principle — and it seems a rather unreasonable doctrine when it is conceded that if there had been a writing with a sticky bit of paper opposite the signature, the creditor would have been bound. Such virtue is in wafers! As to the lack of consideration, it is admitted that one creditor may bind himself to take less provided another also binds himself, the promise of the one being a consideration for the promise of the other; but why is the detriment to the creditor any more a consideration than the benefit to the debtor?

NUISANCE — FIREWORKS — LIABILITY OF CITY FOR INJURY BY. — In Spear *v.* City of Brooklyn, New York Court of Appeals, Oct. 3, 1893, it was decided that a large display of fireworks, including heavily charged explosives, held at the junction of two narrow and completely built streets of a large city, and managed by private persons under no official responsibility, is an unreasonable and dangerous use of the streets, and a public nuisance; and when the exhibition was licensed by the mayor under a permissive ordinance of the common council, the city is liable for injury done thereby. The Court said: —

"That a municipal corporation may commit an actionable wrong, and become liable for a tort, is now beyond dispute. If the city directed or authorized the discharge of the fireworks which resulted in the injury complained of, it is, we think, liable. The inquiry is whether the city of Brooklyn did any thing which, as to this plaintiff, placed it in the attitude of a principal, in carrying on the display. The mayor of the city, its chief executive officer, expressly authorized it, assuming to act, in so doing, under an ordinance of the common council. In so doing, and in construing the ordinance as authorizing him to grant a permit to private persons to use the public streets for the discharge of fireworks, he was following the practice which had long prevailed; and, so far as appears, no question had been raised that such permits were within the ordinance. The permit, when given and communicated to the police, was understood as preventing any police interference with the act permitted, and it had that effect in the case in question. The city had power to prohibit or regulate the use of fireworks within the city, and to enact ordinances upon the subject. The ordinances were not *ultra vires*, in the sense that it was not within the power or authority of the corporation to act in reference to the subject under any circumstances. See Dill. Mun. Corp., Sec. 963 *et seq.* It is the settled doctrine of the courts that a municipality is not bound merely by the assent of its executive officers to wrongful acts of third persons, nor could the mayor bind the city by a permit, for the granting of which he had no color of authority from the common council, and which was not within the general scope of his authority. Thayer *v.* City of Boston, 19 Pick. 511. If the permit was in fact authorized by the ordinance, the city would, as we conceive, be liable, although the particular act authorized was wrongful. For a mistake in the exercise of its powers, or by acting in excess of its powers, upon a subject within its jurisdiction, whereby third persons sustain an injury, there seems to be no reason, in justice, which should deny the injured party reparation. The common council is the governing body. It represents the corporation, and its acts are the acts of the corporation, when they relate to subjects over which the corporation has jurisdiction. It is true that the power to pass ordinances and to regulate the use of fireworks did not embrace a power to authorize or legalize nuisances. But, if the ordinance transcended the power of the common council in this respect, the misconstruction of the common council of the extent of its powers in dealing with the subject, which was concededly within its power of regulation, does not, we think, within any just view of municipal exemption from the consequences of unauthorized and wrongful acts of the governing body, exempt the city from liability. See Cohen *v.* Mayor, 113 N.Y. 532."

This seems distinguishable from Ball *v.* Town of Woodbine, 61 Iowa, 83; 47 Am. Rep. 805; Tindley *v.* City of Salem, 137 Mass. 171; 50 Am. Rep. 289. In Hill *v.* Board, etc. 72 N.C. 55; 21 Am. Rep. 451, the city was held not liable for injuries by fireworks, although it had suspended an ordinance forbidding the display of them.

TRINKETS AND LACES. — An interesting case for women is Ocean Steamship Co. *v.* Way, Georgia Supreme Court, Feb., 1893, 20 Lawy. Rep. Ann. 123, where it was held that under the customs laws,

fans and parasols, made of delicate and expensive materials, ornamented with carving, fragile in construction, and intended more for ornament than use, although to some extent useful, are "trinkets"; and that a woman's shawl made wholly of lace is "lace." The Court said: —

"Bernstein *v.* Baxendale, 6 C. B. N. S. 251, seems to be a leading case on this question. The following is therein reported as a synopsis of the argument of counsel: 'The definition of "trinket" in all the dictionaries carefully excludes articles of utility, such as these bracelets, brooches, and pins which are mere fastenings for dress. Webster describes it as "a small ornament, as a jewel, a ring, or the like"; Richardson, "any small piece of ornament or decoration, of more ornament than use"; and Dr. Johnson, "ornaments of dress; superfluities of decoration"; and this latter is adopted by Bailey.' Whereupon Cockburn, Ch. J., said: 'Richardson's definition seems to me to be the best, — a thing "of more ornament than use." Can a thing be said to be the less an ornament because there may be superadded to it the quality of utility?' And in his opinion, construing the word 'trinket,' he added: 'There is a distinction between some of the articles which are more especially articles of ornament, with reference to dress, and others which, though of a somewhat ornamental character, do not constitute ornaments of dress, but are only occasionally produced. As to the former, — bracelets, shirt pins, rings, and brooches, — they are clearly articles of personal decoration and adornment, and literally fall within the description of "trinkets." It is said that, inasmuch as they are also articles of utility, they cease to be trinkets. But I do not agree to that. Their main and principal object plainly is that of ornament. It is true they may also be applied to some useful purpose; yet inasmuch as they are essentially ornamental, I do not think the fact of their being capable of being turned to some use raises any difficulty. But even supposing their main object was utility for the purpose of dress, if made part of the ornament of apparel, they equally fall within the strictest definition of "trinkets." The other articles, viz., the portemonnaies and the smelling bottles, are more difficult to deal with. Still I think that, though not worn so as to be constantly exhibited to view, and though to a certain extent articles of use, and perhaps of necessity, yet if an ornamental character is given to them to such an extent as to make that their main and primary object, I think they may be fairly and properly considered to fall within the description of "trinkets," in the general sense of the word. If that may be taken to be the true definition of "trinkets" generally, *a fortiori* ought that sense to be given to the word in this act of parliament, the object of which is to protect the carrier against the risk of having to take charge of packages of great value in small compass? In that respect there can be no difference, in point of risk and danger to the carrier, whether the article is designed to be carried in the pocket, or exposed on the dress of the party.' Bovill, Q.C., referred to the case of Atty.-Gen. *v.* Harley, 5 Russ, 173, 'Where "ivory fans" and "seals" were held to be "trinkets."'

"One meaning often given to the word 'trinket' is that it is a mere trifle, possessing but little value. But it seems that to give the word as used in the section under consideration this meaning would be contrary to the spirit and intention of the law, and tend to defeat one of its main purposes."

"SPIRITUOUS LIQUORS." — The Supreme Court of the United States has lately held, with some show of classical learning, that lager beer is not "spirituous" nor "wine." Chancellor Walworth, in that celebrated opinion in Nevin *v.* Ladue, 3 Denio, 450, held that ale and "strong beer" are "strong or spirituous," and in Rhode Island it has been held that lager beer is "strong, malt, and intoxicating," 1 R.I. 592. But whether "intoxicating," is a question for the jury in New York. Rau *v.* People, 63 N.Y. 277. There is no pleasanter vacation reading than Chancellor Walworth's opinion above mentioned, especially with a few bottles of lager at hand which "*dulce est desipere in loco*."

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.

THE following seems to be a fair specimen of English geographical ideas regarding the United States: —

OMAHA, NEB., May 3, 1894.

Editor "Green Bag."

DEAR SIR, — The "Judicial Drama" in the April GREEN BAG, in which Lord Coleridge is represented to be innocent of the meaning of certain expressions in common use, suggests the following, which is an exact transcript of testimony taken October 27, 1891, in the High Court of Justice, Queen's Bench Division, England, in the case of Greenwell *vs.* Linton. The transcript was used in a case between the same parties, in which I was interested, in our District Court.

"*Baron Pollock.* — Where is Omaha?

"*Witness.* — It is in the United States of America.

"*Bingham, counsel.* — It is in the State of Denver, somewhere near Denver City, I think.

"*Witness.* — No, Nebraska is the State."

Yours very truly,

CHARLES A. GOSS.

LEGAL ANTIQUITIES.

"THERE be many who do not know how to defend their causes in judgment, and there be many who do, and therefore pleaders are necessary so that that which the plaintiffs or actors cannot or know not how to do by themselves, they may do by their serjeants, attornies, or friends. Countors are serjeants skilful in the laws of the realm who serve the common people to declare and defend actions in judgment, for those who have need of them, FOR THEIR FEES."— *The Mirrour of Justice.*

IN regard to the prohibition against the election of lawyers to the House of Commons, Coke says (4th Inst. 48), "This prohibition was inserted in virtue of an ordinance of the Lords, made in the forty-sixth year of Edward III., and by reason of its insertion, this Parliament was fruitless, and never made a good law thereat, and therefore called *Indoctum parliamentum*, or lack-learning Parliament." "Since this time," he adds, "lawyers (for the great and good service of the Commonwealth) have been eligible." Prynne, that "Voluminous Zealot," however, argues for the propriety of their exclusion, which he declares shortened the duration of the session, facilitated the despatch of business, and had the desirable effect of "restoring laws to their primitive Saxon simplicity, and making them most like God's Commandments."

FACETIÆ.

GILBERT A'BECKETT celebrated his elevation to the office of magistrate at the Greenwich Police Court by a characteristic pun. A gentleman came before him to prefer a charge of robbery with violence, committed in the middle of the night. In stating his case he mentioned that the assault occurred while he was returning home from an evening party. The worthy magistrate interrupted him by observing: "Really, sir, I cannot make up my mind to accept anything like an *ex parte* statement."

SERGEANT KELLY, a celebrity of the Irish Bar, had a remarkable habit of drawing conclusions directly at variance with his premises, and was consequently nicknamed "Counsellor Therefore." In court, on one occasion, he thus addressed the jury: "The case is so clear, gentlemen, that you cannot possibly misunderstand it, and I should pay your understandings a very poor compliment if I dwelt upon it for another minute; *therefore*, I shall at once proceed to explain it to you as minutely as possible."

THE late Ottowell Wood, one of the leading characters of New England, was once summoned as a witness in court. When he was called and sworn, the judge, not catching his name, asked him to spell it, whereupon Mr. Wood began: "O, double t, o, double u, e, double l, double u, double o, d." The judge was too thick-witted to grasp the meaning of this string of words and letters, and, throwing down his pen in despair, exclaimed: "Most extraordinary name I ever heard; will you write it for me, Mr.—Mr.—Mr. Witness?"

A SINGULAR case was tried at the last term of Wake County (N.C.) Superior Court. A little country bull standing on a railroad track instead of vacating on the approach of a train, answered the whistle with a bellow of defiance and throwing some dirt over his shoulder. A tramp who happened to be on the track a few feet beyond stepped a little off the track and watched to see the fun. The engine struck the little bull fair and doubled him up like a ball. It threw him about twenty-five feet like a catapult and making a line shot knocked the tramp into a pond of mud and water. When the engineer backed his train to take an inventory of damage done, the tramp was crawling out upon a log.

Action was brought against the railroad for personal injuries and indignities. To the surprise and disgust of the plaintiff the jury found a verdict for the defendant. To a sympathizing bystander, the plaintiff placidly remarked that he had been "knocked into a mudhole by the bull, and kicked out of the court-house by twelve jackasses."

A SUIT was recently brought in an Indiana court based upon the following: —

ARTICLE OF AGREEMENT.

in and Between Samuel crawford of the first Part and John Crawford of the Second Part Witnesses that on this day november 9" A. D. 1886 that John crawford of the Second part agrees to take keep and furnish with Board cloes and in case of sickness a famely physisian for the nessissary medical ade so long as the god of natur and the Ruler of all mankind may prolong the lives of Samuel crawford and his wife Isabell crawford take care in health sickness and after death give Each Samuel crawford and his Wife isabell crawford a Decent and Respectable Buryal case and persons above named crawford and Wife a Respectable Shroud or suit of close as may Be Requested at time of death and funiral of above named Samuel crawford and his Wife isabell crawford in compensation thereoff Wherefore the said John crawford and his Wife amanday crawford their heirs executors and administrators Shall Becom the lawfull owners of the following Real Estate to Witnamely Being the North West quarter of the South West quarter of section number twenty six (26) in mark township defiance county ohio also the West half (1/2) of the West half (1/2) of the north West quarter (1/4) of section number thirty five in afore said mark township and county of Defiance and state of ohio nevertheless samuel crawford shall Be the lawfull owner of aforesaid tracts of land untill aforesaid death calls away the aforesaid now it is further asertained in case of the death of Samuel crawford afore his said wife isabell crawford and in case of the said isabell crawford should Remary that she shall only Enherit her part of Board and living with cloes and medical ade as aforesaid and stated only as the Wife of Samuel crawford now if the afore said John crawford his Wife amanday crawford their executors administrators Shall Well and truley fathfuly and with parentel Respect fuley discharge their duties as afore requested then this article of agreement to be in full force and virtue in law and the corts of jurisdiction Shall have power to convey a general Warentee deed of the aforesaid primisis mentioned to the aforesaid John crawford his Wife amandy crawford their heirs executors or administrators in Witness Whereof we have this day set our hands and seals this 9" day of November A.D 1886 in
presence of us

G. H. Long — Samuel Crawford (Seal)
C. S. Elder — John Crawford (Seal)

Signed Sealed and in my presence this 9" day of November A.D 1886

G. H. Long
Notary Public
(Seal)

A CERTAIN lawyer in Lincoln County was a candidate before the people for a seat in the Georgia Legislature. When asked by Judge Dooly as to his prospects in the coming election, he replied that he had serious fears of his defeat, as the people in that county had a strong prejudice against voting for a lawyer.

"Oh," replied the Judge, "if that is all, I will help you out, for you can get a certificate from me at any time to the effect that you are no lawyer."

JAMES WILSON of New Hampshire used to tilt with Jeremiah Smith occasionally. Once while they were journeying together on horseback, Wilson rode on ahead, and meeting a stranger passed himself off to him as Smith, then a member of Congress. When the two attorneys stopped or the night, Wilson related, in the presence of some friends, what a great dignitary he had been mistaken for." "Oh, no," said Smith, "The man knew better; he said, *You* Jerry Smith? Why, *he's* a respectable man.'

A man of the name of Smith being arraigned in court for a criminal offense, Wilson asked Smith how it was that so many offenders happened to have his name. "Easily explained," replied Smith. "They want an honest name to be tried by, and so give the name of Smith, but on inquiry it will generally turn out that their true name is Wilson."

A WELL-KNOWN lawyer on circuit in the North of England, curious to know how a certain juryman arrived at his verdict, meeting him one day ventured to ask. "Well," replied he, "I'm a plain man, and I like to be fair to everyone. I don't go by what the witnesses say, and I don't go by what the lawyers say, and I don't go by what the judge says; but I looks at the man in the dock, and I says, 'He must have done something or he wouldn't be there,' so I brings 'em all in guilty."

NOTES.

THE case of the United States by information *vs.* One Black Horse, long pending in the District Court of United States for the District of Massachusetts, has just now been settled. The case was really against one black horse and his two owners. The information alleged that the black horse was imported into the district from Prince Edward Island and that in making the entry the horse was undervalued. The purpose of the information was to condemn the horse and punish the importers. The case was nine years old. The horse was entered at the custom house in 1883. The information was filed in 1885. The owners soon afterward filed their claim and later a plea of not guilty, which was the proper plea since the latter were charged with a statute offense, and the prayer was to condemn the horse. The defense really was, that, in the first place, the defendants, who were also claimants, did not import the horse at all, but bought him by way of a swap, of the importer after he had been in Boston a year; in the second place, that they bought him in good faith without any knowledge or information of his being undervalued, and used him openly and publicly for more than a year after they became his owners; and in the third place, that the horse was not undervalued in the entry, but was in truth valued for more than he was worth. The information was drawn and filed by the late Mr. Sanger when he was District Attorney; soon after which the counsel for the claimants saw him, and stated the facts of the case to him as they really were, and upon that representation being made to him, he said he would inquire into the case, and if he found that the defendants were not the importers, he would dismiss the case. Not very long afterward Mr. Sanger went out of office, and was succeeded, as is known, by Mr. George M. Stearns, during whose administration as District Attorney nothing was done with the case. Mr. Stearns was succeeded by Mr. Galvin, who finding the case on the docket, with no answer, filed a motion for default. The case was thereupon represented to Mr. Galvin, as it had been to Mr. Sanger; whereupon, he, too, suggested he would inquire into the facts, and if there was a mistake in the information he would dismiss it. In due, or rather undue time, he also went out of office, without doing anything further about the case, and was succeeded by Mr. Allen. The case passed without notice during Mr. Allen's administration. He was succeeded, as we know, by Mr. Sherman Hoar, who soon found the case on the docket and who moved for a default as Mr. Galvin had done. The case was represented to Mr. Hoar, who did inquire into it, and was satisfied that the information proceeded upon a mistake of fact, and recommended to the department at Washington an equitable adjustment, which the department adopted, and the case was dismissed.

But the black horse has a history which is curious. He was quite a small horse, standing somewhat less than fifteen hands, and weighing

only about eight hundred pounds; and beside being small, he had the infirmity of lameness in one of his forefeet, and was spavined behind. His gait was a pace, and although not of the best mode, he yet could pace pretty fast for a little way. For any honest purpose he was worth perhaps one hundred and twenty-five dollars. Before he left Prince Edward Island he was getting better of his lameness, and he was valued at the custom house at two hundred dollars. On his arrival here, he passed into the hands of the importer's brother, who had him trained and put him into some races, which he was accustomed to lose. As is said above, this brother swapped him with these two claimants when he had been here about a year, after which the claimants entered him in several races. And among other pacers, he was paced against one called "Nina." This Nina was a clever and steady pacer who could work out her miles pretty low in the twenties. The horse was called "Ned Hanlon." Hanlon and Nina appeared to understand each other quite well. He could go to her very fast and she didn't want to go away from him. Hanlon wouldn't pass her if he could, and could not if he would. He always lost, but it was said his owners made money by pacing him against Nina. One day, the two, with some others, were pacing at Beacon Park. Hanlon was driven by an experienced and skillful driver. The horses had paced one heat, which Hanlon, as usual, had lost. Then there arose a great cry among the ticket holders in the pool box that the driver of Hanlon was pulling him; and they went to the judges and made a great clamor. The driver of Hanlon protested that he was doing his best to win. The judges decided to let him drive another heat, when one of the protestors who had considerable money in the pool-box, went to the owners of Hanlon and said he would buy the horse, then and there. They told him that they did not want to sell; that the driver was doing his best to win, but they did not believe he could beat the mare, and that the proposed purchaser had better not buy. But the more they persuaded him not to buy the more determined he was to become the owner. He asked them to name their price. They were equal to the occasion, and named $1000. He accepted the offer at once, and paid something on account. As soon as the horse was delivered to him, he went to the driver, told him he was the owner, and that now he must drive as he directed. The driver told him he had better get somebody else to drive in his place as he could not drive Hanlon to beat Nina. But the owner told him he knew better, and that all he had to do was to drive as he told him. "Be it so," said the driver, "how shall I drive in this next heat?" "Drop it," said the owner. "That," said the driver, "I can do easy." He went on, and, of course, lost the heat. Then he went to the owner and said "How about this third heat?" "Go on, of course, and win it," said the owner. "I can't do it," said the driver; "you had better put somebody else in my place." But the owner repeated, go on and drive to win. The driver went on; Hanlon paced very fast and stayed with Nina until they came to the distant stand, when her driver dropped his whip on her, and she came away and won the heat. Then the owner, with the whole crowd of ticket holders, went to the judges and complained that the driver of Hanlon had pulled him and purposely lost the race; and then the judges declared the heat "no heat" and put a new driver in for a fourth heat. The new driver went on, Hanlon struggled hard; the driver did his best, but was distanced in the race. And this, we believe, was the end of Hanlon's pacing in Boston. He became lame, and found his way back to a hospital in the East. But the owner paid the balance of his thousand dollars, as they say, like a little man; and did not know so much as before.

The Geography of Crime. — A number of the most eminent criminologists of Europe have latterly been attempting to frame a geography of crime, and have met with considerable success, having found incontrovertible proof in suicide that crime has its well-marked lines and latitude.

It is found, for instance, that the suicidal centre of Europe is Saxony, where four hundred out of every million people kill themselves each year. From all parts of the compass, according to its greater or lesser distance from the Saxon centre, arises the colossal suicide mountain of Germany. As you go from Dresden north, south, east, or west, the suicidal ratio grows smaller. In Austria it is the greatest in Bohemia, on the

Saxon border; in Prussia, worse in the Saxon provinces of that kingdom. The fewest suicides in Europe occur in Ireland and Russia, in both of which countries there is the greatest suffering, but which seem to escape the mania by their great distance from Saxony. The metropolitan cities, of course, present a greater amount of crime than the country around them. London, Paris, Berlin, Vienna, Rome, St. Petersburg, New York, come in the order. There are 80,000 professional criminals in London, constantly menacing the public peace, the safety of life and property of all, of whom only one-sixth are in prison. Vienna and Buda-Pesth seem to make a specialty of burglary.

Murder, it is found, is in inverse proportion with the civilization prevailing. The higher the civilization the fewer the number of murders committed. The only exception to this rule is in Turkey, where the Islam faith is productive of a certain religious sentiment which makes murder the greatest crime against human and divine laws. In Greece there were 316 murders and 473 murderous assaults last year, or one to, every 2,800 persons. Next comes Spain, where an increase in bloodshed goes hand in hand with the gradual decline of the country. Theft like murder, goes with lack of culture and civilization. It is very rare in Sweden and Norway, while Turkey, Russia, Hungary and the Balkan States show the greatest number of thieves. London is a Mecca of swindlers. Germany also makes a bad record, of late there being a marked decline in the honesty in business transactions, while Belgium, France, and Switzerland rank favorably in this respect. Spain, Italy, Greece, Turkey, and, above all, Russia, lead in fraud. Bucharest is known to-day as the greatest den of swindlers in the world. It will be seen that it is possible to make a criminal map of Europe, showing that certain sections produce murder, others burglary or suicide, just as they produce fruit or wheat or cotton. — *New Orleans Times-Democrat.*

LAW AS SHE IS CLASSIFIED. — Under the head of "*Children Playing in Street*" a well-known legal publication places the statement that, "An elephant properly driven may be a traveler within the meaning of the statute," citing Gregory *v.* Adams, 14 Gray Mass.) 242.

THE jury system of the District of Columbia is peculiar, and has been unchanged since the time of Lord Baltimore and Queen Elizabeth. The old colonial laws of Maryland obtain, under which the court can even now punish a woman for gossiping or telling tales to her neighbor, or failing to keep her house neat and clean. The law prohibits planters from feeding their workmen terrapin and canvas-back duck, and requires that housekeepers shall give their servants wholesome food. People can be fined so many pounds of tobacco for swearing on the streets or for not attending church.

WHEN Earl Ferrars had been convicted of murder, great efforts were made to obtain a pardon, on the ground that he was insane. His mother being applied to, and requested to write a strong letter on the subject, answered: "Well, but if I do, how am I to marry off my daughters?"

A CURIOUS relic of the spirit of those old days when noblemen held their estates by virtue of an undertaking to supply their sovereign with a stated number of armed men when occasion required was to be witnessed at Windsor recently when the duke of Wellington visited the Castle for the purpose of "paying the rent" of Apsley House. It appears that the Apsley House property is held by virtue of an undertaking that the Duke of Wellington shall each year, on the anniversary of the Battle of Waterloo, or on such other day as may be more convenient to the Queen, present Her Majesty with a miniature royal standard, and if, from any cause whatsoever, this quaint service be omitted in any year, the property becomes forfeit to the Crown.

BOOK NOTICES.

LAW.

THE AMERICAN STATE REPORTS. Vol. XXXV. Containing the cases of general value and decided in the courts of last resort of the several states. Selected, reported, and annotated by A. C. FREEMAN. Bancroft, Whitney Co., San Francisco, 1894. Law sheep. $4.00.

This volume contains reports of over one hundred and fifty cases selected from decisions in the courts

of Arkansas, California, Georgia, Idaho, Iowa, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, Pennsylvania, and Wisconsin. Full and exhaustive annotations are, as usual, a distinguishing feature.

LAWYER'S REPORTS ANNOTATED. Book XXI. All current cases of general value and importance decided in the United States, State and Territorial Courts, with full annotation, by BURDETT A. RICH and HENRY P. FARNHAM.

A good selection of cases, with full and well considered annotations make this series of Reports of great value and assistance to the profession. The present volume seems in every way up to the standard of its predecessors.

WOMAN'S NEW OPPORTUNITY. An address delivered at the closing exercises of the Woman's Law Class of the University of the City of New York, April 5, 1894. By DANIEL GREENLEAF THOMPSON. Longmans, Green & Co., New York, 1894. Paper. 25 cents.

Mr. Thompson vigorously asserts the natural right of women to study and practice law if they choose to do so, but he is evidently not so clear in his mind as to whether they are likely to make successful lawyers. He finds many feminine characteristics which, while not establishing any insuperable bar to the progress of the woman lawyer, are obstacles to success which must be pushed aside or overcome. The following advice which he gives to the class is equally applicable to lawyers of the male persuasion: —

"Give your neighbor the benefit of the doubt, regard him as innocent till he is found guilty, let hearsay testimony find no lodgment in your mind, analyze situations, calculate probabilities, allow for your own and the bias of other people. Form the habit of doing these things."

The pamphlet is very readable, being written in an easy, conversational style.

MISCELLANEOUS.

THE AIM OF LIFE. Plain talk to young men and women. By PHILIP STAFFORD MOXOM. Second edition. Roberts Brothers, Boston, 1894.

This book will prove a help and an inspiration to all who honestly desire to attain more nearly the possibilities of life. The author writes in a spirit of warmest love and tender sympathy for the young, and with a keen appreciation of the trials and temptations which beset them; he wisely counsels as to what should be done to make life really worth the living. One cannot read these pages without being the better for so doing; they furnish good wholesome food for both young and old. The topics treated includes "The Aim of Life," "Character," "Habit," "Companionship," "Temperance," "Debt," "The true Aristocracy," "Education," "Saving time," "Charity," "Ethics of Amusements," "Reading," "Orthodoxy."

THE DAMASCUS ROAD. By LÉON DE TINSEAU. Translated from the French by FLORENCE BELKNAP GILMORE. George H. Richmond & Co., New York, 1894. Paper. 50 cents.

This is a story of intense interest, powerfully written, and admirably translated. It will hold the reader's attention from beginning to end. The characters are drawn with a master-hand, and the incidents which make up the plot are deeply impressive.

HYPNOTIC TALES and other tales. By JAMES L. FORD. Illustrated by the Puck Artists. George H. Richmond & Co., New York, 1894. Paper. 50 cents.

For the making of a humorous book no happier idea could have been seized upon than that adopted by Mr. Ford in this collection of stories. The obliging a variety of characters, under hypnotic influence, to reveal their innermost thoughts, gives the author great scope for the exercise of his original humor and keen satire, and he improves his opportunity to the utmost. The tales appeared originally in "Puck" and they are well worth preserving in book form. We recommend them to all who can appreciate genuine wit and who enjoy a hearty laugh.

THE WHITE CROWN and other stories. By HERBERT D. WARD. Houghton, Mifflin & Co. Boston, 1894. Cloth. $1.25.

Mr. Ward is a story-teller of remarkable power and versatility, and the contents of this volume show the author at his best. Several of the stories have already appeared in print, but the others are, we believe, now first given to the public. The title story, in which the abolition of war is the theme, is skillfully worked up and of great interest. For power and pathos we have rarely read anything equal to "The Semaphore," while "A Romance of the Faith" would of itself entitle the author to a high rank among our writers. Altogether the book is a delightful one in every way, and the seeker for summer reading should not fail to possess himself of it.

LORD COLERIDGE.

The Green Bag.

VOL. VI. No. 7. BOSTON. JULY, 1894.

LORD COLERIDGE.

BY JOHN STORER COBB.

BY the death of the Lord Chief Justice of England, the Bench of that country has lost one of its most cultured and conspicuous members. Not that others have not equalled, and perhaps excelled him in one or other of the qualities which distinguished him, but that in no one whom I can call to mind has there been a union of such qualities, each in so high a degree. In his grasp of the philosophical principles of jurisprudence he was probably the equal of any judge that England ever had. This may be called a family characteristic, and links him by more than blood relationship with his great uncle, who, with Southey and Wordsworth, formed the trinity of the great "Lake Poets."

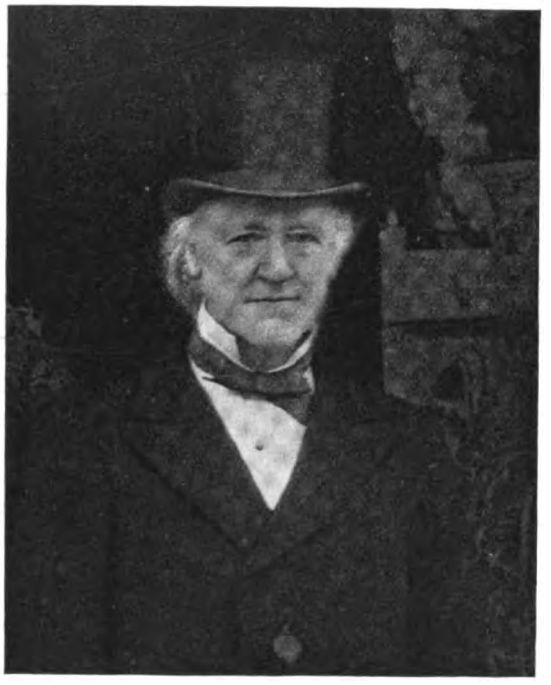
Samuel Taylor Coleridge was an orator, a metaphysician, and a poet, and each of no mean order. His natural talents were such that, even during his school-boy days, Charles Lamb said of him that he was one "to whom the casual passer through the cloisters listened entranced with admiration, as he unfolded in deep and sweet intonations the mysteries of Iamblichus or Plotinus, or recited the Greek of Homer and Pindar." With a genius almost equal to that of Aristotle, he simply drifted from one species of intellectual activity to another without accomplishing ought in any. Nature seemed to have denied to him a will, so that he became utterly lost amid the profundities of the abstruse studies upon which his active, restless, undisciplined brain had ever a tendency to lay hold. The little youthful energy that he had, he was not able to retain, so that in after life he could not even carry on a conversation towards any defined object.

The nephew inherited many of the valuable qualities which distinguished the uncle, not indeed in so high a degree, but there was united with them a will which enabled its possessor to make his mark in the line of life to which his talents were devoted. This important factor in his success he would appear to have inherited from both his father and his mother. The former, Sir John Taylor Coleridge, was, as a judge, distinguished for the patience and ability with which he unravelled the tangled complexities of cases that were brought to his court; the courtesy with which he treated all who came before him; the grasp of principles underlying the technicalities which formed the gist of legal phraseology; and the impartiality with which he pronounced his decisions.

Most of these qualities he transmitted to his son, who was one of the most learned, thoughtful, and carefully industrious advocates of his day, and who, after he was elevated to the Bench, knew how to express in good English the results at which he had arrived in his investigation of the particular case in question. Before he became a judge he had reached distinction in the world of letters and of politics, and with his versatility it is probable that he would have attained

to eminence in any department of life's activities to which he had devoted himself. The law was his vocation, and as a jurist he will be judged. Better lawyers there have been upon the English Bench, but better jurists never, and none who were capable of taking a broader and more philosophical view of the subjects that were brought to him for judgment.

The subject of our sketch was born in December, 1821. His earlier education was obtained at Eton, the most famous of the great public schools of England. From this he entered Balliol College, Oxford, where he graduated B.A. in 1842, and took his Master's degree in 1846. While at college he developed a taste for theological argument, and under the influence of Arnold and Keble, who were warm friends of his father's, his mind received a very decided inclination towards the principles of the High Church party. Like his uncle, of whom mention has been made, he gained among his college friends and acquaintances a reputation as a conversationalist of a high order. So smooth and polished were his sentences, and so strongly theological were his general utterances that it was presumed by many that the church was his destination. In after life this so strongly flavored his political utterances and his writings that when he became a judge, some satirist remarked that nature intended him for a bishop, but accident had made him a judge.



LORD COLERIDGE.

His career in college was in every way creditable, and its close was almost brilliant. He passed with first-class honors when he was but twenty-one years of age, and was at once elected Fellow of Exeter. This fellowship he did not hold long, because it had, of course, to be forfeited when he was married, an event which took place within four years. During the same year, 1846, he took his M.A. degree, and was admitted to the Bar. Being called at the Middle Temple, he immediately went upon his father's old circuit, and thus reaped the benefit of a well-known name and a reputation that was firmly established. He did not, like some of the most brilliant of the legal luminaries of a former age, have to wait year after year for remunerative work. He was very soon in possession of a large practice, and was also a tolerably regular contributor to some of the prominent magazines, in which he expended his surplus energies in critical and readable essays upon literature, politics, and theology.

In the year 1855, Mr. Coleridge was appointed to the Recordership of the seaport town of Portsmouth, and six years later he changed his gown of stuff for one of silk, having attained to the dignity of a Q.C. The learned gentleman now began to think of entering Parliament, as this seemed to be the next stone upon which he must step, in order to continue the path which he intended to travel. His first efforts to obtain a seat were not successful, but at length, in

the year 1865, he was elected by the city of Exeter, whose citizens retained his services as their member until, by his elevation to the Bench, he was disqualified from representing them any longer in the House of Commons.

While he was in the House he was an earnest and a valuable supporter of the Liberal party, and soon after the commencement of his parliamentary career, had firmly established himself as a member who could obtain an audience whenever he was on his feet for the purpose of making a speech. Mr. Gladstone had his eye upon him before he entered Parliament, and indeed, it is said, encouraged him to try for a seat, as he expected valuable support in the furtherance of his principles and ideas. Upon the formation of his first ministry in 1868, Mr. Coleridge was made Solicitor-General, and, as is usual in such cases, had the honor of knighthood conferred upon him. Three years later the Attorney-General was placed upon the Judicial Committee of the Privy Council, and Sir John Duke Coleridge, as he must now be called, was appointed Attorney-General in his place.

Honors seemed now to come to him fast. In a short time he was offered an admiralty judgeship, which he declined. Not long after this the office of Master of the Rolls became vacant, through the retirement of Lord Romilly. This too was offered to Mr. Gladstone's Attorney-General, and this also, after mature deliberation, he refused to accept. Being a member of the Common Law Bar, the offer of this appointment to him caused some surprise, as it was a departure from long established custom. Mr. Gladstone is, however, not a slave to custom, if he sees that good will result from a departure therefrom. He considered Sir John Coleridge as well fitted as any for the post, and offered him the place. There is no doubt, however, that the Bar felt relieved when the offer was declined, and Sir George Jessel was appointed.

Sir John did not have long to wait. But two years had passed when the death of Sir William Bovill made a vacancy in the Chief Justiceship of the Common Pleas, and there was no cause for hesitancy in accepting this when it was offered. He had not been long installed in this office when he was promoted to the House of Lords, under the title of Baron Coleridge, of Ottery St. Mary, in the county of Devon. After he had held this office for about seven years, Sir Alexander Cockburn, the Lord Chief Justice of the Queen's Bench, died, and all eyes turned naturally to Lord Coleridge as his successor. Both chief justiceships were however abolished, or rather the two branches of the law were united, and under the style and title of Lord Chief Justice of England, Lord Coleridge was appointed to the newly created office. This office he held until his death, which occurred between eight and nine o'clock on Thursday, the 14th of June last.

During the year 1873 Lord Coleridge paid a visit to this country, and his dignified and distinguished carriage and appearance will, no doubt, be remembered by many. He was well entertained by the Bench and Bar, wherever he made his appearance, but his proceedings here were much criticised in some of the ultra-refined journals of England. It was even spitefully hinted that he acted as the "advance agent" of Mr. Henry Irving and Miss Ellen Terry in the States. It may be remarked that, as a reply to this, when these illustrious tragedians were leaving England soon afterwards for their first visit here, the Lord Chief Justice's son, the Hon. Stephen Coleridge, went to Liverpool to see them off. This was regarded as, under the circumstances, a bold thing to do, but by the people generally it was sustained, as an evidence of pluck which all admire.

It was also objected to that his Lordship talked politics while here. This was regarded as unpardonable in a judge. The ermine should be kept pure. The critics little saw what a reflection this was upon

politics. If the political field is that in which the seeds of advantage to one's country — indeed to humanity itself — are sown and cultivated, then surely, no man, whatever may be his calling, can be out of place in that field. Indeed every man's duty is to be in it, and to be learning the art of cultivating it. Parties exist only because of a divergence of opinion as to means. The end is the same in all, or ought to be, and Lord Coleridge was independent enough to exercise his divine right of discussion as to the means by which that end can be encompassed. Although, on account of his "advanced" views regarding those means, he was not at all times a courted guest in "society," he will always be remembered as a judge who would not grant to the rich favors which were withheld from the poor, in cases over which he was called to preside.

TRIAL BY NEWSPAPER.

By A. Oakey Hall.

Of late years a new method of trying the guilt or innocence of any accused person has come into popular procedure. Mediaeval methods of trial by battle or by ordeal have often received quaint or acrimonious criticism from modern writers, whose expressions of wonderment at such methods were tempered only by referring these to more or less uncivilized times. Yet now, in an age of great enlightenment, prevails trial by newspaper, which is not free from barbarity in many respects.

Concurrent with preliminary trials of accused before coroners or magistrates or grand juries, generally occur trials by the newspaper press, attended by marshalling of allegations, by comments, by verdicts and by theoretical Sentences; editors acting therein in the nature of judges. The procedure long ago became recognized as existent and affective by criminal courts in their sanctioning "challenges to the favor" of summoned jurors on assigning as cause impressions or opinions of guilt or innocence of an accused formed by jurors from perusal of preliminary trials by newspapers.

The effect of the influence of such trials in delaying the legal trials of indicted persons has been recently shown upon the arraignment in Chicago of the man who assassinated its last Mayor; when citizens summoned by the thousands upon jury panels were, by reason of having attended, as it were, upon newspaper trials, found to be so biased as not to be considered impartial jurors.

This necessity for impartiality was of a growth through many hundred years; for doubtless when jurors of a vicinage were first summonable and used, those who were already familiar with the criminal occurrences about to be investigated and adjusted were regarded as the most available. The original formula of a juror's oath, "true verdict give according to the evidence," came in time to have the element of absolute impartiality included in the adjective "true." And long ago the decision of a learned judge that "the mind of a juror about to be sworn should be like a blank sheet of paper" became heartily endorsed by the Bar. But the probing of the mind of a challenged juror afterwards grew so severe and technical that it became almost a proverb among laymen, that the stupider a citizen was the better he was fitted to adjudicate the guilt or innocence of an accused.

Time was when a newspaper reporter or editor cheerfully submitted to an apparent

etiquette of refusing to discuss *ab initio* the personal connection of a participant in a crime with its circumstances: and of yielding fully to the Saxon presumption that an accused was innocent until duly proven guilty. But, when newspaper managers discovered that a popular desire to hear the fullest particulars about a crime promoted the circulation of their journals, this old-fashioned etiquette was discarded. Little by little the emulation of those managers begat a tale of narration, which inspired comment with expression of opinions; and these in turn got impressed upon readers from among whom jurors must be chosen.

Inasmuch as now-a-days a newspaper is as much a part of a breakfast menu as is a cup of coffee, tea, or chocolate, the breakfasted reader who does not become impressed with newspaper narrations or comments upon criminal occurrences is as singular as the citizen who does not cast his vote at a presidential election.

In some states legislation has sought to circumscribe the effect of newspaper trials upon citizens who are summoned to jury duty. Some statutes have annulled the ancient formulas of having triers or jurors early empanelled decide challenges to the impartiality or the bias, and have made the court sole tryer; but in effect making the challenged juror the practical tryer by submitting to him this arbitrary question: "Notwithstanding any impression or opinion you may have formed or expressed, can you so far banish the same as to enable you to award an impartial verdict upon legal evidence here to be given into your keeping?" If the juror answers affirmatively the judge, unless detecting from mode of answer or behavior that the juror is insincere, is apt to decide that the juror is competent as to impartiality; and to either force the challenging counsel into a peremptory challenge within statutory limit or to placing the juror into his own seat of judgment.

This method of deciding a challenge of course allows a juror who is desirous of deciding the fate of an accused to swear himself into the jury box from motives of either sympathy or prejudice; or who being anxious to escape jury duty makes oath to partiality so as to accomplish his object.

The older common-law procedure of submitting the juror's appearance and mode of answer to laymen triers has seemed to lawyers skilled at jury challenging to be fairer than the later statutory procedure. The older submission was practically putting a simple question as follows — would you wish this candidate to be a fellow juryman, or would you accept him in your own case?

Trial by newspaper anterior to the regular legal trial is however not so mischievous as that mode of such trial which impends concurrently with the statutory trials. The greater public of readers who practically enter the court room already impressed through the medium of newspaper reports demand from newspaper conductors not only stenographic narrations of evidence but also the flavor of editorial comments thereon. The jurors who sit from day to day during a long trial which is daily reported in the local press are admonished by the Bench not to read the newspapers: but admonitions cannot alter human nature. Impanelled jurors will nevertheless read the newspaper accounts of the very drama in which they are actors.

A recent woman novelist has contended that men are habitually more curious than those of her own sex; and that modern Adams are more prone to taste forbidden fruit than the Eves of the present time. Granted then that jurors under duty will yield to temptation of press head-lines and insist upon reading newspaper reports of the evidence to which they have already listened and of comments and rhetorical diversions (possibly perversions) thereon: who shall say what impresses those reading jurors most — what they hear or what they read.

Newspaper trial is the great bugbear of lawyers who defend criminals. If they, however, possess that tact and discretion which Lord Bacon in an essay has declared to be often more useful than learning in a barrister, they will follow the newspapers and temper their own shearing action or inaction and addresses to the press-wind that has been blown or is blowing upon the jurors. And, sooth to say, sometimes counsel for prosecution or defense may often find valuable hints and suggestions from the trial by newspaper.

In a recent trial before a New York court of a man accused of murder, I read in one newspaper, while the trial proceeded, a well reasoned expression of belief that a verdict of guilty would inevitably be reached, and giving reasons; and in another journal of the same date the very opposite belief was impressed upon readers. Now, suppose one juror perused the article that impressed guilt and that another juror read the article of opposite faith, what an opportunity is presented for disagreement within the secrecy of the jury chamber.

A prudent and tactful counsel for an accused will always pay attention to any newspaper trial of his client — whether before arraignment of the latter or during his crucial test of liberty or life — and consider the newspaper as a factor in the legal trial. If the counsel can impress views upon the attendant reporter or upon a friendly editor, may he not be excused for taking what part he can in the trial by newspaper? As press procedures go, his professional attention to such last named trial may become as necessary and as potent as his attention before judge and jury to the interests of client.

Be it a mischief or an aid or a disadvantage, the trial by newspaper is an American institution, almost unknown in England, and one that cannot be regulated, nor disowned, nor stopped. It exerts influence on magistrates, coroners, grand and petit jurors, and even upon some members of the Bench in these days of an elective judiciary. Strength of arm and goodness of steel and finesse had their uses in trial by battle: and wind, tide and waves influenced the luck that came to an accused who was subjected to the ordeal trial of the drowning or flotsam test; and the point of compass that the N–E–W–S–paper in its trial of a client may select for the direction of its pen is often as important for the lawyer to box as is the boxing of a jury under challenge or under evidence and direct or cross examination.

PETITION FOR GUARDIAN.

(*A Scene in the Probate Court.*)

By Wendell P. Stafford.

"YOU pray for a guardian over your son.
His name is — ah — Joseph? Is *this* man the one?"

"No, Jedge; that is William, the one that should be
Guardeen to his brother. Here's Joseph, by me."

"Well, hold up your hand . . . . Now what is the ground?
Is the young man a spendthrift? *non compos?* unsound?"

"Well, Jedge, he's peculiar. Was always jes so
Sence he was a leetle one, larnin' to go.
Can't call him a fool, for he knows a big heap;
But it aint any value to sell or to keep.
It's all about 'beauty' and 'love' and 'devotion'
And glories of airth and the stars and the ocean.
He thinks he hears voices that hold him from sleepin';
And sperrits are round him and he's in their keepin'.
He's chipper by spells; but he's full of his moods.
He'll hang his head down and not speak fer an hour.
I've sent him on arrants, in spring, through the woods,
And he'd get on his knees to every flower.
Nor yit he aint lazy. He never would shirk:
When any's in trouble, my sakes! how he'll work!
But he'll work jest as quick for a man 'at can't pay
As if he was gettin' his dollar a day.
Nor he aint jest a spendthrift. But what can ye call it?
He'll be ragged and give the last cent in his wallet.

He stood t'other day with a coin in his hand.
'Whose money's this 'ere?' says he, turnin' to me.
Says I, 'It's the dollar ye airnt on the land.
Aint it yourn if ye airnt it?' 'I airnt it,' said he,
'But the dollar ain't mine; if I keep it it's curst:
It belongs to the fellow that needs it the worst —
And I'm goin' to find him.' And so he put off.
'Twant never no use to laugh or to scoff.'
I'm old, and I'll shortly be laid on the shelf,
And Joseph aint fit to look out for himself.
But William is diff'nt, — takes after his dad.
Bill's got the first penny that ever he had!
He always took boot when he swapped with the boys,
Till he scooped all their jack-knives and trinkets and toys.
He's smarter'n a trap, if I say it as oughtn't,
And the hook can't be baited so Bill can be caught on't.
And I've often told Joseph, if he'd be like Bill,
I'd do by 'em both jest alike in my will.
But I've gi'n it all up; and it's plain to be seen,
Joe'll never be nothin', 'less Bill is guardeen."

The Judge sat awhile, with a far-away look,
Then took up his docket and wrote in the book.
"I've found this question unusually hard.
It is, which should be guardian, which should be ward.
I shall give the appointment to William," said he,
"But, the chances are, Heaven will reverse the decree."

ENGLISH GAOLS A CENTURY AGO.

By Hampton L. Carson.

JOHN HOWARD, one of England's immortal philanthropists, was sheriff of Bedford County in 1773. The distress of prisoners came directly under his notice. The special circumstance, however, which excited him to activity in their behalf was the infamy of gaoler's fees. He saw men who had been tried and acquitted, after having been confined for months awaiting trial, dragged back to gaol, and locked up again until they had paid sundry fees to the gaoler, the clerk of assize, and the turnkey. The same extortion was practiced upon those as to whom grand juries had ignored bills, and others, whose prosecutors did not appear. The common excuse was that there was no precedent for charging the county with the expense of maintaining the gaol, and that no salary could be paid to the gaoler in lieu of fees.

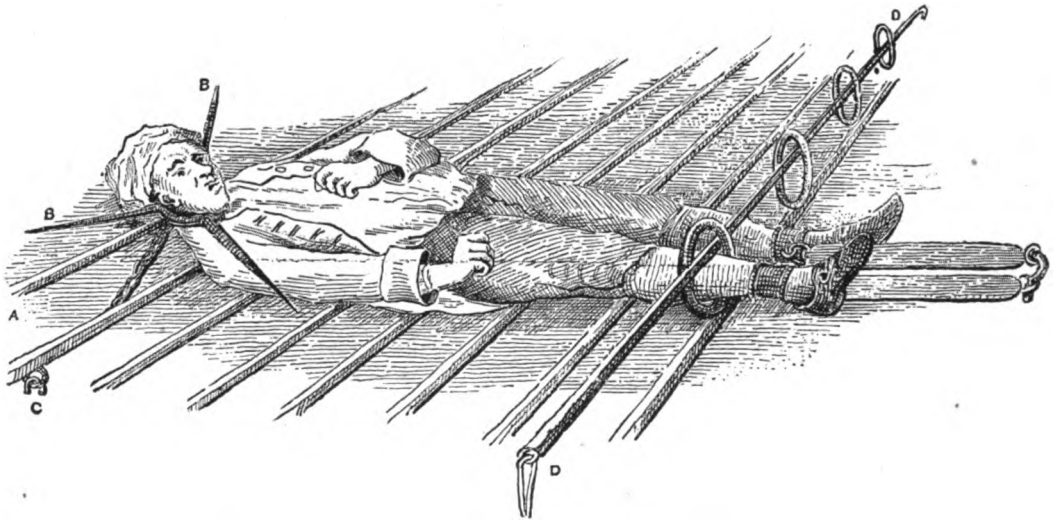
JOHN HOWARD.

Pained and astonished, Howard rode into several adjoining counties in search of a precedent. He soon learned that the same injustice was practiced there. Traveling from place to place, he visited all of the county gaols in England, and beheld scenes of calamity and suffering which he grew daily more and more anxious to alleviate. He found also that the number of the prisoners was constantly recruited by miserable wretches who were brought from the Bridewells, work houses and places of correction for vagrants.

In 1774 he appeared before the House of Commons and was examined upon the subject. He then visited the prisons of Europe, and, in 1777, published the results of his observations. Such was the origin of his famous book entitled: "The State of the Prisons in England and Wales, with Preliminary Observations, and an account of some Foreign Prisons." It was a large octavo volume of five hundred pages, dedicated to the House of Commons, in gratitude for the encouragement given to the design, and for the honor conferred upon the author. An original copy lies before me, and it is my purpose to state briefly its contents and to dwell upon some of the features of English criminal law which, though not touched on by Howard, are closely connected with his subject.

The work is divided into five sections treating of Distress in Prisons; Bad Customs in Prisons; Proposed Improvements in the Structure and Management of Prisons; An Account of Foreign Prisons; A Particular Account of all English Prisons, accompanied by tables relative to fees, numbers of criminals, the crimes for which they were tried, etc.

Howard's attention was first directed to the necessity of obtaining some legislation for the preservation of the health of the prisoners. He saw men and women, wallowing in filth and foul air, expiring on the floors of loathsome cells, of pestilential fevers, and the confluent small pox, victims to the cruelty and inattention of sheriffs and others in the commission of the peace. Want of food, want of water, want of air, and want of light were ordinary evils. In half the prisons, debtors had no bread, although it was granted to the murderer, the highwayman, and the house-breaker. Medical assistance, which was provided by the former, was withheld from the latter. Debtors, who were willing to work, were refused tools, lest they should furnish felons with them for escape and other mischief. Although bread-money was allowed debtors by the Act of 32 Geo. II., there were not, in all England, twelve debtors who had obtained from their creditors the four pence a day allowed by the Act. In one of his journeys, Howard found over six hundred debtors whose debts were under twenty pounds apiece, some of them not above three or four pounds, all languishing for want of food, and was informed that the expense of suing for the aliment was in excess of the sums claimed. Felons, on the contrary, received a pennyworth or two pennyworth of bread a day, the penny loaf weighing about eight ounces, lessened in some cases by farming to the gaoler. Miserable, indeed, was the condition of the debtors. They entered prison in health, and came forth famished, scarcely able to move, and incapable of labor. If a debtor was discerned to have a little money, he was detained by the bailiff in a sponging house at an enormous expense,—the bailiff



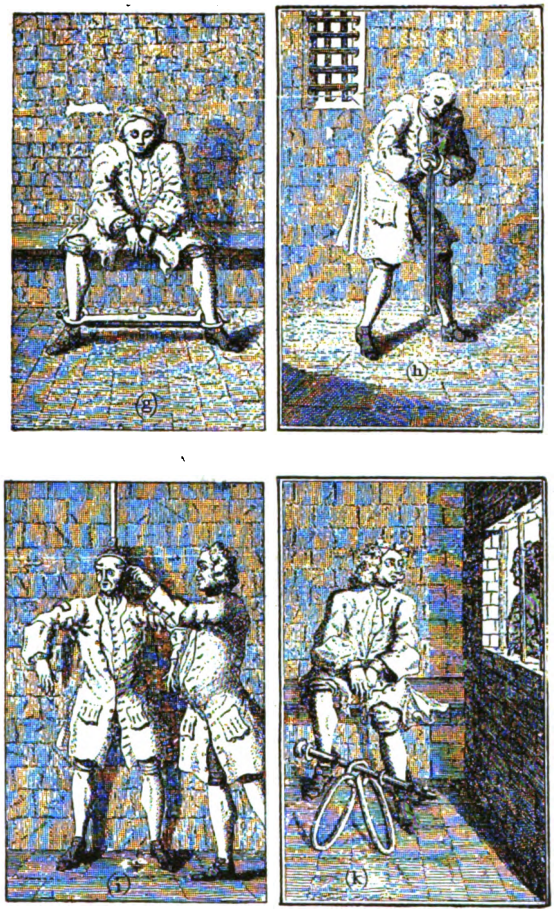
A A. Iron bars, nailed to floor, which entered the flesh; B B. Spikes 12 inches long fixed to a collar of iron 7¼ lbs. in weight, preventing a prisoner from resting his head on the ground; C. Chain which fastened the prisoner to the ground; D. Heavy iron bar crossing his legs and fastened to one, so preventing him changing his posture.

TORTURE INFLICTED IN ELY PRISON IN 1768.

himself keeping a public house, and insisting that the debtor should either go to his house or to gaol.

Water was supplied in allowances of three pints a day, for drinking and washing. The air was so poisonous, with the effluvia and excrement of prisoners, that the leaves of Howard's memorandum book became so tainted that he could not use it until after spreading it for a couple of hours before the fire, while his antidote,—a vial of vinegar, was unfit for use after a single visit. "Hell in miniature" was his oft repeated exclamation.

Light was excluded because the gaolers had to pay a window tax. As the county allowed no straw, the prisoners slept on rags or bare floors; or if, perchance, a little was secured, it was not changed for months, and became a mass of filth and nastiness.



g. Sheers; *h.* Collar; *i.* Skull-Cap; *k.* Fetters.

THE CRUELTIES IN THE MARSHALSEA PRISON: MODE OF APPLYING THE TORTURE.

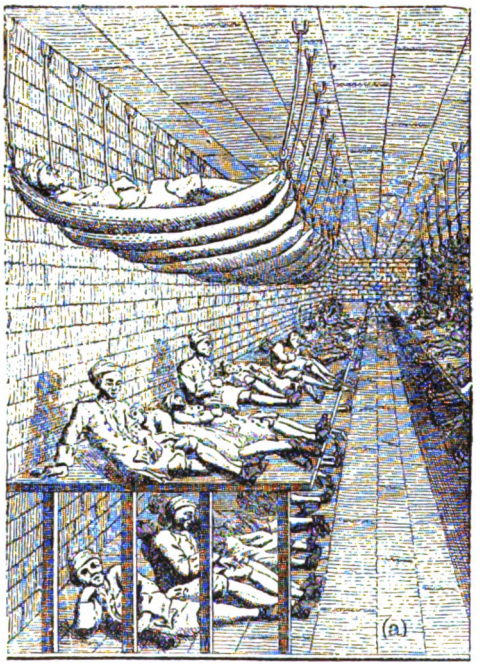
Such were the evils which affected the health and life of the prisoners. Their morals were equally exposed to the most pernicious influences. All sorts of persons were herded together. Felons and debtors, men and women, young and old, petty offenders and hardened criminals; boys of twelve and fourteen years of age listening with eagerness to the tales of crime, adventure, stratagem, and escape told them by the heroes of the Old Bailey. Lewd women jested at the miseries of debtors' wives and daughters. Lunatics and idiots either terrified the inmates by their violence, or furnished sport for the motley crowd. When a new prisoner appeared, he was compelled to put up "chummage," or "garnish." "Pay or strip" were the fatal words. If he had no money, he yielded up his apparel, which was sold for the common account, and the following night was spent in drunkenness and riot. The gaoler kept a tap house, and found it to his advantage to encourage the practice.

Gaming was common. Cards, Dice, Skittles, Mississippi, Portobello, Billiards, and Fives were among the indulgences allowed for a consideration. Prisoners were loaded with irons, ostensibly to prevent their escape; really as a means of extortion, for men and women were allowed the "choice of irons," if they were willing to pay for it. Walking as well as lying down was both difficult and painful. In Ely Gaol, the property of the Bishop, who was Lord of the Franchise of the Isle of Ely, only ten years before Howard wrote, the prisoners were chained down on their backs on the floor, across which were several iron bars, with an

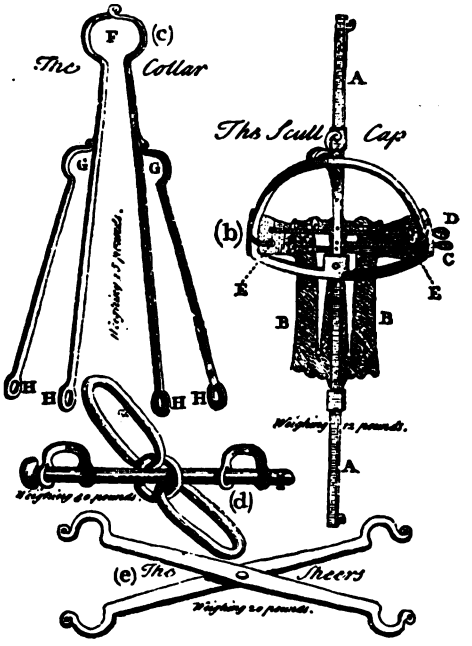
iron collar with spikes about their necks, and a heavy iron bar over their legs.

Other tortures and cruelties were practiced in the Marshalsea prison, as suggested by the skull cap, the collar, the fetters, and shears which are figured in the illustration.

In Newgate the cells were arranged in tiers, about nine feet by six. In the upper part of each cell was a window double grated, the over the chapel, kept by the prisoner who slept there. One night there was a wine club, the next night a beer club, and so on alternately, each lasting until one or two o'clock in the morning. In this prison there were two hundred and forty-three prisoners and their wives, including women not so honorable, and four hundred and seventy-five children.



THE CRUELTIES IN THE MARSHALSEA PRISON: THE SICK MEN'S WARD.



b. Skull-Cap; *c.* Collar; *d.* Heavy Fetters; *e.* Sheers.

THE CRUELTIES IN THE MARSHALSEA PRISON: INSTRUMENTS OF TORTURE.

doors were four inches thick, and the strong stone wall was lined all round with planks studded with broad-headed nails. A barrack bedstead was in each cell. It was said that the boldest criminals, who had affected an air of indifference even at the moment of sentence, were struck with horror, and burst into tears when brought to these darksome, solitary abodes.

In the Fleet there were coffee rooms and tap rooms, with large beer and wine cellars, and "a dirty billiard table" in a large room

In the King's Bench Prison there were seven hundred and twenty-five children, and three hundred and ninety-five prisoners, men and women, who were charged five shillings a week for half a bed.

The Clerks of the Assize charged all prisoners who were burnt in the hand four shillings and eight pence; the same sum was charged to those who were whipped, while those who were acquitted or discharged by proclamation were compelled to pay eight shillings and four pence; while for every one

as to whom a grand jury ignored a bill, the price was six shillings and four pence. In some of the circuits, as the Norfolk and Oxford Circuits, the charges were still higher. Until these charges were paid, the wretches were detained in prison, although the Act of 14 Geo. III. directed that acquitted prisoners "shall be immediately set at large in open court."

It is not necessary to enter into further detail.

Such was the actual condition of prisons at the time Howard wrote. It will be interesting to turn back and ascertain from some of the older authorities how long such a state of affairs had existed, not indeed without protest or remark, but without any effectual efforts at reform, strange proof of the stubbornness of British conservatism.

As to gaoler's fees, Fortescue, in his work *De Laudibus Legum Angliae* declared that it was a part of the oath of a sheriff upon entering into his office *that he shall receive or take nothing of any other man than the King by means or colour of his office.* Lord Coke called it a *fundamental maxim of the Common Law,* to avoid all extortion and grievance of the subject, that no sheriff, coroner, gaoler, or other of the King's ministers ought to take any fee or reward for any matter touching their offices but of the King only, 2 Co. Inst. 74, 176, 209. He adds that after this rule of the Common Law was altered by some Acts of Parliament,

THE TORTURE OF THE BOOT AS APPLIED AT THE PRISON OF THE GRAND CHÂTELET, IN PARIS, IN 1777.

The Original Print is in the Collection Hennin.

which gave to the said ministers of the King fees in some particular cases to be taken of the subject, "it is not credible what extortions and oppressions have thereupon ensued; whereas before, without any taking at all their office was done, now no office at all was done without taking, the officers being

the oppressions and extortions of gaolers, and feared that no remedy would be effectual as long as they were suffered to buy and sell their places. He pointed out that swarms of miserable men, necessitous and without the hope of redemption, after having suffered the penalty of the law for their crimes, were

A COMMITTEE OF THE HOUSE OF COMMONS INQUIRING INTO THE CRUELTIES INFLICTED IN THE FLEET PRISON, 1729.
After Hogarth.

fettered with golden fees, as fetters to the suppression or subversion of justice."

So, too, in the "Mirror of Justices," C. 5 Par. 1, n. 53, it is said: "It was an abuse that prisoners, or any of them, should pay anything for their entrance into or coming out of gaol." Mr. Emlyn, in his interesting preface to the State Trials, written nearly fifty years before Howard's book, alluded to

obliged to undergo the severer punishment of perpetual imprisonment for the non-payment of fees, a debt forced upon them without their consent, and often out of their power to discharge. "How much better," he suggested, "would it be for the public to allow the gaoler a reasonable salary instead of these perquisites, which arise from the miseries of the unfortunate, who are thereby

often necessitated to take dishonest and unlawful methods to enable themselves to pay them."

In the same way, as to gaol deliveries, Lord Coke declared that it was a commission instituted by the law of the land, *ne homines diu detineantur in prisona*, but that they might receive *plenam et celerem justitiam*. He adds, that gaols ought to be delivered thrice a year, or oftener, if need be, 4 Co. Inst. 168. He holds up to scorn the Abbot of St. Albans, who, having had the grant of a gaol and gaol delivery, was adjudged to have forfeited his franchise by an unreasonable delay in making delivery of his gaol, 3 Co. Inst. 43. This loftiness of sentiment was of little use, however, and of but little practical advantage to prisoners, who, after the law had discharged them, were still detained for fees which they could not pay.

SIR THOMAS PENGELLY.

The inhuman use of chains and fetters as a means of extortion had attracted the attention of the House of Commons as early as 1728, when inquiring into the condition of the Fleet and Marshalsea prisons, but the practice continued to exist under the pretence that as gaolers were answerable for their prisoners, they ought to be allowed the use of proper means to secure them. Bracton (1. 3, fol. 105a) had said: *Carcer ad continendos homines, non ad puniendos haberi debet:* prisons are designed only for the custody of prisoners, not for their punishment, unless as a part of their sentence. Fleta had declared: *Custodes gaolorum poenam sibi commissis non augeant, nec eos torqueant, vel redimant, sed omni saevitia remota pietateque adhibita judicia debite exequantur.* Lord Coke had said: "Shackles about the feet ought not to be, but for fear of escape," and again, the same oracle of the Common Law declared: "Where the law requireth that the prisoner should be kept *in salva et arcta custodia*, yet that must be without pain or torment to the prisoner, which chains and fetters undoubtedly are." And, when commenting on the statute of Westminster, 2, Cap. 11, by which the gaoler was permitted in a particular case to put irons on his prisoner, he stoutly declared: "by the Common Law it might not be done."

Yet notwithstanding this great array of adverse authority, the gaolers openly and notoriously inflicted upon prisoners awaiting trial torments more severe than the law inflicted upon convicted felons. This method of proceeding Lord Coke compared to that of Rhadamanthus, "who first punisheth and then heareth; like as the Chief Captain did by St. Paul, first ordering him to be bound

in chains, and then demanding of him who he was, and what he had done."

At a later day, in Hale's "History of the Pleas of the Crown," it was declared: "Fetters ought not to be used, unless there is just reason to fear an escape, as where the prisoner is unruly, or makes an attempt to that purpose; otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable and contrary to the mildness and humanity of the laws of England, by which gaolers are forbid to put their prisoners to any pain or torment."

Mr. Emlyn fully recognized the evil consequences of the common management of gaols. He denounced them as schools and nurseries of roguery and wickedness, rather than proper places for correction and amendment, where raw offenders, with some sense of shame and modesty, soon became impudent and hardened villains, well instructed in the theory, and experienced in the practice of crime. The keepers, interested in the sale of liquors, found their account in promoting rioting and debauchery.

Contagious distempers raged violently in many gaols, spreading their infection to the very courts where the prisoners were brought to trial, to the great hazard of judges, juries, counsel and idle spectators. Baker, in his Chronicle, records an instance in the twentieth year of Queen Elizabeth at the Oxford Assizes, "when the prisoners brought such a stench with them into court, that the Lord Chief Baron Bell, the sheriff, several counsel, almost all the jurors, and near three hundred others, died within the space of forty hours after it."

A more recent instance occurred in the death of Chief Baron of the Exchequer, Thomas Pengelly, who owed his talents and his origin to an amour of the Protector Richard Cromwell. A florid speaker and a bold advocate, he had been appointed to the bench in 1726, and as a judge exhibited patience and firmness, as well as knowledge and discrimination. While on the Western Circuit, some prisoners were brought from Ilchester for trial at Taunton, and the contagion spread by their presence caused the death of some hundreds of persons, among whom was the Chief Baron. I have never looked at his portrait, with its strong but not unkindly features, without reflecting upon his dreadful fate, and the unhappy condition of the wretched men who had appeared before him. He is to be remembered not only as a victim of the shocking system prevailing in the gaols, but as a humane and enlightened philanthropist, who left by his will a considerable sum for the discharge of prisoners confined for debt. His picture fitly closes this imperfect sketch. In future papers, it is my purpose to trace some of the features of early criminal law, and the steps taken to ameliorate the criminal code.

SOME THINGS ABOUT THEATRES.

II.

By R. Vashon Rogers.

ORIGINALLY theatres were established in England by letters patent from the Crown; but licenses were not needed when the servants of the royal family or the great nobles acted plays in the houses of their masters. In time unprivileged theatres gradually arose, so that an Act was passed in the reign of George II. (10 Geo. II. Cap. 28) which made it impossible to establish any theatre, except in Westminster and in place where the King should reside, except by special act of parliament. This continued to be the law until 1843, when free trade in theatres, subject to the conditions imposed by the act, was established. From the days of Elizabeth, an officer of the State has been the censor of the drama; all traces of censorship over other books and writings in England has long since disappeared. By the act of 1843, every new play, and every new act or scene in a play, must, before production, be submitted to and allowed by the Lord Chamberlain, under forfeit of £50, and the revoking of the license of the theatre. We are told that the discretion of this high functionary, as well as of his subordinate, the examiner of stage plays, has, on the whole, been wisely exercised (seeing he has to consider the dresses of the actresses, etc., etc., in the interest of public morals); occasionally, however, Jove nodded, as when during the illness of George III. the performance of King Lear was forbidden, and when George Colman showed marked antipathy to the use of such good words as "heaven," and "angels."

In the Chapter House, Westminster, is the license granted by James I. to William Shakespeare and others: after the usual formal commencement it goes on thusly: "Know ye that we of our speciall grace, estemm, knowledge and meere motion have licensed and authorized and by these presents doe license and authorise these our servants, Lawrence Fletcher, William Shakespeare, Richard Burbage, *et al.*, and the rest of their associates, freely, to use and exercise the arte and faculty of playing Comedies, Tragedies, Histories, Interludes, Moralls, Pastoralls, Stage plaies and such other like as they have already studied or hereafter shall use or studie, as well for the recreation of our loving subjects as for our solace and pleasure, when we shall thinke good to see them during our pleasure; and the said Comedies, (etc.) to shew and exercise publiquely to their best commoditie, when the infection of the plague shall decrease, as well within theire now usuall howse called the Globe, within our County of Surrey, as within anie towne halls or moat hall, or other convenient places within the liberties and freedome of any other citie, etc., etc." Then the trusty counsellor, to whom the license is addressed, is told not to molest or hinder them, but aid them, if any wrong be offered them, and to allow them the usual courtesies.

In Lord Campbell's time the Covent Garden Theatre Company acted under a patent, dated the fifteenth of January, 14th of Charles II., granted to Sir Wm. Davenant, whereby he, his heirs, executors. administrators and assigns are authorized to erect a new theatre in any place within the cities of London and Westminster, or the suburbs thereof, and to gather together, entertain, govern, privilege, and keep a company of players to exercise and act tragedies, comedies, plays, operas, and other perform-

ances of the stage therein, who were to be the servants of his Majesty's dearly beloved brother James, Duke of York, and to take and receive of such as shall resort to see or hear any such plays, scenes, and entertainments whatsoever, such sum or sums of money as either have accustomably been given and taken in the like kind, or shall be thought reasonable by him or them in regard of the great expense of scenes, music, and such new decorations as have not been formerly used. The patent then prohibits the exhibiting of plays by all others besides this company and a company to be established by T. Killigrew, Esq., and called The King and Queen's Company; directs that no actor ejected by one of these companies shall be received into the other, without the consent of the company whereof he was a member, signified under hand and seal; grants permission for women's parts to be represented by men; requires such plays to be purged of all scandalous and offensive passages, and concludes with a *non obstante* clause giving full effect to the patent, "any law, statute, act, ordinance, proclamation, provision, or restriction, or any other matter, cause, or thing whatsoever to the contrary, in any wise notwithstanding" (2 Camp. 359, *note A*).

So much for the history of the theatre from a legal point of view; now, for a consideration of, *Firstly*, the respective rights of theatre-goers, of theatrical managers and "sik lik persones," as Queen Mary's statute puts it; *secondly*, rows between managers and actors.

Firstly, As to the rights of the theatre-goers and the managers. If one has a ticket of admission, has he the right to get into and stop in the theatre, even though the manager wishes to prevent? Mr. Taylor, in 1799, became the possessor, for a valuable consideration, of a silver ticket, which entitled him to free admission to the King's Theatre, in the Haymarket, London, and to see all operas, exhibitions, and other public entertainments (concerts of ancient music excepted) there to be held during the twenty-one years stretching from June, 1792 to June, 1818. Mr. Taylor attended the performances as his soul listed, without let or hindrance, until January 17, 1813, when the proprietor refused to let him enter without fresh payment. The plaintiff rushed into court, and got a decision to the effect that a beneficial license to be exercised upon land is valid, although not granted by deed or in writing; and that such a license granted for twenty-one years, for valuable consideration, and acted upon, cannot be countermanded; and, lastly, that he was entitled to exercise the license granted him, and evidenced by his silver ticket, and enter the theatre without pay, and that he had a right to sue the hostile manager for disturbing him in his right. (Taylor *v.* Waters, 7 Taunt. 373).

This decision seems clear enough, but Mr. Moak lays down the law thus: "The manager of a theatre who has sold a ticket for a seat at a performance, may revoke the license granted by the sale of the ticket, and is not a wrong-doer in refusing to allow the holder to occupy the seat; at furthest he is liable only for breach of the contract." (Moak's Underhill on Torts, p. 446). To maintain his position he quotes Wood *v.* Leadbitter, 13 M. & W. 838, as overruling Taylor *v.* Waters; Macrae *v.* March, 12 Gray, 211; Burton *v.* Scherpf, 1 Allen, 133; Waterman on Trespass, Sec. 1793; Cooley on Torts, 285, 306. The trouble that Wood got into was this: he was fond of horse-racing, and he bought a ticket of admission to the grand-stand, to view the Doncaster races, some fifty years ago. He paid a guinea for his ticket, and was in the enclosure around the stand, to which the ticket admitted him, when he was spied by the Earl of Eglintoun, the steward, who, on account of some alleged shady transaction, ordered his myrmidon, Leadbitter, to ask him (Wood) to leave, and to tell him that

leave he must, "will he, nill he." Leadbitter did his lordship's behest, but Wood would not go, so after a reasonable time, Leadbitter put him out, or to use the classic expression of the defence, *molliter manus imposuit*, and Wood, finding himself outside the desired haven, without his guinea, which had not been offered to him, brought an action for assault and false imprisonment; but he was no more successful in getting a verdict than he was in getting on the grand-stand.

Early in the eighties a colored man and his wife purchased tickets for reserved seats in a theatre. They entered the street door, but were refused further admission and were forcibly ejected by the attendants. The husband appealed to the courts for justice and for damages, and the Supreme Court of Pennsylvania gave him the price of his tickets, the loss occasioned by his wife's illness (brought on by the rough ejectment), and all the expenses he was put to in consequence of the wrongful treatment. The Court said: "Whether the tickets conferred merely a license or something more is immaterial. If they gave only a license to enter the theatre, and remain there during the performance, it is very clear that the agents of the defendants had no right to revoke it, as they did, and summarily eject Peer and his wife from the building in such a manner as to injure her. We incline to the opinion however that as purchasers and holders of tickets for particular seats, they had more than a mere license. Their right was more of the nature of a lease entitling them to peaceable ingress and egress and exclusive possession of the designated seats during the performance on that particular evening." (Drew *v.* Peer, 93 Pa. St. 264). This seems to us a very sensible view of the whole matter.

In Louisiana a verdict was sustained of $300 against the proprietor of a theatre for refusing a man admission because he was colored. (Joseph *v.* Bidwell, 28 La. Ann. 382.) In Illinois the law is similar. (Baylis *v.* Carry, 11 Ill. App. 287.) But away down in Missouri, there being no State legislation on the subject, it was held that the provisions of the Fourteenth Amendment did not apply to the rules of a theatre reserving certain seats for the exclusive use of white people. (Young *vs.* Judah, 35 Cent. L.J. 269.)

Sometimes a genuine mistake is made about the sale of tickets for reserved seats; in such cases, if the management is civil about it, the disappointed ticket-holder must be philosophical. So a Pennsylvania Court decided. A visitor had entered and taken a seat in that part of the house for which his ticket was sold; an usher at once notified him that that particular seat was taken and tendered an equally good one near by, the man refused to move and so was forcibly ejected. The judges told him that he could not maintain an action of assault, if the seat in question had been actually and in good faith sold to some one else. (Common *v.* Powell, 10 Phila. 180.)

If three persons are told on entering a theatre that there is room, when in fact there is not, their proper course is to leave and demand the return of their money; they are not justified in getting into a private box, and if they do, the proprietor may remove them, using no more force than is necessary. (Lewis *v.* Arnold, 4 C. & P. 354.)

Although a proprietor of a theatre advertises a sale of reserved seats at certain prices he may yet, without damage to himself, refuse to sell certain of the seats even if asked for. We mean danger through the action of the courts; what a wild Westerner would do we trow not. (Pearce *v.* Spalding, 12 Mo. App. 141.) The proprietor has a right to make the admission tickets "not transferable," and if this be done neither the original ticket buyer nor the transferee can recover back

the price when admission is refused the transferee. (Parcell *v.* Daly, 19 Abb. [N.Y.] N. Cas. 310.) The lessee of a private box at a theatre may be taxed in respect thereof when the law allows a rate to be laid on every person who inhabits, holds, occupies, possesses or enjoys any building, tenement or hereditament, and that although the proprietors of the theatre are also taxed. (Reg. *v.* St. Martins-in-the-Fields, 3 Q.B. 204.)

Sometimes theatre-goers feel compelled to give expression in a strong way to their ideas anent the performers, and sometimes the managers do not like what is said or done and ask the opinion of the courts in the matter. Gertrude Mara was engaged at great expense at Ashley's theatre: Mr. Harrison published some libels about her, so that she refused to sing, fearing she would be hissed and ill-treated. The hopes of his gains being gone, Ashley took the advice of the town clerk at Ephesus, availed himself of the open law, found deputies and impleaded with Harrison. But Kenyon C.J., thought the injury complained of was too remote, and said the action would not lie; although he considered that if Madame Mara felt injured, she herself might sue successfully. (Ashley *v.* Harrison, 1 Esp. 48.) Neri went further than did Harrison; he thrashed Breda, a singer engaged by Taylor; Taylor complained of the act *per quod servitium amisit;* but got nothing. (Taylor *vs.* Neri, 1 Esp. 386.)

Such extreme measures as the above should seldom be used. However, "the theatre-going public have a right to express their free and unbiased opinions on the merits of the performers who appear on the stage." This judgment was drawn out by Gregory, who in 1843 was playing Hamlet at Covent Garden Theatre; the Duke of Brunswick and others of the audience hooted, hissed, groaned, yelled and made such an uproar that it was to all intents and purposes the tragedy of Hamlet with the Prince of Denmark left out; Gregory could not be heard, understood or appreciated. The actor sued for £5000 damages, but the defendant got the verdict, and the plaintiff naught but the expression of judicial opinion above quoted, with the rider that parties have no right to go to a theatre and by a preconcerted plan make such a noise that an actor, without any judgment being formed of his performance, should be driven from the stage; and if two persons are shown to have laid such a plan to deprive a would-be actor of the benefits which he expected to result from his appearance on the stage, they are liable to an action for a conspiracy. (Gregory *v.* Duke of Brunswick, 1 C. & K. 24.) Sir James Mansfield, some forty years before this had said: "If any body of men were to go to a theatre with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a preconcerted scheme would amount to a conspiracy and that the persons concerned might be punished." (Clifford *v.* Brandon, 2 Camp. 358.)

(This is a parenthesis and may be skipped without any injury to the reader. By the way, this case of Clifford, Esq., is rather interesting. It appears that on the evening of the arrest for which he brought his action, this gentleman, of great eminence at the Bar, went to Covent Garden Theatre; a good deal of noise and confusion had prevailed there for several nights because the prices of admission had been raised and the public had been excluded from the private boxes that had been let for the season. Lord Campbell tells us that on the occasion in question, the performance on the stage was inaudible, the spectators sometimes stood on the benches and at other times sat down with their backs to the performers; during the acts "God Save the King" and "Rule Britannia" were sung by persons in different parts of the house; horns were blown, bells were rung and rattles were sprung, placards were exhibited urging resistance to the oppression of the managers;

and a number of men wore on their hats the mystic letters "O. P." and "N. P. B." (Old Prices and No Private Boxes). There were sham fights in the pit, but no violence was offered to any one and no injury done to the theatre. One witness said, the affair was like a quarrel among a thousand drunken sailors. Best, Sergeant, said the audience was more amused with what was going on than they would have been with the performance; the Judge remarked that the scenes were a disgrace to the country and tended to bring the English nation back to a state of barbarism. When Mr. Clifford entered upon this wild scene there was a cry, "There comes the honest counsellor," and a passage was opened for him and he went and seated himself in the centre of the pit. His hat was soon ornamented with the "O. P." sign; his conduct was most exemplary, he took no part in the disturbance, in fact he persuaded one sitting near him from giving a solo on a trumpet; yet as he was quietly going home he was arrested by the order of the defendant, the box-keeper, and carried off to Bow Street; the magistrate discharged him, however. Sergeant Best acted for him at the trial and recovered from the jury a verdict of £5, although Mansfield C.J., who presided at the trial, asked the jury to consider a lot of knotty, disagreeable questions, such as "Why was his entrance saluted with the exclamation, 'Here comes the honest counsellor?' How had he deserved this peculiar panegyric? (Note the sarcasm of those words; why do so many judges delight in kicking the ladder by which they have risen?) How came it that a word from him was sufficient to prevent a man from blowing a trumpet? Why did he go to the theatre? Was it to see the play? Did he know the meaning of the letters O. P.?" So much by way of digression; now to resume the golden thread of our discourse.)

In fact, Macklin, in 1775, was playing Shylock; Leigh and a number of others arranged to hiss him whenever he appeared on the stage, whereupon he indicted them before Lord Mansfield for unlawfully, wickedly, riotously and tumultuously making a great noise, tumult, riot and disturbance to prevent his playing and to ruin him in his profession. The accused were found guilty; Macklin was satisfied with his victory and declined to call them up to receive judgment, especially as they consented to pay all his law expenses, take £100 worth of tickets for his next benefit, and another £100 worth for his daughter's benefit. This was a comic ending to the affair that the noisy fellows had not anticipated. (Rex *v.* Leigh, 1 C. & K. 29, note "A".) The opinions of Englishmen are not of much weight in this year of grace, especially of a Tory like Mansfield, so we hasten to back up our position with the words of an Irish Chief Justice: in Rex *v.* Forbes (1 Craw. & Dix, Circuit Cases), Bushe C.J. said: "The rights of an audience at a theatre are perfectly well defined. They may cry down a play or other performance which they dislike, or they may hiss or hoot the actors who depend upon their approbation or caprice. Even that privilege however is confined within its limits. They must not break the peace, or act in such a manner as has a tendency to excite terror or disturbance. Their censure or approbation, although it may be noisy, must not be riotous. That censure or approbation must be the expression of the feelings of the moment; for if it be premeditated by a number of persons confederated beforehand to cry down either a performance or an actor, it becomes criminal. Such are the limits of the rights of an audience, even as to actors and authors." And we are told by high American authority that French decisions say, that a person has at a theatre as much right to express disapprobation as others have to express approbation. (32 A.L.J. 401.)

The benefit of humility and of the willingness to take a low seat has been proved even

among theatre-goers. A man in Philadelphia took a front seat in a theatre to witness an exhibition on the trapeze by some star acrobats. One of the performers missed his hold, and ere he struck bottom, hit and injured the onlooker in question. The forwardness of the plaintiff was not allowed to defeat his right to recover damages for the injury occasioned by this falling star. (Fox *v.* Dougherty, 2 W.N.C. 417.) On the other hand when the bust of Benjamin Franklin (which was being used for decorative purposes in a public hall in Boston at the reception of the Russian Grand Duke Alexis), on the singing of the "Old Hundred" came down in a rushing manner upon the shoulder of a lady right below, doing her considerable injury, she asked the courts for other and more healing damages in vain. If the lady had *kenned all* about it (as Mr. Irving Browne would probably say), and had shown negligence on the part of the city, in the arrangement of the bust, the verdict might have been otherwise. (Kendall *v.* City of Boston, 118 Mass. 234.)

Lord Mansfield gave it as his opinion that the proprietors of a theatre have a right to manage their property in their own way and fix what prices of admission they think most for their own advantage; so it is consolatory to the poor fathers of large families to be informed by the same learned judge that theatres are not absolute necessaries of life, and any person may stay away who does not approve of the way in which they are managed. (Clifford *v.* Brandon, 2 Camp. page 363.)

THE MASSACHUSETTS ACTS AND RESOLVES.

By JAMES A. SAXE.

THAT a few facts gathered together while aiding in the completing of a set of the Acts and Resolves of Massachusetts will be of interest to those of my brother lawyers with antiquarian tendencies, I make no doubt.

It seems incredible that the political and judicial history of the Commonwealth should have been so little thought of, that, for over a hundred years, the records were blown out from the State House a leaf for every breeze; that there had been no apparent thought that these leaves made up the history of the political and social life of the Province and Commonwealth from its germ through its ever varying forms to the recent past; and that future generations might rightfully claim a complete record of their past legislation. Yet so it was. Legislature after Legislature had been requested to give the matter their earnest consideration, but with little or no material results until 1865. Until the purchase in that year of the almost perfect collection of a private citizen, Ellis Ames, Esq., of Canton, and the addition thereto in 1866 of the manuscript from the General Court Records by a commission appointed by the Legislature in 1865, there had been no complete collection of the early editions of the public Acts of the Province of Massachusetts Bay.

The work of this Commission of 1865 is practically complete. Five volumes of about a thousand pages each have been printed, bringing together in the same volume the "Resolves" and the "Acts and Laws" passed in the period 1692 to 1780 and originally published separately. There are also two appendix volumes, the second of which has been printed, while the first is now being prepared, losses by fire having set it back. Thirty years have been nearly consumed in the preparation of this work, one of the original commission, Abner C. Goodell, still superintending it. It is entitled, "The Acts and Resolves of the Province of Massachusett's Bay."

The pagination of the Acts and the Resolves in the original copies began anew with every session; the reprint is paged as a new book, throughout. As to enumeration of chapters, the Acts and Laws were according to the sovereign's reign, our ancestors often finding they had recorded in the reign of one king, when "the king is dead, long live the king" had been sung some two or three months before the news reached them. In the reprint the Acts and Laws are numbered for the political year according to the assemblies in which enacted. Under the Charter more than one assembly might sit in one year, but under the Constitution only one. At the end of each Act is the date of its passage and publication. The Resolves are numbered according to the sessions as in original copies.

It is interesting to know that the Laws and Resolves of every session were published in the early 18th century by being read in the market place on some set day. Now, publication is by printing and distribution to the towns.

By the 104th chapter of the Resolves of 1889, the Secretary of the Commonwealth was empowered to collect and publish in the form of the present "blue books," all the Acts and Resolves of the General Court from the adoption of the Constitution in 1780 to 1806, at which latter time full publication of the Acts and Resolves began to be made. As a result, a first volume appeared in 1890. and two more have since been published, bringing the reprint up to 1785. The pagination of the reprint forgets the early paging. The enumeration of the Acts is by the polit-

ical year, the original session and chapter appearing in parentheses at the head of each chapter, and at the end of the chapter, instead of the date of passage and publication, its date of approval. The Resolves are numbered according to session as in the originals.

On the 9th April, 1839, the Secretary of the Commonwealth was empowered to publish, at the close of each session, all the laws and resolves and others, general and special, in one volume not limited by the number of pages. The work of the commission of 1865 and the empowering Act of 1889, relating to the Acts and Resolves from 1692 to 1806, follows as far as practicable the plan pursued in the publication of the Acts and Resolves from 1839 to the present day. The period therefore of 1806 to 1839 has not been considered, and these separate sessions of the Acts and Resolves are very rare, and every year more difficult to find. I believe the three best collections covering this period belong to the State House Library, the Social Law Library and to Heman W. Chaplin, Esq., respectively, and the best one to the private citizen.

Before considering the period 1806 to 1839 we must glance at an octavo edition covering the period 1776 to 1806, whose first printers were Edes & Son. A preliminary volume, entitled, "The Revolution Period," first appeared. It was paged throughout, and, until March 14, 1776, the top of the page read: "In 50th year of the reign of Geo. 3d King etc." But after the Test Act "In the year of our Lord" became the reading. Vol. I. begins after this, and the period is covered in three volumes for the Laws, and eleven volumes for the Resolves. The pagination of the Laws is regular to end of volume, while the enumeration of the chapters is according to the session. The Resolves on the other hand are paged each session, except in one year, 1778–1780, when the paging was according to the political year; their chapters they enumerated by sessions.

After making a general statement applicable to both Laws and Resolves, namely, that there are supposed to be three sessions in the political year, called from their initial month, May, October and January, and that the October session only occasionally appears, we must consider the Laws and Resolves separately. We begin with the Laws whose first volume, numbering from the Edes Edition, is Volume 4.

Volume 4 begins with the May session of 1806 and is very irregular; it covers three political years, to January, 1809, and is made up of seven sessions. Its pagination is most irregular. May, 1 to 29, Jan., 1 to 130, May, 1 to 72. Now, these three sum up 231 pages, and Jan. begins with 237 and goes to 392, May, 393 to 415, Oct., 417 to 420, Jan., 421 to 510. There is a complete index for all seven sessions at end of Jan., 1809, session. The enumeration of the chapters is also very peculiar. Until Jan., 1808, there were no numbers, but they were distinguished merely by date when passed, which was printed at the end of the Act. Then Jan., 1808, begins its enumeration with XLVII–CXXXIX, May, 1808, I–CII, and May, 1809, and Jan., 1810, I–CXXVIII; that is, first by date, second by session, and finally, by political year.

Vol. 5 covers three political years, from May, 1809, to January, 1812, and is made up of six sessions. The paging is regular and there is a complete index at the end of January, 1812. May, 1 to 47, Jan., to 226, May, to 254, Jan., to 382, May, to 510, and Jan., to 618. Enumeration of chapters is according to political year.

Vol. 6 covers three political years, from May, 1812, to January, 1815, and is made up of eight sessions. The paging is regular, and there is a complete index at the end of January, 1815. May, 1 to 132, Oct., to 148, Jan., to 222, May, to 308, Jan., to 478, May, to 560, Oct., to 584, Jan., to 694. Enumeration of chapters is according to the political year.

Vol. 7 covers three political years, from May, 1815, to January, 1818, and is made up of six sessions. The paging is regular and there is a complete index at the end of the third year. May, 1 to 39, Jan., to 184, May, to 282, Nov., to 386, May, to 456, and Jan., to 656. Notice that a November session appears in place of January. Enumeration of chapters is according to the political year.

Vol. 8 covers four political years, from May, 1818, to January, 1822, and is made up of nine sessions, a short April session appearing beween January and May, 1821. The paging is regular and there is a complete index at the end of the fourth year. May, 1 to 60, Jan., to 203, May, to 306, Jan., to 430, May, to 480, Jan., to 562, April, to 566, May, to 612, Jan., to 751. The enumeration of chapters is according to the political year.

Vol. 9 covers three political years, from May, 1822, to January, 1825, and is made up of six sessions. The paging is regular, and there is a complete index at the end of third year. May, 1 to 36, Jan., to 203, May, to 262, Jan., to 414, May, to 470, Jan., to 664. The enumeration of the chapters is according to the political year.

Vol. 10 covers three political years, from May, 1825 to January, 1828, and is made up of six sessions. The paging is regular. May, 1 to 104, Jan., to 336, May, to 383, Jan., to 588, May, to 623, Jan., to 884. There is an index at the end of every session, and a complete one at the end of the third year. The enumeration of the chapters is according to the political year.

Vol. 11 covers three political years, from May, 1828, to January, 1831, and is made up of six sessions. The paging is regular. May, 1 to 50, Jan., to 230, May, to 294, Jan., to 486, May, to 521, Jan., to 723. There is a complete index at the end of the third year. The enumeration of the chapters is according to the political year.

Vol. 12 covers *two* political years, from May, 1831, to January, 1833, and is made up of three sessions. The paging is regular. May, 1 to 165, Jan., to 489, and Jan., to 835. There is a complete index at the end of the second year. The enumeration of the chapters is according to the political year.

Vol. 13 covers three political years, from January, 1834, to January, 1836, and is made up of four sessions. The pagination is regular. Jan., 1 to 300, Jan., to 552, Sept., to 562, and Jan., to 1015. There is one complete index at the end of the third year. The enumeration of chapters is according to the political year.

Vol. 14 covers two political years, from January, 1837, to January, 1838, and is made up of two sessions. The paging is regular. Jan., 1 to 284, and Jan., to 518. There is a complete index at the end of the second year. The enumeration of the chapters is according to the political year.

The Resolves begin this period with Volume 12 according to the volume numbering of the octavo edition.

Vol. 12 covers four political years, from May, 1806, to January, 1810, and is very irregular. It is made up of nine sessions, and the paging is irregular. May, 1 to 30, Jan., 1 to 70, May, 1 to 57, Jan., 59 to 152, May, to 204, Nov., to 220, Jan., to 302, May, to 368, Jan., to 477. There is no complete index at the end of the fourth year, but indices after first, second, fourth, fifth, seventh, eighth and ninth sessions. The enumeration of the chapters is by session through two sessions, then by two political years, then by one political year.

Vol. 13 covers two political years, from May, 1810, to January, 1812, and is made up of four sessions. The paging is regular. May, 1 to 62, Jan., to 177, May, to 268, and Jan., to 409. There is a complete index at the end of the second year. The enumeration of chapters is according to the political year.

Vol. 14 covers three political years, from May, 1812, to January, 1815, and is

made up of eight sessions. The paging is regular. May, 1 to 72, Oct., to 108, Jan., to 222, May, to 243, Jan., to 482, May, to 558, Oct., to 579, and Jan., to 670. There is a complete index at the end of the third year. The enumeration of the chapters is according to the political year.

Vol. 15 covers four political years, from May, 1815, to January, 1819, and is made up of eight sessions. The paging is regular. May, 1 to 80, Jan., to 208, May, to 279, Nov., to 406, June, to 466, Jan., to 576, May, to 602, and Jan., to 740. There is a complete index after 740. The enumeration of the chapters is yearly during first two years and biennially during the last two years.

Vol. 16 covers five political years, from May, 1819, to January, 1824, and is made up of eleven sessions. The paging is regular. May, 1 to 88, Jan., to 205, May, to 271, Jan., to 312, April, to 313, May, to 385, Jan., to 489, May, to 557, Jan., to 615, May, to 674, Jan., to 743. There is a complete index after 743, and a single index after every session. The enumeration of the chapters is by the political year.

Vol. 17 covers four political years, from May, 1824, to January, 1828, and is made up of eight sessions. The paging is regular. May, 1 to 81, Jan., to 180, May, to 238, Jan., to 375, May, to 433, Jan., to 572, May, to 621, and Jan., to 733. There is a complete index after 733, and several single session indices. The enumeration of the chapters is by the political year.

Vol. 18 covers three and a half political years, from May, 1828, to May, 1831, and is made up of seven sessions. The paging is regular. May, 1 to 69, Jan., to 160, May, to 208, Jan., to 376, May, to 431, Jan., to 590, May, to 657. There is a complete index at the end of 657. The enumeration of chapters is according to the political year.

Vol. 19 covers three political years, from January, 1832, to January, 1834, and is made up of three sessions. The paging is regular. Jan., 1 to 234, Jan., to 544, and Jan., to 718. There is a complete index after 718. The enumeration of the chapters is according to the political year.

Vol. 20 covers four political years, from January, 1835, to January, 1838, and is made up of five sessions. The paging is regular. Jan., 1 to 204, Sept., to 244, Jan., to 424, Jan., to 598, Jan., to 773. There is a complete index after 773. The enumeration of the chapters is according to the political year.

THE COURT OF STAR CHAMBER.

By John D. Lindsay.

V.

THE method of compelling the attendance of defendants before the court is thus described in a contemporaneous work: —

"And those that be sued there bee called by a *Subpœna* to appear before the King and his Councell, at a day mentioned in the writ. And the which day if hee make default, then upon oath taken that the partie was served with the *Subpœna*, there shall issue out an Attachment, upon the which if he be taken and doe appeare, hee shall bee committed to the *Fleet*, by the discretion of the court. If hee bee not taken, nor yeeld himselfe, there shall then issue out a Proclamation of Rebellion, with Commandment to apprehend him, and to have his body before the King, and his Councell, at the day set downe in the writ. At the which if he appeare hee shall be committed to the *Fleet*. But if he appeare *gratis* upon the Proclamation, or upon the Attachment, the contempt will not bee so heinous, if hee have any reasonable excuse. And upon his default or appearance upon the Proclamation, there shall goe out an Commission of Rebellion, which appeareth hereafter in this Treatise.

"Note that if the partie doe *gratis* yeeld himselfe upon Proclamation hee shall bee bound by obligation to the King before the Master of the Office of this court, to appeare at everie Session of the Lords untill hee bee discharged."[1]

Its procedure was founded upon an information, generally drawn up by the Attorney-General, in which the charge was set forth after the style of a bill in chancery.

The defendant put in his answer also in the form of an answer in chancery.

He might be examined upon interrogatories, and was liable to be required to take what was called the *ex-officio* oath. This was an oath in use in the ecclesiastical courts, by which the person who took it swore to make true answer to all such matters as should be demanded of him. This oath was always held in great popular disfavor, and its unpopularity is well shown in the Lilburn case referred to hereafter.

The evidence of witnesses was given upon affidavit.

When the case was ripe for hearing it came on for argument much in the way in which Equity cases are argued in these days. The parties appeared by counsel; the information, answer and depositions were read and commented upon; and finally each member of the court pronounced his opinion and gave his judgment separately.

Queen Elizabeth made great use of the Star Chamber as an instrument of royal vengeance.[1]

On one occasion Arthur Guntor, a retainer of Philip Howard, Earl of Arundel, then the jealous rival of Robert Dudley, Elizabeth's favorite, for the hand of the Queen, was brought before the Star Chamber on the information of one of Dudley's servants to answer for the evil wishes he had expressed of the favorite, for standing in the Earl's way. Guntor confessed to having indulged in some gossip, and was dismissed with a reprimand and caution.

Arundel, himself, who incurred Elizabeth's displeasure because of his reconciliation with

[1] The Court of Starre-Chamber, and matters before the King's Council, London, 1641.

[1] Elizabeth regarded extravagance of dress a royal prerogative, for in 1579, an order was made by the Court of Star Chamber "that no person should use or wear excessive long cloaks as of late be used, and before two years past hath not been used in this realm; no person to wear such long ruffs about their necks, to be left off such monstrous undecent attiring."

his wife, together with his wife was thereafter subjected to such persecution that he saw no other means of escaping the snares of his powerful enemies than by leaving the realm. He embarked and set sail from the coast of Sussex, but was overtaken, brought back and lodged in the Tower. Lady Arundel was treated with great cruelty. Arundel House was despoiled, all property confiscated, and Arundel was fined £10,000 by the Star Chamber for having attempted to leave the kingdom without permission. He was also condemned to suffer imprisonment during the Queen's pleasure, and nothing less than a life term served to appease Elizabeth's vengeance.

Lady Katharine Gray (sister of the unfortunate Lady Jane), who had contracted a clandestine marriage with the Earl of Hertford, was thrown into the Tower and there gave birth to a fair son. Her husband had been sent for from France, and on his return he was also incarcerated there. Though in separate prison lodgings he found a means of visiting his wife in her affliction, and she afterwards became the mother of a second child. For this offense he was fined £20,000 in the Star Chamber, his marriage having been declared null and void, as the sister of the Earl, the only efficient witness, was dead. Katharine was kept in durance apart from her husband and child seven years, when she died. Her real offense was that of being Lady Jane Gray's sister.

The luckless Secretary Davison, who was selected by Elizabeth as the scapegoat on whom the whole blame for the Scottish Mary's death was to be laid, was stripped of his offices, sent to the Tower, and prosecuted in the Star Chamber for the contempt of revealing the secret communication which had passed between the Queen and him to others of her ministers. This was doubtless his principal offense and the cause for which he was punished; the other was giving up to them the warrant which had been committed to his special trust. He was fined £10,000 and sentenced to suffer imprisonment during the Queen's pleasure.

In 1553, during the interregnum between the death of Edward VI. and Queen Mary's accession, the violent party spirit of the Star Chamber displayed itself in an unusual degree.

A Mr. Dobbs, who had presented a petition from the reformers of Ipswich, claiming protection for their religion on the faith of a proclamation issued by the queen immediately upon her arrival in London, was set in the pillory for his pains.[1]

One of the Star Chamber's most nefarious acts was the imprisonment of Judge Hales, a proceeding which brought great obloquy on Mary, though her only part in it was the righting of the wrong when it was put before her notice. Judge Hales had positively refused to have any concern in the disinheriting of Mary; he had boldly declared to Northumberland and his faction that it was against English law. He had, however, at the assizes held at the usual time, but after Edward's death, given a charge from the bench to the people of Kent, advising them to observe the laws made in Edward's time, and which were certainly in force until repealed. For this he was committed to the Fleet prison by the privy council. Hales, feeling the keen disgrace of his condition, and despairing that justice would ever again visit his country, attempted his own life, but unsuccessfully. When the queen learned of his unmerited persecution she sent at once for him to the palace, "spoke many words of comfort to him," and ordered him to be set at liberty honorably. But Hales' treatment had so deeply wounded him that he destroyed himself soon after.

Edward Underhill, an accomplished Worcestershire gentleman, who for his zeal in the Calvinistic religion was dubbed "the hot gospeller," penned a satirical ballad

[1] Machyn's Diary records the incident thus: "The 29 of July 1553, was a fellow set in the pillory, for speaking against the good Queen Mare."

against "papists," and for this was summoned before the council while the queen was in Suffolk. After much browbeating he was committed to Newgate. But the queen interfered, and not only was he released from Newgate a few days after the queen's return, but she restored him to his place in the band of gentle pensioners to which he had belonged, and to his salary without deduction during the time of his imprisonment.

Several instances are to be found of the queen's interference to save persons from the cruelty of her privy council.

Indeed, during the whole of Mary's reign those who were of rank or consequence sufficient to find access to her were tolerably sure of her protection; thus the Star Chamber had little opportunity for exercising its power against those of high station and of political prominence, and we actually find it stooping so low as to deal with persons whose positions in life would ordinarily have seemed too humble to make them objects of State punishment.

We learn that the council solemnly sent orders to the town of Bedford "for the punishment of a woman (after due examination of her qualitie) by the cucking-stool," she having been apprehended for "railing and speaking unseemly words of the queen's majesty."

But in the latter part of her reign, when her physical afflictions incapacitated her from interference with the proceedings of the Star Chamber, that court inflicted severer punishments on old women "who railed against the queen's majesty."

Its proceedings against the jury who had acquitted Sir Nicholas Throckmorton are well known. Whatever may be the impression of those who have never studied the evidence in the case, as to Throckmorton's complicity in Wyatt's uprising, a mere reading of the testimony as it is printed in the State Trials must convince any fair mind that at the very least he knew of the treasonable operations and gave them his approval. When Weston, the foreman of the jury, announced the verdict, Lord Chief Justice Bromley said to them: "Remember yourselves better. Have you considered substantially the whole evidence in sort as it was declared and recited? The matter doth touch the Queen's Highness and yourselves also. Take good heed what you do."

Weston, the foreman, replied: "My lord, we have thoroughly considered the evidence laid against the prisoner, and his answers to all these matters, and accordingly we have found him not guilty, agreeable to all our consciences."

Bromley observed, "If you have done well it is the better for you." He then recommitted Throckmorton to the Tower upon the plea that there were other matters charged against him.

Attorney: "And it please you, my lords, forasmuch as it seemeth these men of the jury which have strangely acquitted the prisoner of his treasons whereof he was indicted will forwith depart the court, I pray you for the Queen that they and every of them may be bound in a recognizance of £500 apiece to answer to such matters as they shall be charged with in the Queen's behalf wheresoever they shall be charged or called."

Weston said: "I pray you, my lords, be good unto us, and let us not be molested for discharging our consciences truly; we be poor merchantmen and have great charge upon our hands and our livings do depend upon our travails; therefore it may please you to appoint us a certain day for our appearance because perhaps also some of us may be in foreign parts about our business."

The court thereupon committed the jury to prison.

Four of the jury acknowledged having been in the wrong. The remaining eight were shortly after brought before the King's Council in the Star Chamber. They affirmed that they had but acted according

to their consciences, "even as they should answer before God at the day of judgment," and prayed for their liberty.

The Lord Chancellor passed sentence "that they should pay a thousand marks and that they should go to prison again and there remain till further order were given for their punishment."

Subsequently the sheriff made an inventory of their property, which being reported to the council, Weston, Lucar and Kightlie were adjudged to pay £2,000 apiece, and the rest one thousand marks each, to be paid within one fortnight after. From this the four who had confessed their fault and submitted thereto were exempted.

Five of the eight were afterwards discharged and set at liberty upon paying the fines. The other three sent in a petition to the court, urging that their goods did not amount to the fine, and so upon their paying £60 apiece they were discharged, Dec. 21.

When in 1555 thirty-seven members of the House of Commons, as well Catholics as Protestants, after vainly opposing the enactment of the detestable and cruel penal laws against Protestants, which legalized the acts of bloody persecution that have stained Mary's name for all time, seceded bodily from Parliament, the Star Chamber punished them by fine, imprisonment and other inflictions, and *by loss of their parliamentary wages*.

Numerous were the proceedings of the Star Chamber against Protestants, but the prosecutions there were confined to offenses of a comparatively trivial nature, the common law courts enforcing the capital laws.

The following is one of the Star Chamber entries in the time of James I.: —

"In Camera Stellata * *

Whereas William Dale, John Eden, Hugh Jones and Richard Jackson and other refractory Puritans and Brownists, did deface divers crosses in highways, in the night time: For this the judgment of this court is upon their confession in open court, that the said William Dale" &c. "shall be bound in good behavior, and acknowledge their offense at the assizes, and every one of them pay 100 marks fine to the King's use."

SIR JAMES STEPHEN'S HISTORICAL WORK.

By Forrest Morgan.

THE work done for humanity by the late Sir James Stephen, in giving to 250,000,000 people a just, lucid, brief, and workable code, in a place of a medley of Oriental common-law usages which left rights of person and property pretty much at the chance of the judges' personal qualities, has been fully appraised by others competent to speak; so have his English legal history and codification. But his priceless contribution to general history, the two volumes of "Nuncomar and Impey," has not been noticed in any obituary we have seen; yet it will keep his name fresh to historical scholars forever. It was his rare fortune and ability to write a work in what seemed a well-trodden field of history which is at once the prime quarry from which every subsequent worker in that field must draw, and the convincing judicial decision which every one who presumes to form a different judgment must first overthrow; to settle once for all a problem which, purely personal in itself, is of the first order in general importance from the vastly wider ones it involves and to which it is the key. On the question whether Warren Hastings promoted and Justice Impey carried out a judicial murder of the Mahara-

jah Nuncomar, to give Hastings the upper hand in the East India Company's resident board against Sir Philip Francis and his faction, depends the greater ones whether Macaulay's "Clive" and "Hastings" are the sound history which public admiration supposes, or worthless misunderstanding and caricature; whether James Mill was a truthful historian, or an acrid bigot who garbled his history without conscience to square with his prejudices, and thought the end (of blackening a man he hated) justified the means (of libel); whether Burke's speeches against Hastings are on the right track, or the furious rhetoric of a hot-headed advocate "steered" by a vindictive and baffled politician, refusing to hear the other side and totally wrong; whether Hastings himself was a clean and unselfish as well as a broad-minded statesman, or an unscrupulous adventurer who stuck at nothing to keep himself in power; whether the English judges in India were mere venal adventurers, or the same honorable lawyers as at home; whether, in a word, the heads of civil and military administration in India acted as members of a civilized society or as ruthless barbarian freebooters. Sir James Stephen could not work out all these problems: but he settles some of them by proving conclusively that Hastings had no more to do with Nuncomar's trial or sentence than with the Crucifixion; that the sentence was both legally and morally just, that Impey was only one of four co-ordinate judges who pronounced it unanimously, that they had no choice anyway after the jury's righteous verdict of guilty; that so far from the Francis party considering it or the trial a political "move" of Hastings or anybody else, they treated a letter from Nuncomar after his sentence, asking their interference and complaining of injustice, as a gross affront, and turned it over to the judges; and that the matter of Macaulay's essay, though eked out from a pamphlet by Sir Philip Francis's brother-in-law, is mainly taken in unquestioning faith from James Mill, whose affectation of dry, severe impartiality misled two generations of popular writers, and who cannot in fact be trusted for a page in either facts or judgments. The case is stronger still: we would add that having read Impey's charge to the jury that found the verdict (which must contain the evidence of his corruption and his determination to hang Nuncomar if there was any), we pray Heaven for exactly that sort of charge to any jury that may chance to try us for our life. It would do honor in its justice and acuteness to any judge that ever lived, but it stretches to the uttermost limit every point that can possibly favor the prisoner. Stephen further examines the matters of the Lucknow depositions and the later quarrel with Hastings over jurisdiction: the alleged corruption and illegality of the former utterly vanish under a plain recital of facts, and the alleged attempt of Impey to set up a despotism for purposes of plunder s even ludicrous — for of course he could only act on cases brought before his court, had no initiative or executive power whatever, and was but one of a bench of co-equal judges. He was an honorable and warm-hearted man and a honest judge, even if he was human enough to want a living for himself and family, and Macaulay's savage denunciation of him is pure moonshine. Hastings's character has been still further cleared, and James Mill's character as a historian irretrievably damned, by Sir Edward Strachey, who shows that the atrocious charge as to the Rohilla war, and the war itself as described by Mill and Macaulay, are absolute fiction; and Sir William Hunter tells us that no English administrator before or since was so loved by the natives as Hastings, or his memory so cherished — and explains why. But Stephen's work is far more readable than Strachey's, and is real literature. A full history of India written with equal penetration, justice, and thoroughness of research, would be worth spending years to read.

FORM OF PROCEDURE IN CAPITAL TRIALS AMONG THE JEWS.

IN a former article on "Capital Punishment among the Jews," (THE GREEN BAG June, 1891) we drew largely from Mr. Benny's "Criminal Code of the Jews," and we are indebted to the same work for the following account of the procedure incidental to the trial of capital cases among that people.

A capital trial among the Jews was conducted with all the solemnity of a religious ceremony. The exercise of judicial functions was at all times regarded as a sacred privilege; and the reponsibility incurred in criminal cases was ever present to the Hebrew mind. "A judge," says the Talmud, "should always consider that a sword threatens him from above, and destruction yawns at his feet." Rising betimes in the morning, the members of the Synhedrin assembled after prayers in the Hall of Justice. Pending the arrival of the culprit and the preparations for the trial, they commented among one another on the serious nature of the duties they were called to discharge. The judges were so arranged as to sit in a semicircle. Immediately in front of them were three rows of disciples. Each row numbered three-and-twenty persons. Thus every judge was assisted by three juniors. These disciples were not young and inexperienced students, but were many of them in no wise inferior to the members of the court itself. Any vacancies in the first row were filled up from the second; any required in the second were supplied from the third rank; and the third was recruited from the number of learned men to be found in every place having a permanent Synhedrin. Three scribes were present; one was seated on the right, one on the left, the third in the centre of the hall. The first recorded the names of the judges who voted for the acquittal of the accused, and the arguments upon which the acquittal was grounded. The second noted the names of such as decided to condemn the prisoner, and the reasons upon which the conviction was based. The third kept an account of both the preceding, so as to be able any time to supply omissions or check inaccuracies in the memoranda of his brother reporters. The culprit was placed in a conspicuous position where he could see everything and be seen by all. Opposite to him and in full view of the court were the witnesses. Thus constituted and arranged, the Synhedrin commenced its investigations.

The procedure in a capital trial differed in many important respects from that adhered to in ordinary cases. In an ordinary case the discussions of the judges commenced with arguments for or against the accused; in a capital charge it could only begin with an argument urged in behalf of the prisoner. In an ordinary case a majority of one was sufficient to convict; in a capital charge a majority of one could acquit, but a majority of two was necessary to condemn. In ordinary cases judgment pronounced could always be annulled upon discovery of an error; in capital cases the decision was irrevocable once the accused had been declared innocent. In ordinary cases the disciples present could offer opinions for or against either party; in a capital trial they were only permitted to suggest arguments in favor of the culprit. The judges in ordinary cases could change their opinion prior to giving the final and collective decision; but in a capital charge they were only permitted to change it if at first they had intended to vote for a conviction. An ordinary trial, if commenced in the morning, might be continued during the evening; in a capital issue the proceedings must cease and the sitting be suspended at sunset. An ordinary charge could be heard and adjudicated upon in one day; in a capital

case a prisoner could be acquitted the same day as he was tried, but sentence of death could not be pronounced until the following afternoon. Lastly, in ordinary cases, the judges voted according to seniority, the oldest commencing; in a capital trial the reverse order was followed. That the younger members of the Synhedrin should not be influenced by the views or arguments of their more mature, more experienced colleagues, the junior judge was in these cases always the first to pronounce for or against a conviction.

As soon as the Synhedrin was ready the examination of the witnesses commenced. The first who was to give evidence was taken into an adjoining chamber and carefully admonished. He was asked if he had not perchance founded his conviction of the prisoner's guilt upon probability, on circumstantial proof, or by hearsay; whether he was not influenced in his opinions by persons whom he regarded as trustworthy and reputable. Did he know he would be submitted to a searching and rigorous examination? and was he acquainted with the penalty entailed by perjury? The most venerable of the judges then addressed the witness, solemnly adjuring him to truthfulness. "Do you know," said the rabbin, "the difference between a civil and a criminal case? In the former case an error is always reparable; restitution can always be made. But in the latter an unjust sentence can never be atoned for; and you are responsible for the blood of the condemned and all his possible descendants. For this reason God created Adam — whose posterity fills the earth — alone and sole, in order that we might understand that he who saves a single soul is as though he saved an entire world; and he who compasses the destruction of a single life is as though he had destroyed a world. That the Almighty formed but one man in the beginning is moreover intended to teach us that all men are brethren, and to prevent any individual from regarding himself as superior to a person belonging to another nation. Nevertheless," continued the judge, "if you witnessed the crime and conceal the facts you are culpable. Have no fear therefore of the reponsibility you incur; and remember that as a city rejoiceth when the righteous succeed, so doth a town shout when they that wrought wickedness are punished." Upon the conclusion of this exhortation the examination commenced. The Hakiroth, questions as to time and place, were put to each of the witnesses, and subsequently the Bedikoth, inquiries relative to the commission of the crime. As soon as the answers constituting the evidence against the prisoner had been received they were submitted to the Synhedrin. The consideration of the case was thereupon proceeded with. As we before pointed out, the rebutting testimony could only be directed against the Hakiroth by proving an alibi against one or both of the witnesses. If the accused succeeded in so doing he was of course at once acquitted. If there was a marked discrepancy in the Bedikoth — sufficient, in fact, to render the statements of the witnesses contradictory — the trial equally of course immediately terminated. There would be, under the circumstances named, no evidence legally admissible; no valid testimony to lay before the Synhedrin. Supposing, however, the facts elicited from the witnesses were such as could be brought into court in support of the charge, then the tribunal commenced the discussion preliminary to voting.

The deliberations could only begin with an argument in favor of the accused. Nothing was therefore urged until one of the judges found some fact or facts telling against the prosecution. The member of the Synhedrin then rose and, alluding to the circumstances, said: "According to such and such a statement, it appears to me the prisoner must be acquitted." The discussion thereupon became general. Every item of evidence was carefully overhauled; each of the answers given by the witnesses was subjected

to minute criticism. Apparent inconsistencies were dilated upon, and extenuating facts pleaded. The culprit himself was permitted to urge anything in his own favor or against the evidence of the prosecution. If a disciple found a cogent or valid argument on behalf of the prisoner, he was placed among the judges, and regarded as a member of the court during the entire day. If, on the other hand, one of the disciples noticed anything calculated to injure the defence, he was not permitted to call attention thereto. As soon as the discussion terminated, the preparations for recording the votes commenced. The scribes were ready, and each judge, beginning with the youngest, pronounced his decision for or against the accused. At the same time each stated the facts upon which his conclusion was grounded. The observations of the members were carefully recorded and preserved. As soon as the whole of the Synhedrin had voted, the numbers were announced. If eleven convicted and twelve acquitted, the prisoner was without delay discharged, a majority of one voice being sufficient for this purpose. If twelve convicted and eleven acquitted, the accused could not be condemned, a majority of at least two being required. In such a case the following expedient was adopted: two additional judges were added, these being selected from the first row of disciples. Voting then recommenced. If a majority of two against the prisoner was thus obtained he was convicted. If not, the process of increasing by twos the number of the Synhedrin continued until the requisite preponderance was gained. Should the tribunal by this means come to consist of seventy-one members, of whom thirty-six voted for a conviction and thirty-five against, the matter was reargued until one of the former gave way and declared in favor of an acquittal. Should the six-and-thirty adhere to their opinions the prisoner was discharged. If at the original voting thirteen members of the Synhedrin decided to convict, or if after the subsequent additions a majority of two was obtained in favor of the same course, the accused was found guilty. Sentence, however, could not be pronounced until the following afternoon. The sitting was therefore suspended until the next morning.

In such cases, that is, when sentence of death appeared inevitable, the Synhedrin adjourned immediately the majority that determined a conviction was announced. Slowly the members quitted the hall wherein the trial had been conducted. Gathering in knots of three and more, they remained for some little time in the street discussing among themselves the misfortune impending over their city — for as such all Hebrews regarded the execution of a fellow man. Gradually the groups broke up; the judges proceeded to their homes. They ate but a small quantity of food, and were not permitted to drink wine during the remainder of the day or evening. After sunset they made calls upon each other, again debating the various arguments adduced during the trial. At night each retired to his chamber and gave himself up to meditations; or so it was believed. The knowledge that a life — a life declared by their traditions to be equal to a world — depended upon their verdict, would lead them to ponder upon the judgment of the morrow. There was yet time to reconsider the sentence, time to recall a decision that a few hours would render eternally irrevocable. Rising early in the morning, they returned to the house of justice. Not one was permitted to partake of food. The day that condemned an Israelite to death was a fast-day for his judges. Meeting in the hall of assembly the members of the Synhedrin with their disciples were arranged as on the preceding morning. The witnesses were again present; the criminal was brought in. The scribes seated themselves, and proceedings commenced. One by one each judge in succession pronounced his decision; again each repeated the arguments upon which it was

based. The scribes, tablet in hand, compared the statements now made with those recorded on the previous day. If any member of the tribunal, voting for a conviction, founded his judgment upon reasoning materially opposed to that he before urged, his verdict was not accepted. One who had resolved to acquit on the preceding day was not permitted to change his determination. But any one who had decided to convict might, upon furnishing the Synhedrin with the arguments inducing him so to do, vote on this occasion in favor of an acquittal. Again the number for and against the accused was announced. Still the sentence was deferred. The prisoner might bethink himself of some valid plea in extenuation of his crime; unexpected witnesses might be forthcoming; the Synhedrin might produce some favorable arguments. Slowly the sun gained the meridian. Still the court sat; none thought of quitting the hall of judgment. Gradually the sun declined and evening drew nigh. There was to be no interval between sentence and execution; the hour that heard the doom pronounced would see it carried into effect. Sunset was the time fixed for both. As the afternoon wore on the doors of the court were opened. A man stationed himself at the gate, carrying in his hand a flag. In the distance was a horseman, so placed as to perceive readily the least movement or agitation of the bunting. With a solemnity becoming the occasion, the Synhedrin, after praying that they might commit no sin thereby, decreed the punishment of death. Accompanied by two rabbins, the convict was led to the place of execution without the walls. Hope was not even yet abandoned. If one of the judges bethought him of an argument in favor of the criminal the flag at the door was raised and the mounted messenger prepared for such an emergency galloped forward to stop the execution. If the culprit requested to be reconducted to the court, he was taken back as often as he furnished any valid excuse. The Synhedrin sat until the hazan — messenger of the court — returned with a notification that the condemned man was no more. Again uttering a prayer that the judgment that day pronounced might not have been in error, the members rose and silently quitted the hall of justice.

LONDON LEGAL LETTER.

LONDON, June 6, 1894.

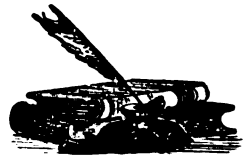
AT the annual dinner of the Union Society of London the other night, Mr. Justice Gainsford Bruce, who was the guest of the evening, gave an interesting account of the early struggles at the bar of some of his contemporaries. He made special reference to the protracted period of inaction which Lord Herschell had to endure after he joined the profession: for seven years at least the future Lord High Chancellor of England had no work at all, and my impression is that it was more than ten years after his call before he really secured any considerable amount of practice; he grew so tired of what seemed an utterly hopeless sphere that only the urgent representation of one or two family friends prevented him seeking another vocation. To mention one or two instances within my own knowledge, Mr. Frank Lockwood, Q.C., had very few briefs as a junior counsel, and it was not until he took silk that he had an opportunity of developing those great gifts of forcible and humorous speech which speedily thereafter brought him wealth and fame. But perhaps the most striking case in our time of a dismal probation preceding a career of signal triumph is that of Lord Watson, the Scottish Lord of Appeal, who waited twelve or fourteen years at the Parliament House in Edinburgh, without gaining the ear of the lower branch of the profession, when briefs came however they came in profusion, and during his final years of practice in the Court of Session, he enjoyed one of the largest which has ever been known in Edinburgh.

This is Derby Day, and all London has flocked to Epsom Downs; many grave professional men whom no other known human temptation can entice from their daily toil, rush out of town on the sixth of June to see the race with the unrestrained joyousness of children. Mr. Justice Hawkins, who is of course impervious to any petty criticism that may be passed on his conduct, rose this forenoon within an hour of taking his seat on the bench, that he might be true to his reputation as a leading turfite. No man's presence on the course is more welcome to great and small than that of Sir Henry Hawkins. The new Solicitor-General, Mr. R. T. Reid (he will be knighted shortly), is a tremendous smoker; he is hardly ever to be seen without pipe or cigar, the former in chamber, the latter when he walks abroad. Mr. Justice Wright is another inveterate slave to nicotine, and indeed most of our men smoke hard, although perhaps those I have mentioned enjoy a special reputation. The Solicitor-General has become famous for his political dinner parties, which are never too large, and always eminently sociable. Mr. Reid is a capital host, and very popular in the House of Commons.

The Hardwicke Society holds its Ladies' Night debate shortly in the Hall of Lincoln Inn, a function which always attracts troops of the fair sex, which never fails to welcome an opportunity of invading the purlieus of the law. Nothing excites more mournful reflections than the disappearance of a venerable and excellent custom. This remark is suggested by the discontinuance for the second year in succession of the annual banquet given to Her Majesty's Counsel by the Attorney-General at the Albion in Aldersgate Street, City, in commemoration of the Queen's birthday. Last year it was not held because Sir Charles Russell was engaged in Paris before the Behring Sea Arbitration at the time, but his successor, Sir John Rigby, had no such excuse this year. Sir John is a man of genial disposition and given to hospitality; his action is all the more commented upon because the Attorney-General's dinner was a very popular feast and all the Queen's Counsel attended. The Albion, by the way, is very famous for its cuisine; although situated in the City it has always contrived to rival in popularity its West End rivals, and a great many regimental dinners are still held there.

There is a substantial shrinkage in the professional incomes of men at the bar just now. Legal work of every kind is very scarce, and the practices of even well-known men are seriously reduced. * * *

The Lawyer's Easy Chair.



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

BY IRVING BROWNE.

CURRENT TOPICS.

CUTTING CFF THE CORNERS. — The lines of the writer of this department are fallen to him in a pleasant place — the most beautiful city in America for residence — spacious, regular, arranged upon a grand park system, shaded, architecturally elegant, nearly every house with ample grounds of its own, and very few fences. But this arrangement of the grounds is disfigured by a frequent pedal intrusion where a lot comes upon two streets. Here to save a few feet of space and a few seconds of time the public are prone to walk diagonally across the fair turf, and eventually to destroy the grass and impress a permanent and unsightly pathway across the corner. In some instances the owners of such lots have guarded against this thoughtless trespass by maintaining about a rod of low fence at the corner to fend off the hasty pedestrian. And then, as wayfarers are apt to sit down on this short fence to wait for the street cars or loaf, the owners have sometimes resorted to the heroic measure of twisting a barbed wire about the rail. The Philadelphians insist that they can always detect a Yankee or a New Yorker in the City of Brotherly Love by his cutting diagonally across the street corners, instead of following the cross-walks. This comes of the Hurry Fiend who rules and curses our land. The same spirit drives the traveler on the ferry boat to rush to the bow and jump off before landing, at the risk of his life or limbs; to jump on or off of railway cars in motion; to gobble his food; to gulp his drink while standing. The same spirit impels the proprietors of ocean steamers to spend much money and jeopard the safety of their human freight by striving to "break the record" an hour or two on a voyage of three thousand miles, when nobody on board has any pretext for being in a hurry. In short, it is a curse upon our people, this feverish anxiety to "get there" a few minutes sooner than somebody else or to break their own record. This is a bad and distinctively American habit. There is no leisure in our country. People will not have it. Our countrymen sneer at the Englishman as "slow," but somehow he seems to "get there," the year round, about as soon as the American; he accomplishes about as much — some say more — and with much less wear and tear of body and mind. This chafing, uneasy, fuming spirit shortens life and makes its shortness wretched. It breeds dyspepsia, the direful spring of all American woes. It entails haste in judgment and immaturity of thought. It converts speech into chatter. Worst of all it inspires the fatal haste to be rich, which is the basis of most of the crime that infests, and the unhappiness that haunts society. The western train-robber is simply trying to cut across a financial corner, and so is that other pestilent robber, the Wall street broker. Coxey and his rabble are trying to cut across a corner to avoid honest labor, and the leader has already experienced the penalty of not keeping off the National grass. The modern woman who neglects her household to run to attend upon Browning clubs, is trying to cut across a corner in culture, and crams her poor little head with stuff for which it is not fitted. The merchant who practices oppression all his life and leaves some money at his death to a college or a church is trying a short cut into the kingdom of heaven — let him read Hawthorne and be convinced that there is no Celestial Railroad, but that we must all fare painfully on foot to that goal. These thoughts come to us at the opening of the lawyer's vacation. We suppose some American lawyers take a vacation. We know a good many who do not, but who stay at home in the summer to pick up the business which their more leisurely brethren sacrifice by absence. The half is sometimes greater than the whole. Hurry does not invariably result in overtaking; it sometimes eventuates in collision. In human life as in nature the best growths are slow. A western farmer who desires some speedy shade about his prairie home sets out some quick and ephemeral cottonwoods, but who shall give them the preference to the slow-growing elm, which will broaden and strengthen with the decades and embrace the homestead for his children's children? A reasonable consecutive length of vacation is a good thing; frequent holidays are every way bad. So let our weary lawyer go to the woods, or the seashore, or to foreign lands for a few weeks in the genial summer time, forgetting his briefs and his books, and he will return home in early autumn a wiser, better, richer and happier man.

THE DEATH OF LORD COLERIDGE. — The death of the Lord Chief Justice of England does not come as a surprise to those American lawyers who have read the recent London law journals and noted their comments on the palpable failure of his physical powers. He was not an old man, as that term has grown to be understood in regard to public men in England, and he had a powerful frame, so that one naturally expected to see him occupying the second judicial post of England for ten years to come. He was a remarkable example of a very great success without shining talents. The talents which he had, in our judgment, would have been better fitted to and earned a greater reputation in politics than in the law. He was pre-eminently a man of affairs and of society. He would have been a model ambassador at a foreign court, or an arbitrator of an international dispute. He certainly was not a great lawyer, either at the bar or on the bench. He could not have been ranked with Russell as an advocate nor with several of his contemporaries as a judge of an appellate court. In fact, he seemed to be very modest in this regard, for he told an American lawyer that he and all his associates, when engaged in consultation on a legal question with Jessel, "felt like children" in comparison with that giant. But from what we have seen and heard of him in his judicial career, we have drawn the conclusion that he was of exceeding merit at trial terms. Here his ready familiarity with the ordinary questions, his good temper, his fairness, his sound common sense, and his unfailing composure and courtesy, must have rendered him a remarkably acceptable and useful magistrate. The "rough side" of Jessel's tongue was tolerated because of his wonderful legal genius; the smooth side of Coleridge's readily induced the Bar to overlook his lack of the legal learning and logical grasp which have been displayed by many of his predecessors. If we were called on to designate his leading characteristics we should say they were tact and good sense. It was these that enabled him to make his extended tour in this country without saying or doing anything but the right thing, and to win the respect and admiration of all the lawyers with whom he came in social contact and all the audiences which he addressed. His information in respect to this country was large and uniformly accurate. He told the writer of these lines that he owed this in great measure to a forty years' correspondence with a bishop residing here. Lord Coleridge was a warm friend to this country and an admirer of much in her polity and society. The keenness of his observation on his travels was very noticeable. He was not a dreamer or theorist, but an observer and actor. So he made his influence felt for good in measures of legal reform. He had a good-natured contempt of cant and pedantic and worn-out form, and did much to bring in the reign of the practical and useful in the realm of the law. No American lawyer can ever forget his humorous creation of the department of special-pleading curiosities in Yellowstone Park, where he arrayed the ancient subtilties of the law with the remains of the pre-Adamite monsters of natural history. Lord Coleridge was a man of keen humor and was charming in companionship, — a redoubtable story-teller, and withal a good listener. He was not in the least a monologist, like his great relative, Samuel Taylor Coleridge, and he had not a bit of his metaphysical nonsense. We should say that he excelled all his judicial contemporaries in his power and mode of presenting all he knew, not only in the matter of tact and address, but also in oratory and rhetoric. His scholarship was extensive and accurate, and he loved letters. Everything he wrote or spoke was adorned by the presence of the literary faculty. This came to him by inheritance and association. The poet Coleridge was his great-uncle (we believe), and his father, judge of the common pleas, and his brother were excellent classical scholars and had something of the poetic faculty. Everything that Lord Coleridge said or spoke was couched in the most elegant and attractive form. He has been, we dare say, on the whole quite as useful a chief magistrate, by reason of his rather unusual endowments, as he would have proved had he been more learned in the precedents of law, stronger in his mental grasp, and ruder in his judicial deportment. There is a certain strength of gentleness, culture and elegance, such as George William Curtis possessed, which, united to wit, sense and judgment such as Lord Coleridge had, affords the basis of a respectable career.

GREAT MEN AND LITTLE MEN. — Many years ago an aristocratic Dutch lawyer and judge of the Hudson Valley, who was of predominant stature, objected to the elevation of an old rival of his to the bench on the somewhat singular ground that he was "such a very l-i-t-t-l-e man." The little man, however, was a very excellent judge for more than a quarter of a century, and we are inclined to believe was a rather more useful judge than his big contemporary. Quite recently, on the occasion of the address to the graduating class of the Buffalo Law School by Mr. William B. Hornblower, of New York, one of the rejected nominees to the office of Supreme Court Justice, a lawyer, in conversation with the present writer, while he admitted the eminent intellectual fitness of Mr. Hornblower for that post, remarked that he could not help thinking that it would have been better to nominate a man whose stature should more closely have corre-

sponded to that of the giants of that bench. We replied that Mr. Justice Blatchford was not a giant, and that Justices Brown and Brewer are men of moderate size, and that while such a consideration would be pertinent in the choice of a drum-major, it seemed hardly serious in the selection of a magistrate. In that address, Mr. Hornblower, enlarging on the "Duties of the Lawyer as a Citizen," although light in avoirdupois, "sat down" pretty heavily on certain persons and certain notions. It seems to us a mistake to believe that great intellects are necessarily wrapped up in large parcels. There have been a good many small great men in the world's history. In fact, we are inclined to believe that there have been comparatively few great great men. David was an abler man than Saul. The famous soldiers have generally been moderate in physical bulk. Cæsar, although tall, was slight. Alexander the Great was a small man, it is said; so were Frederick the Great and William the Third; and certainly the greatest soldier and man of modern times was so small that he was familiarly called the "Little Corporal." We laugh at Gilray's caricature of Brobdingnag George the Third holding Napoleon Gulliver in the hollow of his hand. A still later great soldier was a smallish man — Grant. McClellan, whom some considered a great soldier, was small of frame. So were von Moltke and Sheridan. The orator Cicero was thin and meagre; the poet Horace was a little fellow, and so were Pope, Goldsmith, Tom Moore and Campbell, and so were De Quincey and Jeffrey. The wonderful histrionic geniuses, Garrick and Kean, were remarkably undersized. One of the greatest geniuses of this country was small of stature, and yet he was big enough to be one of the principal founders of this Republic — Alexander Hamilton. The very able but bad man who killed him was a pigmy. Erskine was a small man, but a giant of advocacy. There have been a few eminent giants, or at least big men, in our history, such as Washington, Scott, Lincoln and Webster, and Choate was a rather large man. Nearly all the members of one of the most brilliant races have always been distinguished for low stature — the Jews — and the soldiers who overran nearly all Europe under Napoleon were smaller than their adversaries. In short, the wit of a little Lamb would have fully furnished forth a Falstaff. And with Falstaff we say: "Care I for the limbs, the thews, the stature, bulk and big assemblance of a man? Give me the spirit."

JUDICIAL ENGLISH. — The editor of the "New York Law Journal," who has the light literary touch rarely found in legal writers, offers some interesting observations in a recent article entitled "Some Recent Judicial English." Speaking of Webster he very justly says, he "quite frequently dropped into rhetorical display, pedantic quotation and histrionic artifice, which nowadays would not be employed even by an orator of the second rank." The "American Law Review" has recently said, of the famous peroration of his argument in the Dartmouth College case, that it was "claptrap," and if delivered nowadays would not disturb the judges in their letter-writing and proof-reading. The "Journal" draws a valuable contrast between the style of Everett and that of Lincoln, as illustrated in their Gettysburgh orations. What human being will ever read Everett's long, artificial production? School boys to the latest time will read Lincoln's, and sages will parallel it with Pericles' funeral oration. The "Journal" need be in no doubt that Mr. Howells advocates the use of "don't" and "isn't," etc., in serious composition. He distinctly avows it over his own signature. Not that it is of any earthly importance, for nobody will read a word of Howells twenty-five years hence. But he probably thinks this sort of slipshod English the more "social." After animadverting very severely but very justly on some recent abominable examples of judicial composition in this country — one of which excited the astonishment of a London legal periodical — the "Journal" concludes: —

"The literary style of John Stuart Mill is a sounder model for the judicial writer of to-day than that of Macaulay, which so many eminent judges and lawyers of the generation now passing off the stage adopted as their ideal. To take an actual and almost contemporary illustration from our own State, the style of the late Judge Rapallo, always displaying great linguistic resources in conveying shades of meaning and scientific accuracy of expression, is a better judicial model than that of the late Judge Folger, entertaining as the latter always was, because of his quaint archaisms, studied oddity and almost Macaulayan splendor of rhetoric."

We quite agree that Judge Folger's style was affectedly archaic and odd, but not that it was "Macaulayan." Nothing could be more unlike Macaulay's concise, nervous, brilliant style than the intricate, involved and frequently strange periods of Folger. The nearest parallel to Macaulay in this country is Professor McMaster, in his "History of the American People." Judge Rapallo was doubtless the greatest of the lawyers who sat on the bench of his court in his time, but his style, we should say, was not so felicitous as Judge Allen's. Mr. Justice Bradley, in our judgment, wrote the best on law, and Judge Finch, of the New York Court of Appeals, writes the best on facts, of any of our recent judges. These last two had the happy literary touch of which we have spoken. When it comes to wit, of the sort that illuminates the subject, Chief Justice Bleckley is easily chief.

STANDING REFEREES. — Mr. Fiero, the late president of the New York State Bar Association, has devised an expedient to help the judges out with their arrears. It is to have a certain number of standing referees, to whom causes shall be sent for hearing and decision. If we are correctly informed, the proposal is to have the judges who go out of office at seventy years of age — presumably because they are no longer fit to discharge judicial duties — form this body, or part of it, and thus do something toward earning their pensions. The office would much resemble that of master in chancery, which was vehemently discarded in that State nearly half a century ago. There is probably little danger of the adoption of this scheme, but somehow we are reminded of it by a passage in an article on "Lord Wardens of the Cinque Ports," in the "Pall Mall Magazine" for last month. The passage is as follows: —

"On re-entering Westminster Hall, the barons found it transformed into a banqueting hall, with their table duly set on the right hand of the King. They were properly indignant at finding one of their fifteen chairs occupied by a stranger. In answer to inquiries, he said he was a Master in Chancery, and not finding a seat specially assigned to him, had appropriated one at the table. The barons, who had had nothing to eat since five o'clock in the morning, politely, but firmly, called his attention to the fact that each chair had painted on its back 'Barons of the Cinque Ports.' The Master in Chancery said he didn't care. He'd been asked to dinner, and he'd come. The sequel is modestly told in the report, where it is written: 'The solicitors were compelled to exercise a considerable degree of firmness and decision before they could displace him.'"

We hope the State will not find equal difficulty in keeping the ancient judges out of the old seats. Judge Herrick, of Albany, presents to the constitutional convention the proposal to employ the superannuated judges as a court for the disposal of disputed election cases. This is subject to the same evident objection that if the judge is presumably unfit by reason of age to act generally, he must be unfit to act at all in a judicial capacity. If we are driven to it, we may have to dispose of these troublesome persons according to the ancient custom of Crete in respect to very old people — kill them!

NOTES OF CASES.

IMPUTED NEGLIGENCE. — The Supreme Court of Michigan, in Mullen *v.* City of Owosso (April 17, 1894), hold that where the owner of the carriage, with whom plaintiff was riding, carelessly drove over a pile of sand in the street, with full knowledge of the obstruction, at a rate of speed not allowed by ordinance, — overturning the carriage, and causing the injuries complained of, — the city was not liable. McGrath, C.J., and Hooker, J., dissenting. This is held upon the authority of Railroad Co. *v.* Miller, 25 Mich. 274. The decision is contrary to the law of England, and of every other state of the Union, we believe, except Wisconsin. See 37 Am. Rep. note, 488. It is also contrary to the doctrine of the Supreme Court of the United States, Little *v.* Hackett, 116 U.S. 366. It is somewhat singular that the Michigan court should cleave to the old English doctrine of Thorogood *v.* Bryan, now discarded in England (The Bernia, 12 Pr. Div. 58; Mills *v.* Armstrong, 13 App. Cas. 1), and yet should refuse to impute the negligence of parent to child in an action by the child, contrary to the doctrine of New York in Hartfeld *v.* Roper, 21 Wend. 617. We believe the doctrine of that case, as well as that of the principal case, to be insupportable in reason. A writer in 38 Cent. L.J. 432, doubts that the doctrine of the principal case is really supported by the Miller case.

DAMAGES — REMOTE — INSANITY. — In Haile's Curator *v.* Texas & P. R'y Co., United States Circuit Court of Appeals (60 Fed. Rep. 557), it was held that where a passenger on a railroad train receives no bodily injury from an accident caused by the company's negligence, but is made insane by the excitement, hardship and suffering resulting therefrom, the company is not liable in damages therefor, since insanity is not a probable or ordinary result of exposure to a railroad accident. The Court said: —

"While the defendant, as a common carrier, had reason to anticipate that an accident would cause physical injury and would produce fright and excitement, it had no reason to anticipate that the latter would result in permanent injury, as a disease of the mind, or any other disease that might be caused by excitement, exposure and hardship sometimes incident to travel. If the disease was not likely to result from the accident, and was not one which the defendant could have reasonably foreseen in the light of the attending circumstances, then the accident was not the proximate cause. The defendant had no reason to anticipate that the result of an accident on its road would so operate on Haile's mind as to produce disease — the disease of insanity — any more than that the exposure and hardships he suffered, would produce grippe, pneumonia or any other disease. He sustained no bodily injury by the accident so far as the petition shows; but it caused a shock and an excitement which, under his peculiar mental and physical condition at the time, resulted in his insanity. The defendant owed him the duty to carry him safely — not to injure his person by force or violence. It owed him no duty to protect him from fright, excitement or from any hardship that he might subsequently suffer because of the unfortunate accident. The case of Schaffer *v.* Railroad Co.

(105 U.S. 249) was where, by reason of a collision of railway trains, a passenger was injured, and becoming thereby disordered in mind and body, he some eight months thereafter committed suicide. The Court held, in a suit by his personal representative against the railroad company, that as his own act was the proximate cause of his death there could be no recovery. In the opinion the Court said: 'The suicide of Schaffer was not the result naturally and reasonably to be expected from the injury received on the train. * * * His insanity, as a cause of his final destruction, was as little the natural or probable result of the negligence of the railway officials as his suicide, and each of these are casual or unexpected causes intervening between the act which injured him and his death.'"

OVERHANGING BRANCHES. — The "London Law Journal" gives the following on a rather novel point:

"The case of Lemmon *v.* Webb, decided by the Court of Appeal on Tuesday, clears away the doubts which have so long perplexed the minds of lawyers as to whether 'notice and previous request' was a condition precedent to the right of cutting overhanging branches. The Court of Appeal says that it is not — to some extent on the authority of Mr. Justice Best in The Earl of Lonsdale *v.* Nelson, 2 B. & Cr. 202. In that case Mr. Justice Best excepted the cutting of overhanging boughs to the rule that notice is necessary before the abatement of nuisances of omission on the ground that for an owner to permit boughs to overhang the property of another is an 'act of unequivocal negligence.' This reason is as absurd as the exception founded upon it is harsh and unfair. A man may well enough assume, in the absence of any protest or evidence to the contrary, that an ancient tree whose branches overhang his neighbor's property is as great a source of joy and pride to the latter as it is to himself, and in any event, if cutting has to be done, the tree owner ought surely to have the option of doing it. The decision in Lemmon *v.* Webb not only would, under obvious circumstances, expose to mutilation the famous oak,

> Wherein the younger Charles abode
> Till all the paths were dim,

but would place the pruning-knife in the unsympathetic hands of some lineal descendant of the Roundhead who 'rode beneath, humming a surly hymn.'"

(Brother, your metre is bad, and your quotation is inexact. Read:

> "And far below the Roundhead rode
> And hummed a surly hymn."

It requires an "American" to quote an English poet from memory.) It would require some ingenuity to reconcile this doctrine, practically, with that of Hoffman *v.* Armstrong, 48 New York, 201; 8 Am. Rep. 537, which is that the fruit of overhanging branches belongs to the owner of the tree trunk.

NUISANCE — VINDICATION OF PUBLIC AGAINST. — It is really too bad of the courts to discourage a railway corporation when it essays to do a decent thing for the benefit of the public. Therefore we regret, although it probably is good law, that the Supreme Court of Illinois, in Pittsburgh, etc. R'y. Co. *v.* Cheevers, 37 N. E. Reporter, 49, felt constrained to decide that a railroad company is not entitled to an injunction restraining expressmen and hotel runners from congregating in the street in front of its passenger station, and there soliciting business in such a manner as to constitute a public nuisance, where the only detriment thereby caused to the company is through the annoyance suffered by its passengers. The Court observed:

"It is argued that from such annoyance the business of the company is injuriously affected, in that passengers will avoid patronizing a depot or railroad, in order to patronize which they have to expose themselves to such annoyance. I conclude, as a matter of law, that such annoyance and indirect injury does not constitute such a nuisance as a court of equity will enjoin, but that, in order to lay the basis for equitable relief, it is necessary to show that the complainant is injured in its property rights by the obstruction or interference with its easement and right to an uninterrupted use of the public street in front of its premises; and such detriment and annoyance as it suffers in common with the public, and which is only indirect, must be left to the public authorities to regulate and control, and cannot be remedied by a court of equity on the application of one, as a member of the public, even though he may suffer more than the majority of others from the existence. It is needless to discuss the numerous authorities cited by the learned counsel for appellants, which it is claimed establish a rule for this case contrary to that stated by the master. Each one will be found to depend for its decision upon special and peculiar circumstances and conditions, which do not exist in this case. Such occupation or obstruction of a public street as will entitle an owner of land abutting thereon to the aid of a court of equity to abate must be shown to be such as works an injury to him, not merely greater in degree than that sustained by others of the general public, but such as is special and peculiar in its effects upon him in relation to the use and enjoyment of his property."

BASTARD — ACTION FOR DEATH OF. — Modern courts have shown a very healthful tendency to recognize the rights of the mother of a bastard to the exclusion of the father. The latest instance of this is in Marshall *v.* Wabash R. Co., Missouri Supreme Court, 25 S.W. Reporter, 179, where it was held, under a statute giving a right of action for damages for the wrongful killing of a person, when deceased was a minor and unmarried, to his father and mother, who may join in the suit and have an equal interest in the judgment, that the mother of a bastard unmarried minor may sue for the wrongful kill

ing of her child without joinder of his reputed father. The court referred to the statute which makes the mother the natural guardian of the bastard, and renders each capable of inheriting from and transmitting inheritance to the other, and continued: —

"Instead of being the son of nobody, as at common law, he has a mother who is recognized as such by our laws. The duty of supporting him rests upon her, and she is entitled to his services during minority. As the chief and principal incapacity of a bastard has been removed, so far as he and his mother are concerned, there seems to be no good reason why a statute which speaks of parents and children should not apply to a mother and her illegitimate child, unless there is something in the statute, or the subject about which it treats, to show that it was not intended to apply to persons standing in that relation. To say the mother of an illegitimate child cannot maintain a suit under the second section of the Damage Act is to say she cannot maintain one under the third and fourth sections, which do not fix the damages at a stated amount, but allow compensatory damages, not exceeding $5,000; and it is to say an illegitimate child cannot recover, under either section, for the loss of its mother. We cannot believe the Legislature ever intended such results. As the mother of an illegitimate child is, by our law, deemed and treated a mother, we think she is within the meaning of the Damage Act, and that the father of such child is not. This is but giving effect to what we understand to be the legislative policy of this State. It follows that the plaintiff can maintain this suit, and that the reputed father need not, and ought not to, be made a party."

"CHRISTIAN SCIENCE." — In State *v.* Buswell, Nebraska Supreme Court, 58 N.W. Reporter, 728, the defendant had been indicted for practicing medicine as a Christian Scientist, without a certificate from the State Board of Health, and a verdict in his favor, in effect rendered by direction of the Court, was reversed on appeal, on exceptions taken by the State. The statute in question provided that: —

"Any person shall be regarded as practicing medicine within the meaning of this Act who shall operate on, profess to heal, or prescribe for or otherwise treat any physical or mental ailment of another; but nothing in this Act shall be construed to prohibit gratuitous services in case of emergency, and this Act shall not apply to commissioned surgeons of the United States Army or Navy, nor to nurses in their legitimate occupations, nor to the administering of ordinary household remedies."

The decision seems clearly sound, but counsel for the defendant argued: —

"The defendant, and those of the same faith with him, believe, as a matter of conscience, that the giving of medicine is a sin; that it is placing faith in the power of material things, which belongs alone to Omnipotence. To the Christian Scientist, it is as much a violation of the law of God to take drugs for the alleviation of suffering or the cure of disease, as for a Methodist clergyman to take the name of his God in vain to relieve his overwrought feelings. It is as much the duty of the defendant, as his conscience and understanding teach him his duty, to visit the sick and afflicted, and relieve their distress of mind, as it is for the Presbyterian minister to go into his pulpit on Sabbath morning, and preach the Word of God according to the understanding of that denomination, or visit the bedside of one of his sick parishioners, and administer that religious consolation which is so dear to the heart of the Christian, and which is apparently so necessary to their spiritual welfare. The act of the latter, the eyes of all Christendom look upon in admiration, as the performance of a Christian duty. Upon the former, the able counsel for the State would have the world look as upon the act of a criminal."

The "New York Law Journal" observes: —

"The opinion of the Supreme Court of Nebraska contains a discussion of the merits of the case from the 'Scientists'' own standpoint, which is cleverly put, but not very germane to the legal issue involved. The Court cites texts from the Bible itself condemning 'healing' for pecuniary reward. But towards the close of the opinion the concern of the public in the system of Christian Science is suggested by this reference to the statute under consideration: 'The object of the statute is to protect the afflicted from the pretensions of the ignorant and avaricious, and its provisions are not limited to those who attempt to follow beaten paths and established usages.' Harsh as the criminal condemnation of the defendant for 'Scientist' practices may at first sight seem, one cannot say that such interpretation of the Nebraska law is unnecessary for public protection."

ANIMALS — DOMESTIC — LIONS. — It has recently been held by the English Court of Appeal that a lion is not a "domestic animal," within the purview of the statute against cruelty to domestic animals. So the menagerie keepers may pull out his teeth and cut off his claws and prod him with hot irons, in the promotion of their exhibitions, without liability to answer. This seems very ungallant in the courts of the British lion. What would be said of a court of the United States which should hold that any base intruder might pluck the tail-feathers of the great American bird-o'-freedom? For the sake of national sentiment, if for no other reason, these noble emblems should be regarded as "domestic" to the point of protection against torture. This English decision is enough to make the Nelson lions rear right up and roar, and extort a sympathetic echo from the great stone beast at Berne.

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.

AN Ithaca, N.Y., correspondent sends us the following interesting account of the chlorine poisoning case at Cornell: —

Editor of the "Green Bag."

DEAR SIR. — One of the most famous terms of the Supreme Court of the State of New York closed May 17 at Ithaca, having failed to discover the perpetrators of the chlorine gas outrage, by which a colored woman lost her life.

On the evening of Feb. 20, 1894, the Freshmen of Cornell University were holding a banquet at Ithaca. The Sophomores had rushed them that same evening, previous to the banquet, but they had finally reached the hall and settled down to the discussion of the bill of fare. Those outside the hall saw nothing unusual to attract their attention until about eleven o'clock, when a colored woman, a cook, was led out, unconscious, supported by two men. She was soon followed by several students in the same condition. The woman was taken to a physician's office, where in a few minutes she died. The students were revived with some difficulty at the neighboring drug stores.

An investigation was immediately made by the police, and the cause of the trouble ascertained.

Some parties, presumably Sophomores, had obtained access to an unused room just beneath the banquet room, and here they had prepared an apparatus consisting of a jug with two rubber tubes leading up through holes in the ceiling to the room above. In the jug had been placed salt and sulphuric acid, which together formed chlorine gas, and this it was which had so overcome the banqueters.

The first clue found was the absence of Carl L. Dingens, a Sophomore from Buffalo, from his boarding house the next morning. Then the address, No. 6 Cook Street, where Dingens boarded, was found in lead-pencil on the jug.

Dingens' whereabouts could not be ascertained after diligent inquiry at his home in Buffalo, but three week's later, when the spring term of the University opened, he appeared and announced that he had been under the care of his old family physician at Syracuse for treatment for weak eyes, and had been forbidden by him to read the newspapers, so that the first he knew of the tragedy was when he arrived back in Ithaca.

Meantime the coroner had promptly impanelled a jury, which singularly enough contained a number of Cornell graduates, and subpœnaed F. L. Taylor, another Sophomore, who roomed with Dingens, to tell what he knew about the affair. He, acting under the advice of counsel, claimed the privilege, allowed by the New York Code in trials before the courts, of not being compelled to testify to any matter which would tend to incriminate himself.

The business men of Ithaca who were asked to testify as to where the materials were obtained could not remember to whom they sold them, and their poor memory at this time probably saved them a boycott. The trustees of Cornell University placed $500 in the hands of the coroner to employ private detectives on the case. It was now nearly the time when the Grand Jury of the County would convene, in connection with the Supreme Court and Oyer and Terminer, Judge Gerritt A. Forbes presiding, so the Coroner's Jury, having been unable to accomplish anything definite, turned the whole matter over to the Grand Jury.

The presiding Justice Gerritt Forbes charged the Grand Jury, giving special attention to the chlorine case. The "New York World" and some other papers throughout the country, took exception to the charge, claiming that it was too lenient with the offenders, the "World" heading an editorial on the subject "Conniving at Crime."

Professor Charles A. Collin of the Cornell Law School, for eight years special counsel of the Governor, discussed the question before his law class, claiming that the crime was murder because, while not premeditated, yet it was committed while the perpetrators were engaged in an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual. These criticisms drew from Judge Forbes a spirited reply, in which he claimed that he had not intended to smooth over the matter, and he thereupon charged

the Grand Jury over again, explaining paragraph by paragraph, what he meant in his former charge.

The student Taylor, when brought before the Grand Jury, declined to answer any questions relating to the affair in question upon the grounds stated before the Coroner's Jury, and was thereupon promptly committed by Judge Forbes to the county jail for contempt of court. His counsel obtained his release upon bail from Justices Smith and Parker by writ of *habeas corpus*, and a writ of *Certiorari* to review the proceedings upon which he had been committed. The General Term reversed the decision, but Chief Judge Charles Andrews of the Court of Appeals granted a stay, pending an appeal to the Court of Appeals — this being the second time in the history of the State that the Chief Judge has granted a stay in a criminal case.

There the matter rests, and the incident is undoubtedly closed.

It is generally believed that the students would have made a clean breast of the whole affair and taken a punishment fitted to the crime as they regarded it — a fine or short imprisonment — but the newspapers said so much about murder, electrocution and death chair, that they closed their mouths tighter than an oyster.

Ithaca, N. Y. MURRAY E. POOLE.

LEGAL ANTIQUITIES.

OUR "pious forefathers" were apt to be rather hard toward those who annoyed them with their tongue and pen. In Massachusetts in 1631, one Philip Ratcliffe was sentenced by the Assistants to pay £40, to be whipped, to have his ears cropped, and to be banished. To merit this punishment, he had made "hard speeches against the Salem Church as well as the Government."

FACETIÆ.

THE late Admiral Bailey was once cited as a witness in a civil law suit, an ordeal to which he was totally unaccustomed; but he had read about judges and juries, and had conceived an extravagant idea of the solemn position of a witness upon the stand. This impression was confirmed by the proffered warnings of some of his nautical friends, who cautioned him to beware of the tricks of the lawyers, who did not go about their business in the straightforward way of courts-martial, but were always intent upon making a witness contradict himself, and thus convict him of being a liar and a perjurer. Nothing could be more calculated to alarm the conscientious old salt than the prospect of having his own word questioned by himself. He could not sleep, and he lost his appetite, until the day of trial. At last it came, and he was called to the stand. The first question asked after being sworn, — a process which did not trouble him, but rather gave him confidence, as he was accustomed to an occasional oath — was: —

"What is your name?"

Here was a matter for deep reflection and for a study of the probable disposition of the lawyer to make him forswear himself. He carefully weighed every consideration in his mind, and was seemingly lost in abstraction until the question was repeated, sharply and incisively: —

"What is your name, sir?"

There was no more time allowed for reflection, and the answer was jerked out of him like the spasmodic heavings of the capstan on breaking ground: —

"The-o-do-rus Bailey — *or words to that effect.*" And he added, after a long breath, "If that's perjury, make the most of it. I won't say another —— word to criminate myself!"

WHEN Judge Clark, now on the Supreme Court of North Carolina, was on the circuit court bench, he was a stickler for always opening court punctually on Mondays. Having to open court at Oxford, in January, 1886, when he got to Henderson, he found a deep snow on the ground, and the railroad from that place to Oxford in those days did not run in such weather. So the Judge set out in a buggy with a driver all whose customers had theretofore been "commercial tourists." He took the Judge for a drummer and tried to beguile the tedium by talking over the "hardware" line. Not finding him exactly well posted on that, he took up the "dry goods" business. Not doing much better with that, he successively tried him on "notions," "groceries," "liquors" and others. Having exhausted all the "lines" he could think of he finally asked: "You are a drummer, are you not?" — "Yes," said the Judge, "I am somewhat in that line." "Well, what *is* your line?" said the driver. "I

am a drummer for the State Penitentiary." The driver, saying to himself, half aloud, "You are the first one in that line, that ever come along here," and being not very well posted himself in that business, drove the rest of the way in silence. When the conveyance drove up to the hotel in Oxford, the landlord, Squire Job Osborne, ran out to greet his guest. When the driver heard his fare called "Judge" the point dawned on him, and he dashed round the house scattering a cloud of snow with his wheels.

IN a Washington County town, a little while ago, the local champion liar was brought up before the justice for stealing hens. It was a pretty plain case, and by the advice of his lawyer the prisoner said, "I plead guilty." This surprising answer in place of the string of lies expected, staggered the justice. He rubbed his head. "I guess — I'm afraid — well, Hiram," said he, after a thoughtful pause, "I guess I'll have to have more evidence before I sentence you."

THE following is a literal copy of a paper on file in the Court of Washington County, Penn. :—

To the Honorable *Saml.* A. Gilmore
and his *associates*
Judges of the Several Courts of
Washington *County.*

The undersigned Tenders To you His resignation as Crier of the Courts which you saw fit to confer on him And with it I Tender my Sincere thanks (Saying not too much) that as pleasant moments as passed in my life was in our acquaintance with both the Court and members of the Barr.

Hoping your Honors in your wise Judgment, will select and appoint a proper person who will Do credit To the Court and Satisfaction to the PEOPLE generally

(Increase of the mercantile Business and family matters at Home and self preservation being the first Law of nature Causes me to take this course)

Remaine yours Sincerely
William Simcox crier

HON. B. F. MOORE was for years the leading lawyer in North Carolina. He always went clean shaved — as barefaced as any lawyer ought to be. Not long before his death, he appeared at court with a full gray beard, almost covering his entire face. Col. L. C. Edwards, a member of the Bar, distinguished for his courtesy of manner, congratulated him on his improved appearance and added, with a bow, "Mr. Moore, it gives you such a distinguished appearance." Mr. Moore bowed. "It makes you so much handsomer, Mr. Moore." He smiled and bowed lower. "It hides so much of your face, Mr. Moore." The bows ceased.

A CERTAIN sharp attorney was said to be in bad circumstances. A friend of the unfortunate lawyer met Douglas Jerrold and said: "Have you heard about poor R—? His business is going to the devil." "That's all right, then," replied Jerrold, "he is sure to get it back again."

NOTES.

IN the early part of the war, somewhat more than thirty years ago, there were not unfrequently cases before the Massachusetts Supreme Court in which minors had enlisted in the service of the United States and got their bounties without the consent of their parents, and where the parents of such made application, as the law provided they might, to have their sons discharged; and it was, at that time, the practice of the government to have the United States district attorney appear and represent the government at the hearing. A case of this kind arose one morning before the late Mr. Justice Metcalf, whose leaning at that time was slightly toward the Democratic side, but which, nevertheless, in nowise affected his decisions. The applicants were the father and mother of the boy. They were poor persons, altogether respectable, but not very intelligent, and were represented by counsel. The late Mr. Richard H. Dana, Jr., was then the United States district attorney, and appeared to oppose the boy's discharge. The father and mother and the boy were called and testified. Mr. Dana cross-examined, and afterwards contended at great length that the parents had, by their conduct, assented to the enlistment. When he sat down, Mr. Justice Metcalf looked at his watch and said to the petitioner's counsel, "I have an engagement and do not care to hear you, Mr. T., this morning. I look at these people and see what they are. They mean to be honest. They never consented that their boy should enlist, leave their care and go to the war. Consent implies intelligence and understanding. It is sometimes said, silence gives consent, but that is not true half the time. It depends partly on education, partly on temperament, and always on intel-

ligence. When a man stands up here and for an hour talks stuff to me that I don't believe in, he must not suppose that I consent because I don't interrupt him. Let the boy be discharged."

The decision was so sudden and so uniquely expressed that it set Mr. Dana back for a moment, but as soon as he recovered, he joined in the laugh that followed, and we believe never afterward appeared in that rôle.

HERE is a curious little story told by a solicitor. He had among his clients a few years ago a notorious company promoter, whose financial affairs came to grief. One day, happening to pass by a stationer's shop, his attention was attracted by a portrait of Mr.——, the well-known barrister. Mr.—— was attired in wig and gown, and in his hand he held a paper on which the solicitor's sharp eyes caught the name of his client. His curiosity aroused, he purchased the photo, and proceeded to decipher the words of Mr.——'s brief, speedily discovering that they indicated that a warrant was "out" for the arrest of his client. In a few hours the man of finance was out of England, to which he has not since returned.

THE Philadelphia lawyer is proverbially good in difficult cases. Recently he has devised a way of enlarging the field of practical study for the law student, and at the same time of helping the impecunious litigant. This has been done in the establishment of the Law Dispensary of Philadelphia, wherein a poor person having an action to bring can receive help much in the same way that people in the same condition of life can obtain relief at the hospitals for their physical ills, and at the same time afford opportunities for the enlargement of the knowledge of the walker of the hospital. The plan of the Dispensary is to invite applications from poor people in need of legal assistance who have no means with which to pay for it. A committee sits at stated intervals to hear applications and accept cases; the latter are turned over to the students to be worked up until they reach the court, when the sympathetic assistance of some member of the Bar in full standing is obtained to examine witnesses and make arguments. So far the Dispensary has received about thirty applications, accepted twelve cases, and carried two into court—and won them. The improvement of this system over the ordinary suit in *forma pauperis* must commend itself to litigants, however differently it may be regarded by the various legal professions that adorn the various nations of the world. — *Pall Mall Gazette.*

LITERARY NOTES.

HAMLIN GARLAND writes in the June number of MCCLURE'S MAGAZINE impressions of a visit to the great Carnegie steel mills at Homestead, showing how the work and life there strike the eye of a strenuous and humane realist. Many pictures made from life drawings illustrate the article. Cleveland Moffett gives in this number some further account of the care and training of captive wild beasts, as unfolded to him by several months of intimate study; and the article is illustrated with some more of Mr. Hambidge's remarkable pictures of wild beasts drawn direct from life. A paper by M. de Blowitz, the famous European correspondent of the London "Times," on the chances for "The Peace of Europe," a subject on which his predictions are probably worth more than those of any other man living, is of great interest.

THE complete novel in the June number of LIPPINCOTT'S is "The Wonder-Witch," by M. G. McClelland. It is a charming romance of Virginia, beginning in war times, and happily concluded long afterwards. The title refers to a ring, which had a strange story of its own, and the supposed power of keeping its wearer constant to its giver. The other contents of this number are of unusual interest.

THE June number of HARPER'S MAGAZINE is especially rich in popular features. Besides "Trilby," Mr. DuMaurier's novel, which has attracted unusual interest, and the second and concluding installment of "A Kentucky Cardinal," by James Lane Allen, the number contains four complete short stories. They are: "In Search of Local Color," in the "Vignettes of Manhattan" series, by Brander Matthews; "A Waitress," the last story of the late Constance Fenimore Woolson; "Little Big Horn Medicine," a tale of Western life, by Owen Wister; and "God's Ravens," a study of the Middle West, by Hamlin Garland. The poems include "An Engraving After Murillo," by Marion Wilcox, and "Decoration Day," by Richard Burton.

AMONG the contributors to the CENTURY for June are Mark Twain, Frank R. Stockton, Thomas A. Edison, Edmund Clarence Stedman, John Burroughs, Timothy Cole the engraver, Hjalmar Hjorth Boyesen, W. J. Stillman, Brander Matthews, John Fox, Jr., Alexander W. Drake, Thomas A. Janvier, Will H. Low, Dr. Albert Shaw, Ella Wheeler Wilcox, and eleven ex-ministers of the United States. The subject-matter of this number indicates a number of great variety. Among the the topics treated are Louis Kossuth, Edison's kineto-phonograph, Tissot's illus-

trations of the four Gospels, Kentucky vendettas, the ascent of Mt. Ararat, Dutch, French and American art, the savage mother of Ivan Tourguéneff, the beautiful bookbindings of the present day, the consular service and the spoils system, the government of German cities, hard times and business methods, military drill in the schools, out-door nature, the reform of secondary education, an honest election machine, etc.

SCRIBNER'S MAGAZINE for June offers a tempting table of contents, which is as follows: "Maximilian and Mexico," by John Heard, Jr., illustrations by L. Marchetti and Gilbert Gaul; "The Lighthouse," painted by Stanhope A. Forbes. By Philip Gilbert Hamerton, with full-page illustration (frontispiece) and portrait of Forbes; "The Dog," by N. S. Shaler, illustrations by Ch. Herrman Léon; engraving by E. H. Del'Orme & Schussler; "A Portion of the Tempest," by Mary Tappan Wright; "The Story of a Beautiful Thing," by Frances Hodgson Burnett, illustrations by John Gülich; "Life," by Edith Wharton; "John March, Southerner," chapters XXXV.-XLII., by George W. Cable; "American Game Fishes," by Leroy Milton Yale, illustrations by Charles B. Hudson; "A Pound of Cure," a story of Monte Carlo, chapters VII.–VIII., by William Henry Bishop (concluded); "The Future of the Wounded in War," by Archibald Forbes.

OUR naval policy is one of the leading topics treated editorially in the REVIEW OF REVIEWS for June. In the same connection, projects of ship-canal building in relation to seaboard defense are discussed. Other matters of general interest receiving comment in the "Progress of the World" department this month are: the Senate's tariff muddle, the Great Northern Railway strike and arbitration, the coal miner's strike, the *rationale* of Coxeyism, the New York Constitutional Convention, the question of woman suffrage, the temperance movement and news from the college world. English political and social movements receive due attention also in this department of the magazine.

A MOST important paper of great practical interest to thinking men of all shades of opinion is Hamlin Garland's plain, straightforward exposition of "The Single Tax in Actual Operation in New Zealand," in the June ARENA. Mr. Garland's paper on the single tax in operation is an important contribution to the literature of the land question. Other important papers are: "The Nationalization of Electricity," by Rabbi Solomon Schindler; "The Fall of Babylon," a poem, by James G. Clark; "Election of Postmasters by the People," by Hon. Walter Clark, LL. D., of the Supreme bench of North Carolina; "The Sixth Sense, and How to Develop it," by Paul Tyner, is a most remarkable contribution to the literature of psychical research; and "The Higher Criticism of the Hexateuch," by Prof. L. W. Batten, an eminent Episcopalian scholar. Elbert Hubbard contributes a valuable paper on the A. P. A. movement, in which he points out the end of this movement.

As befits the season, the June ATLANTIC has a restless air about it. A record of a summer spent in the Scillies by Dr. J. W. White, the eminent Philadelphia physician, is followed by a shipwreck-suggesting poem, "The Gravedigger," by Bliss Carman; Mr. Stoddard Dewey writes of "The End of Tortoni's," the famous Parisian café, closed a year ago; Dr. Albert Shaw explains how Hamburg learnt her lesson even before the cholera struck her, and now is one of the most perfectly protected cities; Mrs. Cavazza gives a bright account of the marionette theatre in Sicily; Professor Manatt completes his excursion "Behind Hymettus," and Mr. Frank Bolles continues his wanderings in the Provinces. The fiction, besides Mrs. Deland's notable novel, is contained in one of Mrs. Wiggin's graphic stories, "The Nooning Tree." A group of Carlyle's letters not before printed, and reports of his conversation, are given by his friend Sir Edward Strachey.

BOOK NOTICES.

LAW.

THE SUPREME COURT OF THE UNITED STATES. Its History, by HAMPTON L. CARSON, of the Philadelphia Bar, and its Centennial Celebration, February 4, 1890. Prepared under direction of the Judiciary Centennial Committee. Complete in twenty parts, fifty-six etchings. Third edition. A. R. Kellar Co., Philadelphia, 1894. Parts 50 cts. each.

The republishing of this admirable work in parts is a most excellent idea on the part of the publishers, as it is now brought within the means of every member of the legal profession, no one of whom should fail to avail himself of this opportunity of possessing this valuable contribution to the legal history of our country. We have in former issues of "THE GREEN BAG" expatiated at length upon the great merits of Mr. Carson's book, and it is sufficient now to simply repeat that, in our opinion, no work has ever been

offered to the profession which possesses such intrinsic value. The illustrations include portraits of all the justices who have ever sat upon the bench of the Supreme Court, and are in themselves worth many times the price of the book. Part I contains etchings of John Jay, John Rutledge and Wm. Cushing.

AN ILLUSTRATED DICTIONARY OF MEDICINE, BIOLOGY AND ALLIED SCIENCES. By George M. Gould, A.M., M.D. P. Blakiston, Son & Co., Philadelphia, 1894. For sale by Little, Brown & Co., Boston. Half leather or sheep, $10. Half Russia, $12.

Although in the strict sense of the word a medical work, this dictionary will prove of equal value to both the lawyer and the doctor. An intimate acquaintance with medical technical terms is indispensable to the legal practitioner who is constantly called upon to discuss difficult questions in medicine, chemistry, pharmacy, biology, microscopy, bacteriology, etc.; and as a human life often depends upon the knowledge displayed by him it is important that he should be thoroughly acquainted with the matter in hand. In cross-examination of medical experts, errors in the use of technical terms are not infrequent, and may lead to grave results to clients.

This book explains countless terms relating to insanity, nervous affection, medical malpractice, rape, poisoning, blood-stains, etc. It gives numbers of illustrations of human anatomy; pictures the various bacteria, animal parasites, common tumors, etc.; and contains many tables, such as poisons and their antidotes, electrical batteries, surgical operations, composition of foods, and other special matters, that at a glance enable the reader to grasp any subject under discussion. As a work of reference it is invaluable and all lawyers who can afford it, should procure the volume.

POLICE POWERS, arising under the Law of Overruling necessity. By W. P. PRENTICE. Banks & Bros., New York and Albany, 1894. Law sheep. $5.00.

This volume treats of an exceedingly important branch of the law and one which has assumed unusual prominence during the past few years. Until now no writer has undertaken to bring together the various decisions bearing upon the subject in such a form as to be of practical use, and Mr. Prentice deserves the thanks of the profession for the eminently satisfactory manner in which he has performed this task. "Citizen's rights or property, as they are frequently estimated by the public, are continually invaded anew by government in its necessary guardianship of public interests and for the public good," and a clear analysis, classification and division of the subject to which the various important divisions may be referred and by which we may trace some rule of guidance, whenever the exigency upon which light is sought occurs, must prove of great value and assistance to the practitioner. Mr. Prentice gives us all this in his treatise, and we heartily commend the work as one of unusual merit.

DIGEST OF THE LAWYERS' REPORTS, ANNOTATED. Volumes I. to XX., inclusive. With full index to Notes and Briefs. Lawyers' Co-operative Publishing Co., Rochester, N.Y., 1894. Law sheep. $5.00.

This volume of over 800 pages is a complete digest of the contents of the first twenty volumes of this series, and is indispensable to all who use these reports.

MISCELLANEOUS.

CLAUDIA HYDE. By FRANCES COURTNAY BAYLOR. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.25.

It is a pity that Miss Baylor does not oftener favor the reading public with the products of her pen, for her books are possessed of far more than ordinary merit, and well repay a careful reading. "Claudia Hyde" is a capital story, interestingly told, of Virginia life and hospitality. Without going at all into the plot we may say that the heroine is a most lovable creation, and the hero, who leaves England to seek his fortune in the new world, is a man well calculated to inspire love in any true woman. As a consequence we are given a most delightful love story, the course of which runs smoothly to a happy termination. We recommend the book to all lovers of good reading.

TWO STRINGS TO HIS BOW. By WALTER MITCHELL. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth, $1.25.

Sailing under false colors is always dangerous business, and so the Rev. Creswell Price, the hero of this story, found it to be. The misfortunes which befel him through his all too confiding nature, as a result of which he was obliged to assume a dual character, form the ground work for a most interesting and entertaining tale, one which holds the reader's attention from beginning to end. We lay the book down with a feeling of curiosity as to the future of the reverend gentlemen and wonder what kind of trouble he got into next. Perhaps Mr. Mitchell will enlighten us in another volume. No more entertaining story could be found for summer reading, and it should be at once put on the list of desirable books for vacation perusal.

JOHN GRAHAM.

The Green Bag.

VOL. VI. No. 8. BOSTON. AUGUST, 1894.

THE LEGAL GRAHAM FAMILY.

BY A. OAKEY HALL.

CITING the rules and precedents of Lavater and Spurzheim, it is evident that the faces and heads of the three Grahams, whose portraits are now presented, show rare possession of logic, mental force and language. The traditions of the New York Bar claim for them such a possession; and although David Graham, the elder, and David Graham, Jr. (who used the youthful suffix long after his father died, perhaps to show pardonable pride of parentage), have long been dead, their legal fame will doubtless never die in the city wherein the memory of Hamilton and Kent is treasured by its citizens, who point out proudly to strangers the houses in which dwelt the author of the Federalist or the author of the Commentaries. There have been carpers and cynics, even in the legal profession, who claim that the fame of a great lawyer is as evanescent as that of an actor, and belongs only to his own generation. Possibly this is true if the memory of laymen be alone regarded; but lawyers themselves are always loyal to the fame of their great jurists, and in the temples of Themis lawyers keep jealous guard over the undying flame from the lamp of their science, which has been said to have been lighted, and kept incandescent, as proceeding from the sparks of all other sciences. Over that temple hangs ever an atmosphere of bright tradition. Prior to the year 1808 there had lived in the North of Ireland a celebrated young Presbyterian clergyman who was fast becoming a recognized pulpit orator. He had married young; and he became impressed with the idea that the new land in which, as its chief ruler, George Washington had recently died, and to which had recently emigrated Thomas Addis Emmet — whose monument confronts every Broadway pedestrian in New York city who passes by its St. Paul churchyard — was a land where he might win a better competency than in his native isle. Wherefore, in that last named year, this young clergyman, named David Graham, and of historic ancestry, who was born in the year when impended the revolutionary perils of Valley Forge, took passage from London in a sailing ship bound for the port of New York. While awaiting passage in the former city Mrs. Graham gave birth to a son, who became his father's namesake. Arrived, the Rev. David Graham was welcomed warmly by the Emmets and other Irish emigrés to whom he brought letters. But in a short time, then in his thirtieth year, he concluded to embrace the legal profession. Being a plucky man, and of studious habit, and having saved some patrimony, he soon mastered terms of admission to the New York Bar. Nor was his progress slow; for his acumen and powers of oratory soon attracted popular attention. As early as 1815 the pages of the City Hall "Recorder" and the reports of Caines and Johnson began to show David Graham — no longer wearing clerical silk — as an active practitioner at *nisi prius* and before benches of judges who

eagerly listened to his synthetic arguments. Other children were born to him, and among them John Graham, Charles K. Graham, DeWitt Clinton Graham and a daughter — each of whom he carefully educated. Two of the boys, in due time after being discharged from the ken and care of tutors and professors, followed their father's profession; and one, Charles, became a civil engineer, with military and naval leanings; and thereafter, during the Mexican and Civil wars, at Vera Cruz and Fort Fisher, bravely and intelligently vindicated his ability in the profession of engineering. Early in the thirties of this century, young David Graham began, after having been admitted to the Bar, to rival his father; and to cause contemporaries to recall the old couplet: —

"To teach his grandson draughts his leisure
he'd employ:
Until at last the old man was beaten by
the boy."

The celebrated scientist, physician, raconteur, and biographer, Doctor John W. Francis, whose volume entitled "Old New York" is still sought after in libraries, narrates that to see the two David Grahams together — father and son — in a court room, dividing honors in a pending case, was an interesting sight; for the father's pride, superior to any jealousy, or to love of experienced opinion, in his son was a pleasing spectacle. I can well appreciate this statement; for among the most charming pictures of real life that I hang in my gallery of memory is one where the scene was Trinity Church in New York, when General John A. Dix, flushed with honors as a governor, senator, cabinet officer and Union general, was one Sunday seated in a front pew, as a vestryman, listening to his son, Morgan Dix, as rector, delivering a sermon. The look of proud delight on the General's countenance was unmistakable, and seemed to announce, without sign of egotism, "Parishioners, the man on whose eloquence you hang is my son, and he is distinguishing his father." That Trinity Sunday had with it, also, the making of another picture for memory's gallery — that of an Astor as a church warden passing the offertory plate to the free pew, and receiving the copper coins of indigent hearers. Young David Graham soon tried his "prentice hand" at making a law book, which he dedicated to his parent. It was a book of practice, and now as obsolete in libraries as Fearne on Contingent Remainders, or the law dictionary of the original legal Jacobs. But until superseded by the code of David Dudley Field, it became during two decades the *vade mecum* of the New York practitioner. Although treating of dry proceedures, its clearness of style and attractive comment were very Grahamist — for in those particulars father and son excelled. But, although a master of civil procedures, the taste of both the David Grahams — and that of the junior notably — tended toward the procedures of criminal jurisprudence. Both were in their happiest legal vein when defending accused persons before the police magistracy, the Recorder, or the Oyer and Terminer. David Graham, Jr., was only thirty-eight years old when he was selected by legislative act as one of three commissioners to compile a code of criminal procedure — the germ of the Field code now in statutory use in the State of New York. And to further show how early his legal excellence became known, I add that he had been, when only twenty-four years old, appointed one of a committee of lawyers to prepare a new City Charter that was intended to supersede old royal instruments, and to be submitted to popular vote. For the practice of criminal jurisprudence, the elder and younger David Graham were admirably fitted by reason of their great magnetism of manner, and adroitness and readiness in questioning at *nisi prius*, or in stating propositions of law to the Court. The eyes of David Graham, Jr., were peculiarly lustrous and full of frankness. When

they looked upon judge, juror, or witness, it was impossible to gainsay their truthfulness or charm of expression. "Graham's eyes are in their gaze as strong as affidavits," was a remark I once heard from Judge Aaron Vanderpoel the elder. Intensity and enthusiasm were the characteristics of all members of the Graham family; and these were obvious even in their ordinary intercourse, or conversation. Thirty years ago the swaying of juries, especially in criminal cases, was a great art in New York; and as in Baltimore in the era of William Wirt, or in that of David Paul Brown in the city of brotherly love, or in Boston when Webster or Choate or Dana swayed juries. But whether juries in my city have become more commonplace or more practical or cynical, it is certain that court house oratory does not now count there as it did when David Graham, Jr., fairly compelled verdicts. But it may be added that then judges did not, as they often do now in my city, usurp jury functions and arbitrarily set aside verdicts as being disputative or excessive. When David Graham emptied his legal quiver, he however aimed some of his shafts at the Bench — legally feathered — as well as at jurors. Lawyers, especially junior ones, should always, if they can, capture the judge as well as the jury box. Graham's non-suits were generally as numerous and multifarious as his verdicts. Early in his career, at enod "man about town," named Ezra White, was charged with, and indicted for, murder. The attending circumstances were sensational, and newspapers and gossips made the affair widespread. "David Graham, Jr., has often shown black as white, and now he is engaged to prove that White is not black," was the paragraph of a witty reporter in announcing that the young lawyer had been retained. Without its being necessary to recapitulate the incidents of the trial, I am led to remark that during it, and the subsequent procedures. Mr. Graham's keenness, readiness, and careful sifting of inclusive legal propositions, brought on him the jealousy of many seniors, but the envy of juniors and the applause of the populace. From this case he dated his great rise, as much as the future Lord Erskine dated his own advancement from that hour when the sudden illness of his senior called him to fight alone the case of a sailor who had cause of action against Lord Sandwich, Lord of Admiralty. Erskine, it will be remembered, strongly arraigned that cabinet minister, and was called to order by the Lord Chief Justice, who, however, only mildly remarked, "Lord Sandwich is not before the Court." "Then," thundered the young barrister, "I shall bring him before the Court," and continued his eloquent arraignment of

DAVID GRAHAM.

the tortious magnate for oppression. "How did you have the courage to beard the Lord Chief Justice?" Erskine was asked; and he answered, "At the moment of interruption I seemed to feel my little children tugging at my gown and whispering: 'Now, father, is the chance to get us bread and butter.'" No doubt young Graham, who had recently married one of New York's most famous belles, of high family connections, felt that his White defense was to become a turning incentive to future renown. In another remarkably sensational murder case David Graham, Jr., was soon retained. One Polly Bodine was indicted for killing a relative and firing a residence to conceal the crime. The first trial, upon Staten Island, resulted in Graham procuring a jury disagreement. Venue being changed because of inability to there secure a new impartial jury, New York city was selected as fresh jurisdiction; and there Graham's client was convicted. Truth to say, he fought against strong circumstantial evidence, but he had laid a trap for the presiding judge — John W. Edmonds, author of Edmonds' New York Reports — in some ingenious requests for a charge; upon one of which that judge made a slip, and on writ of error, the conviction was set aside. Here comes opportunity for me to remark that Graham's ingenuity in framing requests to charge was ever remarkable. Bearing well in mind the decisive doctrine that although the ideas of such requests might be correct, yet if the annexed verbiage was faulty the requests might be denied without attaching to them competent exceptions, Mr. Graham was perfect as *anceps syllabarum*, and was therein as prudent, accurate, and careful a master of diction as Chief Justice Marshall was reputed to be — of whom John Sergeant is reported to have said: "Ponder well the rhetoric of his interruptions and allusions during argument so as to meet him accurately." After procuring a new trial for his woman client, who was being as strongly anathematized by popular sentiment as were in recent times Lizzie Borden and Lizzie Halliday, Mr. Graham procured another change of venue to a rural county, where his impassioned eloquence won an acquittal from a jury of astonished but delighted farmer-jurors. After this victory David Graham, Jr., found his reputation fully established; and even New Jersey and Connecticut soon sent him retainers in criminal cases, over the heads of their own legal magnates. What manner of laudatory traditions are affixed in Boston to the contemporaneous career of Rufus Choate cling in New York about the memory of David Graham, Jr. These two jury orators resembled each other in musical voice, choice emphasis, harmony of intonation, language of the eye, grace of gesture, fervid utterance, and in supplementing details — whereof they were equal masters — with eloquent generalizations in peroration. In a paper I have already had the honor of presenting to a former number of the GREEN BAG upon the topic of cross-examination, I took occasion to pronounce David Graham as Master of the Art of Cross-Examination. He eminently possessed the first essential of the art — an insinuating manner and method. He was a native diplomatist. He never lost his temper. He never made needless repartees; but he was proficient in wit and sarcasm, and in the prudent use of the *argumentum ad hominem*. Like many social gallants who possess the faculty of impressing every lady whom they address with the feeling that she alone is the object of his worship, Mr. Graham seemed to impress each juror with the notion that upon him exclusively were conferred his hopes of success. He captured jurors singly and not sought them as a body. His abilities and *nisi prius* triumphs were, however, not confined to criminal trials. He soon became sought after in civil suits; sometimes in those born of contracts, but mainly in such as savored of torts. But his instincts were rather of a defender than of a pursuer. Be-

ing rapid in thought and comprehension, he readily mastered the briefs of attornies; and having in his novitiate imbued himself with principles, and possessing the Baconian-advised ability to seek after knowledge not introactively obtained, he became apt at illustrating his statement of principles with cases from the reports. He depended as much upon his plod as upon his genius — may happ more. He was so conscientious as to undergo the labor of fashioning his own pleadings. In due time politics claimed him; and he was chosen as an alderman, and soon became counsel to the corporation; but he several times declined legislative or executive honors that would win him from his profession. He was as a Whig a devotee of Webster and Clay; and took, amid incessant legal toil, participation both as a local worker and speaker in the political campaigns of the day. His services to his party in behalf of the campaign of Tippecanoe and Tyler were recognized as able and effective. He was in social demand at public banquets and for public addresses. He was always beloved of society as well as of Bar and Bench. He was ever the courteous and pronounced gentleman, and underwent a host of legal conflicts — some tinctured with acrimony — without ever acquiring an enemy. His Irish blood made him combative; but his weapons were foils such as an Admirable Crichton used, and he never wielded a weapon of the style of the broadsword, battleax, or pike. The beginning of the year 1852 found him fast wearing out his nervous organization. Social and politiical exactions, combined with those of his profession, so invalided him that during the summer of that year his physicians peremptorily ordered him change of scene, with alternations of travel and rest. But their order came too late, and in the summer he died while at Nice. His remains were returned to New York, where the newspapers of the period bore full witness to the funereal honors that were paid him by all classes. During much of his career he had superintended the legal education of his younger brother, John, who early indicated the possession of logical and oratorical faculties, as an inheritance from his father. These were carefully nurtured by the brother David. There was the utmost fraternal affection between them; and throughout the life of John Graham, who survived the elder forty years, he was continually vaunting praises, and indeed adoration, of David. If any criticism was made of his own methods,

DAVID GRAHAM, JR.

it was a sufficient answer for John to answer, "They were brother David's ways." But while much alike in some mental textures, they were in others, and in physical attributes, curiously dissimilar. David was of slight, slender build, and almost effeminately graceful. John's physique was heavy and athletic — these qualities of person increasing with age. David's voice was insinuative, soft and winning — that of John was Boanergian and aggressive. David's presence suggested a man who could be effective with foils; that of John, one who could succeed with the gloves. In legal play, David did fencing to perfection; while John could floor an antagonist and drive him to the corner, where the attorney was a *quasi* bottle holder. While yet a law student a severe illness deprived the younger brother of his luxuriant, clustering and curling flaxen hair, so that he resorted to a wig that was a copy of the natural growth. It appears in the annexed picture, for when he became a septuagenarian the fashion and shade of the wig had not varied. Whenever it was renewed its youthful character remained, and so often gave him to strangers an anomalous and odd appearance. Unlike David, John did not possess diplomacy in his methods; yet his blows as an examiner or a speaker displayed craft. David was something of an actor, and was effective at simulation, and as a personator of the client's wrongs or advantages. John was too frank, blunt and natural to be even an imitator of his brother in the foregoing respects. David's manner in the court room might remind of such blandishments as are recorded of Philpot Curran and Sergeant Hill; that of John would suggest Brougham or Ballantyne. Both inherited a love and habit of truthfulness from their clerical sire. Judges took for granted their accuracy of statement or citation, however differing from their conclusions. Either could have joined with the old traditional Bay State lawyer who in the orisons of his old age thanked Heaven that he had never intentionally deceived a client or a court. Great lawyers well differentiate between stratagem and chicanery, or between *gratia argumenti* and positive, if politic, fibbery. I once heard John Van Buren say that the most accomplished and successful blackguard was he who had once been, but had ceased to be, a gentleman. Very often John Graham's aggressiveness in what I may call the judicial P. R. came very near breaking down the ropes that divided the gentleman in the fight from the bully. David's advocacy was oftenest sought where politic handling of facts was indispensable; that of John in cases where severe attack was advisable. To use a military illustration, David's plan of legal battle was a Marlboro or Wellington one; that of John was Bonapartish, or *à la Grant* at the taking of Fort Donaldson. David often succeeded in a desperate case by tact, and John as often lost for the want of it. The latter's methods were cyclonic; and when the cases demanding that atmosphere in court rooms were brought to him he was generally successful. Woe be to the witness who was deceived into the play of prevarication by the smooth glidings and snakelike charm of David's manner under cross-examination; and equally woe to him in the witness chair who undertook to fence with the vigilance and terrific onslaughts of John Graham. Both brothers were enthusiastic; but David could veil his enthusiasm, while John could scarcely ever control it. He was always like the statesman who exclaimed, "My country, right or wrong!" for with John always it was "My client, right or wrong"; and yet he never believed any client to be wholly in the wrong. He would not think, however, of imitating the tactics for which Charles Phillips suffered at the British bar in the Courvosier-Russell *cause célèbre*. Whenever David lost a case he was philosophic over it; but when that legal misfortune happened to John he seemed to take it as a personal insult that

must be avenged in an appeal and by a reversal, or by impugning the jury box or the Bench. When in *banco* David succeeded best by his logic and apt application of principles, and appropriate selection of precedents, which he would marshal in conspicuous array. John's logic was not as severe; and he was prone to select, and almost exclusively dwell upon, one strongest point. If I may be pardoned the figure, the menu of John's brief led his *hors d'œuvres* and *entrées* as fitting approaches to his *pièce de resistance*, over which, like a gourmand over his Vermont saddle of mutton, he always lingered. Neither of the brothers Graham could ever be accused of diffusiveness. They were masters of conciseness and concentration. Their briefs, whether for *nisi prius* or in *banco*, might in project of MSS. be prolix, but for the direct use the true essence was extracted. These briefs were models for fellow professionals. There was always especially one of a most compact form containing suggestive heads and verbal cues for use — as being, as it were, a ready reference-index to the comprehensively penned argument. David, in his briefs, depended mostly upon elementary principles and deductions from them; but John was more of a case lawyer in preparing a brief. Treatises were in the memory of one, but reports most in that of the other. Each was gifted with serviceable possession of memories. Probably the most surprising legal victories which John Graham ever achieved were in the acquittals of Sickles and one McFarland, under the plea of frenzy, in homicide by an injured husband, producing temporary insanity. In each case the moving incidents to the frenzy were somewhat remote from the deed, and, at least superficially elements of revenge came to the aid of the prosecution. The people were, in both cases, represented by able jurists, which made Mr. Graham's victory the greater. Mr. Graham threw all his faculties into those defences; more especially into that of Congressman Sickles, because he was his intimate friend. John Graham was a man of strong prejudices, which it was always difficult for him ever to lay aside, but at times he was also of a curiously tender nature. His reverence for his parents, as well as his love for his brother, was made known unreservedly to all with whom he came in contact; and even his enemies, whom he made by the score, recognized the tender side of his nature. He was so hot tempered that it became a saying in the profession: "If you would beat John Graham, get him angry during trial, for then he loses judgment." Once or twice during the Sickles trial he lost his good temper, which was well checked, however, by Edwin M. Stanton, his associate counsel, who never got angry — not even when afterwards Secretary of War some Union general blundered. These frenzy cases rest only in the keeping of *nisi prius* accounts, but the requests to charge and the judicial directions remain in publication as valuable guides to the profession in similar cases. In later life, John Graham became morbid. There were indications of such tendency when he was young. These grew out of a quarrel he had with James Gordon Bennett, Senior, as editor of the New York "Herald," during a candidacy of John Graham for the office of District Attorney, for which he had strong ambition. Stung by an editorial attack, he was foolish enough to way-lay the editor and chastise him. The latter took revenge by directing that the lawyer's name should never appear in the newspaper; and ever afterwards, when the exigencies of news demanded notice of his cases, he figured only under the phrase, "Counsel for plaintiff or for defendant." John Graham was sensitive to an absurd extreme at all times, and fancied undue criticism when that did not exist. He was avidious always of notice, and this exclusion of notice of his professional doings from the most influential newspaper of that

day, stung him to the quick. Many years afterwards his arraignment for contempt by the Court during his service as an associate counsel of William M. Tweed, on trial for official peculation, increased this morbidness. Never much given to social intercourse, and being a bachelor, reclusive habits fastened upon him until he shunned individual intercourse, and his clientage strongly diminished. So that during several years before his death, in the spring of 1894, he had become a memory almost as distant as that attaching to David or his father. These Grahams deserve to occupy niches in the legal temple of New York city, because very notable instances of renowned advocacy in the days when the practice of law in that city remained a noble profession; and before the taint of politics effected much toward degrading it into a trade.

THE JUDGE'S STORY.

AT a recent conference of the Missouri judges a prominent member of the judiciary told the following story: —

Every lawyer who has ever tried a case in which there is a vigorous dispute as to the facts appreciates what we call a good witness. My observation is that a darky, if he is of the bright, intellectual variety, makes the best kind of a witness. In the first place he thoroughly enjoys it, is prompt in attendance, and you can always rely upon his being in place when you call him. Then again, his asseverations on the witness stand have nothing uncertain about them; his imagination is as strong as that of a woman, and womanlike, he is just as positive of what he imagines he saw as he is of what he actually saw. Added to these virtues is the fact that he is a zealous partisan. If you do him the honor to ask him to be a witness for you he considers it as little as he can do in return to win your case for you if swearing will win it, and he thinks it will.

The law has a mystic fascination for him, he loves its mystery, and loves to drown his senses in the oblivion of its incomprehensibility. And when he goes to court he keeps his eyes and ears open and really learns and remembers a good deal of its technicalities in a sort of superficial way, and is very fond of making a display of it.

The darky whom I now have in mind was called as a witness in my court a while ago in a case that had originated in a justice's court, where it had been fought with animation and brought up by appeal. The cause for action was for a set of wagon harness alleged to be worth eight dollars, and which plaintiff alleged defendant had borrowed of him and refused to return. Plaintiff, as a witness in his own behalf, traced his title from the harness maker and traced the harness into defendant's loft.

The plaintiff was the principal witness for himself, and the defendant was the principal witness for himself, and the testimony was very conflicting. The line of the defense was to break the force of the plaintiff's testimony by showing that his reputation for truth was bad in the community and also to show that the harness really belonged to the defendant. Mr. Thomas Jefferson was called as a witness for defendant on both branches of the defense.

Now Mr. Jefferson was just the kind of a darkey that I have endeavored to above describe. He had been about the court house long enough to learn that a witness was not allowed to tell what he had heard somebody say, but only what he knew himself. He had seen men make fools of themselves on the witness stand by attempting to rehearse hearsay testimony, and he was not going to make such a show of himself.

Defendant's counsel concluded that it

would be good tactics to first break down the plaintiff's character and then demonstrate the defendant's title. This is the way it resulted: —

"Mr. Jefferson, do you know the plaintiff, Smith?"

"Yes, sah."

"Do you live in the same neighborhood he does?"

"Yes, sah; we bofe lives in Rock Springs."

"Do you know what kind of a character he bears among his neighbors for truth and honesty?"

"He bears the wus kind of character sah."

Counsel for plaintiff objects. Cousel for defendant considers the objection well taken.

"That is not the question. Do you know what the people in that neighborhood generally say of him?"

"Cose I knows what dey say 'bout him, but I ain't come here to tell dat. I come to tell what I know about him myself."

"No, you are not allowed to tell what you know about him yourself, but you are only allowed to tell what people say about him."

"You don't mean dat."

"Yes, that is what I mean."

"Not much; I know better'n dat myself. I been about court house too much for you to talk dat way to me."

The court at this juncture interposed, and endeavored to explain the situation to the witness, and he seemed at last reluctantly reconciled to the situation, then the examination by counsel was resumed.

"Do you know what the plaintiff's general reputation is in the vicinity in which he lives for truth and honesty?"

"Now you want me to tell what de folks say, and not what I knows myself."

"Yes."

The witness gave an earnest look at the court, as if asking protection from the outrage, but finding the court seemingly as bad as the counsel, he said:—

"Well, I heard Mrs. Shafer say dat he was de biggest liar in de world and dat he stole Mr. Shafer's geers out of the butcher-shop, and I knowed myself dat he stole de geers because I seen 'im wid 'em."

"That is not an answer to my question. I don't ask you what any one person says, but what the people say."

"Dat is jes what I'm going to tell you, but I got to tell what one say at a time. I can't tell you what dey all say at once. Jerre Gibson told me dat he saw de man"—

"I don't want to know what Jerre Gibson said nor what Mrs. Shafer said nor what anybody else said. I ask you what the man's general reputation is in the community for truth and honesty, and by that I mean what do all the people say about him?"

"How in de name o' God can I tell you what dey all says about him when you won't let me tell you what one of 'em says about him?"

Counsel and witness fenced with each other in this manner for a long time, with no other result than a loss of temper and a strong manifestation of disgust on both sides. At last the counsel made an effort at self-control and said: "Well, Mr. Jefferson, since you and I can't understand each other on that branch of the case, let us leave it and go to the next subject. Now, I will get you to tell us what you know about this harness?"

"Well, I knows all about dem harness, an' everybody around Rock Springs knows dem harness, and dey all sez de harness belongs by right to John Dickson." (Mr. Dickson was the defendant.)

"Now, I did not ask you to tell what everybody says about the harness. I asked you what you knew about it yourself."

"What I knows myself?"

"Yes."

"Why, ain't you been beating me down here for the last hour to keep me from telling what I knowed myself and try to make me tell what everybody say? I knowed dey wasn't no sense in dat, and I ain't goin' to stan' up here and let you make a fool o' me no mo'."

And the witness arose in disgust and walked down from the witness stand and out of the court-room. The defendant's counsel never rallied, and the verdict was for the plaintiff.

THE STORY OF THE PARNELL COMMISSION.

NOW that the dust and heat created by the Parnell Commission have somewhat subsided, and with Mr. Gladstone's retirement from public life men's thoughts are beginning to turn, with a sense of relief, to a reconstruction of parties and to the birth and realization of new political ideas, it may be possible to tell the story of the Parnell Commission, without bitterness or exaggeration.

During the stormy years of Irish agrarian discontent that followed the defeat of the Beaconsfield ministry, and Mr. Gladstone's accession to power, in 1880, both Mr. Gladstone himself and his Home Secretary (Sir William Harcourt) and Irish Secretary (Mr. W. E. Forster) repeatedly characterized the Irish nationalist movement in terms which implied that it was intimately associated with, if not productive of, and, in any event, largely responsible for, the crimes that devastated Irish society. Thus Mr. Gladstone described Mr. Parnell as the grand apostle of the doctrine of public plunder, and his party as marching through rapine to the disintegration of the Empire. Sir William Harcourt stated that they were "steeped to the lips in treason"; and Mr. Forster denounced in no measured terms their silence while outrages of the worst kind were being perpetrated in the Emerald Isle, in alleged furtherance of the nationalist movement. These accusations reached their greatest volume and deepest intensity immediately after the foul murder of Lord Frederick Cavendish (the Duke of Devonshire's brother and then Chief Secretary for Ireland), and Mr. Burke, the permanent under-secretary at Dublin Castle, by the Phoenix Park conspirators. In 1885, Mr. Gladstone's Government were defeated on their budget, and after a brief interregnum under Lord Salisbury's premiership, there was an appeal to the country, with the result that the two great parties in the State — the Liberals and the Conservatives — were almost equally represented in the House of Commons, so that the Irish members practically enjoyed the casting vote. Under these circumstances, Lord Salisbury did not resign office, Parliament was re-opened, and the Government announced in the Queen's speech their intention of strengthening the criminal law in Ireland by the enactment of another (so called) "Coercion" Bill. Immediately an amendment was moved to the address by Mr. Jesse Collings, regretting that no mention had been made in the Queen's speech of allotments for agricultural laborers; on this "three acres and a cow" question, as it has been facetiously styled, the Irish members voted against the Government, and the Salisbury ministry ceased to exist.

Speculation was rife as to the nature of the consideration which had 'moved' from the Liberal opposition to the Irish members in order to secure their support, but nothing was known for some time. At length an enterprising Conservative newspaper announced that Mr. Gladstone had became a Home Ruler. The suggestion was promptly denied by the official organs of the party; but when Parliament reassembled the rumor was speedily verified; and the Home Rule Bill of 1886 was produced. It was defeated in the House of Commons by a majority of about thirty. There was a fresh dissolution of Parliament and Lord Salisbury was returned to power and to the double offices of Prime Minister and Foreign Secretary (for which last position he possesses almost unique qualification) with a majority of nearly one hundred. The post of Chief Secretary for Ireland fell to Sir

Michael Hicks-Beach, but, after a brief period, he was obliged to resign, owing to defective eyesight, and Mr. Arthur James Balfour, M.P. for East Manchester, and then Secretary of State for Scotland, succeeded him.

The rise of Mr. Balfour has been one of the most remarkable episodes in modern political history. He is a son of Lord Salisbury's sister and of Mr. Balfour of Whittinghame, in the Lothians of Scotland. During the last years of the Gladstone ministry of 1880 to 1885, he had belonged, with Lord Randolph Churchill, Sir John Gorsh, and Sir Henry Drummond Wolff, to what was known as "the Fourth Party," which occupied the anomalous position of independent critics both of the opposition and of the government, but he took no very active part in its Parliamentary doings, and in 1884 when "Society in London" was written by an eminent, though anonymous, American "Resident," Mr. Balfour only received a line or two's notice from the pen of the accomplished writer as a young man of indolent habits, of a metaphysical turn of mind, and with much of his noble uncle's power of literary expression. As secretary for Scotland Mr. Balfour extorted a good deal of conscious and unconscious admiration by his coolness and readiness in debate and by the firmness which characterized his conduct in the crofters' agitation; and public opinion in Scotland insisted on his receiving a seat in the cabinet. But no one regarded him as a statesman of the front rank or as likely to become one, and when his appointment as Irish Secretary was announced, the political welkin rang with shouts of laughter at the expense of "the silken aristocrat" who was to succeed where the experience of Mr. Forster and Sir Michael Hicks-Beach had failed. Mr. Balfour soon changed these notes of expectant triumph into a shriller and less jubilant key. His adversaries discovered that "the silken aristocrat" had a nerve of iron and — in so far at least as what he considered the spurious indignation and wrongs of Ireland were concerned — a heart of steel. He never blustered, or talked, like one of his predecessors, Sir George Trevelyan, about being an English gentleman, though he was an Irish Secretary.

CHARLES PARNELL.

He never lost his temper in debate, or swerved one hair's breadth from his resolution to make Irishmen, even if they were members of Parliament, respect the law. He remained impervious to perhaps the foulest abuse that has ever been poured on the head of any public man in England in this century. He was "the bloody Balfour," the "murderer of Mandeville," — an Irishman whose death was caused not by his imprisonment, but by a cold caught in the exposure incident to an Irish political agitation — and so on. Christian ladies

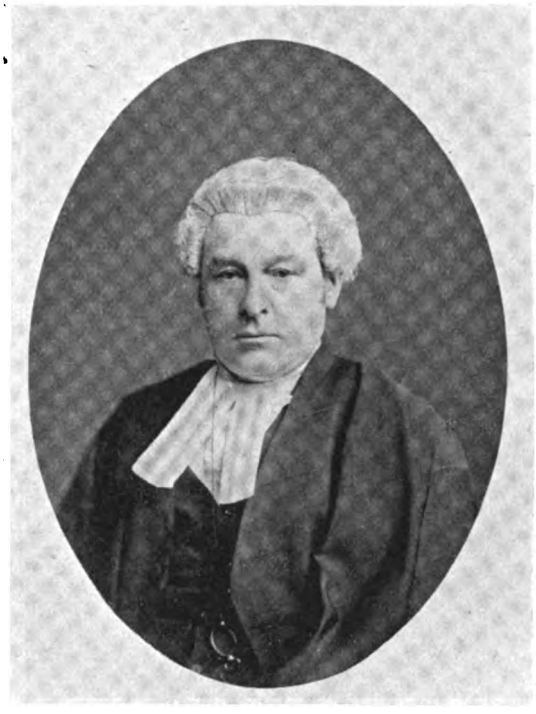
doubted whether he ought to be admitted to the communion, and looked askance on the suggestion that he might be an innocent companion in a game at golf. Mr. Balfour's attitude to his critics, although singularly composed, was not conciliatory. As the American resident had observed, he possessed Lord Salisbury's literary faculty, a phrase which ill-natured foes would be tempted to describe as "biting tongue." One of his adversaries, Mr. James Stuart, who had been caught tripping in his facts, he pilloried as a "demon of inaccuracy," and when Mr. Shaw Lefevre, a third rate politician of cabinet rank who had gone over to Ireland to take part in a demonstration and had advised the authorities at Dublin Castle that he meant nothing illegal, returned to the House of Commons and claimed to be one of "Mr. Balfour's criminals," the Chief Secretary replied: "The right honorable gentleman does himself injustice; he took ample precautions against coming into contact with the law." It was, however, on Mr. William O'Brien, M.P., that the vials of Mr. Balfour's ridicule were poured most profusely, and "martyrdom modified by sandwiches," and the retort to Mr. O'Brien's declaration that whatever he might have said of Earl Spencer in the past, he would blacken his boots now. "It would appear to be a law of the honorable member's nature to blacken something — formerly it was Lord Spencer's character, now it is his boots," have passed permanently into the literature of political dialectic.

MICHAEL DAVITT.

It may readily be believed that, with pleasantries of this description, doing duty in the House of Commons and in the country, the political atmosphere was heavily charged with dangerous electricity; the Irish party denounced Mr. Balfour in language which would have been exaggerated if applied to Strafford or Castlereagh; and the Unionists on the other hand trotted out the old accusations as to the alleged connection between "Parnellism and crime." At first little notice was taken of these charges on the Liberal side, but when the "Times" newspaper, on March 7, 1887, commenced a series of articles on the subject, the first of which alleged that "in times not yet remote, Mr. Parnell and his followers would assuredly have been impeached for one tithe of their avowed defiance of the law, and that "in ages yet more robustly conscious of the difference between evil and good, their heads would have decorated the city gates," public opinion began to be aroused, and it was felt that some form of inquiry would ultimately be necessary.

Events, however, ripened faster than at first seemed probable. On the 18th of April, 1887, when the debates on Mr. Balfour's Crimes (or Coercion) Bill were at their height, and when in fact the critical division was to be taken, the "Times"

published the *fac-simile* of a letter bearing date, the 15th of May, 1882, alleged to have been written by the authority of Mr. Parnell and signed by him, in which he appeared to apologize for having as a matter of expediency openly condemned the murder of Lord Frederick Cavendish and Mr. Burke, though in fact he thought that Mr. Burke had deserved his fate. The house of Walter were fully alive to the importance of the step they were taking in giving this document to the world, and it is said that on the night of its publication the gates of Printing House Square were closed and no one was permitted to cross the threshold till the fateful sheets had been issued. Mr. Parnell on the same day, in his place in the House of Commons, declared that this letter was a forgery, but he did not then take any proceedings against the "Times," for its publication. The gauntlet thrown down by the "Times," was, however, picked up by Mr. Frank Hugh O'Donnell, formerly M.P. for Dungarvan, who conceived himself to be included in the accusations brought against the members of the Home Rule party, and he sued Messrs. Walter and Wright (the publishers of the "Times") for libel. The defendants denied that the statements in question related to the plaintiff, and alleged that they were true in substance and in fact.



SIR JAMES HANNEN.

The case was tried before Lord Coleridge and a special jury on the 2d of July, 1888. Mr. Ruegg was counsel for the plaintiff, Sir Richard Webster, then Attorney-General, and Sir Henry James appeared for the defendants. It may well be open to question whether Sir Richard Webster, as first law officer of the Crown, acted with supreme prudence in undertaking the cause of the "Times" in a matter which it was evident from the outset would provoke the bitterest political feeling. But the attacks which were made on his professional conduct in this stormy episode of contemporary history are now conceded on all hands to have been unfounded. We shall have something more to say on this subject as the story proceeds. But the first of the points that have been made against the ex-Attorney-General arose in the O'Donnell case, and it may as well be dealt with now. The "Times" in effect answered Mr. O'Donnell's claim by two alternative pleas. 1. That the alleged libels did not refer to the plaintiff; and 2. That if they did they were true. In opening their case, the Attorney-General stated the facts which he proposed to give in evidence in the event of the issue of the truth or falsehood of the alleged libels having to be determined by the jury, and repeated and enlarged upon the charges in the "Times" articles. At the close of his address, the plaintiff withdrew from the jury all the alleged libels except two in which he had been specifically named, and on these a verdict was found for the defendants. There was

an immediate outcry on the Liberal and Nationalist sides of political life, that as it was obvious that the truth of the "Times" case could not be investigated in the O'Donnell action, the Attorney-General ought not to have entered upon this line of defense at all. The answer, however, is that it was not obvious that the truth or falsehood of the "Times" case could not go to the jury; and it is difficult to resist the Attorney-General's assertion later on, in the House of Commons, that he was both entitled and bound to put the whole of his client's case before them.

After the trial of O'Donnell *v.* Walter, a motion was made in Parliament that a committee of the House of Commons should be appointed to inquire whether the letter of 15th May, 1882, was a forgery. This was rejected, but an inquiry of a more general character was instituted by the "Special Commission Act, 1888."

MR. JUSTICE DAY.

Mr. James, afterwards Lord Hannen, Mr. Justice Day, and Mr. Justice, now Lord Justice A. L. Smith, were appointed commissioners. Mr. Henry Hardinge Cunningham, a barrister of considerable scientific attainments, was nominated secretary; and Mr. Justice Hannen's court — Probate, Divorce, and Admiralty, division No. 1 — was fitted up as the tribunal for the holding of "the great inquest." The first difficulty with which the judge had to contend was as to the mode of procedure; if they had taken royal commissions of inquiry as their guidet it would have been neccessary for the commissioners themselves to have found the witnesses to be called, and to have employed agents to take their "proofs." Instead of doing this, however, they determined that the inquiry should be conducted as though an issue had been directed to decide whether, or not the persons charged had been guilty of the acts alleged against them.

This was settled at a preliminary meeting of the commission on the 17th of September, 1888; and the "Times," after a gallant struggle by its junior counsel, Mr. William Graham, was ordered to give "particulars" of the allegations on which it relied; substantially, the charges were as follows: —

I. That the respondents were members of a conspiracy and organization having for its ultimate object to establish the absolute independence of Ireland.

II. That one of the immediate objects of their conspiracy was by a system of coercion and intimidation to promote an agrarian agitation against the payment of agricultural rents, for the purpose of impoverishing and expelling from the country the Irish landlords, who were styled the "English garrison."

III. That when on certain occasions they thought it politic to denounce, and did denounce, certain crimes in public, they afterwards led their supporters to believe such denunciation was not sincere.

IV. That they disseminated the "Irish World" and other newspapers, tending to incite to sedition and the commission of other crime.

V. That they, by their speeches and by payments for that purpose, incited persons to the commission of crime, including murder.

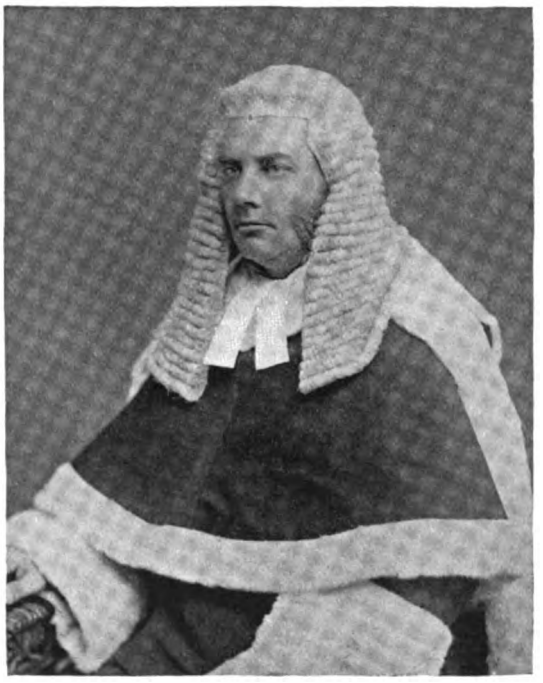
VI. That they did nothing to prevent crime, and expressed no *bona fide* disapproval of it.

VII. That they subscribed to testimonials for, and were intimately associated with notorious criminals, defended persons supposed to be guilty of agrarian crime, supported their families, and made payments to secure the escape of criminals from justice.

VIII. That they made payments to persons who had been injured in the commission of crime.

IX. That the respondents invited the assistance and co-operation of, and accepted subscriptions of money from known advocates of crime and dynamite.

In addition to these general charges it was alleged against Mr. Davitt (*a*) that he was a member of the Fenian organization, and convicted as such, and that he assisted in the formation of the Land League with money which had been contributed for the purpose of outrage and crime; (*b*) and that he was in close and intimate association with the party of violence in America, and was mainly instrumental in bringing about the alliance between that party and the Parnellites and the Home Rule party in Ireland. These preliminaries having been settled, the field was left for a time to legal and political *quidnuncs*, and a riotous banquet they provided for public consumption. It was announced that Mr. Justice Smith was a Unionist and a landlord; that Mr. Justice Day was a 19th century *Torquemada;* that the Parnell letter was a forgery, and that the Irish members knew the author of it. Even the respectable party organs on the Liberal side joined in the clamor, and references to the packed commission were by no means uncommon.



MR. JUSTICE SMITH.

In view of these incidents, it is impossible to doubt the inexpediency of appointing judges to hold *quasi*-political inquiries; and now that the moral of the Parnell Commission has been emphasized by the ludicrous, Evicted Tenants' Commission, opened by the president, Sir James (Mr. Justice) Mathew, by a violent attack on Lord Clanricarde, one of the landlords into whose conduct he was about to inquire, it is to be hoped that no English government will repeat the blunder of exposing Her Majesty's judges to the charges of partisanship, which are inevitable if they are to be engaged in political service.

At length the hour of cause arrived. The three judges took their seat on the Bench. We need not dwell on their careers or qualities in any detail; they are familiar to our readers. Of Lord Hannen it may suffice to say that no other judge in England could have presided over such a stormy inquest with anything like dignity, strength and temper that he displayed. Mr. Justice Smith hardly spoke during the proceedings; and Mr. Justice Day never spoke at all, but sat from morning to night patiently sucking his quill. These learned judges observed, however, although they did not speak, and we may be sure that they bore their part in the preparation of the report. The case for the "Times" was opened by Sir

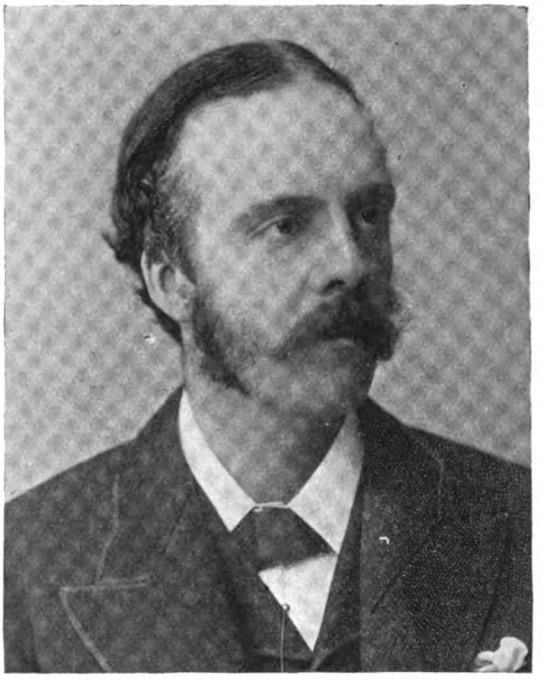
Richard Webster, in a speech of interminable length, and far from striking lucidity. Then came the evidence for the prosecution — files upon files of Irish and American newspapers, to connect the home and the transatlantic wings of the Parnellite movement; and then troops of Irish peasants to speak to the terrorism which had prevented them from paying rents, and to the boycotting and the outrages which the "Times" maintained had "dogged the steps of the Land League." A strange sight it was, this succession of Irish peasants, imperfectly acquainted with the English language (Mr. Murphy, Q. C., a son of the Emerald Isle, is reported, by the way, to have been taken into the case by the "Times" not only or chiefly because of his great gifts as an advocate, but in order to facilitate the examination and cross-examination of these troublesome witnesses), scarcely knowing where they were, or for what purpose, and yet touched with a keen sense of the humor of the situation. After this part of the case had been completed, Major Le Caron, with whose "Twenty Years in the Secret Service" American readers are doubtless familiar, appeared on the scene. His evidence was designed to connect Mr. Parnell and his followers with the Clanna-Gael movement. He was cross-examined at great length, and with ability, by Sir Charles Russell, the leading counsel for Mr. Parnell; and since the elevation of Sir Henry Hawkins to the Bench, the greatest cross-examiner at the English Bar. But "the Major" was a match for his adversary, and it is said that as he left the witness box Sir George Lewis, the well known solicitor who was acting for Mr. Parnell, said: "I should like to have tackled that gentleman myself."

Sir Charles Russell's solatium for his defeat by Major Le Caron was not, however, long in coming. After a brief cross-examination of the late Mr. Macdonald, the manager of the "Times," by Mr. Asquith, Home Secretary under the Gladstone government of 1892 (the first forensic honors, it may be observed, that Mr. Asquith won), the famous or infamous Richard Pigott, from whom the "Times" bought the alleged Parnell letter, and several supplementary letters, for sums amounting to £2,520, was called upon to testify. The cross-examination of this witness, by Sir Charles Russell, was a masterpiece. No speech can give any idea of it. The forgery was exposed, and the forger made good his escape to Madrid, where he blew out his brains to prevent his arrest and extradition. The "Times" proposed, it is understood, to fortify the evidence of Pigott by expert testimony as to the genuineness of the Parnell letters. Fortunately for their professional reputation, however, these gentlemen were not called; and the "Times" withdrew the charges based on the letters, and apologized. Immediately there was a wild outcry that the work of the Commission was over. *Solvuntur tabulae risu!* But the judges thought differently, and pursued their even way. The subsequent course of the inquiry was not disturbed by many startling incidents. Sir Charles Russell's "opening" for the Irish members is as well known in America as it is in England. It received (and deserved) Lord Hannen's encomium, sent down in a pencil note to Sir Charles Russell as he resumed his seat after repelling the "Times's" "indictment against a nation": "a speech worthy of the occasion." Considerable interest of course attached to Mr. Parnell's evidence. He was briefly examined in "chief" by Mr. Asquith, and then passed through the ordeal of a three or four days' cross-examination by the Attorney-General. Sir Richard Webster, it must be admitted, went some way towards eclipsing the Pigott episode in his contest with the great Irish leader, and the Unionist journals seized eagerly on the admission which was extracted from him that he had on one occasion endeavored to "deceive the House of Commons." The only other dramatic scene was the withdrawal of Sir Charles

Russell (to whose imperious temper Lord Hannen had found it necessary to administer repeated correction), and the other counsel for the Irish members, from the inquiry, which soon afterwards closed. The report was published on the 13th Feb., 1890. The findings, from which it is needless to say that Liberals and Conservatives draw very different inferences, were as follow: —

I. We find that the respondent members of Parliament collectively were not members of a conspiracy having for its object to establish the absolute independence of Ireland, but we find that some of them, together with Mr. Davitt, established and joined in the Land League organization with the intention by its means to bring about the absolute independence of Ireland as a separate nation. The names of those respondents are set out on a previous page.

II. We find that the respondents did enter into a conspiracy by a system of coercion and intimidation to promote an agrarian agitation against the payment of agricultural rents, for the purpose of impoverishing and expelling from the country the Irish landlords who were styled the "English Garrison."



THE RIGHT HON. A. J. BALFOUR.

III. We find that the charge that "when on certain occasions they thought it politic to denounce, and did denounce certain crimes in public they afterwards led their supporters to believe such denunciations were not sincere" is not established. We entirely acquit Mr. Parnell and the other respondents of the charge of insincerity in their denunciation of the Phœnix Park murders, and find that the "facsimile" letter on which this charge was chiefly based as against Mr. Parnell is a forgery,

IV. We find that the respondents did disseminate the "Irish World" and other newspapers tending to incite to sedition and the commission of other crime.

V. We find that the respondents did not directly incite persons to the commission of crime other than intimidation, but that they did incite to intimidation, and that the consequence of that incitement was that crime and outrage were committed by the persons incited. We find that it has not been proved that the respondents made payments for the purpose of inciting persons to commit crime.

VI. We find as to the allegation that the respondents did nothing to prevent crime and expressed no *bona fide* disapproval, that some of the respondents, and in particular Mr. Davitt, did express *bona fide* disapproval of crime and outrage, but that the respondents did not denounce the system of intimidation which led to crime and outrage, but persisted in it with knowledge of its effect.

VII. We find that the respondents did defend persons charged with agrarian crime, and supported their families, but that it has not been proved that they subscribed to testimonials for, or were intimately associated with, notorious criminals, or that they made payments to procure the escape of criminals from justice.

VIII. We find, as to the allegation that the respondents made payments to compensate persons who had been injured in the commission of crime, that they did make such payments.

IX. As to the allegation that the respondents invited the assistance and co-operation of and accepted subscriptions of money from known advocates of crime and the use of dynamite, we find that the respondents did invite the assistance and co-operation of and accepted subscriptions of money from Patrick Ford, a known advocate of crime and the use of dynamite, but that it has not been proved that the respondents or any of them knew that the Clan-na-Gael controlled the League or was collecting money for the Parliamentary Fund. It has been proved that

the respondents invited and obtained the assistance and co-operation of the Physical Force Party in America, including the Clan-na-Gael, and in order to obtain that assistance, abstained from repudiating or condemning the action of that party.

There remain three specific charges against Mr. Parnell, namely: —

(*a*) "That at the time of the Kilmainham negotiations Mr. Parnell knew that Sheridan and Boyton had been organizing outrage, and therefore wished to use them to put down outrage."

We find that this charge has not been proved.

(*b*) "That Mr. Parnell was intimate with the leading Invincibles, that he probably learned from them what they were about when he was released on parole in April, 1882, and that he recognized the Phœnix Park murders as their handiwork."

We find that there is no foundation for this charge.

We have already stated that the Invincibles were not a branch of the Land League.

(*c*) "That Mr. Parnell on 23d January, 1883, by an opportune remittance enabled F. Byrne to escape from justice to France."

We find that Mr. Parnell did not make any remittance to enable F. Byrne to escape from justice.

The two special charges against Mr. Davitt, viz.: (*a*) "That he was a member of the Fenian organization, and convicted as such, and that he assisted in the formation of the Land League with money which had been contributed for the purpose of outrage and crime"; (*b*) "That he was in close and intimate association with the party of violence in America, and was mainly instrumental in bringing about the alliance between that party and the Parnellite and Home Rule party in America"; are based on passages in "The Times" leading articles of the 7th and 14th March, 1887. "The new movement was appropriately started by Fenians out of Fenian funds; its 'father' is Michael Davitt, a convicted Fenian." "That Mr. Parnell's 'constitutional organization' was planned by Fenian brains, founded on a Fenian loan, and reared by Fenian hands."

We have shown in the course of the report that Mr. Davitt was a member of the Fenian organization, and convicted as such, and that he received money from a fund which had been contributed for the purpose of outrage and crime — viz., the Skirmishing Fund. It was not, however, for the formation of the Land League itself, but for the promotion of the agitation which led up to it. We have also shown that Mr. Davitt returned the money out of his own resources.

With regard to the further allegation that he was in close and intimate association with the party of violence in America, and mainly instrumental in bringing about the alliance between that party and the Parnellite and Home Rule party in America, we find that he was in such close and intimate association for the purpose of bringing about, and that he was mainly instrumental in bringing about the alliance referred to.

The sequel is soon told. The report was laid on the table of the House of Commons, and, after a debate of the utmost bitterness, was entered on the journals of Parliament by 321 to 259. After another debate of the same character in the House of Lords, a similar resolution was carried without a division. Mr. Parnell then sued the "Times" for libel, and obtained £1000 damages by consent, and the judge's report took its place among the national Blue Books. It is said that Sir Charles Russell made £10,000 out of the commission, and Sir Richard Webster must have made at least double that amount; and the cost of the whole business to the "Times" has been roughly estimated at from £150,000 to £250,000. The house of Walter was not, however, broken by its losses, and the Conservative Englishman still has his political opinions served up hot (with the breakfast rolls) every morning from the columns of the "Times." It is fair to add that Sir Richard Webster, whose conduct of the "Times" case had been so bitterly attacked both in Parliament and out of it, received a perfect ovation at the annual meeting of the Bar, soon after the debate on the report; and a vote of confidence in his professional honor, moved by Mr. Samuel Pope, Q.C., an ardent Gladstonian and leader of the Parliamentary Bar, was carried with acclamation.

LEX.

OLD-WORLD TRIALS.

V.

THE TRIAL OF WILLIAM DOVE.

BEFORE the murder by Palmer of John Parsons Cook, poisoning by strychnia was, forensically speaking, almost unknown. There had been a shrewd suspicion that Miss Abercromby, whose death formed the subject of incidental inquiry in Wainsright *v.* Bland (1 Meeson & Welsby 32), had succumbed to this deadly alkaloid; and one of two cases of poisoning by vermin-killer powders, of which strychnine is nearly always a constituent, had occurred. But poisoning as a fine art had made comparatively slight advances since the days of the Marchioness of Brinvilliers, and arsenic, opium and antimony seemed to exhaust the ingenuity of criminals. Now, although Lord Campbell in passing sentence of death upon Palmer had said, "I hope that this terrible example will defer others from committing such atrocious crimes, and that it will be seen, whatever art or experience or caution may accomplish, that such an offense will surely be detected and punished," the inference which was vulgarly drawn from the Rugeley murders was of a precisely opposite character. The one fact which seemed to have impressed the public mind was that chemical analysis had not, and, as some said in their haste, could not reveal the presence of strychnine, and Palmer's conviction was attributed partly to the suicidal folly of which he had been guilty, partly to the splendid advocacy of Cockburn. The mistaken assumption that "there was no test for strychnia" both brought about and was removed by the *cause célèbre* of the Queen *v.* William Dove.

The prisoner was the son of a Mr. Christopher Dove, a leather manufacturer in Leeds, who died at Christmas, 1854, leaving his son an income of £90 a year, on which he lived. He was brought up as a farmer, but at the time when his wife died was without employment. Mrs. Dove was the daughter of equally respectable parents: her father was a leather merchant at Plymouth, named Jenkins, and her brother had married the sister of the prisoner. Dove was addicted to drink; his wife was a sickly, delicate woman, who was — to use his own language — a considerable "cost to him in doctors' bills"; his intellectual calibre, as will appear more fully hereafter, was feeble; and he had already fallen in love with a Mrs. Whitham, a widow of highly reputable character, who neither did nor said anything to encourage his advances. On 2d January, 1856, the adjourned inquest was held on the body of Cook who, as our readers are aware, had been poisoned by William Palmer in the preceding November; and on the 3d or 4th the papers proclaimed in every home in England, the news that Dr. Taylor and Dr. Rees had failed to find strychnia in the body of the murdered man. Dove read this and commented upon it to a person named Harrison, a soothsayer whom he had got into the habit of consulting. Forthwith he discovered that his house was infested with rats, purchased at first ten, and soon afterwards five grains of strychnia, and announced that he had reason to believe that Mrs. Dove would not long survive the month of February, 1856. Sure enough, after a few preliminary attacks of the same character, she died on the first of March with all the peculiar symptoms of poisoning by strychnia. By violently resisting a post-mortem examination, and falsely asserting that he did so in deference to the wishes of his late wife, Dove succeeded in attracting attention to himself and was duly arrested.

The reed on which he had leaned as on a staff broke in his hands. Not only were Mrs. Dove's symptoms those of strychnia poisoning, but each of five different chemical tests applied to the contents of her stomach and intestines yielded unmistakable evidence of the presence of the same subtle and fatal agent. The strychnia extracted from her body was administered to mice and rabbits. They died with tetanic convulsions. Moreover a spaniel dog, which licked up a small clot of her blood that had fallen on the floor at the postmortem examination, died within an hour from the tetanus of strychnia.

Dove was tried before Mr. Baron Bramwell at York on the 16th, 17th, 18th and 19th of July, 1856. The only possible defence was insanity, and insanity of that peculiar type which is known as homicidal monomania. The evidence in support of it may shortly be summarized as follows: The prisoner's nurse deposed that "he would keep her in his bedroom with his back to the door, grinning and screaming; and would lock a lighted candle up in a basket in the closet." He was sent to school but could not be taught. As an apprentice to a farmer, a Mr. Frankish, he rubbed sulphuric acid upon some cows and calves, blinded two cats and put phosphorus upon others. After leaving Mr. Frankish he went to America for two years, and the same accounts of him arrived as had been before received. His very father looked upon him as a fool, and left him £90 a year to be paid by trustees in weekly allowances. The prisoner then took a farm, in the management of which he was guilty of a variety of extravagances. He would chain a bull-dog to a table, plant apple trees the one day and pull them up the next, mutter to himself, rise at midnight and go to Leeds, tell absurd tales of what he was worth, and complain of noises in the house. At one time the prisoner was found with a pistol threatening to shoot his father. At other times he went about with a carving knife and a bottle of laudanum, menacing the life of Mrs. Dove. He would give his servants notice to quit by an attorney's letter. A schoolmaster who knew him found him one day lying across the ruts of the road. He had been weeping and would neither answer nor rise. Again, he is seen galloping about followed by a troop of boys at Oxford. On another occasion, having seen another man reaping his corn, which was ripe, he went and reaped his own, which was green, because, he said, he would not be behindhand. Finally, while Dove was in York Castle gaol, a report came to the Governor's ears that he had a knife about him, and he was therefore searched. In that search there was found concealed, sewed up in his clothes, a letter written in blood, to the devil, to whom he thought that he had sold his soul. It was in the following terms: —

"*Dear Devil:* If you will get me clear at the assizes and let me have the enjoyment of life, health, wealth, tobacco here, more food and better, and my wishes granted till I am 60, come to me to-night.

I remain, your faithful subject,

WILLIAM DOVE."

Prima facie this was a strong case. But it weakened considerably in the proving. In the first place there was no doubt that Dove both intended to commit, and knew that he was in fact committing murder; again he was afraid of punishment, and only went on with his criminal designs because he believed punishment to be avoidable. In the next place, the letter to the devil, which was the strongest proof of insanity, was *ex post facto*, and might well be fictitious evidence. Once more, none of the witnesses for the prosecution, who were about Dove during the critical period, were cross-examined as to his mental state. Finally, we live in a world of insane people, and it is of the utmost moment that the restraints which the sanctions of the law impose upon them should not be lightly shaken or removed.

Dove was found guilty, with a recommendation to mercy on the ground of his defective intellect, which was not attended to. He suffered the last penalty of the law, and as Palmer's trial forever prevented the symptoms of idiopathic or traumatic tetanus from being confounded with those of strychnia poisoning, so the trial of Dove finally dissipated the delusion that the latest and deadliest of the alkaloids defied the resources of chemical analysis.

* * *

TWICE IN JEOPARDY.

By Frank B. Livingstone.

HAS the Legislature of Massachusetts a right to make a law, permitting the Commonwealth or prosecution, in criminal cases, to allege exceptions and make a motion for a new trial, based upon any material irregularity in the course of the proceedings, such as defects in summoning or impanelling the jury, the misconduct of the jury, misrulings or misdirections of the court, the discovery of new and material evidence, etc., and if the law court sustained the exceptions or motion, to have the prisoner held a second time for trial? In other words, would a law allowing a person, for some good reason or reasons, to be put twice in jeopardy for the same offense, be constitutional? My answer is, the Legislature has a right to make such a law, and that it would be constitutional.

It is a maxim of the common law that "no man is to be brought into jeopardy of his life or limb more than once for the same offense"; and courts of justice in Massachusetts, and in some of the other States, have recognized it, and acted upon it, without any constitutional provision. That, however, does not prevent the Legislature from passing a negative statute, *i. e.*, one which would declare that the maxim has no force. The only thing that can prevent the Legislature from passing such a law would be a constitutional provision, and, beyond question, the Constitution of Massachusetts contains no such provision.

You say "the Constitution of the United States provides for such cases." The original Constitution does not. You may go still further, and say "the first ten amendments contain a Bill of Rights, and that a part of Article V. of said amendments reads, 'nor shall any person be subject for the same offense, to be twice put in jeopardy of life or limb'; and the Constitution provides that 'Amendments shall be valid, to all intents and purposes, as part of this Constitution, when ratified'; and the sixth article of the Constitution declares that 'the Constitution shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.'"

These statements are all literally correct, but the courts of last resort in most of the States have decided that the following amendments, adopted at the first session of Congress, which met in New York City, A.D. 1789, are restrictions upon the powers of the general government only, and not upon those of States.

Preamble.

The conventions of a number of the States, having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the grounds of public confidence in the government will best insure the benef-

icent ends of its institution, resolved, etc. The following articles were then proposed, and were subsequently ratified by the states: —

ARTICLE 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. 2. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ART. 3. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ART. 4. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ART. 5. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ART. 6. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ART. 7. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by jury, shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

ART. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ART. 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the State respectively, or to the people.

The first time the question, whether the above amendments were restrictions upon the States or only upon the United States, came before the courts, was in New York, in the year A. D. 1820.[1] Chief Justice Spencer, in speaking of that part of the fifth article of the amendments, which reads, "Nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb," says, "I am inclined to the opinion that the article in question does extend to all judicial tribunals in the United States, whether constituted by the Congress of the United Stat s or the individual States. The provision is general in its nature, and unrestricted in its terms; and the sixth article of the Constitution declares that the Constitution shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." This apparently seemed to be sound law, and in Mississippi, A. D. 1823,[2] Justice Ellis, deciding the same question, says, "It was properly admitted in argument that this provision of the Constitution was binding in the United States, as well as the State courts of the Union, for I take it, it has never been questioned but that the Constitution of the United States is the paramount law of the land, any law, usage

[1] People *v.* Goodwin, 18 Johnson, 187.
[2] State *v.* Moor, Walker, 134.

or custom of the several States to the contrary notwithstanding."

Later decisions prove the assumption, in the above cases, to be an error. In 1824, in New York,[1] it was thus held by the Court: "The provision of the Constitution of the United States, that 'cruel and unusual punishments shall not be inflicted,' is a restriction upon the national government only, and does not limit the powers of the State." Again, in New York, A.D. 1831,[2] Chancellor Walworth says, "I have had occasion to examine the question how far these amendments of the Constitution of the United States were restrictive upon the power of the individual States; and the conclusion at which I arrived is, that all the amendments adopted by Congress at its first session, and afterwards sanctioned by the requisite number of States, were intended to be restrictive upon the government of the United States and upon its officers exclusively." In Kentucky, A.D. 1829, it was held,[3] that "Article IV. of the amendments to the Constitution of the United States has no application to proceedings under the authority of States." In Vermont, in the year A.D. 1836,[4] Article VII. of the amendments of the national Constitution was held to "establish a limitation to the mode of trial in the Federal courts, but not in the State courts."

In the first case in Massachusetts touching the question,[1] the Court says: "It has been established by the highest authority, that those amendments of the Constitution of the United States which contain no expression indicative of an intention to apply them to the State governments, are restrictions upon the government of the United States only." This case is supported by other Massachusetts cases.[2] The Supreme Court of the United States has also held the same to be the law,[3] and likewise the courts of Connecticut[4] and other States.[5]

From the above authorities, it is quite clear that the first ten amendments to the Constitution of the United States are not restrictions upon the powers of States. The Constitution of the State of Massachusetts contains no provision that a person shall not be subject, for the same offense, to be 'twice put in jeopardy of life or limb.' I, therefore, draw my conclusion, that, since the amendment of the Constitution of the United States does not apply, and the State Constitution does not forbid it, the Legislature of Massachusetts has a right to pass a law that, for some good reason or reasons, may compel a person to be put "twice in jeopardy" for the same offense, and that such a law would be constitutional.

[1] Barker *v.* The People, 3 Cowen, 686.

[2] Livingston *v.* Mayor of New York, 8 Wendell, 85.

[3] Reed *v.* Rice, 2 J. J. Marshall, 44.

[4] State *v.* Keys, 8 Vermont, 57.

[1] Commonwealth *v.* Hitchings, 71 Mass. 485.

[2] Jones *v.* Robbins, 74 Mass. 329; Commonwealth *v.* Whitney, 108 Mass. 5.

[3] Barn *v.* Mayor of Baltimore, 7 Pet. (U. S.) 243; Withers *v.* Buckley, 20 How. (U. S.) 84.

[4] J. Hollister *v.* The Union Co. 9 Conn. 436.

[5] Weimer *v.* Bunbury, 30 Mich. 201; Prescott *v.* State, 19 Ohio St. 184.

SOME THINGS ABOUT THEATRES.

III.

By R. Vashon Rogers.

NOW let us consider a few of the results of the contests when Greek has met Greek — when actors and managers have been at loggerheads.

The proprietor of a theatre, or the manager of a troupe, cannot send a performer to jail because he will not play nor sing, neither can he compel him to do his duty; he apparently can only recover damages against him for breach of contract. The proprietors of Covent Garden Theatre agreed with Kean, the actor, that he should play for twenty-four nights during a certain period at £50 per night, and that meanwhile he should not perform anywhere else in London. Kean cut up rusty; and the Vice-Chancellor considered his high court powerless in the matter; that as it could not enforce the positive part of the contract, it therefore would not restrain by injunction a breach of the negative part. His Lordship thought that if Kean refused to act, sequestration was out of the question, and that a man could not be sent to the Fleet for refusing to act; so he decided to leave the complainants to their remedy at law and not interfere by giving the partial relief and preventing Kean performing elsewhere. (Kemble *v.* Kean, 6 Sim. 334.) This was in 1828. A few years afterwards the same learned Judge admitted that the court might execute a negative contract; he said he remembered a case in which a nephew wished to go on the stage, and his uncle gave him a sum of money in consideration of his covenanting not to perform within a certain district; that, he remarked, was a covenant which the court would execute on the ground that a valuable consideration had been given for it. (Kimberly *v.* Jennings, 6 Sim. 340.) The law remained for some time uncertain as to whether or no one could, by injunction, compel a player not to play in any place but where he had agreed to act. However, at last Lord St. Leonards settled the dispute and established the principle that the court may enforce the negative part of an agreement by an injunction, although the affirmative part is of such a nature that it cannot be specifically enforced by decree. Mlle. Wagner had closed an engagement to sing at Lumley's Theatre and not to sing at any other; however, with the fickleness with which the angelic sex is usually credited, she soon wanted to sing at Mr. Gye's theatre. The Lord Chancellor put his foot down and restrained her from going to Gye's, although all the king's horses and all the king's men could not make her sing at Lumley's. His Lordship said, "The case is a mixed one, consisting not of two correlatives to be done, one by the plaintiff and the other by the defendant, but of an act to be done by the defendent alone, to which is superadded a negative stipulation on her part to abstain from the commission of any act which will break in upon her affirmative covenant, the one being auxiliary to, concurrent and operating with the other. This agreement to sing for the plaintiff during three months at his theatre, and during that time not to sing for anybody else, is not a correlative contract, it is in effect one contract. The engagement to perform at one theatre must necessarily exclude the right to perform at another theatre." (Lumley *v.* Wagner, 1 D. M. & G. at page 618.) His Lordship agreed with the dictum that a person cannot be in two places at once, unless she is a bird, and Mlle. Wagner was neither a Swed-

ish Nightingale nor a Black Swan. Actors now seem to be of such importance that even though there is no agreement on their part not to perform elsewhere, still the courts will not let them do so during an engagement. Dillon, having agreed to perform at Sadler's Wells in certain characters for twelve successive nights, proposed to perform during the same period at another theatre. Sir W. Page Wood granted an injunction restraining him from acting at any other place than the plaintiff's theatre, during the ordinary hours of performance there for twelve consecutive nights. Sir R. Malins, V.C., went so far as to say that if a proprietor engages an actor to perform for him, the actor is not, because he is only wanted for three nights in the week, to be at liberty to go and perform at any other theatre during the other three nights, and thereby take away the advantage of the contract he has entered into with his employer. This opinion was enunciated when C. P. Flockton wished to play Polonius in Hamlet at the Crystal Palace ere his time was up at the Globe Theatre. In his agreement with the Globe managers to do the old man and character business there was no negative clause restricting him from performing elsewhere; yet the V.C. would not let him go, although the performances at the Palace were in the day and would not necessarily interfere with those at the Globe, which were at night. He considered that a man agreeing to act in one particular theatre during the season is a party to a contract that he will act there and not anywhere else: and said that contract is as necessarily implied as if it had been plainly expressed; the amiable judge, however, seemed anxious to soothe the feelings of the disappointed would-be Polonius, and so said in his judgment: "I must treat Mr. Flockton as if he were the greatest actor in the world, and as if wherever he went the public would run after him" (Montague *v.* Flockton, L.R. 16 Eq. 189).

The American courts seem to have wobbled in this matter after much the same fashion as their English contemporaries. Now, however, there seems to be no doubt that the managers may restrain an actor breaking his agreement and acting elsewhere whereever there is a negative clause. In fact it has been held that where the question is between different theatres in the same city, and a leading actor breaks his engagement with his manager and goes over to a rival establishment, without doubt an injunction will be granted whether the covenant not to play elsewhere is present or absent. (Colwell *v.* Cline, 8 Mart. (N.S.) 694; High on Injunctions, 2d Ed. Sec. 1666; 12 Cent. Law J. 391.)

The courts are unwilling that talents should be hid under a bushel, and will not sympathize with a manager who for any reason wishes his employees to have perpetual holiday. Mr. Fechter engaged Mr. Montgomery, who had been a provincial actor and desired to appear on the London boards, to perform Shakespeare's characters. Fechter kept Montgomery idle for five months, only requiring him to draw and spend his salary. Montgomery thought he was destined to be a star, he wished to work and shine, not to twinkle in the dark and be idle; so after the five months of perfect idleness, and as apparently Fechter might be going to keep him unemployed for another five months, Montgomery would not submit, but struck and broke his engagement. Then the manager rushed into court and asked for an injunction to restrain the active-minded actor; but the Master of the Rolls considered that Fechter had broken his part of the agreement and so would not hold Montgomery to his. He said there was mutuality in the agreement entered into on both sides: on the one side, that the actor should have an opportunity of displaying what his abilities and talents were before a London audience, and on the other side, that he should not act elsewhere unless with the permission of the manager. (33 Beav. 22.)

Mlle. Johanna Wagner was not satisfied with the advertising she received in the action brought against her by Mr. Lumley, nor was she obedient to the order of Lord St. Leonards: she still wished to go to Gye's, and Mr. Gye still held out inducements; Lumley's story was that Gye, knowing that Mlle. Johanna was engaged to perform at the Queen's Theatre for a certain time, and that she had promised not to sing or use her talents elsewhere during the term without the plaintiff's written consent, yet he (Gye), maliciously intending to injure the plaintiff in his business, enticed and procured Johanna to refuse to perform for plaintiff. The Court of Queen's Bench considered this malicious conduct of Gye's, and decided that Gye might be sued and that an action is maintainable for maliciously procuring one to break his contract to give exclusive personal services for a time certain, equally whether the employment has commenced or is only *in fieri*, providing the procurement is during the subsistence of the contract, and produces damage. (Lumley *v.* Gye, 2 E. & B. 216.)

The question as to whether attending rehearsals is essential, was considered in the dispute between Mr. Gye, the director of the Royal Italian Opera, London, already referred to, and Signor Bettini, of Milan. These gentlemen had agreed that the latter should undertake the part of first tenor in theatres, halls and drawing-rooms for Mr. Gye; that he should not sing anywhere out of the theatre in the United Kingdom during the engagement, without Gye's permission, except at places more than fifty miles from London and out of the season of the theatre. He also agreed to be in London without fail at least six days before the commencement of his engagement, for the purpose of rehearsals. A temporary indisposition prevented the singer's arrival in London until two days before his public appearance; so Gye would have naught to do with him and said the agreement was off. The Signor, however, took legal advice, and the matter coming, on a demurrer, before Blackburn, Quain and Archibald, JJ., the first-named gentleman said: "As far as we can see, the failure to attend at rehearsals during the six days could only affect the theatrical performances, and perhaps singing in duets or concerted pieces during the first week or fortnight of the engagement, which is to sing in theatres, halls and drawing-rooms and concerts for fifteen weeks. We think therefore, that it does not go to the root of the matter so as to require us to consider it a condition precedent." The Italian therefore got the favorable judgment of the court, and Mr. Gye was left to seek redress by a cross-action for damages. (For the sake of the profession we hope he sought them.) (Bettini *vs.* Gye, 1. Q.B.D. 183.) The same court, a very few weeks afterwards, found that the failure of Madame Poussard to be ready to perform at the appointed time, through a serious illness of uncertain duration, went so much to the root of the consideration that the cancellation of her engagement at the Criterion, by her employers, was justifiable. This artiste was engaged by the world-wide Spiers & Pond to play Friquette in Lecocq's opera of "Les Prés Saint Gervais," for three months (providing the opera should run so long), at £11 per week (requisite dresses and tights being furnished by the management). Madame got up her part and attended rehearsals; there was delay in bringing out the play, and unfortunately, some five days before the opening night, she was taken ill and had to go to bed. There was a consultation between the parties concerned, but the witnesses, of course, differed as to what was agreed thereat, However, Miss Lewis was engaged to study up the part and be ready to play if Madame should still be *hors de combat.* Madame was unable to attend either the final rehearsals or the first night of the performance, so Miss Lewis appeared. The opera was a success. After the fourth night Madame Poussard recovered and offered to

take her place, but as Spiers and Pond refused to allow her, an action was brought by her husband. The jury sympathized with the poor woman, and said she ought to have £83 damages, as non-attendance on the night of the opening was not of such material consequence to the theatre people as to entitle them to rescind the contract. The Court, however, and Mr. Blackburn was again the spokesman, differed from the gentlemen of the jury, and thought that, from the nature of the engagement to take a leading, and indeed the principal part (for the prima donna sang in male costume as the Prince de Conti) in a new opera, which it was known might run for a longer or shorter time, and so be a profitable or losing concern to the defendants, they could (without the aid of the jury) see that it must have been of great importance to the defendants that the piece should start well, and consequently that the failure of Madame Poussard to be able to perform on the opening and early performances was a very serious detriment to them. The Judge further remarked that this inability having been occasioned by sickness was not any breach of contract by the plaintiff, and no action could lie against him or his wife for the failure thus occasioned, but the damage to the defendants and the consequent failure of consideration was just as great as if it had been occasioned by the plaintiff's fault instead of his wife's indisposition. So judgment was given for Spiers & Pond. (Poussard *v.* Spiers, 1 Q.B.D. 410.) The Exchequer Court had previously expressed a similar opinion as to the non-liability of a party for breaking a professional engagement on account of illness. Arabella Goddard had engaged to play the piano at a concert for one Robinson; sickness prevented her; Robinson sued for damages: the contract said nothing as to what was to happen in case of illness: the Court held her excused, such a contract being in its nature not absolute but conditional upon ability to perform. (Robinson *v.* Davison, L.R. 6 Ex. 269.) Similarly where Caldwell agreed to provide Taylor with a room in a music hall for a particular occasion, the building having gone up in smoke before the time, when the Court would not hold Caldwell liable. (3 B. & S. 826.) An action cannot be maintained against a dancer for non-performance of her agreement to exhibit her skill in the terpsichorean art on the boards of a London theatre if, at the time when she should have made her pirouettes, the theatre was unlicensed. (Gallini *v.* Laborie, 5 L.R. 242.)

Actors and actresses must walk circumspectly around the back premises of the theatre and must beware of man-traps. If one fall through an opening in the floor, the judge may say to him what Erle J. said to Seymour, who, at the Princess Theatre, London, was grievously bruised and injured by falling through an unlighted, unguarded hole in the passage near the dressing-room: "A person must make his own choice whether he will accept employment on premises in this (bad) condition; and if he do accept such employment, he must also make his choice whether he will pass along the floor in the dark or carry a light. If he sustain injury in consequence of the premises not being lighted, he has no right of action against the master, who has not contracted that the floor should be lighted. (Seymour *v.* Maddox, 16 A. & E. [N.S.] 327.)

A performer who is called on to resume, in consequence of the illness of another, a part in which by previous performances she had acquired celebrity, is entitled to reasonable notice before the time of the performance; and such notice should be proportioned to the reputation at stake. (Graddon *v.* Price, 2 C. & P. 610.)

In New York it has been held that a law forbidding the opening of theatres on Sunday is quite constitutional; and on the other ocean it has been decided that theatricals are among the "barbarous and

noisy amusements" forbidden on the Lord's day. (Lindenmuller *v.* People, 33 Barb. 548; People *v.* McGuire, 26 Cal. 635.) We have seen above how Sunday plays were objected to in the olden time in both Scotland and England.

THE COURT OF STAR CHAMBER.

VI.

By John D. Lindsay.

A CASE which has been regarded as an example of the oppression of the Star Chamber, is the prosecution of Sir John Hollis, Sir John Wentworth and Mr. Lumsden in the same reign. The late Justice Stephen has cited it as an instance in which the court grossly exaggerated the supposed offense, and created a great crime out of a very small matter, and after narrating what he evidently supposes was the real cause and complaint, says: "It is difficult to see how this could be regarded as in any sense criminal conduct."

Let us examine the facts as they really existed, and see whether after all, the persons prosecuted had not done enough to render them technically liable to judicial discipline even at this day.

Richard Weston, one of the conspirators in the poisoning of Sir Thomas Overbury in the Tower, had been convicted, in the King's Bench, before Sir Edward Coke, then Lord Chief Justice, and sentenced to be hanged. Upon his arraignment he had at first stood mute, and for several days refused to put himself upon trial according to the method prescribed by law, but finally, after much persuasion, he was prevailed upon to take his trial. The evidence left no ground for doubt of his guilty and active participation in one of the most dastardly and cowardly murders known to history.

After sentence had been passed upon him Weston sent for Sir Thomas Overbury's father, "and, falling down upon his knees, with great remorse and compunction, asked his forgiveness. Afterwards, again of his own notion, desired to have his like prayer of forgiveness recommended to his mother who was absent. And at both times, out of the abundance of his heart, confessed that he was to die justly, and that he was worthy of death." When upon the gallows, even at the point of death he again publicly affirmed that he was guilty and that he had been "justly and honorably dealt with."

Lumsden, according to Sir Francis Bacon, then Attorney-General, between Weston's standing mute and his trial, took upon himself to prepare in writing "a most false, odious and libellous relation" of the proceedings, and delivered it to one of the officers of the palace to be put into the King's own hands, "in which writing he doth falsify and pervert all that was done the first day of the arraignment of Weston; turning the pike and point of his imputations principally upon" Lord Chief Justice Coke.

Wentworth and Hollis had offended in a different way. At Weston's execution these gentlemen with others rode up on horseback in an officious manner, pushed themselves forward to the scaffold, and proceeded to question Weston as to his guilt. Wentworth asked him directly whether he did poison Overbury or no. Weston answered merely that he did him wrong, and turning to the sheriff said, "You promised me that I should not be troubled at this time." Nevertheless Wentworth pressed him to answer, saying that he desired to know, that he might pray with him. Weston refused

to satisfy his questions and said, "I die not unworthily, my Lord Chief Justice hath my mind under my hand, and he is an honorable and just judge." Hollis meanwhile stood by, not himself questioning, but urging Weston to discharge his conscience and satisfy the world. When they found they were unable to work upon Weston further, they turned away, and Hollis in indignation exclaimed that he was sorry for such a conclusion, that was to have the state honored or justified. Hollis's offense was aggravated, for he had publicly announced on the day the verdict was given that if he were of the jury he would doubt what to do. Stephen says, "It is difficult to see how this could be regarded as in any sense criminal conduct; but it seems to have been thought that Wentworth's question and Hollis's remarks remotely implied that Weston's guilt might perhaps be not absolutely certain notwithstanding his conviction." This is indeed a very liberal view of the matter. A careful consideration of the case would likely result in a different opinion.[1]

[1] Shiel, in his sketches of the Irish Bar, in speaking of the custom of the Irish peasants of a century ago, of urging condemned criminals to confess, says: "In cases exciting any unusual interest, no sooner is a convicted person handed over to the executioner, than he is beset on all sides with entreaties to make what is called a last satisfaction to justice and to the public mind, by an open confession of his guilt. As between the convict and the law such a proceeding is utterly nugatory. If he denies his guilt, he is not believed; if he admits it, he only admits a fact so conclusively established as to every practical purpose that any supplemental corroboration is superfluous. If the verdict of a jury required the sanction of a confession, no sentence could be justifiably executed in any case where that sanction was withheld.

"But this could not be. In submitting the question of guilt or innocence to the process of a public trial we apply the most efficacious method that our laws have been able to devise for the discovery of the truth. The result, like that of all other questions depending upon human testimony, may be erroneous. The condemned may be a martyr, for juries are fallible; but for the purposes of society their verdict must be final except upon those rare occasions where its propriety is subsequently brought into doubt by new evidence emanating from a less questionable source than that of the party most interested in arraigning it. Then, as far as regards the satisfaction of the public mind with the justice of the conviction (for upon this great stress is also laid), the public should never be encouraged to require a higher degree of certainty than the law requires.

"But the practice of harassing convicts for a confession before the crowds assembled to witness their execution produces this effect: it teaches them to divert their attention from the best and only practical test of a question that should no longer be at issue, and to set a value upon a test the most deceptive that can be imagined. A voluntary admission of guilt may to be sure be depended on, but after conviction no kind of reliance can be placed upon the most solemn asseverations to the contrary. Death and eternity are dreadful things, and it is dreadful to think of wretches determined to brave them with a deliberate falsehood upon their lips; yet there are men — many — that have the nerve to do this. In Ireland it is of frequent occurrence; particularly in cases of conviction for political offenses, and more or less in all others. A regard for posthumous reputation — the false glory of being remembered as a martyr — a stubborn determination to make no concession to a system of laws that he never respected — concern for the feelings and character of relatives by whom a dying protestation of innocence is cherished, and appealed to as a bequest to the honor of a family name: these and similar motives attend the departing culprit to the final scene, and prevail to the last over every suggestion of truth and religion."

The case came on to be heard before the Lord Chamberlain, the Archbishop of Canterbury, Lord Crew, Lord Steward, Earl of Pembroke, Bishop of London, Bishop of Winton, Lord Zouch, Lord Knowles, Secretary Winwood, Chancellor of the Duchy, Sir Thomas Lake and the three Chief Justices. The proceedings seem to have been conducted with the utmost calmness and dignity.

Bacon informed against the defendant, *ore tenus*, "for a misdemeanor of a high nature tending to the defacing and scandal of justice in a great cause capital." After dwelling at some length upon the heinousness of the crime of poisoning (or "impoisonment," as he called it) and the efforts of the King to discover and punish Overbury's murderers, he reviewed the circumstances of Weston's arraignment, his stubborn refusal at first to plead, his trial and conviction, and spoke of his repeated acknowledgments of guilt.

Referring to Lumsden's gratuitous interference on behalf of Weston, he said that while Lumsden was a Scot and therefore ignorant of English laws and forms, he could

not tell "whether this doth extenuate his fault . . . or aggravate it much in respect of presumption; that he would meddle in that that he understood not." He intimated that Lumsden had been the instrument of another, and that the false report of the proceeding was another's work; "some other man's cunning wrought upon this man's boldness," he said. He argued upon the circumstance of the slanderous matter having been sent directly to the King, saying: "I note to your Lordships that this infusion of a slander into a King's ear is of all forms of libels and slanders the worst. . . . But where a King is pleased that a man shall answer for his false information, there, I say, the false information to a King exceeds in offense the false information of any other kind, being a kind (since we are in matter of poison) of impoisonment of a King's ear."

Coming to a consideration of Hollis' and Wentworth's misbehavior, he charged it to be done "to supplant his" (Weston's) "Christian resolution, and to scandalize the justice already past and perhaps to cut off the thread of that which is to come" (referring to the trials of Weston's co-conspirators). He said that the questions put to Weston were directly contrary to what had been already tried and judged in the King's Bench. Wentworth had said that he wanted to pray with Weston. "I know not," says Bacon, "that Sir John Wentworth is an ecclesiastic that he should cut any man from the communion or prayer." Of Hollis's proclaimed dissatisfaction with the evidence of Weston's guilt at the trial (which Hollis said he knew not whether it was before or after the verdict), he said, "Whether Sir John Hollis was a *pro*-juror or a *post*-juror, one was to prejudge the jury, the other was to taint them."

In conclusion he said, "Of the offense of these two gentlemen in general, your lordships must give me leave to say that it is an offense greater and more dangerous than is conceived. I know well that as we have no Spanish Inquisition nor justice in a corner, so we have no gagging of men's mouths at their death, but that they may speak freely at the last hour; but then it must come from the free motion of the party, not by temptation of questions. The questions that are to be asked ought to tend to farther revealing of their own or other's guiltiness; but to use a question in the nature of a false interrogatory to falsify that which is *res judicata*, is intolerable. For that were to erect a court or commission of review at Tyburn, against the King's Bench at Westminster. And besides it is a thing vain and idle, for if they answer according to the judgment past, it adds no credit; or if it be contrary it derogateth nothing. But yet it subjecteth the majesty of justice to popular and vulgar talk and opinion. My Lords, these are great and dangerous offenses, for if we do not maintain justice, justice will not maintain us."

Lumsden's answer to the charge against him was that he had not himself been present at the arraignment of Weston, and what he had written he had heard from others in common discourse, who, upon being demanded to justify what they had repeated, denied it. Therefore he confessed that what he had written was false, but pleaded ignorance of the law, and disclaimed any intention of prejudicing the cause of justice.

Bacon replied that Lumsden's answer and submission were modest, but that "whosoever would raise a slander and refuse to tell his author . . . that he was the author himself . . . I hold it not unworthy a gentleman to discharge his fault upon the first author: and by the law the not doing thereof maketh him the first author: so he becomes a false accuser of himself."

Wentworth admitted that he had asked the questions of Weston concerning the poisoning of Overbury. He had seen other do the same thing at the same time. Again, not being at the trial and having heard that Weston had denied his guilt, "he was desirous to be satisfied of the truth of himself;

yet he purposed not to ask any questions when he came thither: but if to ask questions of a man going to execution were offensive to the state, he did humbly submit to their Lordships' censures."

Hollis confessed having expressed his doubt of Weston's guilt at the trial, saying he had been but a by-stander and that his opinion had been drawn from him "in ordinary discourse, and that he had offended as a man perhaps more trickish and curious to give his verdict or judgment of life or death than others." He said he had gone to the execution as he had gone to many others: that he had know it to be a custom for by-standers to interrogate condemned men. As to having offended by his behavior there, he said "that Mr. Attorney had so well applied his charge against him, that though he carried the seal of a good conscience with him, he would almost make him believe that he was guilty; but he hoped their Lordships would take the bird by the body and not by the feathers." He had, he claimed, acted as he thought a Christian should act, to persuade Weston to ease his conscience, and "intended not to controvert the law and justice that had passed on him." If the court determined that he had offended, "he did humbly submit himself to their honorable censures."

Coke pronounced sentence. First dealing with Lumsden he said among other things: "He that infuseth into his Majesty's ears the least falsehood concerning his judges unjustly, is like him that infuseth never so little copper into coin; the both commit a kind of treason. . . . And for your persuasions, Mr. Lumsden, that you will not be an accuser, this is a contemptuous answer: for this is not to be an accuser, being examined of another to discover him; but your refusal in this kind of answer is a manifest contempt." Lumsden was fined two thousand marks, imprisoned in the Tower for a year, and thereafter until he should at the Kings-Bench Bar submit himself, confess his fault, and disclose the authors.

As to Hollis and Weston Coke proceeded: "If that he that is to be undone by a verdict shall not speak cross matter to a verdict (as the books of Edward III. and Edward I. are, and II. Henry IV., 53 Estophel, 137), what shall be done to him that, having no matter in a cause capital wherin he had nothing to do, would intermeddle? For as the law saith, 'Turpis est admissis rei ad fe non pertinentis.' Sir John said, that it hath been a custom to ask questions at those times, and that he did usually go to executions. For his own part, he said, that ever since he was a scholar, and had read those verses of Ovid, Trist. III., 5: —

> 'Et lupus et vulpes instant morientibus —[1]
> Et quæcunque minor nobilitate fera est,

he never did like it, and therefore he said, he did marvel much at the use of Sir John . . . I know he" (Hollis) "hath travelled many countries, speaks many languages, hath seen many manners and customs, and knows much of foreign nations; yet a little knowledge of the common law of this land would have been better for him than all these; it would have kept him from asking questions, and counselling in scandal of religion and justice, two of the main pillars of the kingdom, and that in cold blood. Evidence is above eloquence; the party himself acknowledged that he died justly, and those that saw him said that he died penitently: so to conclude, as it was sometimes said of Rome, 'et quæ tanta, fuit Romam tibi causa videndi,' he might very well now say of Sir John Hollis his going to Tyburn, with a little alteration of the words, 'et quæ tanta fuit Tyburn tibi causa videndi.'"

Hollis was fined £1000, and Wentworth 1000 marks, each was imprisoned in the Tower for a year, and compelled to make submission to the common law courts.

As far as the mere management in court of the different cases went, it cannot be denied

[1] This line is incorrectly quoted. It should be "Ut lupus et *turpes* instant morientibus ursi." Tristia, III., 5 (35-36).

that they were for the most part calm and dignified, though the strange taste and violent passions of the time give them occasionally a grotesque appearance; but the severity of the censures or sentences imposed in several instances is in these days astonishing.

LONDON LEGAL LETTER.

LONDON, July 7, 1894.

LORD RUSSELL, of Killowen, is now Chief Justice of England; he will take his seat in a day or two, and his subsequent career will be watched with intense interest. Lord Coleridge's death came very suddenly: his physical powers had abated sensibly during the last few years, but anyone who knew him would have expected his system to be capable of withstanding the effects of the chill which carried him off. The late Lord Chief Justice played a most conspicuous part in public life; without being either a very great lawyer or a very great judge, he formed a most admirable figurehead for our common law system. Mr. Crump's agitation for a Bar Association has borne some fruit after all. Sir Henry James's committee has issued its report, which proposes the formation of a general council of the Bar which would be the accredited representative of the latter. It is suggested that it should consist of the Attorney General, and the Solicitor General for the time being, and every former law officer, while remaining in actual practice at the Bar, sixteen practising barristers, of whom four are to be nominated by the masters of the branch of each of the four Inns of Court, and forty-eight practising barristers, to be elected by the whole Bar. The council to have power to appoint six additional members as it may consider desirable, by reason of their parliamentary or professional eminence, or on account of their representing any circuit or section of the Bar not adequately represented. The profession at large will watch with critical interest the early career of this new organization.

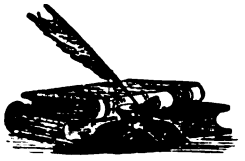
The legal teetotaler has at last asserted himself. For better or for worse there are comparatively few members of the Bar who can claim the distinction, but here and there you do find a genuine abstainer from the delights of alcohol. I think I mentioned some time ago how cordially our Inn of Court dinner men welcome a teetotaler, whose abstinence increases the allowance of wine at the disposal of his fellow diners. I must confess I have very rarely had the pleasure of dining with an abstainer in the precinct of the law, but on the rare occasions on which I have, one has never failed to admire the uncomplaining neatness with which the anchorite passed the flowing bowl and cheerfully quenched his thirst with a few sips of water. Lately a sterner breed has sprung into existence, and within the quiet halls of Grays Inn, certain students and junior barristers, smarting under a sense of injustice no longer tolerable, have approached the master of the Bench with a petition claiming that they should be supplied with non-alcoholic beverages, or in the alternative that a proportion of the sum paid for the feast — two shillings sterling — should be deducted in respect of the wine they do not drink. Out of sheer pity I should rather be inclined to distribute a few bottles of lemonade or ginger beer among these thirsty agitators, but they are not entitled to any deduction from the sum they pay for their dinners, which only defrays a portion of the expense of the food supplied, the wine and beer being presented by the Inn out of the corporate funds. However, as I say, let the teetotaler have some consideration.

We have had another anarchist trial at the Old Bailey; the prisoner was represented by Mr. Farrelly, to whom I referred in my June letter as defending an anarchist conspirator on a previous occasion. At the trial in question Mr. Farrelly succeeded in rescuing his client from the toils of the statute law directed against dabblers in explosives. There was a weak point in the chain of evidence forged by the brown authorities, and Mr. Farrelly successfully pressed this home in his powerful address to the jury, a verdict of acquittal being the result.

The weather has lately been so hot and oppressive that forensic labors have been almost unendurable.

* * *

The Lawyer's Easy Chair.



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

BY IRVING BROWNE.

CURRENT TOPICS.

WHERE DID RALEIGH DIE. — On the occasion of Lord Chief Justice Coleridge's visit to this country, he was entertained at a club house on Grand Island, in the Niagara River, a few miles below Buffalo. A feast was spread for him, and the master of the ceremonies was his lordship's host in Buffalo, an accomplished lawyer, a cultured scholar, and an influential citizen, of national reputation. It had been agreed between him and his lordship that there should be no speeches, but the other diners would not be content with this, and loudly demanded "Coleridge." Thereupon the chairman aforesaid arose, and introduced his lordship very felicitously, observing that to quote some words recently employed by a distinguished United States senator, on another momentous occasion, "The shallow murmur, but the deep are dumb," and that the deep at the head of the table must respond to the demand of the shallow at the foot. The chairman insists that he distinctly spoke of the line as a "quotation" by the senator, but at all events, nobody present, except Lord Coleridge, could for a moment have supposed that the chairman intended to attribute the authorship of that hackneyed verse to that senator, Roscoe Conkling, although perhaps the chairman, like most others present, was ignorant of the authorship. But Lord Coleridge, misunderstanding the matter, or perhaps in accordance with the not uncommon horse-play of the House of Commons on the occasion of classic or poetical quotations, affecting to misunderstand it, began substantially as follows in response: "This is a country of surprises. I have always been instructed to suppose that Sir Walter Raleigh was beheaded a good many years ago on Tower Hill, but to-day I learn that he is a present senator of the United States." A great many present thought the hit a rather rude one in the circumstances, although of course it was not so intended. Now only a few days ago the occupant of this Easy Chair read in that very delightful, although rather too gushing, book, William Winter's "Shakespeare's England," a statement that on the inner wall of St. Margaret's Church, at Westminster, is a brass tablet with an inscription to the effect that Sir Walter Raleigh was beheaded in Old Palace Yard, just outside the church, and that his remains are buried in the chancel of that church! On consulting Edward's Life of Raleigh we find this correct. He slept his last night at the Gate House, and not at the Tower. He dropped his head at Westminster instead of Tower Hill, and Lord Coleridge was a mile or two out of the way in the locality. It is always well for a critic to be sure of his *ground*, and "Physician, heal thyself" is a very wise injunction. No critic is infallible, as was exemplified in our own case, when last month we moved the great stone lion from Lucerne to Berne! We must have confused him with the Bears of Berne.

JUDGES' TERMS. — *Apropos* of Lord Coleridge, another solecism of his was recently brought to our attention by a distinguished judge of the Supreme Court of New York. This gentleman was present at the Bradlaugh trial held before his lordship, and heard his charge, in the course of which he cited a case from 17th Johnson's New York reports. His lordship invited comment and criticism from counsel, and Mr. Bradlaugh, who conducted his own cause, very respectfully called his attention to another American case. His lordship replied in his suave and grandfatherly way, that his attention had previously been called to that case, and that he could not deem it authoritative, because while he must acknowledge with deep pleasure the constant courtesy with which he had been treated in the United States, it still must be admitted that decisions in the courts of that country were not of authority in the courts of England; that this must necessarily be so for the reason that the "American" judges are elected by popular vote, and hold office for extremely short terms — in some instances only a year or so. Our New York judge was struck by this remark about the length of the judicial term in this country, and consulting the standard English authority, Whittaker's Almanac, he found that there was not at that time a single English judge, except Sir James Hannen, who had sat on the bench so long as he himself, and Sir James antedated him by only a month! The New York judge is competent for several years yet. This

remark by Lord Coleridge is very amusing when we reflect that the chief legal dignitary of England, the Lord Chancellor, goes out with his administration, and one did once go out in six months. Until 1846 all the judges of New York were appointed and held till sixty years of age. They now hold fourteen years. In many other States they have terms almost equally long. In Massachusetts (and several other States, we believe) the judiciary are appointed and hold for life or until some fixed advanced age. All the Federal judges are appointed and hold for life, and two of the chief justices together sat more than sixty years. There is one judge in that court now who has sat there more than thirty years — Mr. Justice Field, brother of the late David Dudley Field. The present chief justice of New York has sat more than twenty-four years, and another judge of the same court has been a judge twenty-eight years. Another went out of the same court a few years ago who had been a judge more than a quarter of a century. There are undoubtedly many other instances of equally long service. Indeed, one would not risk a great deal in asserting that the average length of judicial service in the Eastern and Middle States, and probably in some of the Southern, exceeds that of the English judges. It may be questioned, moreover, whether there is not such a thing as too long a term of judicial service. At all events, we cannot recall an instance, in *this* country, where a leading law journal has deemed it its duty to hint to a chief justice that he ought to retire because of his somnolency on the bench!

KING PHILIP. — Still in this vein reminiscent of Lord Coleridge, we may warrantably narrate an incident of a dinner at the private table of the aforesaid chairman, his lordship's host, on the same progress, in which the late Elliott Shepard, his lordship's *cicerone* in this country, and his lordship were the chief interlocutors. The genial host had told an excellent anecdote of that same United States senator, Roscoe Conkling, illustrating his fearlessness and independence. He had been arguing a case before some judge who too manifestly took up the side against him and exhibited an undue amount of heat. Conkling wound up his argument shortly, saying that he would leave the further consideration to his honor's calmer moments. "I will appeal," said he, "from Philip drunk to Philip sober." "By the way," said Shepard, "I think the origin of that phrase is not generally understood. King Philip, the Indian chief, celebrated in early New England history, had taken a white man captive, and being somewhat excited by 'fire-water,' condemned him to be burned alive. The captive then exclaimed, 'I appeal from Philip drunk to Philip sober,' and the King let him go." There was an instant's silence, so thick that you might have cut it with a knife. This tale was more than Lord Coleridge could stand. His eyes were nearly dropping out of his head with amazement, and leaning across the table toward Shepard, who sat directly opposite, he exclaimed in a tone of almost sorrowful expostulation, mingled with profound courtesy, "Oh, but my *dear* Shepard! that was not King Philip, the Indian, don't you know? — that was Philip of Macedon!" It is safe to say that Shepard was the only unembarrassed man at the table.

THE DECEASED WIFE'S SISTER. — This troublesome factor in society has again made her customary triumphal progress through the House of Commons and met with her customary snubbing by the silk-vested, shovel-hatted ecclesiastics in the House of Lords. A majority of nine, composed wholly of this class, we believe, has again defeated the will of the Commons. Once the majority was only two, and the pillars of the constitution shook almost as horribly as when wager of battle was abolished within this century. It is, and will always be, difficult to make the commonalty understand why this proposal is wicked, and yet it is quite regular for a widow to marry her dead husband's brother, and why God inculcated the latter observance upon the Jews. Probably so long as the kingdom preserves this very useless appendage of its governmental machinery, this state of things will continue. But there is one remedy for it — the parties, who not having the fear of the established bishops before their eyes, desire to contract such incestuous alliances, may conveniently do so by emigrating to this country, or even to any one of the English colonies. Matrimony is freer from theological quibbles in Australia or Canada. Of course they would have to continue to live out of England, but we can imagine worse things.

NOTES OF CASES.

DANGEROUS PREMISES. — In 6 GREEN BAG, page 249, attention was called to an Indiana case holding that the widow of a fireman cannot recover damages for his death caused by the collapse of a defective and dangerous building on which he was standing while fighting the flames. Similar doctrine may be found in Gibson *v.* Leonard, 143 Illinois, 182; 36 Am. St. Rep. 376, which holds that the owner or occupant of a building is not liable to an underwriter's fire patrolman who forces his way into a building to save property from fire, without invitation,

permission or license, express or implied, and is injured by using a defective elevator intended for freight and not for passengers. Although not a trespasser, he is a mere naked licensee, to whom no duty is due except that of not willfully injuring him.

OBLIGATION TO ACCEPT OFFICE. — An entirely new question in this country is decided in People *v.* Williams, 145 Illinois, 573; 36 Am. St. Rep. 514, namely, that *mandamus* lies to compel acceptance of a municipal office after election or appointment, by one who is qualified but refuses, although the statute imposed a penalty for non-acceptance. Such appears to be the common law rule in England, as is shown by the citations in the opinion. The Court observe: —

"Under our form of government the principle applies with even greater force than under a monarchy. In a republic the power rests in the people, to be expressed only in the forms of law. And if the duty, preservative of the common welfare, is disregarded, society may suffer great inconvenience and loss, before, through the methods of legislation, the evil can be corrected. Upon a refusal of officers to perform their functions, effective government, *pro tanto*, ceases. All citizens owe the duty of aiding in carrying on the civil departments of government. In civilized and enlightened society men are not absolutely free. The burden of government must be borne as a contribution by the citizens in return for the protection afforded. The sovereign, subject only to self-imposed restrictions and limitations, may in right of eminent domain take the property of the citizen for public use. He is required to serve on juries, to attend as witness, and without compensation, is required to join the *posse comitatus* at the command of the representative of the sovereign power. He may be required to do military service at the will of the sovereign power. These are examples where private right and convenience must yield to the public welfare and necessity. It is essential to the public welfare, necessary to the preservation of government that public affairs be properly administered; and for this purpose civil officers are chosen, and their duties prescribed by law. A political organization must necessarily be defective which provides no adequate means to compel the obvious duty of the citizen, chosen to office, to enter upon and discharge the public duty imposed by its laws, and necessary to the exercise of the functions of government."

"But how if he will not stand?"

INFANT'S NEGLIGENCE. — All the courts, except the Massachusetts, seem to have the tenderness of nursing mothers towards infants, and speak grievously towards adults who put dangers in their way, and palliate the natural curiosity of the young for meddling with attractive things. This is especially manifested in the turntable cases, and in like manner infants have been excused for undue familiarity with dogs to whom they have not been introduced, and sometimes for wandering in by and forbidden paths. And so on the other hand, adults have been charged with the unpleasant results of selling or otherwise furnishing them with dangerous articles, like guns. A recent exemplification of this judicial tenderness is found in Haynes *v.* Raleigh Gas Co., decided in the Supreme Court of North Carolina in April, 1894 (19 S. E. R., 344), in which it was held that it was not contributory negligence for an intelligent boy, ten years old, when walking along the sidewalk, to grasp a guy wire hanging from an electric light pole to the ground, there being nothing to indicate that it was charged with electricity. The Court said: —

"A child is held to such care and prudence as is usual among children of his age and capacity (Murray *v.* Railroad, 93 N.C., 92). The defendant contends that the deceased was ten years of age, 'a very healthy, intelligent moral and industrious boy.' Let us assume this to be true. As he returned to his home the morning of his death, passing along the streets of the city, he was trespassing on no one's property. He was walking where he had a right to walk, not by mere permission or invitation, but because he, as one of the public, had an absolute right so to do. The wire was on the sidewalk. Only one witness saw him when 'he took hold of the wire, and the wire threw him in the ditch.' That witness testified that 'he did not have to reach for it. He just reached out his hand and took it. He did not have to stoop.' No witness testified that there was anything from which even an adult could have inferred that this wire was carrying a deadly current of electricity, or indeed any current at all. True, the witness who saw him grasp the wire, when he came to his rescue, saw the fiery indications of the passing of the current from the wire to his hand, and several witnesses deposed, that, after the accident and the throwing of the wire into a yard where there was wet grass, they noted that the wire was 'steaming' at the point where one of its coils touched the sidewalk, and also at its extremity in the yard. Grant this to be true, and yet there is not, as it seems to us, any evidence that it was steaming when the deceased caught the wire, or if it was, that its steaming was such as to carry, to a boy passing along, a warning that he must not touch it. We should be very loth to declare an adult guilty of negligence for grasping a wire such as this one under circumstances such as the defendant contends surrounded the deceased. We certainly cannot declare that this boy, whose conduct must be judged with due regard for his boyish nature and habits, negligently caused his own death. The instruction that 'upon the evidence the plaintiff's intestate was not guilty of contributory negligence' should have been given."

The only doubt here seems to be whether contributory negligence was not a question of fact. A jury might well be justified in saying that the boy was not negligent, but can it be assumed, as matter of law, that he was not? But women and small boys are very powerful in courts of justice.

WHAT'S IN A NAME? — The attention of this Chair was recently called in a practical way to the case of Hanson *v.* Globe Newspaper Co., 159 Massachusetts, 293, which decides a perfectly novel question. It was an action for libel in a newspaper article attributing riotous conduct in court to "H. P. Hanson, a real estate and insurance broker of South Boston." The details of the occurrence were correct, and H. P. H. was a real estate and insurance broker of South Boston, but the person really in question was A. P. H. Hanson, who also was a real estate and insurance broker of South Boston, and for whose name that of H. P. Hanson was substituted by mistake. The case was tried without a jury, the judge found that the libel was not "of and concerning" the plaintiff, and judgment went for the defendant. This was affirmed on appeal, three judges dissenting. A case somewhat similar to this was tried in Buffalo recently. A newspaper reporter, reporting certain proceedings in an action for divorce of "Louise Weber *v.* Clem Weber," founded on the ground that the defendant had another wife living, made the mistake of publishing that the defendant "formerly kept the Silver Dollar Saloon in Buffalo." The reporter was led into this mistake by information from the court officials who heard the proceedings in court. The name of the saloonist was Clement J. Weber and his wife's name was Louisa, but he was generally known as "Clem Weber," and his saloon signs were thus inscribed. He had, however, not lived in Buffalo for ten years, and was a well known and very reputable merchant at Medina. It appeared plainly on the face of the article that he was not the man really referred to, for every other detail was inconsistent with that supposition. Malice was clearly disproved. The newspaper published a prompt, ample, and candid retraction and explanation, without any request from the plaintiff. It was shown by all the evidence that very few thought the plaintiff was even referred to, and that nobody believed the charge. The plaintiff alleged and swore in his complaint to special damage in loss of business and credit, but made no attempt to prove any, and the evidence even of his own witnesses showed indisputably that he sustained no damage whatever. The case was left to the jury, and they found a verdict of $800! The case is stronger for the defense than the Massachusetts case, for in the latter there was nothing in the publication to indicate that H. P. H. was not the man intended, while in the other every allegation, except the mistaken one of description as the saloonist, pointed to a man living in Ohio, and who suddenly disappeared from Buffalo. It seems that there *is* something in a name. We recently read of a poor fellow in England, who wearied of well doing because nobody would employ him for the reason that his name was "William Sikes," and he was therefore driven to drink and crime and became completely discouraged. But there is certainly such a thing as a respectable name that sheds libel and slander. The Glasgow, Ky., "Times" is responsible for this: "Benjamin Franklin was lately whipped for stealing chickens; Thomas Jefferson sent up for vagrancy; James Madison fined for getting drunk; Aaron Burr had his eye gouged out in a fight; Zachary Taylor robbed a widow of her spoons; John Wesley was caught breaking into a store; George Washington is on trial for attempted outrage; Andrew Jackson was shot in a negro barroom; Martin Luther hung himself on the garden palings while stealing a basket of vegetables, and Napoleon Bonaparte is breaking rock for a $3 fine in New Orleans. What's the matter with the old boys?"

REPUGNANT DEVISES. — A rather novel point is decided, in Day *v.* Wallace, 144 Illinois, 256; 36 Am. St. Rep. 424, namely, that where the same land is devised in two different clauses of the same will to two different persons, they shall take as co-tenants. It was held by Coke that the latter alone should take, but Lord Brougham, in Sherrat *v.* Bentley, 2 M. & K. 149, held as in the principal case. This is also supported by Redfield on Wills, vol. 1, p. 443, and by McGuire *v.* Evans, 5 Ind. Eq. 269. But opposed to this are Holling *v.* Coonan, 9 Gill, 62, and Coverb *v.* Seburn, 73 Iowa, 564. The Court in the principal case say, that granting a mistake, "It is impossible to tell in which clause that mistake occurred. We know of no rule by which we are allowed to say it was made in the first rather than in the last. We can conceive of no good reason why the consequences of such a mistake should be wholly visited upon appellants."

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.

LEGAL ANTIQUITIES.

AMASIS established a law in Egypt, that every Egyptian should annually declare before the governor of the Province, by what means he maintained himself, and all those who did not appear, or who could not prove that they had some lawful livelihood, were punished by death. This law Solon introduced into Athens, where it was inviolably preserved as a most just and equitable provision.

FACETIÆ.

THE following anecdotes are told of Sir Francis Johnson, Chief Justice of the Superior Court of Province of Quebec, who died on May 27, 1894:—

On one of his circuits in the Eastern Townships during the winter, he startled the inmates of a country hotel, at which he put up, almost out of their wits. The night was bitterly cold, and the hotel proprietor was not extravagant in his fuel supply, or in the weight of his blankets, as the Judge very soon found out after getting into bed. He put over his bed coverings his heavy coat and other clothes; still the wind and arctic frost became colder and colder and sleep he found impossible. What was to be done? It was after midnight, and no one round to make a fire. Happy thought. The Judge arose, and putting on his slippers and dressing gown, went into the passage and shouted with all his power, "Fire, fire, fire." In a few seconds the whole of the hotel was aroused and each frightened one inquiring where it was. Then came the proprietor. Panting and scared, he ran for the Judge and screamed out, "Where is the fire, where is it?" The Judge, with a merry twinkle in his eye, replied: "That's what I am trying to find." A good fire was at once made in the hall, and the rest of the night was passed in comfort.

On another occasion, in a case as counsel, and questioning a witness, Johnson said: "I want to know, did you see it done?" Witness, "No, I was not an eye witness, but an ear witness." "Ah," remarked Sir Francis, "a *near* witness and not a *nigh* witness? That is what I call a distinction without a difference!"

One of his judgments was appealed to the Court of Appeals and sustained. On being met by Judge M—— the latter said: "Well, Frank, I have just sustained a judgment of yours." "Yes? Well, my dear M——, I still think I was right."

THE following affidavit was filed in Court of Common Pleas in Dublin in 1822:—

"And this deponent further saith, that on arriving at the house of the said defendant, situate in the county of Galway aforesaid, for the purpose of personally serving him with the said writ, he, the said deponent, knocked three several times at the outer, commonly called the hall door, but could not obtain admittance; whereupon this deponent was proceeding to knock a fourth time, when a man, to this deponent unknown, holding in his hands a musket or blunderbuss, loaded with balls or slugs, as this deponent has since heard and verily believes, appeared at one of the upper windows of the said house, and presenting said musket or blunderbuss at this deponent, threatened 'that if said deponent did not instantly retire, he would send his (the deponent's) soul to hell,' *which this deponent verily believes he would have done*, had not this deponent precipitately escaped."

A MAN was tried before Mr. Justice Burrough, for stealing a pair of breeches. The prosecution was conducted by a young barrister, who, seeing

a female witness in the box, and the court crowded with ladies, thought proper to speak of the stolen garment as *inexpressibles*. "*Inexpressibles!*" said the Judge, "inexpressibles — I don't find mention of any such thing in the indictment." "Why, no, my lord," simpered the counsellor; "I thought, my lord, it might be as well — (and here he winked and nodded in the vain endeavor to inspire the judge with the same regard for propriety); the indictment mentions breeches." "Then why couldn't you say breeches at once? here, Mr. Sheriff, please hand them up to the lady. Now, ma'am, are you ready to swear that those are your husband's breeches?"

In an Exeter, N.H., town meeting, the question of building a new fence about a burying-ground was considered. Judge Jeremiah Smith opposed it. "What is the need, Mr. Moderator," said he, "of a new fence about such a place? Those who are outside of it have no desire to get in, and those who are inside *cannot* get out."

While Judge Gove, of New Hampshire, was holding a court in one of the northern counties, he was much annoyed by the coughing that proceeded from some of the spectators. He referred to it again and again with increasing asperity, until at length he directed the Sheriff to remove from the court-room the next man who coughed. As might be expected this peremptory order had a marvellous effect in stilling the audience. That evening a stranger appeared at the village hotel, afflicted with an incessant cough. "I can tell you how to cure that," said a bystander; "you just go down to the court house, and there is a little wizened-faced judge there who'll put a stop to that cough of yours in less than five minutes, — a sure cure!"

In a patent case in New York recently one of the lawyers consumed two days in describing the differences between two scientific appliances. When he had finished the Judge quietly said to him: "Now, Mr. ———, will you please tell us what *is* the difference!" The lawyer, it is said, hasn't recovered yet.

The following good story is told of Judge Dooly of Georgia: —

While holding court in Hancock County he had to impose a fine on two men brought before him for riot. He called on the clerk for a piece of paper, and the clerk, who was frugal in his habits, gave him a small piece of brown paper on which to write his order. The judge threw it to the floor contemptuously, giving the clerk, at the same time, a rap on his bald head.

"I would not fine a dog," said he, "on such a piece of paper as that. Go, gentlemen, and sin no more. The next time you are brought before me I will see that you are fined on gilt-edged paper."

NOTES.

James Payn tells of a friend of his who had avoided jury duty for some time by the assistance of a government official in acknowledgment of a certain douceur, but he got tired of paying an annuity and wanted it to be done with for good and for all. "For £10," said the official, "I will guarantee that you shall never be troubled again," and the money was paid. When the day came for his attendance at the court, John Jones, let us call him, could not resist the temptation of seeing how his money had been invested. He described the sensation of hearing "John Jones" called out as rather peculiar; it was called out a second time, and he could hardly resist answering to his name; when it was called out a third time, he felt quite eerie, and much more so at what took place in consequence. A person in deep mourning and with a voice broken with emotion exclaimed: "John Jones is dead, my lord." And his lordship, with a little reflected melancholy in his tone, observed: "Poor fellow, scratch his name out."

From a standard and entirely sober digest of Illinois reports, under the title "Carriers" and a subdivision as to baggage, we quote the following digest paragraph: "56. Two revolvers in the trunk of a grocer who went into the country to purchase butter: Held, that but one revolver was reasonably necessary."

The opponents of capital punishment in Central Switzerland have raised a curious point of law in support of their movement. The affair arises out of the conviction of a monster named

Ahegg, who recently murdered his daughter. He was sentenced at the Assize Court, at Schwytz, to be guillotined, whereupon a local society for the abolition of the punishment of death appealed against the sentence on the ground that, according to law, condemned criminals must be beheaded by the sword. The Court of Appeals decided that their view of the law was correct, and this causes a dead-lock, as no man can be found in Switzerland to carry out the sentence of the law in the manner required.

THE following "Fraud Upon an Insurance Company," which is taken from the "Deutsche Tabak-Zeitung," is certainly just a little too good to be true. A cunning fellow, who wanted to smoke the best cigars at the cheapest possible cost, bought 1,000 cigars of the highest quality and corresponding price, and immediately insured the whole stock. When he had smoked the last of them, he demanded 750 marks from the insurance company on the ground that the whole of his insured stock, ten boxes of cigars, had been consumed by fire! The Solomonic court decided in favor of the plaintiff. The company then brought an action of conspiracy against the smoker, accusing him of having intentionally put fire to his own cigars, and deliberately destroyed his property. Hereupon the same wise court condemned the insured smoker to three months' imprisonment.

THE Supreme Court of Errors of Connecticut, in Chamberlain *v.* Hemingway, has decided that a treadmill is not a highway; saying, "A man can take as many steps on a treadmill as on a highway, but he cannot perform a journey on it. The treadmill is not a highway."

IN State *v.* Hawley, 63 Ct., the court determines the old question of the guilt of our first parents; saying, "Adam and Eve were both guilty."

ASSOCIATE Justice Harlan, of the United States Supreme Court, in a recent address to the graduates of the University of Maryland Law School said: "At this particular period in our country's history, and in view of the profession you have chosen, I cannot do better than to say something about the Constitution of the United States — how it was framed and adopted by the people. I have often been surprised to find lawyers who have not read the Constitution, although it might be read in the time passed on the street discussing the last baseball game."

A STRANGE story is told in connection with the finding of a will that was filed in the Probate Court of an Ohio county, and the readers of THE GREEN BAG may be interested in the account of the manner of finding the will as related by a brother of the deceased, and in a copy of the will itself.

The brother tells the following marvelous story as to the manner of finding the will. He says that on Tuesday night, June 17, he and his family could get but little rest owing to unaccountable noises in the house. Doors slammed and peculiar knockings disturbed their slumbers. Towards morning Mr. B—— got up to investigate the mystery. A rummaging sound seemed to issue from one room, and he opened the door and looked in and was astounded to see what appeared to be the form and face of his brother Dan bending over a desk in the corner. He summoned courage to ask him what was wanted, and the reply was, "Those papers." The form was luminous, and when it had uttered these words it faded before his eyes and disappeared. Mrs. B—— was of course told the story and she was very careful to stay away from that particular room. When her husband returned she was a badly frightened woman and told him that she had heard peculiar sounds in that room during the day, as though caused by lifting the desk lid and letting it fall. He then resolved to make an examination, and after rummaging through the desk the will was found.

The will itself is a literary curiosity.

"Bucyrus Crawford County May the 21 1885 this is my last will and testament after my dith

first my detts are god to be paid then the car (photograph car) and the machinery goyes to will n B—— and my Cloth (clothes) to J P B—— and to L Mollenhaph Absolom is to git ten dolares i place of cloth (clothes) he cand ware eney of them and

will is to run the Bisness if it pays him and i think it will Misses R —— gits ten dolars as a preusent Kate B—— gits five Ela B—— gits two and the rest to be dividet equall among the three two Brothers and sister or thare ares is eney thing left for them i dont want youance to quarl and to fight about it and git noting do it up in pes and good will and stay frends i almost for god my girl magie B—— is to have ten dolares she was my girl and so i will Close

Daniel B—— seal

We the under sined agnalage thahat Dannel B—— was in his sound mind and have seen him sine his name

J R K ——
& Christ R ——

BOOK NOTICES.

LAW.

A Treatise on the Law of Torts in obligations arising from civil wrongs in the common law. By Sir Frederick Pollock, Bart. New American, from third English edition. Elaborated with notes and references to American cases. By James Avery Webb of the Memphis Bar. The F. H. Thomas Law Book Co., St. Louis, 1894. Law sheep. $5.00.

Pollock on Torts has long been recognized by the profession, in both England and America, as a work of great merit, one displaying a vast amount of research on the part of its distinguished author, and remarkable for its clear and succinct exposition of the principles of this important branch of the law. An American edition will be warmly welcomed by students and practicing lawyers. Mr. Webb has not altered the text and notes of the author, but has added such notes and references as seemed pertinent. The agreement or disagreement of the English and American authorities is generally mentioned in the editor's notes, and where they are not in harmony the points of difference are specified and briefly discussed. This new edition is a valuable addition to our legal text-books, and the profession will not be slow to appreciate it.

The American State Reports. Vol. XXXVI. Containing the cases of general value and authority, decided in the courts of last resort of the several States. Selected, reported, and annotated by A. C. Freeman. Bancroft-Whitney Co., San Francisco, 1894. Law sheep. $4.00.

There appears to be no falling off in either the quantity or quality of this series of reports. The present volume contains over 1000 pages, and is made up of decisions reported in fourteen different States. Mr. Freeman's annotations are very full, and give these reports a great value.

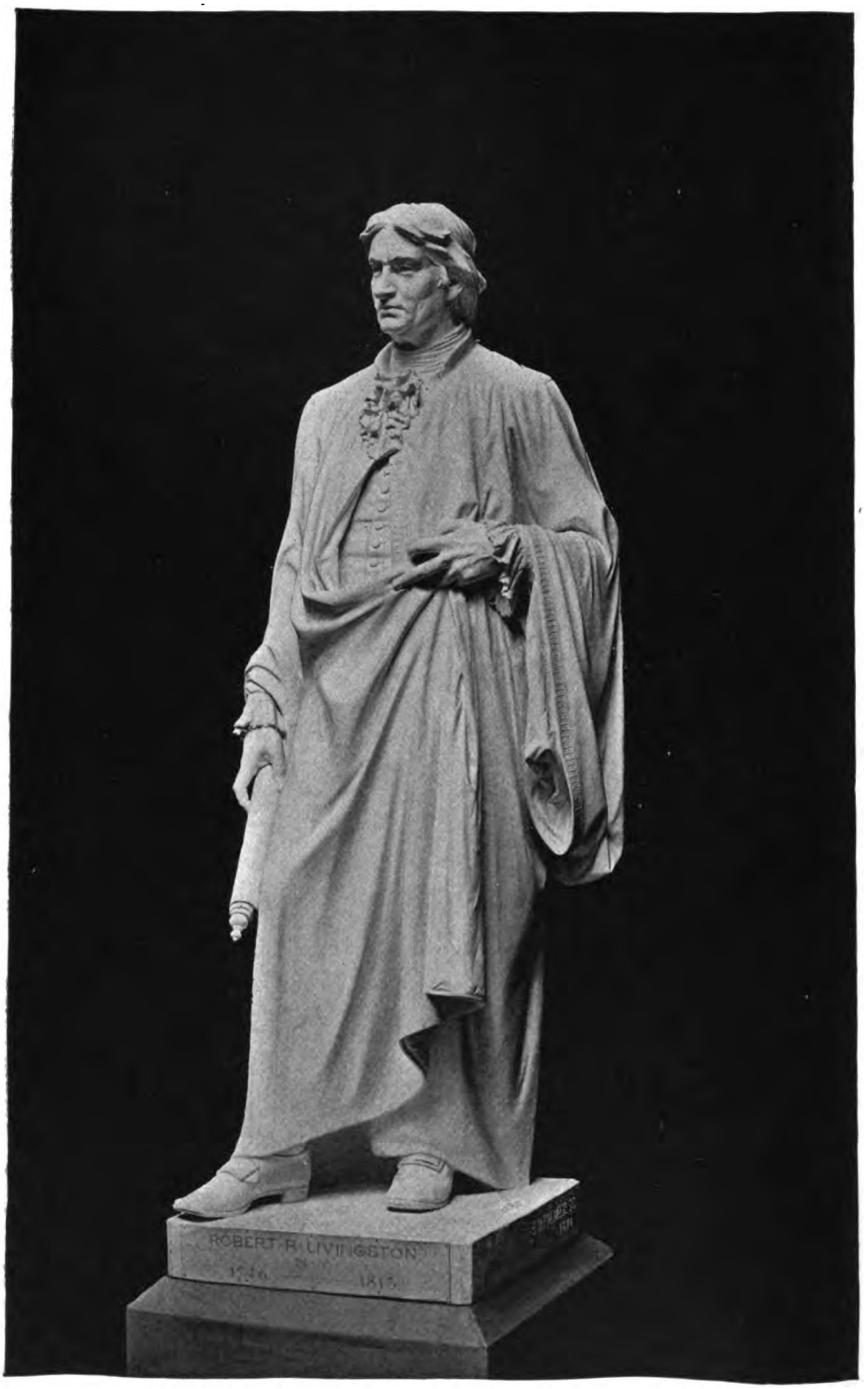
Lawyers' Reports Annotated. Book XXII. All current cases of general value and importance decided in the United States, State and Territorial courts, with full annotation. By Burdett A. Rich and Henry P. Farnham. The Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1894. Law sheep. $5.00.

This last volume of the Lawyers' Reports contains many important cases, with a liberal amount of valuable annotations. The series is well kept up to the excellent standard which has distinguished it.

MISCELLANEOUS.

Bayou Folk. By Kate Chopin. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.25.

A most delightful collection of stories of Louisiana life makes up the contents of this volume. The author's pen is one of wonderful power of description, and these sketches display the hand of the real artist. There is an indescribable charm in these pictures of Creole life which fairly captivates the Northern reader. The score or more of stories, all equally well told, are none too many to satisfy the reader, for there is not a superfluous line or a suggestion of repetition in the whole book.



The Green Bag.

VOL. VI. No. 9. BOSTON. SEPTEMBER, 1894.

ROBERT R. LIVINGSTON.

BY IRVING BROWNE.

WHEN the State of New York was called upon to contribute the statues of her two greatest citizens of the Revolutionary era to the rotunda of the National capitol at Washington, she responded with those of Robert R. Livingston and George Clinton. In respect to the former at least there will be no question of the entire propriety of the choice. Livingston was the very foremost figure in the eyes of State pride, at once the most distinguished and the most useful of the sons of New York, whose contributions to her material prosperity were to be subsequently equalled only by those of DeWitt Clinton. His life was not a remarkably long one, but it was cast among great events. Born in the echoes of the futile uprising of the second Pretender, it witnessed the downfall of the great French Empire in America, and the successful revolt of the English colonies against the mother country; the establishment of the American Republic and the bloody birth and death of that of France; and passed away to the sound of the cannon of England's rebellious offspring in triumph over the mistress of the seas.

Livingston was born in the city of New York in 1746. He was descended from the great land-owner of that name, to whom, with the patroon, Van Rensselaer, came the ownership by royal grant of most of the richest land in the eastern and middle parts of the State. The Livingston lands embraced most of the present counties of Columbia and Dutchess. His father, of the same name, was the wealthiest land proprietor of his day in the State, a judge of the Supreme Court, an ardent patriot and a vehement opposer of the stamp-act. He was the only one of the colonial judges who did not support the Crown. It is not a little remarkable however how few of the greatest land-owners were Tories, although it would seem that their natural inclination would have been subserviency to the Crown. Livingston in New York and Washington in Virginia were shining examples of the patriotic independence of that strenuous period. The talents and virtues of the father were inherited by his two famous sons, Robert R. and Edward.[1] The younger, Robert Livingston, was graduated at King's, now Columbia College, in 1765, at the age of nineteen, with probably a scholastic acquisition which would barely enable him to enter Harvard at this day. Inevitably he studied law, and he practised the profession with success in the city of New York. At one time he was partner of John Jay. Governor Tryon appointed him Recorder of the city in 1773, but he was soon deprived of the office on account of his patriotic leaning. All through the Revolutionary War he was a prominent and pronounced advocate of the rights of the Colonists. He was a member of the

[1] Mr. Hampton L. Carson, in his excellent History of the Supreme Court of the United States, is in error in making Mr. Justice Brockholst Livingston a brother of Robert R. and Edward, and describing the latter as sons of William Livingston. The same mistake is made by a recent writer in the Albany Law Journal. It is a wise biographer who knows his hero's father.

second Continental Congress; and although he opposed it at first on the grounds of policy, he was one of the committee of five to draft the Declaration of Independence. He would probably have been a "Signer" but for his absence at the sessions of the provincial convention of New York, at which it was resolved to assume the title of "State," and at which he was appointed on a committee to frame the first State Constitution. He was a member of the convention at which that instrument was adopted. He was Secretary of Foreign Affairs for two years from August, 1781. In 1788 he was chairman of the New York convention to consider the proposed Federal Constitution, and was largely influential in procuring its adoption. He was the first Chancellor of his State under the new Constitution, and held that office until 1801. As Chancellor, he administered the oath of office to Washington, the first president, on the steps of the Federal Hall in Wall Street, on the exact spot now occupied by the statue of Washington, in front of the Sub-Treasury building. He was in the Congress of 1780. In 1800 he declined the Secretaryship offered by Jefferson. In 1801 he accepted the ministry to France,[1] which he had declined in 1794. At Paris he became the intimate friend of the great Napoleon, who gave him a snuff-box ornamented with his own portrait by Isabey. He was then said to be "the favorite foreign envoy." There in 1803 he negotiated the purchase of Louisiana (for which his great brother, Edward, framed its code of laws), and brought it to a successful issue just upon the arrival of Monroe, who had been sent out as special envoy for the purpose. At Paris too he met Robert Fulton, and experimented with him in steamboating upon the Seine, launching a boat that made three miles an hour. He then began negotiations for the settlement of the French spoliation claims. He resigned his mission in 1804, and traveled upon the continent for a year, returning home in 1805. There he devoted himself to work and experiment for the promotion of the material and intellectual prosperity of his State. He built at his own expense a steamboat on the Hudson, which made four miles an hour. In 1809 he and Fulton launched the "Clermont," which made five miles an hour, and procured for them a grant of the monopoly of steam-navigation on the waters of the State, which, after having been sustained by Chancellor Kent and the Court of Errors, was set aside by the decision of the Supreme Court of the United States, in Gibbons *v.* Ogden. He served on a commission to adjust the eastern boundary of New York. He is said to have introduced gypsum as a manure, and the breed of merino sheep, and he wrote essays on agriculture and sheep. He was one of the founders of the American Academy of Fine Arts in the city of New York, for which he brought home casts from Paris, and he was president of the New York Society for the Promotion of Useful Arts. He died in 1813. We may imagine that his last hours were occupied with conjectures of mixed patriotic and material composition, concerning the possibility of applying steam to the propulsion of warships, by means whereof the naval pride of England might still further be lowered.

Although this distinguished man has been in his grave only the length of an old man's life, yet his fame is in great measure already traditionary. Considering his versatility and activity, he has left on record very little in his own hand. Although of liberal education, and with elegant tastes which his great wealth enabled him to gratify, he seems to have been eminently a man of affairs, noticeably a statesman, and pre-eminently a

[1] The Encyclopædia Britannica says he was appointed by President Jackson! The event which made Jackson president did not occur until more than a decade later, and it is one which the English do not love to recall. Mr. McMaster is in error in speaking of Edward Livingston as Minister to France (History of the People of the U. S., vol. 3, p. 39).

State-builder. His was a mind of constructive bent and force, both in the intellectual and the material spheres.

Of Livingston as a lawyer we really know nothing, and of him as a judge, next to nothing. There are no extant records of his decisions as chancellor, and of the character and extent of the business of his court there is very little evidence. But judging from what we know of his mental aptitudes and from the results of his public career, it is easy to believe that his judgments were distinguished for sound sense and a practical sense of justice rather than for legal learning and research and a sensitive weighing of precedents. Doubtless when he was apparently listening to the prosy and interminable arguments of the legal Dry-as-dusts of his court he was gazing out of the window on the sheep nibbling on the neighboring hills, on the sloops crawling like snails up the North River, and cogitating how he could make that grass richer, that wool longer, and those slow-paced craft to increase their speed. Certainly he did nothing, like his famous successor in the chancellor's chair, to build up an equity system for this new world of English-speaking folk. Very probably the world is better off for his inventive speculations and vagaries than it would have been if he had passed his quarter of a century of chancellorship in covering reams of paper with immaterial distinctions and useless doubts, solved in obscure and tedious phraseology, or in not solving those doubts at all, like that celebrated English chancellor who came in just as he went out. But perhaps his age was too rude and practical for the full flowering of the beautiful and expensive system of chancery. So far as evidence exists it is difficult to see why Chancellor Jones on the one hand should have declared that "this august tribunal, though since covered with a halo of glory, never boasted a more prompt, more able, and more faithful officer than Chancellor Livingston," or why Judge Duer on the other should have averred that Kent "rescued the court of chancery from a condition of utter inefficiency." Robert Ludlow Fowler, with more tangible foundation, says, (23 Albany Law Journal, 287), "Those decisions of Chancellor Livingston bearing on jurisprudence, and preserved in the records of the council of revision, indicate the same qualities which so distinguished his career as a statesman and diplomat." The utter absence of precedents from his court however is shown by Kent, who wrote in 1826 (6 Albany Law Journal, 41), "For the nine years I was in that office" — the chancellorship — "there was not a single decision, opinion or dictum of either of my predecessors, Livingston and Lansing, from 1777 to 1814, cited to me or even suggested." Kent also states that in the last fourteen years before he came in, only thirteen lawyers had been admitted to practice in that court.

There was probably never a more important legislative grant to individuals than that which was made by the New York legislature, in 1807, to Livingston and Fulton, of the monopoly for twenty years of navigating the waters of the State by boats propelled "by steam or fire," contingent on their building within two years a boat thus propelled, which should attain a speed of five miles an hour, and successfully running it for a year from New York to Albany. The first grant was in 1798, to Livingston alone. Under this he built a boat at his own cost, but it was a failure. In 1803 a similar grant was made to Livingston and Fulton jointly, and it was under this that they experimented on the Seine at Paris. This grant was renewed in 1807, and under this at length success was attained with the "Clermont."[1] This grant was as an inducement and indemnity to them for embarking capital in experiments in this kind of navigation. The consideration for the grant is

[1] The vessel was thus named because the Livingston manor-house was at Clermont, Columbia county.

very forcibly set out in the report of Livingston *v.* Van Ingen, 9 Johnson, 507. As has been stated above, the court of this State supported the validity of the grant, but the Federal Supreme Court, in Gibbons *v.* Ogden, reversed those judgments, and very wisely denied the right of any citizen to a monopoly of any peculiar mode of navigating the public waters. The decision of the New York Court of Errors, in Ogden *v.* Gibbons, 17 Johnson, 488, was but *pro forma*, to facilitate an appeal, and was based on the former decision in Livingston *v.* Van Ingen, *supra*, in which the decree of Chancellor Lansing, denying an injunction, was unanimously reversed. The argument of Thomas Addis Emmett for Livingston is very able and brilliant. He lays stress on two facts, one that these boats do not interfere with the old mode of navigation, and the other that they do not carry merchandise! Ogden Hoffman, arguing on the same side, alluded to "the ridicule and contempt cast upon the appellants as rash and chimerical projectors." In the later case, Chief Justice Kent argues that the State grant may not be invalidated by one armed only with a coasting license; that there must be some unequivocal statute or decision to impeach it. "We must be satisfied," said he, "that 'Neptunus muros magnoque emota tridenti fundamenta quatit.'"

Neptune, in the person of Chief Justice Marshall, arose and shook the foundations of the State laws quite to the conviction, if not to the satisfaction, of the great Chief Justice. That was a battle of naval giants — Wirt and Webster on the one side, Emmett and Oakley on the other. Emmett and Wirt quoted and wrested Virgil at each other, and the great argument was conducted *ore rotundo*, *secundem artem*, and with due and stately perorations. One of Gibbons' steamboats was significantly named "Bellona." Of all this the reader may get an excellent account in Mr. Snyder's "Great Speeches by Great Lawyers," page 47, and he forcibly describes the hostile legislation of New Jersey and Connecticut on the subject, and how near to a civil war the three States were brought by Livingston's grant. The result must have entailed a serious pecuniary loss upon Livingston. One of the earliest New York steamboats was quite naturally named "Chancellor Livingston," and another was quite unnaturally christened "Chief Justice Marshall."[1] Livingston's faith in steamboating does not seem to have embraced steam travel on land, for unless my memory is at fault, he once wrote a letter declaring his belief that even if railway trains could be driven by steam at ten miles an hour, they could not be stopped within any reasonable distance! If the first chancellor could revisit this sphere he would be quite satisfied with the increase of speed in modern steamships, and he would have no reason to feel ashamed of the despatch of business in his court in comparison with that of the tribunal substituted for it half a century later.[2]

Livingston, in his "Essay on Sheep," takes credit to himself for first introducing merinos into the State, but it seems that Colonel Humphreys had brought them over to Connecticut in much larger numbers several years earlier (See 47 Albany Law Journal, 178), and Seth Adams to Dorchester, Mass.,

[1] In 1825 Story and Webster journeyed from Albany to Catskill on the former and returned on the latter.

[2] In volume 2 of the "American Medical and Philosophical Register," p. 256, was published "An Historical Account of the Application of Steam for the Propelling of Boats," signed "A Friend to Science," but prepared by Livingston himself, which concluded in the following strain: "The projectors, stimulated by the public patronage and the pride of success, have spared no expense that can contribute to the care and safety of travellers. Their boats... have attained a degree of perfection which leaves us nothing to wish, but that the public, duly impressed with the advantage they have received from their labors, may cheerfully bestow on them the honor and profit to which the boldness of their enterprise and the liberal manner in which it has been executed, so justly entitled them." It is evident that the Chancellor was master of the modern art of advertising. Franklin called him "the Cicero of America." It is evident that he was as proud of the steamboat enterprise as Cicero was of the Catiline business.

even earlier, in 1801. Jutting into the Hudson River, at Hudson, and only a few miles from the family manor-house at Clermont, is a beautiful hill called Mount Merino, because it was an early sheep pasture and probably fed the Chancellor's sheep. If the Chancellor could have anticipated the increase of lawyers and of law business in his State, and especially the multiplication of precedents, be might well have despaired of breeding sheep enough to furnish diplomas for the lawyers and bindings for the law reports. His State has dwindled to one of the smaller of the sheep-breeding States, although it ranks first in the legal demand for sheepskins.

Undoubtedly the greatest benefit ever conferred by the Chancellor on his native country was his successful negotiation of the purchase of Louisiana, for which "useless" acquisition he and Jefferson were at the time so roundly abused by their political opponents. It furnished Napoleon with considerable ready money to prosecute his projects against England. If he could have been induced to pay more attention to Fulton's overtures in 1801, and to those experiments on the Seine, he might possibly have ferried his army across the Channel and changed the history of the world. Livingston accomplished his notable feat of diplomacy by passing by the tricky and temporizing Talleyrand, who was unwilling to sell Louisiana, and appealing directly to the First Consul.[1]

[1] The appointment of Monroe as special envoy was regarded by Livingston's friends as an unworthy reflection on him. Gouverneur Morris wrote him: "Setting aside the sacrifices you have made to promote the cause which brought them into power, I cannot help thinking that your rank in society, the high offices you have held, and let me add, the respectable talents with which God has blessed you, all required more delicacy on the part of your political friends than has on this occasion been exhibited." Mr. Schouler in his History of the United States says: "Livingston was old, hard of hearing, had never been much in contact with the enterprising spirit of the West, and whose latest correspondence besides betrayed discouragement with his task, and a disposition to have our government fight for the coveted territory as the only sure means of obtaining it. Livingston had nevertheless proved himself a discreet, zealous and persevering negotiator under the most trying circumstances." Now Livingston certainly was not old — 57 is not old — and if hard of hearing it was very premature. Being ready to fight for the coveted acres, he seems to have had no lack of "enterprise."

Livingston's interest in the fine arts gives a pleasing impression of his characteristics. His promotion of this liberal branch of culture reminds the reader that Morse, the inventor of the electric telegraph, was an artist, the founder of the New York National Academy of Design and its first president, and that Fulton was a painter.

Of Livingston's personal appearance his niece and household companion, Miss Garrettson, says: "He was tall, with a breadth corresponding to his height; never corpulent. The figure was commanding. As a public speaker I have always heard that he was graceful, his action unusually fine. When silent his countenance was serious, I think, too, with that slight shade of sadness, which deaf persons so often wear. So, too, when speaking on grave subjects; but in his family, in the social circle, his face was lighted up, and his smile one of the most beautiful I ever saw. There must have been great mobility of feature, I think; there was so much of changeful expression, and every change was agreeable. With his ready sympathy and ever-ready wit, his conversation was given freely and could not fail to please."

Of the close of his life she says: "During the last years of my uncle's life I was with him almost constantly, when disease had seriously injured his body and left his mind untouched. Always a firm believer in the truths of Christianity, it was not until the last year of his life that he felt its transforming power. It was pleasant to see this man, who had by his diplomacy given us a territory stretching from the Mississippi to the Pacific, who gave a steamboat to the world, whose whole life was spent in making improvements to benefit his race, now using the hours of pain and sickness in contriving comforts for the sick in hospitals and in the abodes of poverty. Sweeter still to hear him

speak of the love of God which filled his soul. 'Whenever,' said he to his physician, 'I have had anything good, I have always tried to share it with my friends. Doctor, I wish I could make you partake of the joy and peace I now feel.'"

At the south end of the chamber of the Court of Appeals, in the capitol at Albany, stands a replica of the Washington statue. This most beautiful of American indoor portrait statues is the work of the celebrated Albany sculptor, Erastus D. Palmer. A reproduction of this accompanies this sketch, and satisfies the expectation of the personal appearance of the elegant, courtly, and dignified gentleman whom it perpetuates. A portrait by Vanderlyn is in possession of the New York Historical Society, and represents Livingston in his court dress as Minister at Paris. It would have been more fitting if the statue at Albany could have faced to the east and looked out of the grand windows on the Hudson flowing at the base of the hill, and on those monster ships, "propelled by steam or fire," and carrying merchandise as well as passengers, which vex her surface in daily trips to or from his native city. Placed as it is, it faces the portraits of the great Chief Justices of the State, Kent, Church and Folger. His fame as a lawyer and magistrate must yield to theirs, but the sum of all their bestowal and achievement for the political and material prosperity of the State and the Nation cannot equal his

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NOTE. — Since the foregoing was written, access to Mr. Clarkson's book, "The Biographical History of Clermont," has opened to me several matters of interest, including an interesting correspondence between Livingston and Jay. It appears also that Livingston was in favor of negro emancipation and of negro suffrage. That he was absent-minded. That he was fond of hunting. That he was not destitute of humor — to determine whether ground corn-cobs were good fodder for cattle, he sent a lot to a miller for grinding, and when the miller asked for his pay, he informed him that he should have taken out his toll in the customary manner. Livingston spelled "plum" with a final *b* — showing that his thoughts were upright.

SOME FAMOUS LITIGANTS.

By Benjamin F. Burnham.

THE recent death of William McGarrahan and the vicissitudes of his proceedings for more than a third of a century in the courts and Congress to recover Panoche Grande from the New Idria squatters, have awakened a wide interest in the subject of spunky litigants generally.

In 1844 the Mexican Government, through its California governor, Micheltorena, granted to Vicent Gomez "Panoche Grande," a tract of land now in Fresno and Monterey Counties, California, and which contains the New Idria quicksilver mines. (Such grants were sustained in the Hidalgo treaty, sec. 9, U. S. Stat. 229; 631.) The grant was confirmed by the Southern California Federal Court, and the survey of the surveyor-general was approved in 1862. In 1857 Gomez had conveyed to McGarrahan.

In 1863, against Maxwell and other adventurous mining squatters, McGarrahan obtained a judgment in ejectment and an injunction restraining them from committing waste. From this the defendants took an appeal, which in 1865 was sustained, on the ground of an alleged discrepancy between the petition and the decree in describing the tract.[1]

It appears[2] that one Ord, who had been counsel for Gomez, became United States district attorney for Southern California, and entered into a bargain with Gomez to allow a reversal, by the District Court, of the decree of the board, and a consequent confirmation of the claim, on condition of receiving himself a portion of the land, which afterwards he did receive.

Our present limits preclude recital of the details of the *nunc pro tunc* decree of 1858 for "three leagues"; the "four league amendment"; the absconding of Ord; the order of Judge Ogier of 1861, setting the case for trial *de novo;* the complication from Judge Ogier's death; Mr. McGarrahan's fight as an innocent purchaser for value (probably $11,000), and the decision in 1865, that a decree, although obtained by fraud, will sustain an appeal for the purpose of correction.

From the decision of the Supreme Court of California, McGarrahan sued out a writ of error to that of the United States Court, his counsel being Montgomery Blair, Matt H. Carpenter and Charles P. Shaw.[1] In 1877 came the decision "that because this record does not show a patent countersigned by the recorder, it is not sufficient to prove title in the party under whom McGarrahan claims. This makes it unnecessary to consider any of the other questions which have been argued; and the judgment is affirmed."

Mr. McGarrahan next laid siege to Congress for relief; there being many precedents.[2] From report No. 1, 53d Congress, Oct. 3, 1893, to accompany H. R., 415, it appears that the New Idria necromancers have received none too much credit — or discredit — for having "put money where it would do the most good." At page 6 is recapitulated: firstly, proof of the legal grant to Gomez, and transfer of the title to McGarrahan; secondly, the confirmation by the California Federal District Court; thirdly, the Attorney-General's entry for decree in the Supreme Court; fourthly, the order of the Secretary of the Interior, Caleb B. Smith, that a land patent issue to McGarrahan, unobeyed; fifthly, that of his successor, John P. Usher, also unobeyed, "for some reason

[1] McGarrahan *v.* Maxwell, 28 Cal. 75.

[2] See United States *v.* Gomez, 23 How. 327; 1 Wall, 690; 3 Wall, 752.

[1] McGarrahan *v.* New Idria Min Co., 96 U. S. 316.

[2] E. g., 12 U. S. Stat. 808; 13 id. 136; 534; 372; and acts in 1860 and 1861.

not yet divulged or ascertained"; and sixthly, President Lincoln's command in 1863, that the patent issue. After it was drawn up, he died without signing it.

The record of the patent was inspected by the Judiciary Committee of the House, and on July 14, 1870, Chairman John A. Bingham ordered an authenticated copy; but when this arrived, July 26, the record was found to have been meanwhile mutilated. The committee were puzzled and divided. Then follows[1] a heart-sickening account of bill after bill of successive Congresses, reported in McGarrahan's favor, none directly defeated, but hope deferred, deferred, deferred. The writer is not sufficiently informed to discuss the merits of certain severe criticisms of the action of Senators Stanford and Morrill in favor of the New Idria and of President Harrison's veto of July 29, 1892, on the ground that the bill did not end litigation.

In April, 1894, McGarrahan was lying sick in Providence Hospital, Washington, evidently still trusting Providence. As to the New Idria bonanza bosses — 'tweren't strange if they were still trusting "'tother fellow"; *i. e.*, the Almighty Dollar.

Last week I sent a copy of the foregoing sketch to McGarrahan, soliciting him to correct any inaccuracies. On Tuesday came the public announcement of his death. On the day before came the congressional document which I have used in verifying. On the lower corner of its envelope were the words: "Am sick — can't write."

One of the most indefatigable of American litigants was Myra Clarke Gaines. At the time of her birth her mother, Marie Zulime, was the wife of Carriere. Her putative father, Daniel Clarke, was the owner of valuable real estate in New Orleans.

Myra was the young widow of Whitney when she married General Gaines. Any attempt to recite all of the vicissitudes of her litigation would be too voluminous for our present limits. To say nothing of the trials in the Louisiana Federal Court, there were no less than seven decisions in the Federal Supreme Court between 1839 and 1867.[1] The decision in 1867 was, that Daniel Clarke's will made in 1813, a short time before his death, acknowledging Myra to be his legitimate and only daughter, and annulling the will of 1811, was in the nature of dying testimony, and was affirmative evidence of great weight.

One of her many exciting episodes was a scene in a court-room in New Orleans, wherein her counsel got into a wrangle with Judge Buchanan, and withdrew. Thereupon General Gaines introduced her, and she pleaded her own cause before the jury. She disobeyed the judge, and upon being reprimanded, she twitted him of being interested against her.[2]

In 1874, Mrs. Gaines filed a bill in the equity court at Washington, charging that she had conveyed to Hon. Caleb Cushing 68,000 acres of land in Louisiana, and had received from him a counter deed acknowledging the trust; and that he afterwards, in his own name, obtained a confirmation of the title, denying her right to any interest therein. She obtained from Judge Wylie a temporary order restraining him from receiving the patent from the Interior Department. The injunction is said to have been readily dissolved, and satisfactory adjustment to have been effected.

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In point of plucky litigation Mrs. Gaines had a compeer in Patience Swinfen. A half century ago there lived in Staffordshire, England, an old man named Sam Swinfen, who had inherited a dilapidated estate worth £60,000. On the death of his wife, he invited his only son, H. I. Swinfen, whom he

[1] R. 51, p. 8.

[1] See *ex parte* Myra Clarke Whitney, 13 Peters, 404; Gaines *v.* Relf, 15 Peters, 9; Gaines *v.* Chew, 2 Howard, (U. S.) 619; Paterson *v.* Gaines, 6 How. 550; Gaines *v.* Relf, 12 How. 472; Gaines *v.* Haines, 24 How. 553; Gaines *v.* New Orleans, 6 Wallace, 642.

[2] See 13 Sol. Jour. & Rep. 861.

had driven away for marrying, in 1831, against his will, to come and live with him and repair the mansion. The son did so, but soon afterwards died.

In 1854, the father, eighty years old, made a will giving all his estate to Patience, the young widow. The heir-at-law, Captain Swinfen, filed a bill in chancery, invoking to his aid the old friend of the probate lawyers, "mental incapacity." Thesiger (who was afterwards Lord Chancellor Chelmsford) appeared for the widow, and Cockburn (afterwards Chief Justice) appeared for the Captain. The evidence of the testator's being completely broken down by his son's death, was so strong that Thesiger advised her to let him compromise, but she positively refused. Next day, she was astounded by Thesiger's informing her that he had settled by accepting for her an annuity of £1,000; and out of court he marched.

The Captain had a verdict, but the widow had possession. She refused to budge, and he obtained a rule *nisi* for an attachment; but this was quashed for insufficient proof of disobedience.[1] Another rule was taken out[2] and she made affidavit stating all the facts. Thereupon Judge Crowder held that there was no implied authority in the relation of attorney and client, and consequently, that the compromise was invalid.

The Captain then filed a supplementary bill for specific performance of the contract of compromise.[3] There now appeared upon the scene a fresh actor in the person of Kennedy, a young lawyer from Birmingham. He presented the widow's case so well that Romilly, Master of the Rolls, decided, as had Judge Crowder, that counsel had no power to give estates away at his discretion.

Captain Swinfen took an appeal,[4] but the Lords Justices sustained Baron Romilly's decision; one of them, Sir James Bruce, making the excoriating remark that the Captain's appeal was only a *pis aller*. They gave the widow the costs. Then the Captain got a new trial of the issue *devisavit vel non*, at Stafford, in 1858. The judge summed up in his favor; but through Kennedy's masterly skill, the jury rendered a verdict for the widow.

Thereupon the Captain went to the Master of the Rolls for a new trial.[1] But this attempt failed; Kennedy citing (in support of his proposition that mental competency may co-exist with great physical imbecility) the case of the great Marlborough, who, stricken with paralysis, his mouth awry, unable to articulate, was yet competent to make a most important codicil before his death; also the case of Lord Chancellor Eldon, who made a will at the age of ninety-three, a month before he died; also of Sir Herbert J. Fust, who suffered from the very disease that afflicted testator Swinfen, namely chronic rheumatism and hydrocele; also of a recent judge (not named, of course) who, though struck with hydrocephalus, performed his duties with transcendent ability to the very last. He also quoted Cicero's remark in *De Senectute*, concerning blind Appius, that old folks remember everything except passing events. He appealed to Coxe's Life of Marlborough, that history contradicts the satirist:—

"Down Marlboro's cheeks the tears of dotage flow."

Ancillary to this, a suit was brought in the probate court for costs,[2] wherein the court, Sir Charles Creswell, refused to order as to costs. She also gained a suit in 1860,[3] deciding that £190 was not an unreasonable sum for an executrix to leave at her banker's.[4]

[1] See Swinfen *v.* Swinfen, L.J.R. 25 Com. Pl. 303; 18 Com. Bench, 482.

[2] See 26 Com. Pl. 97; 1 Com. Bench, N. S., 364.

[3] See Swinfen *v.* Swinfen, 27 L.J.R. Eq. 35.

[4] See Swinfen *v.* Swinfen, 27 L. R. Eq. 69.

[1] See Swinfen *v.* Swinfen, 28 L.J.R. Eq., N. S., 849,—a leading case on senility as affecting testamentary incompetency; it is meagerly reported in 27 Beavan, 148.

[2] See Swinfen *v.* Swinfen, 1 Swab. & Tr. 283.

[3] See Swinfen *v.* Swinfen, 29 Beavan, 211.

[4] See also Swinfen *v.* Swinfen, 1 Foster & Fin. 584.

But the victory over the Captain did not satisfy the adventurous vim of the young widow, nor the enterprise of Barrister Kennedy. She — to use the colloquial synonym of prosecute and pursue — she "went for" Thesiger (who had now become Lord Chancellor Chelmsford), demanding damages for a "fraudulent" compromise. But this was a little too much, and the court unanimously dismissed her suit; the case[1] being a leading one upon the powers and responsibilities of counsel.

But the widow's demonstration of pluck did not end here. Her next move was to marry — not Kennedy, but one Broun. Thereupon, in 1863, came a great leading case,[2] Kennedy suing her for £20,000 fees. Therein Chief Justice Earle delivered his celebrated opinion that an English barrister's fee is an *honorarium;* and cannot be the subject of a legal claim. One regrets to add that poor Kennedy, in the bitterness of despair, made some unsavory statement, wherefor he was disbarred, and died of a broken heart.

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A partnership litigation in Tennessee concluding in a decree by Chancellor Morgan, in 1875,[3] was famous for being accompanied with tragedies of a vendetta. Editor S. D. Thompson informs[4] that one of the matters involved was payment of $100,000 expenses of acquittal of Isaac L. Bolton, prosecuted for killing W. Millen in 1857, in a trouble alleged to have arisen in defense of the rights of the firm. During a collateral trial, the parties in open court, before the Chancellor, opened fire with pistols and two persons were wounded. Soon afterwards the house of defendant Thomas Dickens was attacked in the night, and himself wounded and other persons killed. The assailants were hunted to the mountains and killed. He subsequently killed Wade Bolton, and was himself soon afterwards assassinated. His son Samuel Dickens was killed by an accidental discharge.

Wade Bolton, dying childless, left a will, wherein, after providing for his wife, he gave the bulk of his large estate to found a college to be named after him. After a bequest of $10,000 to the widow of Stonewall Jackson, he gave legacies to his nephews and nieces on condition that they lend their aid to defeat the chancery suit, "the gigantic swindle of the old land-pirate, Thomas Dickens, and his ally and tool, Sarah W. Bolton." The partnership business was buying and selling slaves at Memphis, and aggregated several millions of dollars. Each party charged upon the other the burning of Bolton's house to destroy the firm's books.

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Nearly a quarter of a century ago, the "Albany Law Journal" mentioned that at Buffalo they were having a ten dollar law suit; that the costs had reached $1,200, and that the parties were just beginning to get interested in the case. Another journal stated that a Buffalonian was expelled from a benevolent society for refusing to pay a fine of twenty-five cents. He sued out a mandamus and was restored to the privilege of exercising benevolence. Whether the sweets of hearty fraternization were a logical sequence, is not recorded.

In Indiana, in 1868, two brothers quarrelled over the ownership of a barrel of salt. The case was decided in 1870 at a cost to one of them of $352 besides his lawyers' fees.

In Rochester, Minnesota, a few years ago, in a servant girl's action against a merchant for wages, his counterclaim for kerosene at fifty cents a night when her "cousin" called to see her, was disallowed.

In Baltimore, in 1870, a Mrs. Siebert obtained a verdict of $2,000 against a man for forcibly kissing her hand. Which reminds of the Missouri school-ma'am, Rob-

[1] See Swinfen *v.* Chelmsford, 5 Hurl. & N. 890.

[2] Kennedy *v.* Broun, 13 Com. Bench, N. S., 677.

[3] See Sarah W. Bolton, Executrix, *v.* Dickens, 2 Cent. L. J., 477.

[4] Id. p. 469.

inson, who tried to make a court believe that she sought a lone interview with a man for the sole purpose of admonishing him of the impropriety of having offered to kiss her against her will. The sequel was what might have been expected in case of a man yclept "Musser."[1]

An English lady once kept a spicy diary of her disloyal kisses, and it was admitted in evidence. But her husband was refused a divorce, for the diary contained hallucinations as to something else than mere kisses, also divers pious passages: *e. g.*, "May the great Author of the being," etc., "direct," etc.[2]

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The report of some cases is apt to suggest to the reader's mind the query: "Which ligitant was most penny-wise and pound-foolish?" In a Vermont suit in 1871,[3] it appeared that Mrs. Drew, with the highway-surveyor's consent, cut the grass between the horse path and wheel ruts, so that her children might go and come from school in the highway without getting their clothes wet. Alas! She fed the grass to her husband's horse, unmindful of the rights of Mr. Cole, the abutting owner of the fee. He sued them in trespass—*quare (claw-some) fregit?*—and obtained a verdict for one cent damages. Mrs. Drew objected to the court's charge that she was a trespasser *ab initio*, and that the rule *de minimis lex* did not apply. This exception the Supreme Court overruled.

That lonely Green Mountain grassy road reminds of the streets of some dull business places down South. In a Georgia case in 1880,[1] it appeared the defendant had passed an ordinance forbidding the running at large of cattle in the streets, but indefinitely suspended its operation because the grass therein grew uncomfortably luxuriant. It was held that one gored by a cow running at large in the street had no cause of action against the city council.

[1] R. *v.* M., 78 Mo.
[2] See Robinson *v.* Robinson, 1 Swab & Tr. 362.
[3] Cole *v.* Drew, 44 Vt. 49.

[1] Rivers *v.* Augusta City, Council, 65 Ga. 376.

"A DISGUSTED LAYMAN'S" VIEWS OF LAW AND LAWYERS.

THE comments, in a recent number of "THE GREEN BAG," on a Massachusetts Court holding that it was bound by the *rigor mortis* of the Common Law, and citing such a mummy as Bracton, suggest to a "Disgusted Layman" that lawyers, as well as courts, seriously need moral, as well as mental, reformation. Such a layman is imperfectly informed as to just what modern legislative endorsement has been given the Common Law, but he understands that its provisions are more or less traditional in their application, that the system arises out of centuries of decisions on points that cannot be, or are not, covered by express statute. Now if this is the foundation on which this system rests, does it not follow as a necessary deduction from the premises that other decisions than those of Lord Rustedaway are of at least equal weight with his lordship's? Then where is the line to be drawn as to what, which, and when decisions are entombed in that sarcophagus? This is the logical hammer that cracks that image. A practical hammer is the remark of Chief Justice Paxson of Pennsylvania, that the Common Law is, and must be, plastic, conforming itself to the conditions it has to meet in the changed conditions of society, and as the layman learns that Judge Paxson is quite as eminent a lawyer and jurist as any on the Massachusetts Courts, he

is puzzled to know why the rule of common sense does not determine the point. Then this particular disgusted layman was informed by a *lawyer*, (none of your "members of the Bar" either,) that the Common Law of Louisiana, conceived as it was under the very different conditions of the Napoleonic era, really works better in the interests of justice, expedition and simplicity than the Common Law as we have it. If this statement is correct, I know of no more severe impeachment of the blind idolatry of the Common Law — as for instance, the Massachusetts decision you quote — than that the work of a people so little distinguished in the science of legislation as the French, has proved better than the work of the greatest law-making race the world ever saw. If the work of a people, just emerged from centuries of misgovernment of the worst character, is superior to that of the race that originated self-government and carried it to its present standard, it simply demonstrates that the work was done under the influences of modern life, while that of England was clogged and pinioned by the trammels of by-gone ages of different conditions.

But after all, is not the source of this anomalous putting of the less over the greater, of much higher importance than the absurdity itself? Then what *is* that source? I do not hesitate to say that it is the egoism, the self-complacency, the vanity, of the profession that so mis-erects so noble a structure as the system of law. Law is a science, but do not lawyers often forget that it is the science of human justice? Is there not far too much of a feeling that it is much like a skillful playing of a poker hand? And do not very, very many lawyers entertain the view (unconsciously perhaps, but still the *guiding* view) that the preservation of the scientific status of law, keeping it on the plane that the layman cannot get his foot on, is the real use of the law? I can remember several innovations in the law, such as admission of evidence of plaintiff and defendant, and I well remember that too many lawyers mourned, not any weakening of the powers of law to furnish substantial justice, but that the technicalities of the profession, gained in a life-time, were swept away! Is not this hideous, when you come to reflect on its full meaning that facilitation of justice is less important than preservation of tricks in shuffling the cards that a veteran gambler in legal practice has acquired? A typical instance of the utter rot and nonsense this ultra-professional view brings about, was the Original Package case, arrived at by metaphysical inductions and refinements of mystic logic, until the plain common-sense of nearly every man told him that the most evident rights of self-government were held as of less account than fancy goods in the legal line. By the way, that decision was clearly outlined forty years since by "Porte Crayon." He was down on Albemarle Sound, and told a native that there were men with mouths eight inches wide. Native declared that was a fish-story; Porte reproved him for his incredulity, and pointed out that deductions from known facts proved this statement. "We know that oysters must be eaten whole, we know that there are oysters eight inches across the minor dimension, therefore there must be mouths eight inches wide to take them in, or the beautiful chain of harmony in the universe is broken." Native wasn't a court, and replied "Mister, you must be from the North." "Why?" "Why, because they are so bookish and larned up there that they will believe anything"; — transpose "believe" to "decide." This delicacy of apprehension led a judge in Pennsylvania to decide that a party in A county, holding license *there* to sell liquor, was guilty of selling without license if he shipped it C.O.D. to B county! Had he shipped without the C.O.D. provision he would have sold in A county, but the C.O.D. kink put the sale in B county! Now that is just the sort of "law" that the layman has a right to become "a disgusted" one over. That a man be

confined in jail for 90 days for not arriving at the correct inductive conclusion on the point between C.O.D. and ordinary collections, may be, abstractly, very proper, but the layman knows his liberty ought not to hang on such delicate distinctions as that. The distinguished counsel for the victim — now a justice of the U.S. Supreme Court — remarked to the State Supreme Court that this decision was one of the class that brought the law into derision, and a "Disgusted Layman" felt much encouraged at this substantial endorsement of his view that such "law" was an ass. (Of course the Supreme Court reversed.) Now it is not worth while kicking up a stir at individual asininities in administration of law. As long as we have "gentlemen of the long ears," they *will* sometimes don the "long robes," and their ears *will* stick out. But it is eminently proper, and thoroughly consonant with progress of right and justice, that such asininities be not afforded shelter under the coat-tails of "My Lord Bracton," or any other fossil, that evident injustice be not perpetrated under cover and patronage of abstractions like that establishing that men must have mouths eight inches wide, or that by which it is established that if Bill, in Illinois, sells Jack his pocket-knife that he has just brought over from Indiana, is it "inter-state commerce"! Let every ass be obliged to bear the full burden of his ears, and fewer of them will get into positions designed for wise men.

Of course I am not proposing that lawyers become altruists at once. It would be a bad thing for us all. Had altruism been the rule since the beginning of the human race, we would still be cave-dwellers, for selfishness in some form — call it emulation if you will — has been and always will be, the hidden spring that forces all human progress forward. Such fanciful nonsense as that lawyers should not keep accounts or render bills, that their pay be all honorariums, is balderdash, and it is your "Disgusted's" private opinion that a good many lawyers who admire that view do it in dread of being identified as the individual for whom the proverb was designed, "the laborer is worthy of his hire."

Your "Layman" has very correct ideas of jury service, and a "Disgusted Layman" hardly knows that his disgust at jurors does not equal that he entertains for law and lawyers. Did it ever strike you lawyers what an excellent thing it would be for you if you all had a course of jury service to educate you in what the average jury thinks of things? For instance — your "Disgusted Layman" was once on a jury in Criminal Court, trying a miserable petty roadside-scrap assault and battery case. Left to themselves, the jury would have disposed of the case without leaving the box by acquitting and dividing the costs, but the "member of the Bar" who defended, only belonged to the Bar for the sake of going to the Bar Association picnic, and was worked up on the importance of his case. He quoted Magna Charta, the Bill of Rights, the Constitution of the United States, and finally the statute of the State, to convince the jury that when a man was assaulted he wasn't guilty of assault and battery in striking back, until he kept us over half a day trying a contemptible case that ought not to have taken half an hour, and the jury were determined to "get it in" on that lawyer somehow, and on retirement, the only unanimous motion was "Move we acquit and put the costs on Mr. ——" (said member of the Bar for the defendant); every hand went in in "aye" for that motion, and if Judge —— or Judge —— had been on the Bench, that verdict would have been rendered, but several of us knew that Judge ——, who tried the case, had no more notion of humor than a cow, and would not see the joke, but send us back with a reprimand.

Then is it amusing to note the solemn view raw jurymen take of their oaths and obligations to their country. In the first few trials the new juryman gets on, he will ponder and argue whether Molly Jones's calling Betsy

Smith an "old cat," justified Betsy in hitting Molly on the nose, and grave will be his deliberations. But wait until he has had a week's dosing of tin-pot assault and battery cases, and he has wider views, and his vote generally is "acquit and divide the costs. They'll know enough to keep out of court next time."

Then I remember where a lawyer in Common Pleas lost the case he would have won, had he not put a nasty-tempered, nagging, spitfire woman witness on the stand. The law seemed all straight for his side, and the evidence preponderated on that side, but the jury saw right off that this spitfire woman was at the bottom of the row, and agreed that her mother-in-law was eminently justified in leaving her husband who would keep such a daughter in his house to torment her mother-in-law, and as one juryman said, "If it is the law, that a woman must put up with being deviled half out of her life by a hellicat like that, that I would rather hang myself than live with, then .... the law" (the question was: had the husband lost his "courtesy" in his deceased wife's estate, by her leaving him in consequence of his persecution? and the jury decided that he had "abandoned" her by abandoning her to the persecution of this infernal daughter).

The funniest case your "Disgusted Layman" ever knew of a lawyer (and a tip-top one too) losing his case for himself, was in a suit about the identity, and consequent ownership, of a cow. The case had knocked about from court to court until it was a question of three or four hundred dollars costs, not just a cow. The late Col. — —— had his case won: his client has several pretty daughters who all swore they had milked the cow, knew she was "pap's," etc., while the other party had only one daughter and she wasn't pretty. But the Colonel wanted to make sure, surer, so he put on an outside witness who swore to the cow, having bored her horns for "hollow-horn." But the late Bob —— (the lawyer opposing the Colonel) was an old granger and knew lots about cows, and casually inquired of the witness, "I suppose you saw the holes in her horns?" "No," said the witness, "but I saw the marks of where they had grown up." "Ah, all right," said Bob, and immediately called for ——, who was the clerk of the court. —— was much amused, as he immediately saw through Bob's game and took the stand. "Mr. ——, you are an old farmer?" "Yes, sir." "You have known horns bored for hollow-horn?" "Yes, sir." "Did you ever know of one where the holes grew up?" "No, sir, the holes will never grow up if the cow should live to be an hundred." Bob scouted around the court room, picked up every old stockman and farmer he knew, all swore as did Mr. ——, and Bob won his case out of hand.

I remember how the late Hon. Welty —— demolished a consequential, self-important witness who had sworn to the good character of a defendant that Welty was prosecuting. This witness was then, and long had been, engaged in floating all sorts of wildcat railroad schemes, and swore to having known this defendant in connection with "railroad enterprises." "Stop — ——," said Welty, "what were these 'railroad enterprises'? Was there any dirt dug, or did they have any iron laid, or own any cars? or were they just some of these —— [the witness' name] air-lines?" The Court was convulsed.

A DISGUSTED LAYMAN.

CHAPTERS FROM THE ANCIENT JEWISH LAW.

By David Werner Amram, of the Philadelphia Bar.

III. PROCEEDINGS IN DIVORCE.

THE divorce procedure of the ancient Hebrews was a simple matter. Abraham, at the instigation of his wife Sarah, dismissed his wife Hagar; and this act of divorce is recorded with naive simplicity in the Book of Genesis (xxi. 14): "And Abraham rose up early in the morning and took bread and a bottle of water and gave it to Hagar, putting it on her shoulder, and the child, and sent her away." In the patriarchal state of society, all persons who were members of the family, whether wives, children, kinsmen or slaves, were unconditionally subject to the power of the oldest male ascendant, the patriarch.

The exercise of this power was qualified only by the subtle influence of customs and traditions, which in course of time crystallized into law and became acknowledged and authoritative precedents. The instance cited shows the power of the father and husband, exercised it is true, according to the Biblical story, against his will and in deference to Sarah's desire, but nevertheless indicative of his absolute right. And it is to be noted that Hagar was not the concubine or slave of Abraham, but his *wife*. (Gen. xvi. 3.)

There is no formality mentioned in connection with this act of divorce except that he gave her some food and water before sending her away. This, however, is to be taken rather as an act of mercy than of law.

As long as the patriarchal family was nomadic, and never permanently in contact with other families, the simple "sending away" may be assumed to have been sufficient as an act of divorce; but when the herdsmen became agriculturists with fixed habitations, new conditions arose which gradually changed the ancient forms of procedure. With the introduction of writing, the act of divorce, like all other legal acts, was *attested* by a writing which was given to the wife as proof of her divorce and of her eligibility as a candidate for a second marriage. It enabled her to prove property in herself. For, as a maid she was under the power of her father, as a wife under the power of her husband, but as a divorced woman she became her own mistress. When we reach the period (about 621 B.C.) when the law of Deuteronomy (xxiv. 1–4) was promulgated, the procedure consisted of three steps: the husband had to write a Bill of Divorcement, give it to the wife, and send her from his house. The omission of either formality was fatal and rendered the divorce null and void.

The Deuteronomic Code, in the passage referred to, speaks with legal precision and brevity. To understand it clearly the traditions and laws of the Talmud must be consulted. And indeed it is entirely impossible to understand the laws of Bible without a knowledge of the Talmud. Many of the Talmudic laws date back to a hoary antiquity and are contemporaneous judicial interpretations of the Biblical laws of which they are supposed to be a later expansion and commentary.

Not every man could write a Bill of Divorcement, and in most cases the services of a scribe had to be called into requisition. As the scribes were usually of the priestly class, the act of divorce was invested with a certain degree of solemnity. The most ancient simplicity gave way to a greater complexity in procedure, and the system which has been preserved in the Talmud was established. Here the untrained intellect of the average man was at

sea, and the whole matter was referred to men learned in the law, to prepare the papers, examine the witness and do all things necessary to effect a legal separation of the parties.

The original form of the *Get* (Bill of Divorce) is unknown. During the period of *Tanaim* (teachers of the Mishna), which ended during the second century A.C., any document which contained certain apt and operative words constituted a Bill of Divorce. The following form, which is at least 1500 years old, is still in use among the Jews, who exercise their own jurisdiction in these matters in eastern Europe, in Asiatic and African countries: —

"On the third day of the week, the third day of the month Sivan, in the year 5645 of the creation of the world according to the era of our reckoning here in the city of Cairo, which lies on the river Nile and the wells of water, I, David the son of Benjamin the Levite, who am this day in this city of Cairo, which lies on the river Nile and the wells of water (and by whatever name and surname, I and my father, my city and my father's city may be known), do declare of my free will, without compulsion, that I leave thee, and free thee, and dismiss thee, my wife Rebecca the daughter of Paltiel, who art to-day in this city of Cairo, which lies on the river Nile and the wells of water (and by whatever name and surname thou and thy father and thy city and thy father's city may be known), who hast been my wife heretofore until this date; and hereby I do free thee, and leave thee, and dismiss thee, that henceforth thou mayest have the power, and that thou mayest have the control over thyself to go to be married to any man whom thou mayest choose; and no man shall hinder thee, on my behalf, from this day forever; and thou art allowed unto any man. And this shall be unto thee from me a Bill of Release, a letter of Dismissal and an instrument of Freedom.

According to the Law of Moses and Israel.

REUBEN, THE SON OF JACOB, *witness.*
SIMON, THE SON OF JOSEPH, *witness.*

The language of the *Get* is the Aramaic idiom of the Talmud.

The law requires that a scrupulous exactness must be observed in conforming to the rules of procedure in divorce, even to the respective sizes of the letters in the *Get*, the kind of ink to be used, and the substance on which the *Get* may be written.

The reason for these minute regulations was to prevent any possible ambiguity, and their effect was to compel the husband to seek counsel of the scribe or Rabbi. But when the custom of employing professional talent in the execution of the *Get* had become invariable, the reasons for the rules of chirography ceased to exist, and it became customary to write the *Get* on prepared forms, with blanks left for name and date. For as the Rabbi presumably would not make a mistake in writing the *Get*, it became a matter of indifference whether he used a blank form or wrote the whole *Get* himself.

The question as to the material on which a *Get* may be written, as indeed almost every other question discussed in the Rabbinical schools, gave rise to much fine dialectic hair-splitting. One unconscious Talmudic humorist put the question: "May a *Get* be written on the horn of a cow?" We are forcibly reminded of Mr. Meeson's will in another question, "May a *Get* be written on the hand of a slave?"

The discussion about the *Get* on the horn of the cow arose in this manner: The Deuteronomic law provides that the husband shall *write* (a Bill of Divorce) and *give* it to the wife. Now, said the Rabbis, inasmuch as in the *Tora* the words *writing* and *giving* follow each other closely, therefore, nothing must be done to the *Get* between the writing and the delivery; for instance, if, after being written, but before delivery, it is torn on the margin, it is invalid and a new *Get* must be written. Now our aforesaid unconscious humorist spoke up: "Suppose a *Get* is written on the horn of a cow and the horn is sawed off and given to the wife; is it a valid *Get?*"

The answer was promptly given: "No, you must give her the whole cow." It will of course be understood that this is not a serious question of practical importance, and was not so considered by the Rabbis. It was suggested by their natural desire to view every possible and even impossible phase of questions under discussion, running down every point to its logical result, in order to provide for every contingency and to bring all human action as far as possible under a complete system of law.

Although customarily written by a scribe or Rabbi, the *Get* may be written by any one except certain persons under natural or legal disability, such as infants, idiots, deaf mutes, slaves and idolaters; it must be signed by two competent witnesses.

The husband did not sign the *Get;* his name appeared in the body of the document, and before the witnesses signed they heard his declaration that the *Get* was given by him to his wife of his own free will and accord. The *Get* was delivered to the wife or to her lawfully constituted agent, and thereupon she left the house of her husband and the divorce was complete.

OLD-WORLD TRIALS.

VI.

THE STANFIELD HALL MURDER.

A MORE hardened villain than James Blomfield Rush has seldom stood at the bar of a court of justice, and the story of his crime reads like a romance.

Rush was the tenant of three farms on the Stanfield Hall estate, near Norwich, which, at the time of the tragedy we are about to relate, belonged to Mr. Isaac Jermy, the Recorder of that city. In the course of the year 1844 he became involved in pecuniary embarrassments, and obtained from his landlord advances of money, the repayment of which was secured by a mortgage. The mortgage deed provided for the discharge of the loan on the 30th of November, 1848. When that day drew near, Rush was not only unable to meet his engagements, but was on the worst possible terms with Mr. Jermy, who had been compelled some time before to take proceedings against him for ejectment. He did not, however, allow the day of payment to approach without making some preparations for getting rid of his debt. Mr. Jermy's title to the Stanfield Hall estate was being impugned by two hostile claimants, with whom Rush entered into league. These persons practically undertook to release him from the mortgage if they obtained possession of the estate. Not content with this satisfying assurance, Rush forged the signature of Mr. Jermy (among other documents) to a deed, releasing him from his liability to repay the mortgage debt. This forged signature was attested by a woman, Emily Sandford, who had been a governess in his family, and had been seduced by him under promise of marriage.

On the evening of the 28th November Mr. Jermy was shot through the heart, at his hall door, by a man whose head and face were concealed from view by a black cape. On hearing the report of firearms in the hall, old Mr. Jermy's son stepped out of the dining-room to see what was the matter, and instantly met the same fate as his father. Mrs. Jermy and her maid, Eliza Chestney, now came upon the scene in a state of ter-

rible trepidation, whereupon the ruffian shot the former in the right arm, and the latter in the leg. No attempt to arrest him seems to have been made, but the two surviving victims of the outrage and the servants had no doubt whatever that the perpetrator of the murders was Rush. On the following morning he was arrested in the lodgings where he had been living with his mistress, Emily Sandford, and contented himself with a simple denial of his guilt. In due time he was brought to trial, at the Norwich assizes, before Mr. Baron Rolfe and a jury. Mr. Sergeant, afterwards Mr. Justice Byle, author of the famous book on "Bills," and owner of the still more famous horse named "Business," which formed a convenient excuse for many a pleasant holiday,[1] prosecuted for the Crown. The prisoner defended himself. It is stated that he endeavored to secure the services of an English barrister upon the terms that the latter should not conduct his defense, but simply advise him, if so required, on any legal points that might arise in the case. Of course no counsel would accept his brief on such conditions, and he was accordingly left to fight his own battle to the best of his ability.

The probabilities of his guilt almost amounted to demonstration. In addition to the strong and concurring testimony of Mrs. Jermy, Eliza Chestney and the servants, and to the powerful motive for the commission of the crimes, that we have shown to exist, Rush's conduct, both before and after the critical period, was inconsistent with the hypothesis of his innocence. He had left his lodgings mysteriously shortly before the crime was committed, and had returned to them in a state of profound agitation after an interval long enough to have allowed of his being the murderer. He had destroyed the clothes that he wore on the fatal night, and had solemnly conjured his mistress not to disclose the fact that he had been absent for more than a few minutes. Finally he set up, for the first time at the trial, the extraordinary defense that when he left his rooms on the night in question, he met a gang of men, who were presumably in the service of the claimants to the estate, and who told him that they were going to take forcible possession of Stanfield Hall. Of course the suggestion was that these persons had been the authors of the outrage. But the strong intellect of Baron Rolfe brushed this specious tale aside, and put the circumstantial evidence before the jury with convincing power. A verdict of Guilty was returned, and Rush suffered the last penalty of the law. He remained utterly impenitent to the end, and walked gaily to the scaffold in a pair of patent-leather shoes. During the process of pinioning he complained that the rope hurt him, and urged the executioner to keep cool and to take time. His case is one well calculated to arouse serious reflection. Here was a man possessed of good natural gifts and certain superficial graces of character, but who, when any obstacle crossed his path, at once displayed the pitiless ferocity of a tiger. The misplaced sentiment of the present day would probably have dignified his wickedness with the pretentious name of instinctive criminalism. But the grim school to which Rolfe belonged knew nothing of that strange disease which in recent years has been imported from Italy into England and America, and he was treated as men treat the wild beast that he resembled.

[1] Mr. Sergeant Byle's horse was as dear to him as his practice, and he often absented himself from chambers to enjoy its society. If a client happened to call on any of these occasions he was gravely informed that Mr. Sergeant Byle was "away on business."

TEMPLE STUDENTS AND TEMPLE STUDIES.

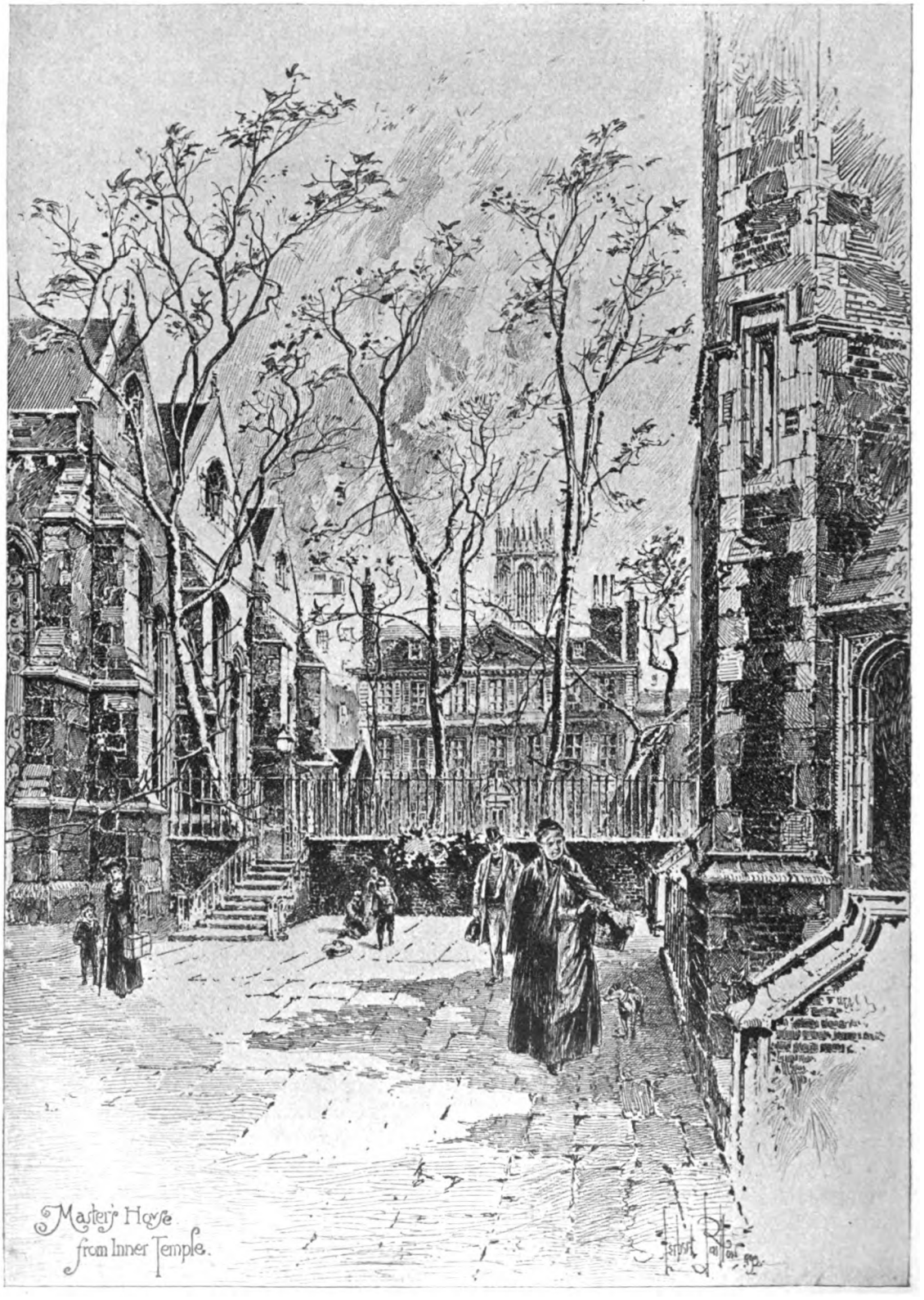
By Dennis W. Douthwaite.

I.

WHEN Dugdale was about compiling that excellent folio volume of five hundred pages, which he designed as a "manual for students of lawe and all serious persons," he was moved, in the first place, to descant on the want which that handy volume was about to fill. Many and quaint are the reasons which urged him to this end — now-a-days men publish a series on less provocation — and among them, "for that divers Young Students, finding in the Antient Year Books frequent authorities for opinions, not only do take all of them to be Judges of old . . . but which is much worse, viz., in not being well acquainted with the true names of the Judges, do take those abbreviations of their names, there found, to be their very genuine and proper appellations; *Id Est* Mutt. for Mutford, Stouff. for Stouford . . . consequently their so well deserving memorie is utterly buried in the depth of Oblivion." It is uncertain whether the Young Student now-a-days permits himself the recreation of the Antient Year Books. An ever increasing curriculum makes it difficult to find time for lighter reading, and in the need to master "Smith's Analysis of Jones's Equity," the more fanciful attractions of Bracton "De Legibus" (which Coke read three times a year) must needs be eschewed. Moreover, Time has played havoc with many of the names there mentioned, and has, perhaps, come to look on "Stouff." as indeed "a very genuine and proper appellation" for certain things there laid down. So that the preface to the "Origines" is only quoted now to point out that our legal heroes still, to some degree, suffer from the same neglect.

It is not too much to say that the plot of ground about the Temple Church or the Middle Temple Hall holds more tradition than any similar plot in the kingdom. Yet how seldom comes a Bencher with the same pious enthusiasm which marks the Oxford Dons who charge a higher rent for the rooms from which Shelley was expelled. How few among the present dwellers in the Temple could say, off-hand, where Blackstone's chambers were; or Mansfield's, although Pope has embalmed the very number in his verse. Or tell the site of the house on the outskirts, where Selden lived, in what Wood calls "a conjugal way," with the Countess of Kent. How many Middle Temple men can direct you to the door in the Hall under whose hammer-headed nails can still be felt the tanned cuticle of that over-daring Dane who was caught stealing the plate, and so was skinned for a warning? It becomes increasingly difficult to find that door. Nay, who knows now which is old and which new Temple — which part of Middle Temple Lane is "of the good date" and which has a poor modern reputation of 1700.

"I don't know," says Thackeray, "whether the student of law permits himself the refreshment of enthusiasm, or indulges in poetical reminiscences as he passes by historical chambers, and says, 'Yonder Eldon lived; upon this site Coke mused upon Littleton (a hard task this, for the place is not known); here Chitty toiled; here Barnewall and Alderson joined in their famous labors; here Byles composed his great work upon Bills, and Smith compiled his immortal "Leading Cases."'" We doubt if the Temple often hears such musings; we fear that like Gallio (who was himself a lawyer) he cares for none of these things, and has but a very imperfect acquaintance with the traditions of his Inn.



It is perhaps fair to say at once that one element, at least, of romance is lacking. The Temple is not like Oxford — home of lost causes and impossible ideals — whose very impractical enthusiasms are a spur to affection. From this point of view it has generally been the Templars' misfortune to be successful. There has been no leading of forlorn hopes or desperate resistances. They have never had to stand the brunt of organized persecution; not for many centuries has there been such a harrying of the Temple as fell on the Commons under Cromwell, or the Church under James. They have made even treason businesslike, and have seen always where came in the possibility of successful resistance or the wisdom of reform. "Their manners," says Bishop Warburton, "have, in every age, been such as were the first improved and the last corrupted." It is certain that the Bishop intended to be complimentary — he was addressing lawyers at the time — but the phrase is capable of two interpretations. In such debateable matters as politics and religion the line between "improvement and corruption" is sometimes, and justly, a matter of expediency, and we shall be doing Templars no great wrong if we say that what Hooker, as master of the Temple, called the "eye of civilization" has sometimes had a squint in favor of the dominant party. It is very much to its credit that it has been no such villainous obliquity as has marked most other public institutions at one time or another.

SIR EDWARD COKE.

The scattered notes which follow may serve to gather up some Temple legends worth recalling.

For the most of the buildings in London, eastward of Temple Bar, the great fire of 1666 is the beginning of history. That burning only singed the outskirts of the Temple, and, although at various times there have been smaller fires, which have cleared away much that belonged to Tudor times, there still remain the Temple Church, the Middle Temple Hall, and some corners, here and there, that boast an even longer life. History begins here with the Temple Church, raised in 1184 by the Knights Templars in the likeness of the Church of the Holy Sepulchre. With the extinction of the

Order and the dispersion of their lands and goods, the Temple went to the Hospitallers, and after some few years was leased to the little company of lawyers as their place of rest and study. They were a small body enough, having something of the ecclesiastical habit still clinging to them, in days when *nullus clericus nisi causidicus* was something more than a rhetorical apothegm. Men seem to have devoted themselves to law with a touch of religious zeal, — as if they had received a "call" before entering. They probably saw nothing incongruous in St. Swithin sitting as Lord Chancellor and solving a peasant's claim for broken eggs by restoring the eggs uncracked by a miracle from the Bench.[1]

For such a band of enthusiasts the Temple was a perfect home. London ended then at Ludgate, and the river Fleet (now a city sewer) flowed between. On the one side, Fleet Street was an open road as far as Westminster; on the other, broad grounds sloped down to Thames side — a river then spanned by one bridge, that still ran 'silvery' past a pleasant strand. Shut off from tumult, and guarded from attack (even now at night the Temple is a fenced city guarded by gates on every hand), the place seems to have kept for many years this shadow of monasticism. The dining and sleeping in pairs, "so that one might watch the other," though it soon lost its efficacy, the expulsion from Hall, and other methods of punishment, were all relics of the older dispensation, and served to mark out the new Templars as a separate and exclusive order. Eighty years afterwards, when Wat Tyler and the men of Kent poured down on the lawyers, sacked their houses and made bonfires of the books and rolls, it was "to spite the Knights Hospitallers." In most risings of the kind the Temple seems to have received almost the first attention of the mob.

"The first thing, let 's kill all the lawyers," says Dick in "King Henry VI.," and it is matter of history that the Temple was among the first places which Jack Cade marked out for instant destruction. Three hundred years after, at the time of the Gordon riots, when Mr. Scott, afterwards Lord Eldon, came down from Cursitor Street to his chambers with his girl-wife on his arm, he found Fleet Street alive with a rabble full of the same amiable sentiments, while inside the closed gates was gathered an army of defense. And very rough treatment did the beautiful Bessie Surtees receive, so that when they reached the Middle Temple gate her head was bare, her kerchief torn, and all her ringlets loose about her shoulders. It would be pleasant to be able to add that the garrison, inspired by the lady's lovely confusion, and burning for revenge, dashed out and made havoc from Thames to Tower Hill. The facts are that they preferred to remain strongly intrenched inside; and when, later in the day, some of the younger brethren formed themselves into a troop for active service, they found the door shut in their faces by the officer in command. He declined, he said, to allow his soldiers to be shot from behind.

The first Temple student whom we can identify with anything approaching certainty is Geoffrey Chaucer. This is to reject St. Swithin, since it does not seem probable that he belonged to any Inn of Court, and in any case was hardly of the stuff of which students are made. It is different with Chaucer, although here, too, material is scanty and confined to one bald entry in the preface of Mr. Thomas Speght, which assigns him to the Inner Temple, and adds, as corroboration, that he met there "the moral Gower." "Not many years since," adds Speght, "Master Buckley did see a record in the same house, where Geoffrey Chaucer was fined two shillings for beating a Franciscan friar in Fleet Street." This is the only record of the incident, although the learned Mr. Thornbury, copying from

[1] "Statimque porrecto crucis signo, fracturam omnium ovorum consolidat."— William of Malmesbury, 242.

Speght, but anxious to find reasons for such a diversion, speaks of "an insolent friar." Why insolent? *Je ne vois pas la nécessité.* It should be said, however, that the one great house was not split up into the Inner and Middle Temple until twenty years after Chaucer's death. So that the story has at least one defect. One may set against this the wonderful portrait of the manciple (caterer) in the "Canterbury Tales": —

"A gentil manciple was there of the Temple
Of whom achatours mighten take ensample
For to be wise in bying of vitaille,"—

where the description is plainly from intimate knowledge of the buttery. Some commentators are for rejecting the legend altogether, of whom Canon Todd is the first. It is interesting to note that Todd was at one time "suspected of Romanist tendencies." So that, in the matter of a friar, one might look for some show of prejudice at the Canon's mouth; but he would probably have swallowed St. Swithin and the eggs without a murmur. The mention of the amount of the fine — not an exorbitant price as Friars went then — is proof of the peculiar jurisdiction which the Benchers exercised. The student who to-day bonneted a bishop (or whatever is the modern equivalent of Friar-baiting) would be handed over to the civil authorities. But for a long time the rigorous code framed by the Benchers, covering every question of dress and deportment, recreation and study, was almost the only one to which the members were amenable.

TEMPLE CHURCH (NORTH SIDE).

It is long before we obtain another glimpse of Temple manners. Occasionally, as in 1441, there is a clatter of swords in Fleet Street, when the "youths of the Inns of Court" are "out" with the "citizens of London." To the credit of the Templars be it said that they held out for two days, and only yielded to the sheriffs and the soldiery. In 1458 the disturbance is renewed, when the students are driven back by the archers to their Inns, leaving "the Queen's attorney" dead behind them. One feels for the man of law, whom power and office had not spoiled, stealing out from his dry parchments and writs of *capias* to hit some douce citizen over the costard for old sake's sake. His name has escaped us, but, even anonymously, he is interesting as our first glimpse of a Templar in office. The general tenor of history so far is, it must be confessed, unprofitable.

We first find any authentic picture of Temple study, fifty years afterwards, in the person of Sir Edward Coke. His mode of

life there is well known. As was to be expected of the future commentator on Littleton, Coke was a "reading man." His day's work has come down to us in the pages of Lloyd. "He rose at five, lighting his own fire, and then read Bracton, Littleton, and the ponderous folio abridgments of the law till the court met at eight o'clock. He then took boat for Westminster and heard cases argued until twelve o'clock, when the pleas ceased for dinner. After a meal in the Inner Temple Hall he attended Readings in the afternoon, and then resumed his private studies till supper time, at five o'clock, after which he slammed his chamber door and set to work with his commonplace book to index all the law he had amassed during the day, and at nine he retired to rest."

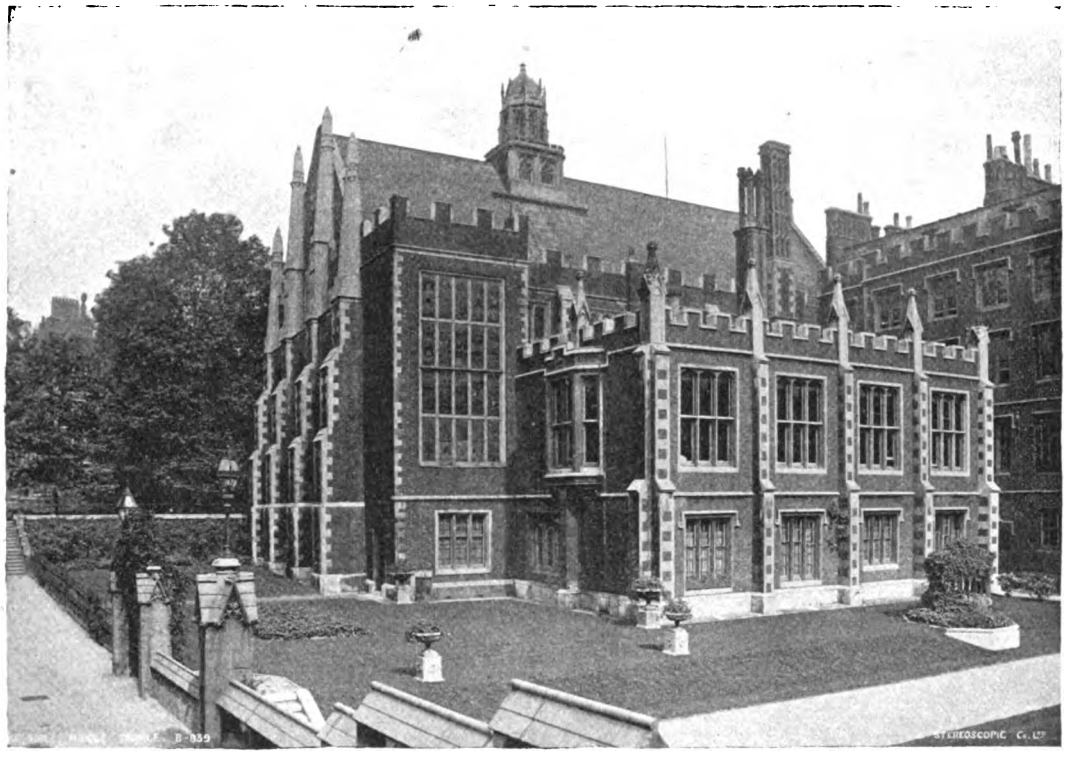
We shall not be able to love Coke overmuch, but we may always admire his honesty, his industry, and his determination to succeed. And in so doing it is quite possible that we shall satisfy Coke himself. In later life he was wont to say that there were three things for which he commended himself: his obtaining so fair a portion with his first wife; his successful study of the laws; the independent way in which he had obtained his successes, *nec precio, nec pretio.* There were not many ways in which Coke resembled his fellow-students, and the first of these is not one of them. Few men have shown a more rash contempt for prudence than those Templars whose loves are matter of history. It is all the more creditable that Miss Bridget Paston brought with her to Mr. Attorney £30,000. Mistress Bridget would doubtless deny the justice of part of the third claim — and she would probably be right. She would maintain that she was properly coy and backward in consenting; we should submit that it is not often that £30,000 may be had without the asking. However excellent these achievements were, it must be confessed that they tend to make the story of Coke's student days monotonous. He had no time to see the town, he never entered a play-house (and thanked God for it), and was in all things a business-like and unimaginative person. One ugly jest is recorded of him in Manningham's Diary — a book of which we shall say something later: "Booth being indited of felony for forgery, desyred a day to answere till Easter terme. 'Oh!' said Mr. Attorney, 'you would have a Spring; you shall, but in a halter.'"

In the same spirit, all through the trial of Raleigh (who had been his fellow-student at the Temple), Coke rained on him epithets such as 'viper' and 'spider of hell.' 'The extreme weakness of the evidence," says Sir James Stephen in his history of the criminal law, "was made up for by the rancorous ferocity of Coke, who reviled and insulted Raleigh in a manner never imitated, so far as I know, before or since in any English court of justice." It is a fair boast, and a pleasing one, and comes with authority. But we confess that "never imitated . . . *before* or since" . . . is a phrase of which, in calmer moments, we should have liked to hear the Judge's reading.

In one thing, at least, Coke proved himself a Templar — in his dogged resistance to any attempt to over-ride the Common Law or curtail the rights of Parliament. No man held worse cards or played a better game. No man was more closely watched and came through the ordeal with less tarnish. He fought Bacon, he fought Bancroft, and withstood even majesty itself, even if, according to the histories, he "grovelled" at the royal snub. But while grovelling he still protested the excellence of the Common Law and the merits of his own interpretation. If he lost his dignity, he seldom missed his point. There cannot have been much affection existing between Coke and his Inn. There were no friendships, merry-makings or diversions to remember. "The Temple," says one panegyrist, "was often called 'My Lord Coke's Shop'"; and the phrase, ugly as it is, could not be bettered.

We can find only one story of those days. It is said that he first came into notice when, as a student, he argued for the members in "the Cook's case," presumably a question of bad commons in the hall. Whatever it was, it had been a stumbling-block to the Bench until Coke's ingenuity and learning "made all clear."

From the time of Coke onwards the Inns have chronicles enough and to spare. We hope to be forgiven if we assign the residence of Falstaff and Shallow in Clement's Inn to this period. Speaking by the book, their time had come and gone two hundred years before. We venture to assert that the anachronism is Shakespeare's rather than ours. There is very little about the Inns of Court novitiate of Falstaff to suggest the earlier monastic days of these institutions. Indeed, after some search, it seems probable that we have found Falstaff's prototype in a tale told in the Burleigh Papers no earlier than 1582; and since the resemblance has many points of interest, introduces some famous students and has not, so far as we know, been noticed before, we shall detail it rather fully. The writer is one Fleetwood, Recorder of London, Burleigh's very good friend and spy on the Inns of Court, with the eye of a hawk for a Papist and responsible for many a Star Chamber case among the students. He tells how certain students of the Inns of Chancery have been indicted for a riot some nights since "for common disturbers of the peax, for night-walkers, for breakers of glass windows, lanthorns and such like." At whose trial the Recorder observed: "I do suppose two of them to be descended of the blood of Nero the tyrant. I never knew of two



MIDDLE TEMPLE HALL.

such tyrannical youths, the eldest not being twenty years old." Forty years afterwards, if we mistake not, the memory of that night raised painful thoughts in the mind of Master Robert Shallow.

"*Shallow.* O, Sir John, do you remember since we lay all night in the windmill in Saint George's fields?

"*Falstaff.* No more of that, good master Shallow, no more of that."

St. George's fields lay well outside the city, and it is probable that they took to the windmill on their way home from this entertainment, perhaps for safe hiding, perhaps because the Inn gates had been shut long before. Other commentators are without exception agreed that the memories of Shallow on this occasion were all pleasant and all disreputable. But how much clearer is Falstaff's plaintive protest, if we believe that he was imprisoned the day after. Only the names of the two prodigies mentioned above are given. They were Kniveton and Light. But we shall add one or two more. "There was little John Doit, and black George Bare, and Francis Pick-bone, and Will Squele, a Cotswold man; you had not four such swinge-bucklers in all the Inns of Court again." There is yet another name more famous still — but we will let Fleetwood tell his own story: "About a sevennight past, young Mr. Robert Cecill, your Lordship's son, passed by St. Clement's Churche, I standing there to see the lanterns hangen, and to see if I cold mete with any outrageous dealers. There stood sixe of the honest inhabitants with me. 'Lo!' quod they, 'Ye may see how a nobleman's son can use himself, and howe he putteth off his cap to poore men. Our Lord blesse him,' quod they... Your Lordship hath cause to thanke God for so virtuous a child." There were the makings of a diplomatist lost in Falstaff; and they were found in Robert Cecil, Earl of Salisbury. You may see the double of the incident in the Knight's interview with Gascoigne, when he warned the Judge of the evils of bad company, and was tenderly solicitous as to how he bore his age.

There is still a Lord Robert Cecil at the Inner Temple, who has earned the same amiable reputation among the burghers. But it is chiefly through the merits of an able treatise on Commercial Law.

It is a pity that Falstaff nowhere makes any allusion to the inner polity of the Temple. Clement's Inn, to which he was attached, was one of the junior schools of the Inner Temple, or, as Fortescue puts it, "such as receive gudgeons and smelts, while the Inns of Court have the polypuses and leviathans, the behemoths of the law." The fact that Falstaff never qualified for the haunts of the behemoth seems to point to an abrupt and early ending to his relations with his University.

The only legal phrase that we can find attributed to him is, "the wearing out of six fashions, which is four terms or two actions, and with all intervallums." — A hard saying and designed, apparently, to bring ridicule on the profession. Nevertheless, it is evident that most of the memories of his student days were pleasant to him and would bear re-telling.

> A good man makes his life-time doubly last
> And lives twice o'er as he recalls the past.

There was nothing of "my Lord Coke's shop" about his recollection, and we do not doubt that some whisper of the old mad days lingered, too, on his lips when he "babbled o' green fields" at the last.

How much of Falstaff is true and how much is false does not, as Mr. Burrell, Q.C., says of "The Bible in Spain," "matter a dump." He may have been a portrait or a type. In any case he is the greatest Temple student in literature. Of Sir Edward Coke it was said that to no man were the liberties of England so much indebted as to him, and by some he is called our greatest English lawyer. Of Falstaff it has to be said that he took more liberties than he gave,

and that it was not his familiarity with law, but some other more effective process, which bred in him his sovereign contempt. Still "we could have better spared a better man."

The life of a student was not, however, all cakes and ale. Only within certain times and limits could he go out into the city, and never without his gown. His presence, at least, was required at the Readings, Moots and Pleadings which were held from time to time. His attendances in Hall and Chapel were carefully watched, and, at one time, to neglect the latter was to enter on the broad road which led to the Star Chamber. He was called on "to order his habits and hair to decency and formality," even when no more precise rules were laid down for his deportment. Above all, he was to "yield due respect to the Benchers and Governors, his Antients: or (as the cause shall require) to be cut off from the Society." This last ordinance he kept in his own peculiar fashion, making its observance an excuse for defying most of the minor edicts of the world outside; while his daily services in the chapel he invested with a quaint ceremony and upheld with a fierce enthusiasm which helped to make piety more palatable.

LAMB BUILDNG, INNER TEMPLE.

The method of his Readings may be briefly told. "The Reader (being one of the Benchers chosen for that purpose), first excusing his own weakness, will afterwards read his case—twice if so desired. Then the antientest Barrister takes the case and argues it. After whom the Judges and Benchers argue according to their antiquity, the puisne Bencher beginning first . . . . until the antientest Judge has argued. Then the Reader answers the objections, and so concludes that morning's Reading." But

although these exercises were provided, "there was none that was compelled to learn," inasmuch as after his entrance the student's call was merely a matter of time, he might, if he pleased, go on growing daily more ignorant during eight years. The student who gave his mind to it might thus achieve an incredible degree of ignorance which, for the next four years after his call, he might increase or dissipate as suited him best. In either case, he might not practise until he was of twelve years' standing, unless by a rarely given special permit from the Bench.

CASES AS "THE ORIGINAL SOURCES" OF THE LAW.

By Dwight Arven Jones.

IT is not uncommon to hear the decided cases referred to as "the original sources" of the law. And this characterization has some plausibility because of the fact that the cases do declare the law for a given locality. But when one stops to consider, he will see that the statement is not as to the authority of the law, but as to whence it comes, and that it contains a broad and exclusive assertion that the original sources of the law are to be found in the cases. Now this assertion is wholly untenable, and I think therefore that the use of the phrase alluded to is open to the serious objections that it exaggerates the cases out of their proper sphere and ignores other and more important sources of our jurisprudence. To gain a better view of this question let us consider, first, some of the apparent sources of our law, and second, the scope of reason in creating and maintaining rules of law.

No one in these days can question the great influence of Roman law upon the laws of European countries; and the more the subject of this influence is studied the more does it appear that this law has had a far-reaching effect even upon the law of England. In our search for the sources of the law, we are therefore at once directed to a study of the Roman law, and there we find as the basis of the law a body of orderly principles. We perceive that we must study early fragments of laws, the Twelve Tables, and later the famous Institutes of Justinian, and that we must constantly investigate generalizations of law. In no other way moreover can we gain an idea of the system of law which was approved by the Romans, and most of which, as Prof. Sheldon Amos says in the preface to his work on the Civil Law, "is, under one form or another, living at this hour."

Back then of all the earliest decided English cases, we find this learned system of law. And not only has it existed in the far past, but side by side with the development of the common law in England, there has gone on the application of the principles of the civil law to certain phases of English life and to every-day affairs in France, in Germany and in other European countries. The English people therefore have been continually absorbing the rules of the civil law, and both reported cases and ancient treatises bear much internal evidence of the great extent to which principles of right recognized centuries before have been incorporated into the English law.

But not only have the cases thus been dependent upon ancient law, they have also frequently been controlled by custom or statutes, and they are in no sense the sole sources of English law. Statutory law moreover was not infrequently adopted for the express purpose of overturning the decisions of the courts, as may be illustrated by reference to the history of the early statutes enacted to prevent religious corporations from holding property in perpetuity.

If we take our position at the present day and look about for the sources of our modern law, we find that we are entering upon a study to which a lifetime might be given with advantage. To estimate the effect upon our law of Roman, German, French and English law would be a hazardous and laborious undertaking, and one would be forced to study statutes, decisions and commentaries alike. But the task would not end there, for to trace the sources of the laws of a particular locality in this country one must take into consideration the effect upon them of many neighboring and co-ordinate jurisdictions. At no time moreover has the effect and influence of statute

law been more pronounced and varied than at present. This strikingly appears upon an examination of the law of corporations. It is not too much to say that from the decisions of the courts of one state no idea can be derived of the law governing corporations in another state, and very little idea of the laws of the home state can be gained without a continual reference to the statutes to note the dates of changing laws. Indeed the whole subject of corporation law is built upon statutes, and they much more than the decisions are the sources of this law. Whence these statutes are derived it is not easy to trace, but of one thing we may be sure, the decided cases are not responsible for them. By the enactments of Codes also, and by the revisions of statutes, nearly every branch of jurisprudence has been greatly affected, and whether we turn to the law of real estate, the law of contracts, the law of domestic relations, the law of wills or the law of torts, we find all largely dependent upon statutes for the origin of many of their existing rules.

By this brief review we may therefore see that the apparent sources of our law are remote, varied and intricate, and however much certain cases may have contributed toward the establishment of a specific rule, we will probably find the source of the rule far behind the case in which it was authoritatively announced; and we may also be sure that he who now neglects to consider the statutes as original sources of law will find himself outside the current of the times. But a review of the development of our law will be likely to convince the investigator of another thing, and that is, that beyond and behind all the sources of the law thus far mentioned there is one which is still deeper and more real, and one to which all decided cases and all statutes must answer for their stability, namely, reason. And it is the sphere of reason in giving rise to and in upholding rules of law that I wish particularly to consider.

There is a popular fallacy that the law is founded upon technical rules and precedents. But nothing is farther from the truth. The law is founded on reason, and from the beginning of civilized society the human reason has been struggling to evolve rules, in accord with the prevalent ideas of right, to govern the affairs of men. And the present aim of the law is to control human actions with justice. Therefore the highest authority for any rule of law is that it commends itself to the human reason as a just rule.

In our country even the form of government is founded on reason. A system has been adopted which commends itself to the intelligence of the people as a just and reasonable method of maintaining the rights of the country and of each one of its inhabitants. The Constitution of the United States and the various state Constitutions, all are dependent on reason for their stability, and not upon precedent. They derive their force from the public opinion which upholds them and which in turn is founded on the general intelligence of the people as directed and controlled by the opinions and reasons of thoughtful men. So the decisions of all the courts find their most lasting authority in the fact that they are founded on reason. In early times the foundation of the law in reason was clearly recognized, and the value of the Roman law lies in the fact of its orderly and comprehensive presentation of rules of conduct and life. And we now, looking back to ancient rules, follow or reject them because to our view, with the light of experience and in our circumstances, they are reasonable or unreasonable. We respect their authority because they are valuable products of the minds of thoughtful men of the past, and we strive to retain the results of past experience for use in future time and guardedly follow precedent because it is reasonable that we should do so. There has been too a noticeable tendency in many branches

of modern law to set up standards of conduct and judgment which commend themselves to the human reason. And we see now, that the law forces men to carry out their agreements as it is reasonable to insist that these have been understood. It interprets their wills and construes their statutes as it is reasonable to read the language used. And it requires them to exercise reasonable care in their conduct toward one another. So rules in the law of evidence which sometimes seem to shut out investigation are upheld simply because they are founded upon a knowledge of the uncertainty of human testimony and every new statute adopted is supported by the claim that it is the best, the most reasonable, rule on the subject.

These instances show that the ever active and most deep-seated source of our law is reason, which is thus bringing all rules to submit themselves to its test. It is reason also that is constantly striving to get away from pernicious precedents, and the fact that so frequently in these days the effort for freedom is successful is most promising. The struggle to ascertain the "why" of old rules, the rebellion against precedent simply because it is precedent, and the determination to accomplish justice are most encouraging signs of the times. The human reason should not be cramped in any profession and least of all in the law. And to follow precedent at the sacrifice of reason is superstition. What would reasonable men think of the science of medicine if it set its face against new remedies and new methods because the older remedies and methods had been approved by high authorities? And what must they think of the law when it refuses to take cognizance of new thought and of the modern determination to get at justice because high authorities long ago settled how specific questions should be regarded? Unfortunately many instances arise where courts of the present day still cling to old and faulty precedents. And no more conspicuous or more disastrous example of this can be given than that afforded by the decision in the Tilden Will Case in the State of New York.[1] This decision violated the fundamental principle upon which the law of the interpretation of wills is built, and the court, happily by a narrow majority, refused to carry out the intention of the testator mainly because of former decisions which established a technical rule of questionable value and one that has since been altered by statute.[2]

Fortunately many instances might also be cited to show that courts have in recent years broken away from obsolete rules. And even in a late issue of the "Albany Law Journal" attention was called to the number of times one of the most conservative and able state courts in our country has reversed its own decisions, and the action of the court in so doing was highly commended.[3] This changing of view is necessary to progress in jurisprudence and is a striking proof that the decided cases are not the true sources of our law. If we look to the past, all acknowledge the great value of the variety of facts presented in the accumulated cases. Is it not reasonable to conclude that the new facts of present and future cases will illustrate rules of law in such a way that modification and change are necessary? Then too, the coordinate jurisdictions in this country tend greatly toward a modification of views and the establishment of just rules. The conflict may go on for years, but eventually, with the aid of new facts and with the light derived from other courts, many conflicting rules will be harmonized.

If we look upon the law as founded in reason, no difficulty is experienced in observing changes in rules. The difficulty comes from supposing that precedents are

[1] See 130 N.Y. 29.
[2] L. 1893 C. 701.
[3] Sept. 9, 1893.

all controlling. It is only reasonable to expect change in the application of rules of law to the changing affairs of men. The fundamental principles do not alter. The desire and determination to do justice do not change, but the decision as to what is justice in a given case must vary as the circumstances which surround and illustrate the case become more apparent. In conclusion let it be made clear that if we admit that human intelligence or reason is the main source of our law, we do not on that account discard or underestimate the value of decided cases. In all branches of law these cases are of vital importance, for they represent the law as it has been applied in actual life. They also are the law within the authority of the tribunal deciding them, and with the statutes they constitute the authoritative statements of our law. Moreover reason teaches us to illustrate rules of law in all possible ways, to consider all sources of information that are open to us, to take advantage of all experience, and to aim to establish broad and just principles. All the constitutions, statutes and laws of the past then, and all the decisions of able courts are aids and guides, for the human reason of the present day to adopt and uphold true rules of justice. But they are simply aids and guides and they should never usurp the authority of reason, which is the final arbiter of the justice of all written and unwritten law. That this should be recognized is of the utmost consequence to the members of the profession of each new generation. For if it is, they will not be hemmed in by the records of past effort to declare the law, but it will be open to them to discover new principles, new light and new methods that shall make the law more just and more reasonable in its application to the great variety of human affairs.

THE COURT OF STAR CHAMBER.

VII.

By John D. Lindsay.

A NARRATIVE of a few of the later cases prosecuted in the Star Chamber may prove of interest. They give a very clear idea of the procedure of the court, and show the extent to which it went in ascertaining the real facts and upholding the dignity of its jurisdiction. It is true that their proceedings were marked by an almost ludicrous deference to the King's royalty and sovereignty, but one cannot fail to be impressed with the solemnity of its treatment of the cases, and its apparent desire to vindicate the cause of justice. Very full reports of several of the more important cases may be found in the State Trials.

In 1632, Henry Sherfield, Recorder of Salisbury, was informed against by the Attorney-General Sir Robert Heath (who became Chief Justice of the Common Pleas before the case was heard in the Star Chamber, and sat at the trial as one of the members of the court), for breaking, in October, 1629, a painted glass window in the Church of St. Edmunds, containing a representative description of the creation, in contempt of the King as the supreme head (next under Christ) of the church.

The information recited that all churches are sacred and both founded and maintained by regal and sovereign power; that no subject can meddle with them in doing anything for their ornament or structure without license of the Bishops in their several dioceses, or the ordinary for the time being, who derive their authority from the sovereign power.

Sherfield was one of the parishioners and a vestryman of the church, who, as he claimed, "as lawful owner" of the church "had lawful power, without the Bishop, to take down or set up any window and to do any other thing in repairing or adorning the said church, and for reformation of such things as are amiss in the same."

Although the broken window had been in the church for upwards of 300 years without exciting displeasure, it offended Sherfield and apparently others of the parishioners. "It is no true relation or story of the creation," he said in his answer, "in that true manner as it is set down in the Book of Moses; but there are made and committed by the workmen divers falsities and absurdities in the painting . . . as that he hath put the form of a little old man in a blue and red coat for *God the Father*, and hath made seven such pictures, whereas God is but one in deity; and in his order of placing the several days' works of God in the creation, he hath placed them preposterously, the fourth before the third; and that to be done on the fifth which was done on the sixth day; and in one place he hath represented God the Father creating the sun and moon with a pair of compasses in his hand, as if he had done it according to some geometrical rules."

There had been a meeting of the vestrymen of the church in January, 1632, where the offending window being discussed, Sherfield was given permission to take it down at his own cost and replace it with plain glass. The Bishop of Sarum hearing of this, forbade it being done. Although it was not proven that Sherfield had received notice of the Bishop's command it was significant that from January to October Sherfield had found no opportunity to execute the vestry's order, and then did the work secretly. In October Sherfield gained access to the church, locked the door and with his staff pulled down the window.

He claimed that he had done so in order

that the glazier might know the window that was to be repaired, and for no other purpose.

He said in his defense, "That he hath for many years past been settled and resolved in his judgment, and that upon good and sound authorities, that it is utterly unlawful to make any such representations of God the Father; and by such authorities as were set out and declared in the time of Queen Elizabeth, and otherwise for the taking down and abolishing superstitious images and pictures, especially in the churches. He was, thereupon, the rather emboldened to desire and endeavor the taking away the said window; and because it had been a cause of idolatry, plainly, to some ignorant people. He saith he was placed in the church in such a seat as that the said window was always in his eye during his abode in the church; and not out of opposition to the King's majesty, but by the authority of the vestry, he thereupon did, with his staff, pick out some of the glass in that part of the window which represented the Deity." But he denied having received any notice of the bishop's inhibition.

The proceedings in the Star Chamber were conducted with the utmost apparent decorum and solemnity. The defendant's answer, and the depositions of the witnesses against and for him, were read at great length, and his counsel was afforded every indulgence in the presentation of the defense, which consisted of a respectfully submitted claim of jurisdiction over the church property, a denial of any intentional wrongdoing, and a justification of the defendant's motives.

After a long and temperate discussion the judges delivered their several opinions. The court was unanimous in the opinion that Sherfield was guilty of an offense cognizable in the Star Chamber. Sir Thomas Richardson, Chief Justice of the King's Bench, said: "I hold it comes fitly and properly before your Lordships here. This is rightly *crimen stellionatum*. There be many covers in it, for it is of mix'd cognizance, and therefore fit for this court, which I ever hold to be the greatest court, except the Parliament." But there was a great difference between the members of the court as to what penalty should be inflicted.

Lord Cottington, Chancellor of the Exchequer, was for depriving the defendant of his office of Recorder, binding him over for his good behavior, compelling him to make public acknowledgment of his offense in the Church of St. Edmunds and in the Cathedral Church, and that he pay a fine of £1,000.

"It is said," spoke Lord Cottington, "that he is a wise man, and an old man, learned in the laws, and that gray hairs are upon him; but it had been a better argument of extenuation to have said he was a weak man, a poor man or a mad man . . . It is said he is a justice of the peace, I hope your Lordships will take order he be justice no longer . . . For this answer I take it to be full of singularity and pride; and notwithstanding anything contained therein or in the proof I hold this his action a great offense, an offense of great scandal and presumption as to him that knows the law. If he or others had been minded, upon good advice or in good way, to have presented this or the like thing fit to be reformed to the proper ordinary, or to the King's Majesty, being the supreme head, he and they should have done well, and have had a great many thanks for so doing; but tho' it were fit to be removed it was not in his or the vestry's power to do it. I take it it differs not from that case adjudged here in this court the last day, when a great many poor men, who had a right to common, but in claiming it made a riot, were justly punished. So here, though this window were scandallous, yet a private man, nor many private men cannot take it down: For what (as Mr. Attorney said) if one half of the town would have it stand, and the other half would have it down, what

must follow but insurrection? So that here is in this a great deal of disobedience, and that done in the singularity of his spirit in contempt of the church; he hath thereby touched upon the regal power, and encroached upon the hierarchy of the bishops, who have their authority from the King."

Sir Robert Heath, whose former connection with the case as the prosecutor of Sherfield seems in no way to have prejudiced his judgment, took a very different view.

While agreeing that Sherfield's act was an offense, he noted several circumstances in the defendant's favor which induced him to take a more merciful view of the appropriate penalty. "I dare not give encouragement for any private man to do any public thing in church or commonwealth of his own authority. It is a very pernicious and dangerous thing. But yet I shall not sentence him for some things which in the first place I shall make mention of." He then proceeds to point out that though the bill of information charged Sherfield with having demolished the window pursuant to a conspiracy with others, and riotously, nothing of the sort had been proven. "I must confess," he said, "I was informed that the cause was much fouler than it is, and many others were suspected to have an hand in it; and this was the reason of the charge in the information." Further he thought Sherfield might have taken "just scandal at the superstitious window," and had he merely removed it at the vestry's direction his fault would not have been great. He called attention to the fact that there was no proof that Sherfield had known of the Bishop's inhibition, though, he said, "I verily think (as to my own private satisfaction) he could not but know" of it. Moreover it had been claimed that the defendant had acted "out of the spirit of contradiction and in opposition of the church government."

"I condemn his rashness and heat of spirit," said Heath, "in doing it without the Bishop; but I cannot perceive that it was done to oppose the Bishop or Ecclesiastical government." It had been claimed that Sherfield had proceeded "in a profane manner and that it was a breach of piety toward God." "I must confess I think not so," said Heath, "but rather that the offense was fit to be removed; he was grieved and his conscience offended at it; and I verily think, if the Bishop had been told of it in a decent manner he would have reformed it." It had also been claimed in aggravation of the offense that the defendant boasted of what he had done. "This appeareth not," said Heath; "no man seeth this proved. Nay, in his answer, opened by his counsel, on his oath he saith he accounteth it a great cross to him, and is very sorry for it." In conclusion Heath thus delivered himself: "There was cause (I am satisfied) that this window should be removed. It was made for the picture of God the Father, and so it was generally conceived to be: but though it was idolatrous, and their bowing to the same was conceived to be idolatry, they should therefore have told the Bishop of it which seeing neither Mr. Sherfield nor the vestry did do, he is not in this to be excused. I shall therefore agree to sentence him for this fault: but I shall forbear to put him from his place of Recorder in the said city. It is not an offense in him as Recorder, nor as Justice of Peace. I hold that every man who is sentenced, should (as near as may be) be sentenced *eo modo quo offendit*, and therefore I think not fit that he be put from either of his places, for else we should for this one offense censure him as worthy to be cut off from his places, and so good for nothing. And I shall forbear to bind him to the good behavior, for he is a gentleman of reputation in the country where he dwelleth: and I have observed that a gentleman is not bound to the good behavior, but for very foul and enormous offenses. But I would have him to make acknowledgement of his fault unto my Lord Bishop of Salis-

bury, and before such as he shall call unto him. And I would have him give some satisfaction, and this in the very kind that he hath offended at the discretion of the Bishop. For the fine of £1000 set by my Lord, that spake last before me, I hold it to be too much for an error, being there appeareth no contempt. I shall therefore think, and so set 500 marks to be enough."

Sir Thomas Richardson[1] went at great length in narrating his conception of the facts. He referred to the manner in which Sherfield had undertaken to get rid of the offending window. Seemingly he agreed with Sherfield that the window was offensive. He said: "His motive to do it was this: There was offense in this window and he conceived that it was idolatry or the cause of idolatry. The offense was that God the Father should be pictured there in the form of an old man in blue and red. I have no reason to believe that Mr. Sherfield took this to be made for God the Father; for He never was nor never can be pictured; who knoweth him so well? Moses himself saw but His back parts. But give me leave, my Lords, as for idolatry. This worshipping of idols is the greatest sin of all others; it is a spiritual idolatry; it is to give God's honor unto creatures; for the homilies of the church I think they are very excellent things (and so they are without doubt), and there is an excellent homily against idolatry; so that Mr. Sherfield and others, taking offense at the pictures in this window . . . they might to avoid occasions of evil desire, endeavor to remove the same. But then I hold he should have gone to the proper judge of that power, and here I find fault with him, that in the twenty years of his continued offense thereat, he would never resort to the bishop to complain thereof. This was certainly *scandalum acceptum and non datum.* He should have gone to the bishop; but for his color to do the same, by the order of the vestry I think it a mere color . . . The manner of his doing it I like not. He did not take it down, but brake it down in the head and feet, which offended him. This should have been the act of public authority; he presumeth to do it in the church, a sacred place, and ever privileged. Therefore it was an offense to use any violence in it, though but to the window, and therefore to be punished . . . yet I hold clearly he doth not disaffect the governor. To my knowledge he hath done good in that city since I went that circuit; so that there is neither beggar nor drunkard to be seen there. For ecclesiastical government he is outwardly conformable. I have been long acquainted with him; he sitteth by me sometimes at church; he bringeth a bible to church with him (I have seen it) with the Apocrypha and common prayer book in it, not of the new cut . . . To speak somewhat of the offense that sticketh upon him, I assure myself if Mr. Sherfield had gone and acquainted the bishop with this order, when it was made, the cause had been prevented; but done as it was, it was disorderly done and without warrant. This, therefore, is an offense done by the defendant . . . in arrogating to himself power and authority not belonging to him, and his zeal and good intention shall not excuse him . . . I proceed to my sentence, where I must crave liberty . . . to use my own conscience, and I shall ever hold this rule, to judge and inflict punishment *secundum*

[1] This judge was soon after Elizabeth's death elected member for St. Albans and was chosen speaker of James' third parliament, in January, 1621, which was remarkable for the proceedings which resulted in the disgrace of Lord Chancellor Bacon, against whom Richardson had to demand the judgment of the Lords. After presiding for five years in the Common Pleas he was made Chief Justice of the King's Bench, October 24, 1631, where he sat during the remainder of his life. Although esteemed a good lawyer, he was not respected on the bench. Evelyn calls him "that jeering judge," and no doubt he carried his inclination to humor and jocularity too much into court. While in parliament he was suspected of being a favorer of the Jesuits and on the bench was inclined to the Puritans. He was mild in his sentences and independent in his principles. — Foos.

quantitatum delicti . . . My Lords, this I remember always, that every punishment here must be *ad reformationem, non ad ruinam;* therefore, I shall not agree to discharge him of his Recordership, nor of his place of Justice of the Peace in that city. For binding him to the good behavior, I humbly crave pardon to dissent from that; he is a grave bencher and a learned man, and a gentleman well governed hitherto, however his indiscreet zeal transported him into this error . . . I shall agree to his submission and confession of his faults . . . but, my Lords, for his fine to the King, £1,000 is too much, and 500 marks is too little. I shall therefore go between both, and set £500 and imprisonment according to the course of the court."

Secretary Windebanke expressed himself no further than to say that he agreed with the sentence proposed by Lord Cottington.

Secretary Cook said that he should endeavor to keep a good rule, which was not to make faults where they were not, nor to make them greater than in themselves they were. He inclined to Judge Richardson's view of the case, that Sherfield had been carried away by his zeal, "yet I say that private men are not to make batteries against glass windows in churches at their pleasure upon pretense of reformation, notwithstanding, I conceive, the danger of example to encourage others to break down such windows will not be so great as the occasion of triumph to ill-affected persons would be if this court should too severely punish an error in pulling down that which the church disalloweth." Cook thought Sherfield's public acknowledgment to the Bishop of his error in not first obtaining permission to remove the window, would be a sufficient penalty, and acquitted him, for his part, of any fine or other punishment.

Sir Thomas Jarmin said that the offense was in doing a thing which, if it had been done "with answerable circumstances, had been no fault in him, *sed bonum est ex integris causis* . . . To speak my sentence shortly; as I shall not say anything to encourage hot-spirited men, so I shall still bear and remember that excellent and just saying . . . that we are to judge *secundam probata*, not *probabilia*." He was therefore for a fine of 500 marks as proposed by Sir Robert Heath.

Sir Henry Vane thought the defendant had done "that which befitteth not his wisdom and experience." He said, "I have learned long since that ignorance doth not excuse an offense, either in church or commonwealth . . . But he is a learned man, a Recorder, a bencher, and a parliament man. I have known him give grave and wise counsel in that place. All these aggravate his offense and make it wilfulness in him. But for his conformity and yet doing a thing contrary to his profession of conformity, I ground my sentence the heavier upon him. He shall pay (I think fit) £1,000, he shall make acknowledgment of his offense in the Cathedral Church and before the Bishop, prebendaries and canons, but not be put out of his Recordership."

Sir Thomas Edmonds agreed with Lord Heath for a fine of 500 marks and acknowledgment.

The Bishop of London thought there were circumstances of aggravation in Sherfield's offense. He had not gone to the Bishop as he should have done, but had chosen his own way of getting rid of the window; he was twenty years offended at it and so had plenty of time to determine upon a better method; his office and authority made his offense the more scandalous; his age should have given him better wisdom; he had gone privately to the church when if his purpose had been honest and worthy he might have proclaimed it freely; his office of Justice of Peace made the offense greater; his act had encouraged others to commit "like insolences in the same church"; his pretended tenderness of conscience should have induced him to go to the Bishop, — "if it

were but a show of tenderness then surely there was more wilfulness in his offense"; his fault was aggravated by his profession. "It is an honorable profession," said the worthy Bishop, "and as it is a great offense in a divine to infringe the law of the kingdom wherein he is born and bred up, so it is also a great offense if those of the profession of the law vilify the poor laws of the church. Thus much let me say to Mr. Sherfield, and such of his profession as slight the ecclesiastical laws and persons, that there was a time when churchmen were as great in this kingdom as you are now; and let me be bold to prophecy that there will be a time when you are as low as the church is now, if you go on thus to contemn the church . . . As for my sentence I agree with my Lord Cottington."

Lord Wentworth said: "Men now in these days make themselves wiser than their teachers . . . Uzzah touched the ark with a good intention: but because he did this without warrant he was secretly punished. It is not for a divine to meddle with Littleton's Tenures, nor a lawyer with divinity, to govern matters in the church." He thought the matter required such a penalty as should be an example to others, and said: "I shall not, therefore, go anything less than any of my Lords here before me have done." He was in favor of depriving Sherfield of his office, binding him to his good behavior, putting him to a public acknowledgment "in both churches," and a fine of £1000.

Viscount Falkland and the Earl of Devonshire agreed with Lord Cottington.

Viscount Wimbleton agreed with Lord Heath.

The Earl of Dorset said he conceived that the Attorney-General was much to be blamed, and if the court legally took notice of a prosecution where the King was a party, he should give his vote to fine him. "He hath here made a great noise of terrible things . . . but hath not endeavored to prove many of them." He said that if the window had been removed by proper authority it would have been a worthy act. "If all unlawful pictures and images were utterly taken out of the churches I think it were a good work, for at the best they are but vanities and teachers of lies . . . I note the mind wherewith it was done, and it was out of a little too much zeal; his conscience was tender. This, if it had been guided well, would have been worthy of praise." He considered the circumstance of Sherfield's having done the work "privately and without noise" to be a "diminution of his fault, for secret evils are not so bad as when they are openly done; the same evils done in chambers are not so bad as if they were done in the market-place . . . I shall not sentence him for three or four Papists, nor shall I forbear to sentence him for three or four Schismatics. The reason why I shall not sentence him is to avoid the tumults of the rude, ignorant people in the countries where this gentleman dwelleth, where he hath been a good governor, as hath been testified, and is well known, and no doubt hath punished drunkenness and other disorders. And then such persons shall rejoice and triumph against him, and say: 'This you have for your severe government.' This, I think, would be no good reward for his care. The reason why I shall sentence him is because he hath erred in his manner of doing this thing, in going on his own head without the ordinary, to a work of this nature . . . I would not have him to lose his place therefore, nor to be bound to the good behavior; I would, notwithstanding, have him make such acknowledgement to the Bishop, and in such manner as he shall think fit; but I do not set any fine upon him."

The Earl of Arundel found fault with the defendant for having borne his "offense of conscience, which he said he had at this window by the space of twenty years together," and said he should have revealed

his mind to the Bishop. "God gave him warning, he fell upon the seat,' and hath had time enough to think of it since, and in all this time he never came to acknowledge his offense. I agree therefore with my Lord Cottington."

The Lord Privy Seal (the Earl of Manchester) thought the defendant had acted through mistaken zeal, but said there were three things for which he should censure him —"(1) his pretending the order of the vestry, (2) that he would neglect authority, which is near unto contempt, and (3) his passion in doing it himself, and not by others . . . all may take notice that our votes are to maintain order and government, yet not to uphold superstition . . . I will sentence the defendant, but not fine him, to make acknowledgement to the Bishop, not to disrecorder him: the fact deserves not a fine."

The Archbishop of York (Dr. Neale) found many circumstances of aggravation in the defendant's conduct. As a justice of the peace, he regarded it as particularly scandalous in him to have meddled in the affair at all. The vestry's order, worthless as it was, had only given him permission to take down the window, not to demolish it; moreover, it had contemplated his having a glazier do the work, not to have him do it himself. "It is good to meet with growing evils," he said; "we know not how great a fire may be kindled with a small spark. I cannot, therefore, do otherwise than agree to fine and censure him highly . . . I concur with my Lord Cottington in all the parts of his sentence."

Lord Coventry, Lord Keeper of the Great Seal, said that he had no doubt the cause would produce a good effect, for the great audience present could not but be satisfied that the court deemed it unlawful to represent the Deity by picture, and consequently condemned Romish superstition, and, on the other side, that the court was resolutely bent on maintaining the government by the reverend fathers of the church, the bishops. "For the charges in the bill," he said, "if they had been proved, I should, for my part, have trebled the fine set by any of your Lordships. There was never cause worse prosecuted, yet we are to consider how much standeth proved against this defendant. The prosecutor causeth the information to be exhibited against the defendant and ten others, but those others are not so much as pressed to answer." He looked with great lenity upon the offense itself, and desired only that a fit disposition should be made of the case, in order that the law might be vindicated. He therefore inclined to the opinion of Secretary Cook, to make acknowledgment, repair the broken window in decent manner, but, he said, "I am loth he should be put to any heavy fine, the rather because he hath not been prosecuted in an ecclesiastical court; therefore, I give no fine at all."

Nine members of the court agreed to set a fine of £1000 upon the defendant, to deprive him of his office, compel him to make acknowledgment in the Church of St. Edmunds, and likewise in the Cathedral Church, before the Bishop there, and the deans and prebends. Nine others were against depriving him of his office, but agreed that he should make acknowledgment in private to the Bishop, and in such manner and before such persons as the Bishop should think fit. As for the fine, these were again divided; four were for no fine at all, four were for a fine of 500 marks, and one for £500.

According to the rules and orders of the court, where there was a difference of opinion as to the fine, the King was to have the "middle fine."

Therefore the sentence of the court was thus entered: —

"The defendant being troubled in conscience, and grieved with the sight of the pictures which were in a glass window in the church of St. Edmund in New Sarum,

one of the said pictures, to his understanding, being made to represent God the Father, did procure an order to be made by the vestry (whereof himself was a member) that the window should be taken down; so as the defendant did, at his own charge, glaze it again with white glass; and by color of this order, the defendant, without acquainting the Bishop or his Chancellor therewith, got himself into the church, made the doors fast to him, and then, with his staff, brake divers holes in the said painted window, wherein was described the creation of the world; and for this offense, committed with neglect of episcopal authority, from which the vestry derived their authority, and by color of an order of vestry, who have no power to alter or reform any of the ornaments of the church, the defendant was committed to the Fleet, fined £500, and ordered to repair to the Lord Bishop of his Diocese, and there make an acknowledgement of his offense and contempt before such persons as the Bishop would call unto him."

This case of course arose out of the conflict between the prelates and the opposers of a union between church and state government, and was prosecuted with almost as much bitterness and fanatical zeal as the persecution of the Protestants under Mary. There was absent, however, that disgraceful spirit of hypocritical piety which characterized the proceedings against Prynn, of which we shall speak further on.

The Lawyer's Easy Chair.

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

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS.

WISDOM AND LEARNING. — There is no fool like a learned fool. "Much learning hath made thee mad," said Festus to Paul. This may be more justly said in modern times of a great many men who have muddled their modicum of brains with too many books, and have not strengthened them by "the proper study of mankind." But when one is curious to behold a perfect and unadulterated fool he may frequently behold him in the form of a pedagogue and in the chair of a college professor. There is an insularity in these conditions that makes the man apparently the more in love with his own fantastic notions the more preposterous and opposed to the common sense of mankind they appear to be. It just now is reported that one Professor George D. Herron, who occupies a chair of Applied Christianity in an alleged college of Iowa, recently delivered an address at the Nebraska University Commencement, entitled "The New Political Vision," in which he declared that there is no justice in the courts because they are corrupt, and that Congress is venal. Fortunately we are not called upon to quarrel with him in his denunciation of our national legislature, but we do feel called upon to resent — not too seriously — his double indictment of the courts. Unjust and corrupt! Pray what does Herron know about it? If he would take some of his attributed Christianity and apply it to his own spirit he would be rather more careful in his utterances, and if he would borrow a little common sense and consult some one who may be presumed to know something of the subject, he would never so stultify himself. Slight reflection would have taught almost any other man but Herron that our various communities would not go on electing judges to perpetuate corrupted justice. Men will stand a great deal of political corruption before they rebel, but they are much more indignant at and impatient with judicial corruption, because the courts of justice are their ultimate refuge. It so happens that this extraordinary clamor of Herron is uttered at a time when the courts all over the country have been showing their purity and their independence of political party ties by a remarkable series of decisions in election cases. No severer test could be imagined than this. Herron is one of that most dangerous class, the learned fools, and judging him by this doctrine he stands near the head of his class. It is gratifying to learn that Governor Crounse, of Nebraska, then and there vigorously combated his silly vaporing, and likened him to such anarchists as Johann Most. Let Mr. Herron fly back to his little college, climb up again into his little chair, and laying aside some of his mad learning, apply his heart unto Wisdom. He never will become famous, although he may grow notorious, by such intemperate and incredible charges.

SHAKESPEARE'S WRITING AGAIN, — Since our recent comments on the current attempts to prove that Shakespeare could not write, our attention has been called to some remarks on the subject by Dr. Rolfe, in his Shakespearian department in "The Critic." One of these recent attacks in question was based on the allegation that in two of his known signatures Shakespeare's name was not written consecutively, but with the given name above the surname. Hence it was argued that he was so ignorant as not to know the ordinary form of personal signatures. Now Dr. Rolfe assures us that in both these instances the signatures, which were appended to deeds, were upon the narrow slip of parchment on which the seal was affixed, according to custom, and necessarily the one name was above the other because the slip was not wide enough to contain both in the ordinary form! This shows the want of candor or the ignorance of these defamers of Shakespeare. The truth is, this Bacon rivalry is almost monopolized by four classes of persons — credulous and wonder-loving fanatics, faddists, jokers, and mercenary folk who boil their pot with every new form of fuel.

DETECTIVE STORIES. — Detective stories have always been great favorites among the legal profession, probably because they are frequently amusing studies of evidence and keep the guessing faculty in exercise.

They may be regarded as the "dime novels" of the lawyer. Poe's and Gaboriau's are unrivaled. Anna Katherine Green has written at least one which warmly commends itself to the legal sense — "The Leavenworth Case." The very recent ones of Conan Doyle, — "Memoirs and Adventures of Sherlock Holmes" — are always ingenious even when absurd, and they are too frequently absurd. But the lawyer in vacation likes anything out of the ordinary beat, even if absurd, and will find himself reading the two volumes through with avidity, although he may pooh-pooh at every other page. Just now our purpose is to point out several bad slips in two of the most horrible and preposterous. In "The Yellow Face," for example, the writer plants himself on very shaky physiological ground in supposing that a mulatto and a white woman can breed "a coal-black negress" child. In this tale also the writer makes a mistake in having the wife, who had had such a child by a former marriage, and wished to conceal it, but at the same time loved the child and desired to provide for it, voluntarily make over all her property to the new husband, with the simple privilege of drawing on it from time to time. Again, how did she support the child for three years without drawing on those funds? Dr. Doyle quite unnecessarily raised a suspicion in the husband's mind by this device. In the powerful but extremely horrible and utterly impossible story of "The Speckled Band," the villain is made to introduce into the bed-room of his step-daughter, whom he wishes to put out of the way, a venomous Indian swamp-adder, by means of a dummy bell-rope communicating with a ventilator above her bed. The snake encircles the victim's forehead and stings her to death almost instantly, in the dead of the night. In dying she shrieks, "The speckled band!" Now how did she know it was speckled or a band? Besides, what normal woman would have failed to discover that the bell-rope communicated with no bell, and that the bed was clamped to the floor, and thus have her suspicions aroused? "Parables do not go on all four," but detective stories ought to do so. A greater artist than Dr. Doyle, however — Charles Reade — in "The Cloister and the Hearth" made even a more gratuitous blunder. In that tremendous scene where Gerard and Denys are trepanned by the murderers in the inn, and Denys with his cross-bow shoots the first one who ascends to kill the travelers, and Gerard sets his body up and with phosphorous converts his face into the image of a grinning skull, it was entirely superfluous for him to write "La Mort" on the forehead, for it is evident that none of the assassins could read — indeed it is expressly stated that they were "ignorant brutes." We are glad Mr. Reade is not here to abuse us for venturing this criticism.

THE SIGN OF MATRIMONY. — Some Englishman writes to the "Pall Mall Gazette" that the cause of social morality will be served if every married person have "a circle tatooed round the third finger of the left hand in place of or as well as the wedding ring." He is convinced that this would save honest people from many sad entanglements, make bigamy impossible, and prevent many breach of promise suits. He says: —

"To make this proposition practical and distinctive of course certain rules would have to be made. For instance, any unmarried man or woman tattooing their third finger to be heavily fined. Every widow and widower to add a distinguishing star to their ring. Every married man or woman disunited by law to have a bar of erasure across their wedding ring, and those who marry two or three times to add the extra circles accordingly. The operation of tattooing could, with all reverence, be performed by an expert in the vestry after the church service, or at the registrar's office for those who only go through the civil ceremony."

If this had appeared in an "American" newspaper, it would of course have been a joke, but we cannot believe it anything of the kind in this instance. It sounds just like an ecclesiastical device. Hurrah for compulsory vaccination and compulsory tattooing! Those bishops who voted against the deceased wife's sister are just capable of setting up a tattoo annex in the vestry. There should of course be a duly baptized and vaccinated tattooer in orders, and he shall be allowed a liberal fee for the administration of the rite. Government brands its mules; why should it not tattoo its married subjects?

COMPULSORY EDUCATION. — One of the most decayed of dead-letter laws in the State of New York has been a law for compulsory education. Nobody ever heard of any attempt or wish to enforce it. But last winter the legislature of that State enacted a fresh law for the same purpose, and it has been hailed by the press as the harbinger of glorious things, without a hint about the old law. The fact is that very few newspaper writers now-a-days are old enough to recollect anything that occurred twenty years ago. The original law was very meritorious in purpose, and so of course is the present, and it is sincerely to be hoped that it will be enforced. Not perhaps that universal education is an unfailing panacea or preventive, for statistics seem to show that the tolerably well educated classes are not unrepresented in the State prisons; but it must be admitted that education does something towards the prevention of crime as well as toward the fostering of general thrift and virtue. The modicum of education which enables boys to read dime novels may

well be distrusted, and the compulsion in question should be exercised until such a taste is outgrown or overcome. The result of this new law will be watched with great interest. It will not execute itself, and everything will depend upon the machinery provided for the enforcement of it and the fidelity with which that machinery is put and kept in motion.

HAZING. — The New York Legislature also passed a law directed against hazing in colleges and schools. This sprang from the recent "unfortunate" incident at Ithaca, by which a poor woman lost her life through the vicious and reckless act of students aimed at other students. This is the second fatal "misfortune" growing out of hazing which has happened at Cornell. It is much to be regretted that the perpetrators cannot be detected and punished as severely as the law will allow. There is no fitter place for the education of the vulgar and mischievous rowdies, masquerading under the disguise of gentlemen, who indulge in such senseless and wicked conduct, than the State prisons, and we should heartily rejoice to see them all sent there. One example would be sufficient. Mr. Henry Wade Rogers, the well-known law writer and president of the Northwestern University, at Evanston, Illinois, has wisely adopted the heroic remedy of expelling, peremptorily and unconditionally, every young man detected in hazing. This also will probably prove efficient, but where death results from these reckless acts, the penalty should be that of manslaughter. It will not answer to say, "Boys will be boys." That saying is just as silly as "Cow-boys will be cow-boys." But we await the working of this new law also with considerable curiosity. Both laws have the seeds of lethargy in them.

OHIO CITATIONS. — A contribution to the "Weekly Law Bulletin," of Ohio, draws attention to the fact that at Cornell Law School comparatively few Ohio decisions are cited, while those of the States completely encircling that State, as Michigan, Indiana, Kentucky and Pennsylvania, are largely cited, as well as those of Wisconsin and Illinois. The correspondent also states that when he was attending Harvard Law School "the explanation was frankly given that the decisions of our State did not rank with those of other States. The order of relative merit at that time seems to have been about as follows: Massachusetts, New York, Pennsylvania, Kentucky, California, Michigan, and Blackford's Indiana decisions. As to the reason for this discrimination it probably originated in the prejudice that existed and still exists, in many quarters, against an elective judiciary for short terms." Our own impression is that the Ohio decisions are fully as meritorious as those of Kentucky, California, Indiana, Illinois, or Wisconsin. If we were called on to array the decisions in order of merit, interest and importance we should put them as follows: New York, Massachusetts, Pennsylvania, Michigan, New Jersey, and let the rest take their places as they could scramble for them. New York easily comes first as the creator of the equity law and on account of the vast mass, variety, and importance of its decisions. Perhaps those of Massachusetts average higher in judicial merit, but they must yield at the other points. They represent New England law fully and fairly, but the decisions of all the other New England States are of a high order. We cannot understand why Harvard should prefer Kentucky and California to Michigan, or why they should be given any special prominence. Certainly they are not of peculiar general authority. On the other hand, the Michigan Supreme Court consisting of Christiancy, Campbell and Cooley was one of the finest that our country ever had. There are several other States whose adjudications are excellent and should be preferred to several of the States mentioned above, notably Alabama, and at some periods, South Carolina and Georgia.

NOTES OF CASES.

ANOTHER TOOTH CASE. — Unless the jocose newspaper reporter is exercising his vein of pleasant invention, a novel case of tooth-law has arisen in Germany. It comes to us that a man with a toothache resorted to a dentist. The stump proved to be a difficult one to draw, and when it was out it was of such curious shape that the dentist declared he would keep it as a curiosity. His patient however thought he would like to keep it for himself and claimed it; but the dentist, on the ground that a tooth, when drawn with the free consent of a patient, is ownerless property as soon as it leaves the jaw, refused to give it up. The patient at once entered an action against the dentist. We think he should succeed. Is the man who goes about with a "stump-eradicator" on the western prairies, entitled to the stumps? By no means. Much less should a surgeon have the privilege of holding and exhibiting — perhaps for gain — any offending member of the human frame, especially one of abnormal structure, when its original proprietor has chosen or been compelled to sever it from the bulk of his body. Any custom to the contrary would be void as *contra bonos molares*. We take it that the time has long gone when the tooth-drawer could carry the evidences of his skill in a bag with him to

show to gaping rustics at the fair, at least in cases where the owner objected.

Readers of "Our Mutual Friend" will recall the discussion between Messrs. Venus and Wegg as to the right of the former to hold the latter's amputated leg by purchase. From a friendly motive he was "glad to restore it to the source from whence it flowed," but when Wegg "threw it out as a legal point" that "if he had consulted a lawyer" it was doubtful that Venus could "have kept this article back from" him, Venus declared he "would have seen him further" before he would have surrendered it without being paid his price for it. "You can't buy human flesh and blood in this country, sir; not alive, you can't," says Wegg, shaking his head. "Then query, bone?"

PERSONAL LIABILITY OF JUDGES. — The very interesting question of the civil liability of a judge to a suitor for malicious or corrupt conduct within his jurisdiction has recently arisen in England in a case of which we get the following reports from "Notes from London" in the "Scottish Law Review" for June.

"The plaintiff was a Dr. Anderson, a planter in Tobago and the defendants, Sir John Gorrie, the Chief Justice, and two of his puisne judges. Serious scandals arose some time ago in consequence of the maladmistration of justice in that island. Sir Frederick Pollock and Sir William Anson were sent out on a commission to take evidence; and, in consequence of their report, the defendants in the action were deposed from their offices. Dr. Anderson seems to have been the representative of the planting interest, and Sir John Gorrie to have made himself the champion of the natives. Actions were brought at the instigation of the Chief Justice against Dr. Anderson, who was fined oppressively, held to bail in excessive amounts, and finally, when he petitioned the Crown upon these matters, as he had the legal right to do, was imprisoned for contempt of court. Having procured the deposition of his judges, he commenced his action against them for $10,000 damages. Sir John Gorrie died after the action was commenced, one of the defendants obtained the verdict of the jury before the trial was concluded, and only Mr. Justice Cook remained. The Lord Chief-Justice, in charging the jury, pointed out the necessity for securing the independence of judges acting judicially, but thought it monstrous to say, when a thing was done maliciously and corruptly, though within his jurisdiction, it was done judicially. The jury took the same view, and found for the plaintiff — damages, £500. Whereupon Lord Coleridge entered judgment for the defendant on the ground that the judge's privilege was absolute while acting within his jurisdiction, and that no action could be brought against him. In actions of slander brought against judges and counsel this seems to have been held, and is no doubt the law; but Lord Coleridge thought the law doubtful in the case he was hearing, and it was safer to enter judgment for the defendant, on the assumption that no action can be brought against a judge acting within his jurisdiction, and leave it to be appealed. This will probably be done. It would have been better if Lord Coleridge had made up his mind earlier as to the necessity imposed upon him of entering judgment for the defendant, and thus saved much time and the expense of keeping a trial going from day to day when the result is a foregone conclusion."

The leading case on this subject in this country is Lange *v.* Benedict, 73 New York, 12; 29 Am. Rep. 80. See also Busteed *v.* Parsons, 54 Ala. 393; 35 Am. Rep. 688, with a note at p. 694, on which the present writer spent a good deal of time. The doctrine indicated by Lord Coleridge's ruling seems well settled in both countries, but it has always seemed to us that the defendant Benedict in the case above cited acted without and outside of jurisdiction. Judge Folger made the best of a bad case for the protection of a brother judge.

CHANCE VERDICTS. — In Wright *v.* Abbott, Mass. Supreme Judicial Court, 36 N. E. Rep. 62, a quotient verdict was set aside, on the testimony of the officer in charge of the jury, who overheard their "deliberations." The Court said: —

"It is certainly not the duty of an officer in charge of a jury to listen to the deliberations of a jury, but, if he does, his testimony cannot be excluded on the ground that his knowledge was obtained in this manner, if it is otherwise competent. The rule excluding testimony of the conduct of jurors in the jury room when deliberating upon a verdict ought to have some limits. It seems that in England it has been finally settled that the affidavit of a juror will not be received to show that the verdict was determined by lot (Vaise *v.* Delavai, 1 T. R., 11; Owen *v.* Warburton, 1 Bos. & P. 326; Straker *v.* Graham, 7 Dowl. 223, 225). The weight of authority in this country also is that the affidavits or the testimony of jurors to show such a fact will not be received (Dana *v.* Tucker, 4 Johns. 487; Cluggage *v.* Swan, 4 Bin. 150; Brewster *v.* Thompson, 1. N.J. Law, 32. Grinnell *v.* Phillips, 1 Mass. 540, is regarded as overruled in Woodward *v.* Leavitt, 107 Mass. 453, 462). It has always been held that if a verdict is obtained by resorting to chance, or by drawing lots, it will be set aside (Mitchell *v.* Ehle, 10 Wend. 595; Donner *v.* Palmer, 23 Cal. 40; Ruble *v.* McDonald, 7 Iowa, 90; Birchard *v.* Booth, 4 Wis. 67; Dorr *v.* Fenno, 12 Pick. 520; Forbes *v.* Howard, 4 R. I. 364). In Vaise *v.* Delaval (*ubi supra*), where a verdict was obtained by tossing up, Lord Mansfield said: 'The Court cannot receive such an affidavit from any of the jurymen themselves, in all of whom such conduct is a very high misdemeanor; but in every such case the Court must derive their knowledge from some other source, such as from some person having seen the transaction through a window, or by some other means.' In Wilson *v.* Berryman (5 Cal., 44) the verdict was what is called a 'quotient verdict'; and the Court, while conceding that the affidavit of a juror could not be received, admitted the affidavit of the under-sheriff that the affidavit of the juror was true."

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 PENNSYLVANIA correspondent offers the following suggestion: —

Editor of "The Green Bag."

As a remedy for an evil of increasing extent — namely preferring a member of one's family as a judgment creditor, to the injury of general business creditors — permit a suggestion. Let a statute law be enacted in each state requiring judgments given to cover money advanced by members of a family to be entered within fifteen days after the giving of the judgments. Judgments not so entered to be void; and also providing that judgments given to cover the loans mentioned above shall be given within ten days after the loan is made, else to be void.

Lancaster, Pa. BENJ. C. ATLEE.

LEGAL ANTIQUI I ES.

BISHOP BURNET relates a curious circumstance respecting the origin of that important statute, the Habeas Corpus Act. "It was caused," he says, "by a odd artifice in the House of Lords. Lord Grey and Lord Norris were named to be the tellers. Lord Norris was not at all times attentive to what he was doing; so a very fat lord coming in, Lord Grey counted him for ten, as a jest at first; but seeing Lord Norris had not observed it, he went on with this mis-reckoning of *ten;* so it was reported to the House, and declared that they who were for the bill were the majority, and by this means the bill passed."

FACETIÆ.

A NUMBER of years ago in the Superior Court for New London County, Conn., a witness whose first name was Thomas, and who was the son of the plaintiff, testified to a certain important date, and on cross-examination having testified that he had refreshed his memory as to the date by a memorandum made at the time, was asked to produce the paper, which he did. The paper was seized by the cross-examiner and read aloud. It was as follows: "Tommy, do not forget. It was July 25th." The value of "Tommy's" testimony was destroyed.

IN a certain town in Nevada there was at one time a justice of the peace, who had been born in the Emerald Isle, and whose blunders occasioned many a smile to the better educated members of the community.

A subpœna had been issued from his court to another Irishman to attend as witness in a case where James Smith was the plaintiff, and Isaac Williams *et al.* were the defendants.

Michael Fennessey, the desired witness appeared in court before the trial commenced, and during an informal preliminary conversation he asked bluntly, "Judge, who in the wurld is *'et al.'?* That's fwhat Oi'm wantin' t'be towld."

"Well, well, Moichael," exclaimed his honor, in utter amazement, "Oi must say Oi'm a bit surprised that an Amirican citizen, an' a man av orthinary intilligince, should not know the manin' of *et al.!* But for the binifit av the witness an' any other gintlemin prisint that moight be ignorant as well as Moichael Fennessey, Oi will explain. It is dirivated from two Latin wurrds conthracted, an' manes in its litheral an' Amirican sense, "*at all, at all!*"

IN a case in which a man was accused of forgery, the counsel for the defense drew from a witness the following statement: —

"I know that the prisoner cannot write his own name."

"All that is excluded," said the judge; "the

prisoner is not charged with writing his own name, but that of some one else."

A Virginia judge once visited a plantation where the darkey who met him at the gate asked him which barn he would have his horse put in. "Have you two barns," inquired the judge. "Yes, sah," replied the darkey, "dars de ole barn, and Mas'r has jes build a new one." "Where do you usually put the horses of visitors who come to see your master?" "Well, sah, if dey's Metodis's or Baptis's, we gen'rally puts 'em in de ole barn, but if dey's 'Piscopal we puts 'em in de new one." "Well, Sam, you can put my horse in the new barn; I'm a Baptist, but my horse is an Episcopalian."

An old judge of the New York Supreme Court, meeting a friend in a neighboring village, exclaimed, "Why, what are you doing here?" "I'm at work trying to make an honest living," was the reply. "Then you'll succeed," said the judge, for you have no competition."

Recently a woman was on trial before a Police Court, in Charlotte, N.C. She had figured as a defendant before. Knowing that fact, her counsel on this occasion, who was proving an alibi for her, took occasion to put on an unusual number of witnesses, and some of them of undoubted character. So confident was he that, when through the examination, he refrained from making any speech, saying to the court that the witnesses for the defendants were such as to render it unnecessary. The police justice promptly entered up sentence. Observing the astonished looks of her lawyer, he politely said, "Mr. B——, your client has been before me several times. If I were to believe *her* witnesses, I never would convict her."

It has not been so very long since the old English court rules passed out of observance, and when they were in vogue, nowhere were they more strictly observed than in South Carolina. The rules provided that a lawyer, when he spoke in court, must wear a black gown and coat, and that the Sheriff must wear a cocked hat and sword. On one occasion a lawyer named Pettigrue arose to speak in a case on trial.

"Mr. Pettigrue," said the judge, "you have on a light coat. You cannot speak, sir."

"Oh, your honor," Pettigrue replied, "may it please the court, I conform to the law."

"No, Mr. Pettigrue," declared the judge, "you have on a light coat. You cannot speak."

"But your honor," insisted the lawyer, "you misinterpret. Allow me to illustrate: The law says the barrister must wear a black gown and coat, does it not?"

"Yes," replied the judge.

"And does your honor hold that it means that both gown and coat must be black?"

"Certainly, Mr. Pettigrue, certainly, sir," answered his honor.

"And the law further says," continued Mr. Pettigrue, "that the Sheriff must wear a cocked hat and sword, does it not."

"Yes, yes, Mr. Pettigrue," the court answered somewhat impatiently.

"And do you mean to say, your honor," queried Pettigrue, "that the sword must be cocked as well as the hat?"

"Er — eh? — er-h'm," mused his honor. "You may continue your speech, Mr. Pettigrue."

A Legal Career.

He went into an office with intent to study law,
And he waxed enthusiastic over all he read or saw.
It was such a noble science, and that he should come to be
Its most sapient exponent, seemed his certain destiny.

So the office seemed a palace, and a throne the office stool,
While no labor howe'er mighty could this youngster's ardor cool;
For his head was full of visions as a hive is full of bees —
Visions of his future clients and the fatness of their fees.

"Blackstone" was his favored diet, with a dessert dish of "Kent,"
And he served up bits of "Greenleaf" every single place he went;
While he always took some "Wharton" with his quiet ev'ning smoke,
And he warmed his legal body with a glowing piece of "Coke."

Then he went to be examined and his grade was passing fine;
They admitted him to practice and he pasted up his sign,
And the business men remarked, "Oh he is promising, they say,"
But they gave their work to Codger — who was old — across the way.

Tho' they put him on committees where the work brought no reward,
Tho' they made of him a sort of special agent for the Lord,
Yet they had no labor for him that his hungry purse would fill,
And he's growing gray and grizzled waiting for a client still.

PAUL DUNBAR.

Dayton, O.

NOTES.

THE English law courts have formally decided that a wife is not a necessity of life, but a luxury. There have been a good many breach of promise suits before the courts lately, and in two prominent ones the defense was set up that the contract was invalid because the contracting parties were minors when it was made, and that no contract made by a minor is binding at law, except it be for a "necessity." In one case the defense failed because the contract was renewed after the youth attained his majority, but in the other case the young fellow got off, the court deciding that a wife could not be considered a necessity.

THE Madagascar "Gazette" recently printed an advertisement calling for "a lawyer, capable of interpreting the laws of China, Siam, and Japan. He must also possess a thorough knowledge of English constitutional law. No applicant who is not willing to assist at farm work and help in the blacksmith shop need apply. He must also be a good rider and driver."

SOME years ago a farmer sued an orphan asylum at Buffalo, for injury to his sheep by a dog kept at the asylum. The case was tried in the county court, and the judge held as follows: "I have carefully looked over the defendant's charter, and I find that it is not authorized to keep anything but orphans. Keeping a dog was therefore *ultra vires*, and it is not liable in this action."

IT is said that when Sir Richard Webster, Ex-Attorney-General of Great Britain, was crossing the Atlantic, last summer, he encountered, in the smoking saloon, a well-known New York sporting man, whose appearance and conversation did not convey to Sir Richard any accurate idea of his occupation. The New Yorker was quite elated with the acquaintance and decided to introduce Sir Richard to his wife, the first time the opportunity offered. When the appropriate moment arrived, the presentation took place on deck, as follows: "Mary, let me present my friend, Lord Webster of England, one of the greatest lawyers there. He is the HOWE HUMMEL of London!"

THE "Omaha Bee" reports that in San Francisco a sensitive husband is suing his wife for divorce because she bleached her hair. In his petition he says: —

"Bleached or artificially colored hair is easily distinguished as such and does not appear natural, nor does it deceive any person, but it is perfectly patent and noticeably conspicuous. It is regarded by the majority of right-thinking persons as an indication of a loose, dissolute and wanton disposition, and is regarded as and commonly held to be a practice never affected by modest, pure and respectable women."

The husband claims that he is mortified and humiliated on account of the change in the color of his wife's hair. He adds: —

"She is a brunette naturally. Her hair is of a chestnut brown color, which in its normal state is modest and becoming, and harmonizes with the natural color of her skin and eyes. Since we married she has, against my wishes and protest, and with intent to vex, annoy, exasperate and shame me, dyed her hair and changed its shade to a conspicuous and showy straw or canary color. As a consequence of this artificial coloring, she has been obliged to paint her face to secure an artificial complexion in keeping with the artificial color of her hair. The combination has given her a giddy, fast and sporty appearance."

ON a recent occasion an advocate was arguing a patent case before the U.S. Supreme Court. He claimed an infringement of rights in the manufacture of a new style of collar button. Incidentally, he spoke at length and with enthusiasm of the varied merits of the invention. Justice Shiras, who is the humorist of the Supreme Bench, interrupted his glib discourse by saying: —

"I wish to ask if, among the numerous admirable qualities of this collar button, one of particular and indispensable importance is embraced.

In a word, if it falls and rolls under the bureau, can it be found again?"

The query was put with the utmost apparent gravity, and it staggered the lawyer completely, so that after adding a few hesitating remarks, he closed his argument. Justice Brown and Justice Harlan were both convulsed with mirth, because it happened that each of them had lost a collar button that very morning. Brown's had rolled under the fireplace and lodged in a spot secure from recovery behind the gas-log. Whether the joke had any influence in the decision favorable to the plaintiff, which was rendered, nobody can tell. — *Washington Star.*

BOOK NOTICES.

RESTRICTIONS UPON LOCAL AND SPECIAL LEGISLATION IN STATE CONSTITUTIONS. By Charles Chauncey Binney, of the Philadelphia Bar. Kay & Brother, Philadelphia, 1894. $1.50.

The branch of constitutional law treated of in this volume owes its origin, as the author says, to a widespread lack of confidence on the part of the people of the several states in their own representatives in the state legislatures. That this lack of confidence is well founded, the proceedings of some of our recent legislatures leave no room for doubt. Mr. Binney has given his subject careful consideration, and his work contains much of value and interest to the profession. The contents are as follows: —

Chapter 1. — The Treatment of Local and Special Legislation in England and the United States. Chapter 2. — The Distinctions between General, Local, and Special Legislation. Chapter 3. — Classification. Chapter 4. — Local Option as affected by the Restrictions. Chapter 5. — Legislative Discretion as controlled by the Restrictions. Chapter 6. — The Restrictions actually in force in the several States.

THE HISTORICAL DEVELOPMENT OF THE JURY SYSTEM. By Maximus A. Lesser, of the New York Bar. Lawyers' Co-operative Publishing Co., Rochester, N.Y., 1894. Law sheep, $2.50.

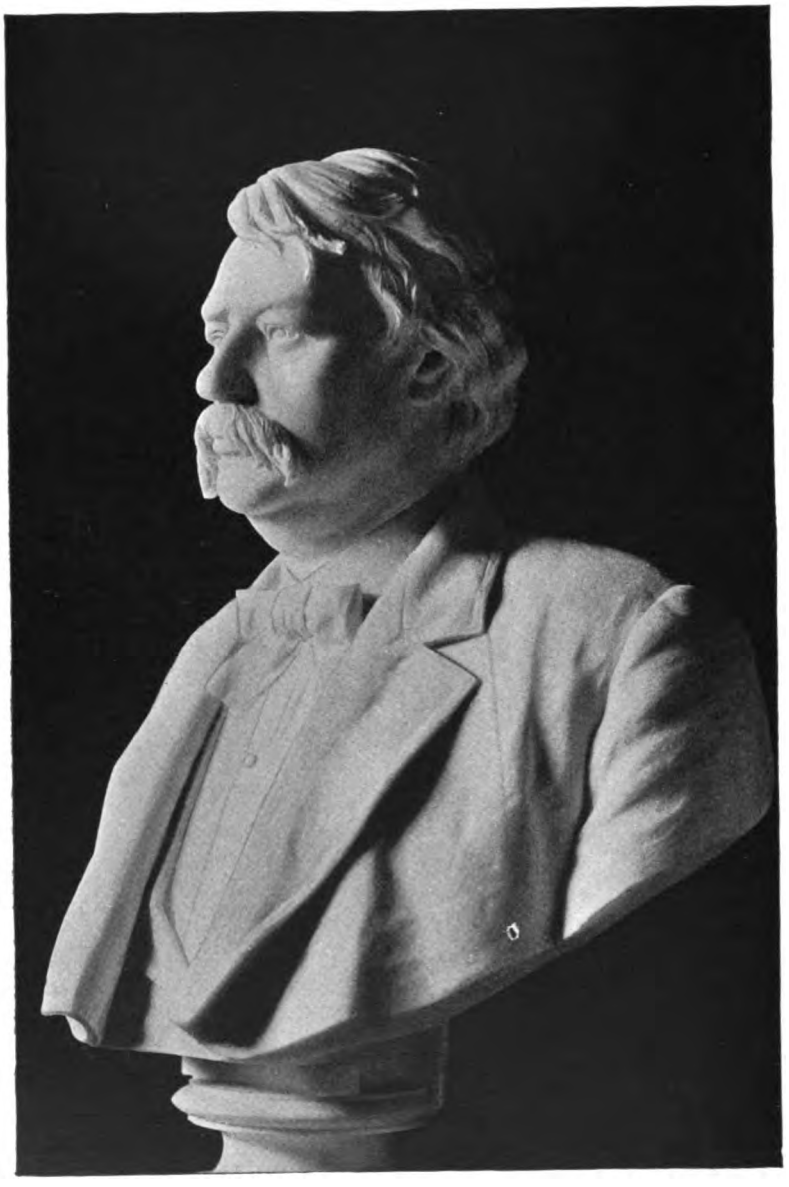
Mr. Lesser, in this volume, offers the legal profession a work of great interest and one which will be heartily welcomed by all scholarly lawyers and students of the development of our legal institutions. Since Mr. Forsyth's admirable work upon Trial by Jury, published many years since, we have had nothing so comprehensive regarding the source and growth of the jury system. The author's treatment and presentation of his subject is original, and the general reader as well as the lawyer will find the book well worthy a careful reading.

INFAMIA. Its place in Roman Public and Private Law. By A. H. J. Greenidge, M.A., Hertford College. McMillan & Co., New York, 1894. Cloth, $2.60.

This work, of more than ordinary interest to the legal profession, displays a vast amount of study and research on the part of its learned author. Branches of this subject have been treated by writers on constitutional and private law, but nowhere, so far as we know, has Infamia been treated from a historical standpoint as a whole, as it is in this book of Greenidge's. All students of Roman law will welcome this contribution as a valuable addition to the literature upon that subject, for Infamia is in touch with almost every department of Roman life, and in its juristic aspect it is difficult to say what department of Roman law — public, criminal and private — it did not to some extent control. We commend, therefore, the work to every thinking lawyer as one in which he will find both entertainment and instruction.

AMERICAN RAILROAD AND CORPORATION REPORTS, being a collection of the current decisions of the courts of last resort, in the United States, pertaining to the Law of Railroads, Private and Municipal Corporations, including the Law of Insurance, Banking, Carriers, Telegraph and Telephone Companies, Building and Loan Associations, etc. Edited and annotated by JOHN LEWIS. Volume VIII. E. B. Myers & Co., Chicago, 1894. Law sheep, $4.50.

The lawyer who wishes to keep abreast of the times, as to the law of corporations, should possess this excellent series of Reports. Mr. Lewis displays good judgment and discrimination in his selection of cases, and his annotations are unusually full and valuable. The present volume reports some one hundred and twenty cases, decided in the year 1893.



Matt. H. Carpenter

The Green Bag.

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MATTHEW HALE CARPENTER AS A LAWYER.

BY HENRY D. ASHLEY.

BELIEVING as I do that there is no inspiration to a struggling lawyer like the contemplation of one of the giants of our profession, I shall attempt in this paper to give a fragmentary sketch of a man who in my judgment was one of the greatest lawyers America has produced. Born on December 22, 1824, in Vermont, on the banks of the Mad River, whose turbulent and rapid stream the flow of his life somewhat resembled, Decatur Merritt Hammond Carpenter, as he was christened, Matthew Hale Carpenter as he baptized himself, through love of the law and of that great jurist, passed his youth amid the beauties of the Green Mountains. His grandfather, Cephas Carpenter, a Justice of the Peace, and a man of prominence, cultivated his young grandson's love for oratory and legal pursuits, which had appeared in him almost from the cradle; and he defeated this same doting grandfather, who was opposing counsel, in the first lawsuit he ever tried. When about six years of age, Paul Dillingham, the most prominent attorney then practising in the Mad River valley, afterwards governor of Vermont, visited young Carpenter's father's home, and, attracted by the boy's appearance, told his mother that when fourteen he would take him into his office at Waterbury and put him in training. When his fourteenth birthday arrived, having treasured this long forgotten promise, the ambitious boy suddenly left his parents to go to Waterbury to enter Paul Dillingham's office. There he worked for six years, and from thence to West Point, which he left during his second furlough home, humorously saying to his parents, "I do not believe a man can ever become great by learning to walk a crack with a stiff neck and his fingers on the seams of his pantaloons." In November, 1847, he went to Boston determined to get into the office of one of his two great idols, Daniel Webster and Rufus Choate. Choate at first informed him that he had no room for another student in his office, but impressed by his simple statement and apparent ambition, he at last reluctantly gave him permission to come back next day. His first day in Choate's office is worth a detailed account. As Choate next morning came from his private office through the library on his way to court and saw young Carpenter browsing among his books, he playfully handed him a letter just received from a country attorney, asking an opinion upon some intricate question of law, which he told Carpenter to give him on his return at night. When he returned in the evening, Carpenter handed him a carefully written letter of many pages in answer to the lawyer's intricate question. Choate sat down at once and carefully read the letter, and when he had finished the last page, pushed down his spectacles, peered up at the gawky boy standing beside him, and silently studied for some moments his head and face. Completely surprised, he said as he signed the letter, "Well, I guess I can put 'R.

Choate' to this letter and tell that lawyer to send me a hundred dollars." He remained with Choate some years, only leaving to go to Beloit, Wisconsin, with a strong letter of recommendation from Choate and a guaranty from him of payment to Little, Brown & Co., for all the books Carpenter might order. Arrived at Beloit with seventy-five cents in his pocket, Matt rented an office on credit, unpacked a library larger than had ever been seen in the town, and after borrowing fifty cents to pay for painting his name on his shingle, the penniless young attorney started on his professional career. From that time to his death, though stricken with blindness lasting several years, and encountering and surmounting constant obstacles, Carpenter ever went upwards and onwards till an untimely death, in 1881, closed his eloquent lips forever. To review in detail the important litigation in which he was engaged would fill a volume. From the justice's courts of Wisconsin, through the State and Federal Courts of that State, he hewed his way, till in 1862 he argued his first case in the Supreme Court of the United States, the theatre of his greatest professional triumphs. A letter written home by him from the chamber of that august tribunal on the day of his first appearance casts a vivid light on the charming personality of the man: —

"Supreme Court Room, Friday, 12 o'clock, M.

"My Darling Babies:

"The gravest and most dignified body of men on earth is just now before me. A squeaking voice from Jersey is enlightening the court. Yet my thought is over the prairie and my heart with you, dear, precious pair, who are to me more than courts or oratory, and more than sovereignty or power, dearer than the ruddy drops that visit my heart. I am well and shall write you more at length when I get rested. MATT."

The late Justice Miller thus describes the impression produced upon the judges of the Supreme Court at that time. The case was a complicated railroad receivership, and after elaborate argument by distinguished counsel opposing him, who utterly failed to get the facts of the case in the minds of the court, as Carpenter, who had appeared before me in Wisconsin when on the circuit, rose to make his argument, I said to him, "Mr. Carpenter, can't you tell the court what this case is all about." He then proceeded to marshal in serried array, the complicated facts of the case, taking three-quarters of an hour to the statement of the facts. The law he covered in five minutes. As we were exchanging our robes for our overcoats in the little room appointed for that purpose, Judge Grier addressing me said, "Brother Miller, who is that Mr. Carpenter who has come down from your circuit? I want to know him, for I have heard nothing equal to his effort to-day since Mr. Webster was before us."

The test oath cases, the McCardle case, the Belknap impeachment, his argument before the Electoral Commission, Bradwell *v.* State of Illinois, the slaughter-house cases, Northwestern University *v.* People of Illinois, and his numerous battles with corporations, particularly railroad corporations, are some among the many important cases in which his deep legal learning, his matchless oratory and his fearlessness as an advocate shone out. Ever affable and courteous, he was always aggressive and fearless, he exemplified the old oath of an English barrister, "To present nothing to the court in falsehood, but to make war for his client." Another letter from the Supreme Court chamber in Washington to his wife during the argument of the MacCardle case, reveals the man more than reams of my feeble descriptive generalities could do: —

"Tuesday, March 3, 1868.

"Dear Girl:

"Yours of 27th received, and I am greatly relieved, as I was beginning to be anxious, it had been so long since I had heard from you.

"I spoke two and a half hours to-day, and did as well as I expected or hoped to do. I am

praised nearly to death. I had half of the Senate for an audience. Miller's face was as the face of an angel radiant with light and joy; Davis and Field looked troubled; Nelson, Clifford and Grier dead against me. But I shook them up and rattled their dry bones. Kiss the pets and believe me always the same.

MATT."

After Carpenter's victory in the slaughter-house cases, as soon as Justice Miller had rendered his opinion affirming the decision of the State court, he telegraphed to his New Orleans clients as follows, "The banded butchers are busted."

Carpenter, although a man of the highest professional ideals, was never seriously disturbed by what has always seemed to me the most absurd of ethical questions. Should a lawyer fight for his client though he knows him to be in the wrong? Among the famous whiskey cases which he defended was the United States *v.* "three tons of coal." At this trial Carpenter, having made a desperate attempt to pass by Judge Drummond for the purpose of instructing and soothing the jury, was sharply reprimanded by his honor, with the pungent remark that it was the province of no one but the court to instruct the jury. After the case, to friends asking him why he undertook so desperate a course, and one that might have entailed a fine for contempt, Carpenter replied, "All the law was against me, public opinion was against me, the press was against me, the court was against me, and my clients were as guilty as Cain. What could I do? My only possible chance was to get by the judge and at the jury."

A more detailed account of the McCardle case may not be without interest. As reported in the U. S. Supreme Ct. Reps., 6th Wallace, 318, and 7 Wallace, 515, the case appears a rather simple one, but probably no graver questions were ever presented before the Supreme Court, involving as it did, the constitutionality of the entire reconstruction acts and directly causing the Act of Congress of March 27, 1868, and almost re-saving the Union. I can not refrain from quoting from the opening sentence of the magnificent argument in that case, as it evidences the intrepidity of the man before the most august of tribunals: —

"This is the first time in the history of the world that a bench of judges has been invoked to redress the wrongs, real or imaginary, of eleven millions of people, and to establish the authority of ten pretending governments. Such controversies have been decided by force, not by reason; in the field, not in the courts. Waterloo determined the fate of Napoleon, and he went in sullen silence to his ocean rock, never dreaming of the habeas corpus. No lawyer can argue, no judge decide, this cause without a painful sense of responsibility. Its consequences will be upon us and our children; and generations yet unborn will rejoice or mourn over the principles to be here established.

"This court has been told, not for the first time, that it is the great conservative department of the government; that if it does not keep constand vigil over the other departments, they will rush, as would the planets without the law of gravitation, into 'hopeless and headlong ruin.' There is nothing within the circle of human emotions, unless it be the pleasure with which a lover praises the real or imaginary charms of his mistress, at all to be compared to the delight experienced by a lawyer in glorifying a court. It results from our studies and our training, and we entertain the utmost reverence for those who must declare what the law is. Within proper bounds this disposition is commendable; but the bar, in a free country, often have higher duties to perform; and this adulation of the judges may be carried to excess. The judges of this court, like the apostles of our Lord, are men of like passions and infirmities with other men. The bar stands in much the same relation to the court that the prophets held to the ruling powers of the ancient dispensation. It is our duty, when occasions require, to admonish and warn, and that, too, *whether courts will listen, or whether they will refrain.* There are times when general truths should have personal application; times when a prophet in Israel must say to a

King of Israel, 'Thou art the man.' But to do this, he should be a prophet, and not a mere technical levite. He should stand among his brethren like Saul in the multitude, head and shoulders above them all. The man to speak thus to this court should have the mien and the manner of a prophet, his hair whiter than milk streaming down his shoulders. He should be as old as the apostles would have been had they lived to read McCardle's newspaper. With no qualification to perform this duty, except that I have read McCardle's newspaper, the task is before me, and it will be my aim to show, while conceding that this court is a very grave body, that it does not furnish the law of gravitation either to the material universe or to our political system."

With such an introduction he proceeded to close a masterly argument of the great constitutional question involved, and when he had finished his argument, Stanton, with tears in his eyes, exclaimed fervently, "Carpenter, you have saved us."

Carpenter's personality had a charm about it that was simply indescribable. Of inexhaustible good nature and keen sense of humor, his mind, steeped in general literature, was a storehouse of thought and fancy. Theology, poetry, science his mind greedily devoured. Shakespeare and his Bible were his intimate associates; a sincere believer in the great truths of religion, the divinity of Christ and the Fatherhood of God, although a member of no religious body, and taking his church membership as he once said by the courtesy, he numbered among his most intimate friends several distinguished clergymen. When at Racine College, Wisconsin, of which institution the Rev. James De Koven was then president, the doctor one day called me into his study, and read me a letter just received from Matt Carpenter, which had caused him profound astonishment. Doctor De Koven had just returned from a convention of the Protestant Episcopal Church at Baltimore, where he had carried on a debate on the question of the difference between transubstantiation as held by the Roman Catholic Church, and the doctrine of the real presence, as maintained by the extreme ritualists of the Protestant Episcopal Church. Carpenter's letter showed him to be thoroughly familiar with all the niceties of theological hair-splitting, to have kept pace with the entire controversy, and to be a theologian of no mean order. Carpenter was literally a book devourer. He seemed to take in whole sentences at a single glance without reading each word. His miscellaneous library in Milwaukee, still preserved exactly as when he died, would delight the heart of any lawyer of literary taste. Every inch of space, save doors and openings for windows, is lined with books. All the great recorded speeches of the English-speaking advocates, a full set of the Gentleman's Magazine, of Notes and Queries, with all those odds and ends peculiarly suited to the literary palate of a busy lawyer.

His charity and generosity amounted almost to a fault, and there was not a sour spot in his nature. Personal prejudices never seemed to sway his professional or public judgment. In speaking in the United States Senate on Trumbull's bill to increase the salary of the United States District Judges, after listening to arguments made by various senators in favor of the bill, principally on the ground of their high personal regard for the judge of their own district, he said: —

"Some senators have alluded to and lauded the judge of the district in which they reside; from which it might be supposed that they were actuated in voting this increase of salary by motives of friendship to or admiration for the present incumbent. I am not at all influenced in that way. The judge of the district in which I reside is not a friend of mine, and I am not a friend of his. He thinks I am unfit to be a senator, and I think he is unfit to be a judge. In court I pay him the deference due to the office of judge, and he shows me the respect due to a member of the bar; but out of court

neither recognizes the other. But, sir, I know the amount of labor performed by him, the number of cases he decides, the time spent by him in holding court, and I know that five thousand dollars per annum is even less than a just compensation for his services, and I should hold myself entirely unfit for a seat in this body if I were incapable of doing justice to him because he is not my friend, or because he is my bitter enemy. By refusing to vote a suitable salary to him I should be guilty of doing toward him what I think he has often done towards me — injustice. We ought to vote a salary for the office, without regard to the merits of the accidental present incumbent.

"Five thousand dollars a year is not more than proper compensation for the services of any man fit to be a district judge. And without providing an adequate salary, you can not at all times secure the services of a competent man, except from the wealthy men of the country, who might be willing to accept the office without any salary whatever. This would be closing the door of preferment to the poor, and surrendering the bench to the rich; which I am opposed to, not only because being a poor man I sympathize with that class, but because such a policy would be anti-republican, and a practical surrender of the bench to the rich."

In his address at the founding of the Taylor Orphan Asylum in Racine, he said:

"The poor want less talk and more bread. The world needs less of doctrine and more religion; less of form and more substance; less of the pretending and more of the reality of godliness and charity. The money worse than wasted in the superfluities of life, in silk and satin to be draggled by our wives and our daughters through filthy streets, would clothe all the orphans in the world.

"The money spent on whiskey to madden the brain, in tobacco to shatter the nerves, in politics to promote the demagogues, would carry all the comforts of life to every hearthstone in the land, educate the ignorant, and lift up the oppressed, and pour oil and wine into all the wounds of suffering humanity.

"Of all the duties of life there is none that touches us so near the tender emotions of the heart, none that is commanded by God in language of such solemn aud awful warning, as the duty of protecting the unprotected and befriending the fatherless child. In that great code given by God himself to his chosen people, a code which mingles municipal regulations with moral precepts, it is written, 'Ye shall not afflict any widow or fatherless child. If thou afflict them in any wise, and they cry at all unto me, I will surely hear their cry, and my wrath shall wax hot, and I will kill you with the sword, and your wives shall be widows and your children fatherless.'"

In Erskine's speech in behalf of John Stockdale, tried on information filed against him by the attorney-general for libel on the House of Commons, the attorney-general having garbled from the supposed libelous publication sentences at random, and tacking them together, endeavored to thus prove their libelous character, Erskine in reply said, "I humbly expect that the benevolent Author of our being, holding up the great volumes of our lives in his hands, and regarding the general scope of them; if he discovers benevolence, charity and goodwill to man beating in the heart, where he alone can look; if he finds that our conduct, though often forced out of the path by our infirmity, has been in general well directed; his all-searching eye will assuredly never pursue us into those little corners of our lives, much less will his justice select them for our punishment, without the general context of our existence, by which faults may be sometimes found to have grown out of virtues, and very many of our heaviest offenses have been grafted by human imperfection upon the kindest of our affections. No, gentlemen, believe me, this is not the course of divine justice, or there is no truth in the gospels of heaven. If the general tenor of a man's conduct be such as I have represented it, he may walk through the shadow of death with all his faults about him with as much cheerfulness as in the common paths of life; because he

knows that instead of a stern accuser to expose before the author of his nature those frail passages which, like the scored matter in the book before you, checker the volume of the brightest and best spent life, his mercy will obscure from the eye of his purity, and our repentance blot them out forever."

Opposite this passage in Carpenter's copy of Erskine's speeches, in his private library in Milwaukee, he has written, "I believe this."

Such was Matthew Hale Carpenter, a great and profound lawyer, a matchless orator, a noble-minded, tender-hearted, lovable man, with charity and good will to man beating in his heart, a man whose faults and frailties but endear him to anyone conscious of his own shortcomings, — and who of us is not?

Though one of the most conspicuous figures in the United States Senate during the most trying period of this country's history, Carpenter was in his intellectual make-up a lawyer pure and simple.

He once said, "I have been called a bad politician, a bad man, a bad almost everything, but never so far as I know a bad lawyer." When in 1881 he lay dying in Washington, his lifelong friend, Judge Arthur McArthur, came into his room. As McArthur sat down by the bed and took his hand, the weary eyes of the dying man showed no light of recognition. Suddenly a smile illumined the wan face and he said playfully, "Judge, I want to make a motion." "It is granted, Matt," said his friend, but before he had finished the reply the great lawyer had gathered his feet up into the bed, and that mysterious change which we, in our childish ignorance of a better name, are pleased to call "death," had emptied the crumbling house of its immortal tenant.

Had his arguments and speeches been taken down and preserved; had there been a Boswell or a Lockhart to have caught and recorded the essence of his personality, his memory would be both great and fragrant to the third and fourth generation of future members of our profession. But the greatest of lawyers may hardly dare to hope that his memory among his brethren will live beyond a few short months. The eye of some future plodder may catch his name in a law report, but before the sod on his grave has twice grown green and withered, he is as though he had never been.

We brother lawyers may as well be as decent to one another as we can. We are all travelling in the same direction, and will probably lie near together in our graves. Let us do all the kind things for one another we can, for we shall certainly pass this way but once. And whatever our views about the future, when we are dead we will probably be dead a long time.

DUELLING AT THE IRISH BAR.

THE late Mr. John Edward Walsh, who was Attorney-General for Ireland in 1866, and subsequently Master of the Rolls in Ireland till his death in 1869, wrote and published in 1840 a little book entitled "Ireland Sixty Years Ago," in which he directs attention to the practice of duelling at the Irish Bar towards the close of the last century.

Many men at the Bar, Mr. Walsh says, practising fifty (one hundred) years ago, owed their eminence not to legal ability, but to their powers as duellists. Mr. Walsh relates that a contemporary of his own consulted Dr. Hodgkinson, Vice-Provost of Trinity College, Dublin, then a very old man, as to the best course of study to pursue, and whether he should begin with Fearne or Chitty. The Vice-Provost, who had long been secluded from the world, and whose observation was beginning to fail, immediately reverted to the time when he had himself been a young barrister, and his advice was: "My young friend, practise four hours a day in a pistol gallery, and it will advance you to the woolsack faster than all the Fearnes and Chittys in the library."

Some noted instances of legal and judicial duelling in Ireland will be of interest. Mr. Curran, who became in 1806 Master of the Rolls in Ireland, while at the bar and a member of the Irish Parliament, fought a duel with Lord Buckingham, Chief Secretary for Ireland, because he declined to dismiss at his request a public officer. Mr. Curran also fought with the Attorney-General, Mr. FitzGibbon — the weapons being enormous pistols twelve inches long. Mr. FitzGibbon afterwards became Lord Chancellor of Ireland and Earl of Clare. His enmity drove Curran out of practice in the Court of Chancery at a loss, according to his own estimate, of £30,000.

John Scott, who as Earl of Clonmel died in 1798, while Chief Justice of Ireland, fought Lord Tyrawley and Lord Llandaff, and was a party in several other duels with swords and pistols. Marcus Patterson, who was a contemporary of the Earl of Clonmel, and was Chief Justice of the Irish Court of Common Pleas from 1800 till 1827, was Attorney-General from 1789 till 1800. He was so distinguished, during the turbulent period which preceded the Union, for his duelling propensities, that he was always the man depended on by the Government to frighten a member of the Opposition, and so rapid was his promotion, that it was said he "shot up" into preferment. When in 1826 the question of retirement from the judicial bench was mooted to Lord Norbury, whose mental and physical powers were clearly failing, he immediately produced from a case in his study a brace of duelling pistols, and threatened to challenge anyone who would venture to mention the matter in his presence.

Mr. Hely-Hutchinson was a barrister of great eminence, and Prime Serjeant. The holder of this office took precedence in Ireland of the Attorney-General. When practising at the Bar he fought many duels. He was subsequently in 1774 appointed Provost of Trinity College, Dublin. He was anxious, when Provost, to establish and endow a professorship of the science of defence in the University of Dublin, and challenged and fought a Mr. Doyle, an Irish Master in Chancery.

Those instances, recorded by Mr. Walsh in "Ireland Sixty Years Ago," and by Sir Jonah Barrington in his "Personal Recollections," are startling. Mr. Walsh only writes of what he had heard of the doings of a previous generation, but Sir Jonah Barrington, who lived in the Union period, testifies to what he had seen. Sir Jonah was himself Judge of the Irish Court of Admiralty, and a far-famed duellist.

It is perhaps worthy of note that Mr. Ambrose Hardinge Giffard, a member of the Irish Bar, fought a duel with another barrister, Mr. Bagnal Harvey, by whom he was wounded. Mr. Harvey was subsequently, in 1798, the leader of the Rebellion in the county of Wexford, and was executed for high treason. Mr. Giffard afterwards became, as Sir A. Hardinge Giffard, Chief Justice of Ceylon. He was paternal uncle of Lord Halsbury, the ex-Lord Chancellor of England.

The laws by which duelling is punishable were then, Mr. Walsh observes, as severe as now, but such was the spirit of the times that they remained a dead letter. No prosecution ensued, and even if it did no conviction would follow. Every man on the jury was himself probably a duellist, and would not find his brother guilty. After a fatal duel, the judge would leave it to the jury whether there had been "any foul play," with a direction not to convict for murder if there had not.

"Duelling in Ireland," wrote Mr. Walsh in 1840, "is now happily a thing of the past." A few years afterwards, however, the old duelling spirit asserted itself at the Irish Bar on a memorable occasion. Mr. T. B. C. Smith, in 1844, as Attorney-General for Ireland, conducted the State prosecution of Mr. O'Connell. Mr. FitzGibbon was one of the leading counsel for the defence. The report of the trial for the 30th Jan., 1844, in the State Trials, contains this remarkable passage: "The court having adjourned for luncheon, during the interval the Attorney-General sent a challenge to FitzGibbon."

On the judges resuming their seats, Mr. FitzGibbon complained of the conduct of the Attorney-General thus: "With a pistol in his hands he says to me, I'll pistol you unless you make an apology, and I cannot help telling him now such a course won't draw an apology from me." The Attorney-General admitted that the letter was written hastily, but under circumstances of great provocation. The good offices of common friends were invoked, and the Chief Justice, insisting on an assurance from both gentlemen that the quarrel would proceed no further, thought that "this unpleasant matter might at once be set at rest" (see Reports of State Trials, New Series 5, pp. 366-368).

This was the last instance of a serious challenge at the Irish Bar. Mr. Smith subsequently became Master of the Rolls, and was the immediate predecessor of Mr. Walsh in that office. Mr. FitzGibbon became a Master in Chancery. His son is one of the Lord Justices of Appeal in Ireland. — *Law Times.*

THE LAW OF THE LAND.

By Wm. Arch. McClean.

VIII.

OUR PET ANIMALS.

DE GUSTIBUS NON EST DISPUTANDUM; which being interpreted, as everyone knows, is that there is no disputing about tastes. Confidentially this is no Latin legal maxim, the quotation is indulged in for the mere purpose of illustrating its truth as to animal pets, for one old maid will dote on one cat, another cannot exist with less than a half dozen cats, and still another will abhor cats.

Run over the list of people you know or have known and make a list of their pets. One has a big dog, another a middle-sized dog, still another a very diminutive dog. Others have birds of every description and kind, squirrels, rabbits, a lamb, a goat, a fox, a wolf, an alligator, even a horned toad. When tastes run to curiosities there is no knowing what the last freak may be.

When there is no disputing about tastes and every individual believes his or her taste as to pets is a laudable one, to be indulged at one's whim, it is not to be wondered at that courts have been frequently called upon to declare the law of the land as to animals. Taste is a particularly sensitive subject, as lawyers have remuneratively learned to know in this direction.

The law divides animals into two classes, namely, such as are *domitae*, or commonly known as domestic animals, and such as are *ferae naturae*, or of a wild disposition. The kind of ownership that an individual may have in either of these classes is quite different and distinct. The ownership in those classed as domestic animals, as horses, cattle, sheep, and the like, is absolute, being such an absolute property in domestic animals as shall entitle one to maintain an action against anyone for killing or injuring them, as shall entitle one to have him who should steal them punished, as shall make the owner liable for damages done by his domestic animals under certain circumstances. In animals of a wild nature a man has only a limited or qualified property which continues only so long as they are under his dominion and control, such as where he housed or confined them so that they cannot escape, or where he has educated or tamed them. If they escape from him or regain their natural liberty, his property in them instantly ceases, unless they are known to have a habit of returning whence they escaped. It is such a qualified ownership that one under many circumstances cannot maintain an action for the killing or injuring of them, or a criminal prosecution for the larceny of them, and is not himself always liable for damages committed by them. There are, however, many exceptions to this limited property in wild animals.

The decisions are numerous in which the question of ownership of animals is considered, and in which delicate distinctions are called forth. The law as stated is well settled as to the larger domestic animals, such as horses, cattle, sheep and the like. The smaller animals and the freaks are those that frequently call out the mental powers of the court's reasoning to a nicety. Ownership in the dog is complete now, though it was not in the days of Blackstone; a man may have damages for the killing and injury of his dog, his dog may be stolen and the thief punished, and the owner is liable for the damages done by his dog, if he knows of the

mischievous disposition of his dog to do harm.

On the other hand consider the domestic cat and its feline ways. Exceptions must be made for pussy. As a learned court remarked, cats are rather harbored than owned, they are not subject to direction, cannot be put under the same restraint as most other domestic animals; to a certain extent they may be regarded as still undomesticated and their predatory habits as but a remnant of their wild nature. In consequence, when pussy crawls up on the porch of a neighbor and knocks down a bird-cage and makes an appetizing meal of a pet canary, the court is constrained to ask the momentous question, is a man to be held responsible for the act of his cat in killing his neighbor's canary-bird because he knows that the cat's natural propensity would lead him to do so? It is answered by holding that the cat's appetite for birds is a remnant of its wild nature that cannot be restrained by its owner, and for which its owner is not liable. It is well that such is the law. A pretty lot of damages the owners of cats would be paying for nights made hideous and the consequent loss of sleep and etceteras if courts held that the owners were liable in damages because they knew of the cat's natural propensity to sing their oratorios at night.

Birds, emblems of freedom, can so far lose their liberty as to become the subject of valuable property. They may gain their freedom by escaping and own themselves again, or belong to him who shall bring them into his dominion and control. On the other hand the escape and recapture may be so near together that the one capturing is only able to retake by the first owner having brought the bird under control; in consequence the first owner will not lose his ownership in the bird. A southern court has said, should a canary-bird, a mocking-bird, parrot or any other bird escape from its cage to the street or to a neighboring house, to say the first person who caught it would be its owner is wholly at variance with our views of right and justice.

Doves and pigeons, to be a subject of property, must be confined. If at liberty and they be taken or killed, the owner cannot claim damages nor hold the party capturing them to answer the charge of larceny. If they fly to some farmer's field and indulge in a feast of grain, the owner cannot be held for the known natural propensity of his birds to eat grain. An exception has been made however to the carrier-pigeon. Confined or in flight it is a subject of property.

This qualified ownership in birds led a defendant to the charge of larceny of a bird and cage to plead that the bird was not such a species of property for which he could be held in larceny. In other words, to steal a bird was not larceny, for the bird was of a wild nature, hence no one's property, and to steal it was not to steal from anyone. The court, evidently with little if any admiration for such fine-spun reasoning, remarked that the value of the bird was perhaps more than ten times that of the cage, and to hold that larceny might be committed of the cage but not of the bird would be neither good law nor common sense.

The ownership of animals of a wild nature must be such that they are brought into the actual power of the possessor. The fish you see dangling on the end of your line, the fish you almost pull out of the water, or half way, to see them fall back — the biggest fish of a summer's outing that become finally caught as told to your friends — these do not count, you do not own them unless actually caught, as a court was compelled to declare. The plaintiff was fishing and had cast a seine around a shoal of mackerel through which the fish could not escape in the opinion of experienced persons; but before the catch was

made the defendant entered with his boat and took the fish. Though the court was of the opinion that the conduct of the defendant was not commendable, yet they could not avoid holding that the fish were not in the actual power of the plaintiff, that the plaintiff's possession was not complete so as to enable him to maintain an action for damages.

In another case, a hunter had chased up a fox, was in pursuit of it, there was no doubt in his mind that he would overtake and capture it. However, another hunter made his appearance and in his sight killed and carried away the fox. In an action of trespass for damages the court said that the first hunter had not brought the fox into his actual power, and hence had not such possession of it as to be able to maintain trespass.

From time to time courts have found it necessary to add to the list of animals of which when reclaimed larceny may be committed. Bishop mentions the following: "pigeons, doves, hares, covies, deer, swans, wild boars, cranes, pheasants and partridges, to which may be added fish valuable for food, including undoubtedly oysters."

In fact, when reclaimed and confined, the whole animal kingdom may be claimed to come under the same rule. If it were not so the menagerie business would be extremely risky. An enterprising Yankee might transfer an entire menagerie to a new set of cages and make defense to the larceny that the *ferae naturae* of the menagerie were not objects of larceny.

A Western court called upon to determine the status of a tame buffalo, held that a buffalo which has been captured when a calf and reared on a farm with domestic cattle and becomes so tame as to take food from the hands of its master like other cattle and to be easily driven home when it strays away, is no longer of a wild nature, but is the subject of property, and for any trespass committed by it the owner is liable, and for any injury done to it by others he can recover damages.

The whales that move in the great waters have been to court, making of themselves martyrs for the development of the law of the land. Capturing and killing a whale and leaving it floating upon the ocean with marks of appropriation, makes it the absolute property of its captors who can maintain an action against one who appropriates it with or without knowledge of the title of the captors.

Fin-back whales killed in Massachusetts Bay with bomb lances sink to the bottom. They float to the surface in two or three days, and a usage that they shall belong to the person who killed them, no matter by whom found, is enforced.

We leave the subject with the whale. The whale has swallowed our subject with its characteristic Jonah disposition. Beholding our title and the end hereof, it may be asked, who ever heard of a whale for a pet? A recent newspaper yarn told of a pet whale that came at the whistle of its master in some bay, and sported and spouted in obedience to command. If that story is not pure fiction, and that whale is hurt or does an injury, a court may have to handle several nice questions that suggest themselves. Can a pet whale be the subject of a larceny? Or if the pet whale swallows a man, will the owner be liable to the widow of the swallowed one in damages because kept with full knowledge of its natural propensity to swallow? We will make no attempt to forestall the answers of the court.

SCENES IN COURT FROM THE YEAR BOOKS.

"HOW one would have liked to see one of those ancient Courts under the Plantagenets!" was the remark of Wills J. at a meeting of the Selden Society,—on an eyre say at Winchester or Hereford,—the King's Justices, the stout old sheriff with his posse, the bailiffs, the knights, the jurors, the serjeants of the law "ware and wise" in their hoods, the appellees and prisoners, and all the motley crowd of suitors and spectators. Where be they all now? They live forgotten in the dusty folios of the Year Books—those Year Books rich with the spoils of time to the student of our legal history, to the ordinary reader an arid waste of legal technicalities. Yet here and there, diversifying the dreariness, we come upon some little green oasis of human interest, a lively wrangle between counsel, a glimpse of national manners, an outbreak of testiness on the part of the judge, it may be a "good round mouth-filling oath," such as Queen Elizabeth in her best vein could swear, according to Mr. Froude. A Scotch young lady, lamenting her brother's addiction to the bad habit of swearing, added apologetically, "but nae doubt swearing is a great set aff to conversation"; and no doubt swearing from the Bench is very effective at times. So at least the King's Justices thought, for they swear in the Year Books with the force and freedom of Commodore Trunion. "Do so in G—'s name," "By G— they are not," "Go to the devil" (Alez aut grant diable) — this to a bishop — are among the flowers of judicial rhetoric. When Hull J. flew into a passion at the sight of a bond in restraint of trade and swore "per Dieu si le plaintiff fuit icy, il irra al prison" (2 Hen. V. fo. 5, pl. 26), he was only keeping up the tradition of the Bench. Counsel swear by St. Nicholas, which has an appropriateness of its own (21 & 22 Ed. I. Br. Chr. 31, iv. 480).

> "A good and virtuous nature may recoil
> In an imperial charge,"

says Shakespeare in "Macbeth." The justices felt they represented the King's person and were naturally inclined to be a little absolute in swearing and laying down the law. Cases did not then embarrass them. "Never mind your instances," says Metingham J. to counsel who was citing some previous decision (20 & 21 Ed. I. Br. Chr. 31, iv. 80). Here is a little scene, suggestive of the Court in Bardell *v.* Pickwick: —

Berriwick J. (to the Sheriff). "How is it you have attached these people without warrant? For every suit is commenced by finding pledges, and you have attached though he did not find pledges."

The Sheriff. "Sir, it was by your own orders."

(Mem. by Reporter.) "If it had not been, the Sheriff would have been grievously amerced. Therefore take heed." (21 & 22 Ed. I. Br. Chr. 31. iv.)

On another occasion a jury was shuffling, on a question of legitimacy.

Roubery J. (to the Assize). "You shall tell us in another way how he was next heir, or you shall remain shut up without eating or drinking until to-morrow morning. (21 & 22 Ed. I. Br. Chr. 31, iv. 272.) This quickly brought the right answer.

Counsel do not escape unscathed.

Hertford J. (to Counsel). "You do bad service to your client. You only take care to get to an averment. You have pleaded badly." (21 & 22 Ed. I. Br. Chr. 31, iv. 180.) This must have been trying for poor Mr. Phunky. The following is more racy. In a writ of *Monstravit de Compoto*, &c., Hampone (counsel) begins in this seemingly inoffensive manner: "Whereas he supposes by his writ that he has nothing whereby he may be summoned or attached

to render this account, we tell you that he has assets in T.," &c.

Hengham J. "Stop your noise (Lessez vostre noyse) and deliver yourself from this account, and afterwards go to the Chancery and purchase a writ of Deceit, and consider this henceforth as a general rule." (30 & 31 Ed. I. Br. Chr. 31, v. 6.) Let us hope this last statement was lucid to the practitioner of the day. The words at the beginning certainly seem rude, but perhaps they are only what a counsel of that day calls "curial words" (paroles de la Court). "Every word," he says, "spoken in Court is not to be taken literally. They are only curial words" (20 & 21 Ed. I. Br. Chr. 31, iii.) — a remarkable anticipation of a certain celebrated occasion when the Pickwickian sense of the word "humbug" was explained.

However, counsel were able to take care of themselves then as now.

"Sir" (this was the mode of addressing the Court). "Sir," says Toudeby, "we do not think that this deed ought to bind us, inasmuch as it was executed out of England" (at Ghent).

Howard J. "Answer to the deed."

Toudeby (counsel). "We are not bound to do so for the reason aforesaid."

Hengham J. "You must answer to the deed, and if you deny it then is it for the Court to see if it can try," &c.

Toudeby. "*Not so did we learn pleading.*" (30 & 31 Ed. I. Br. Chr. 30, ii. 72.) This probably in an audible aside.

The independence of the Bar is emulated by the Reporters. One Robert was charged with harboring an outlaw. The outlaw procured a charter of pardon from the King, and Robert contended that this purged his offence. Berriwick J. was like Dr. Johnson; his pistol having missed fire he knocks down his opponent with the butt end of it. "Robert, pay your fine to the King, for you cannot deny you harboured him, and that was a great trespass against the King," &c., &c.

"Note, the Justice did this rather for the King's profit than in accordance with the law, for they gave this decision *in terrorem.*" (30 & 31 Ed. I. Br. Chr. 30, i. 506.) Brave reporter! This is better than surreptitiously keeping a drawer like Campbell for Ellenborough's bad law. Later on a reporter — was it the same? — mentions a ruling with approbation as "correct."

The proper construction of the Statute of Westminster came in question.

Hengham J. "Do not gloss the statute. We understand it better than you, for we made it, and it is often seen that one statute extinguishes another." Often! we should think so. Counsel of course collapsed. Still, the learned judge failed to appreciate the distinction of intention and intendment The dictum contrasts unfavorably with the modesty of the late Lord Justice James in referring to a previous decision of his own, "which," he would say, "is an authority, though I joined in it."

Technicality in these early cases is rampant. The rule is "Find a flaw, however microscopic, in the writ, and pray for judgment." In a "Petit Cape," Agnys was written instead of Agnes. Asserby (for Agnes) thought thereby to upset the whole process, and he said, "Sir, he sued the Petit Cape against Agnys, whereas he ought to have sued it against Agnes. Judgment of the bad writ."

Metingham J. "It is not the fault of the party, but it is the fault of our clerk, and that fault will be amended by us, and so we tell you that the process is sufficiently good, and you are not courteous in speaking in that fashion."

We find Hengham J. obliged, on another occasion, to observe, "That is a sophistry, and this place is designed for truth." (30 & 31 Ed. I. Br. Chr. 31, v. 20.) No applause is recorded however as following this excellent sentiment. Brumpton J. has even to admonish counsel, "See that there is no deceit in your pleadings." (30 & 31 Ed. I.

Br. Chr. 30, v. 362.) Craftiness in pleading was the order of the day, like the subtleties of the schoolmen. Indeed, Durand, a thirteenth century writer, recommends advocates to adopt what he calls "a vulpine simplicity." "You have admitted this, God help you," says the Court on one occasion. On another, counsel had made a slip in vouching the wrong person.

Robert (on the other side). "We pray judgment of this bad voucher."

Warwick (who had made the slip). "Leave to imparl *for God's sake, Sir.*"

(Mem. by Reporter.) "He obtained it with difficulty." (21 & 22 Ed. I. Br. Chr. 31, iv. 492.)

This excited state of counsel was not altogether professional keenness. Amercement was the common consequence of an unsuccessful suit. People are always being amerced for false, that is, unfounded claims, sometimes sent to prison. Witness the following sad tale of an attorney. It was a case of a claim to land, and alleged default in attending on a given day. *B.*'s attorney held to the default. The Justice asked on what day the default was made. The attorney answered that it was on the first day, and it was found that it was on the second day, and afterwards (one or two or three days afterwards) the attorney came and said that it was on the second day, and he held to the default as before.

Metingham J. "My fine friend (bel amy), the other day when the worthy man was ready to make his law you said that the default was made on the first day, and afterwards you came and said that the default was made on the second day, and thus you vary in your words and deeds: this Court doth adjudge that you take nothing by your writ, but be in mercy for your false plaint." (21 & 22 Ed. I. Br. Chr. 31, iv. 460.)

A prior had hung a thief (who had confessed), and got himself into hot water about it.

Spigournel J. "Call the Prior."

The Prior came.

Spigournel J. "Do you claim infangthef and utfangthef?"

Hunt (counsel). "Sir, he claims to have infangthef."

Spigournel J. "Was the felony committed within the limits of your franchise?"

Hunt. "No, Sir."

Spigournel J. "Where then?"

Hunt. "Sir, we do not know."

Spigournel J. "Now, Sir Prior, do you mean to hold a plea in your Court of a felony committed out of the limits of your franchise, when you claim only infangthef?"

(Counsel for the Prior turned and doubled, but to no purpose.)

Spigournel J. (to the Prior). "You have well heard how it is recorded that you went to judgment on him who acknowledged himself a felon without presentment by the Coroner who can bear record, whereas your Court is not a Court of record, and this you cannot deny: attend judgment on Monday." (30 & 31 Ed. I. Br. Chr. 30, i. 500.)

What befell the unlucky Prior does not appear. The Crown was getting very strict, and rightly, about these franchises.

Default of appearance was a common incident then as now, perhaps commoner, owing to the difficulties of travelling, as the following illustrates. It was a case of a Writ of Right between Roger de Pengerskeke, demandant, and John de Leicester and Joan his wife, tenants. On the day of the return of the writ to cause the four knights to come and choose the Assize, John did not turn up and the default was recorded. On the next day John came to the bar and answered for his wife as attorney, and for himself in his own person, and said that the default ought not to hurt him because he was hindered by the rising of the waters.

The demandant's Attorney. "Where were you hindered?"

The Tenant. "At Cesham."

Mallore, J. "At what hour of the day?"

The Tenant. "At noon."

The demandant's Attorney. "And we pray judgment if from that time he could be here at the hour of pleading, since it is fifteen leagues away from here. Besides he began his journey too late."

The Tenant. "I travelled night and day."

Mallore J. "What did you do when you came to the water and could not pass? Did you raise the hue and cry and the menée, for otherwise the country would have no knowledge of your hindrance?"

The Tenant. "No, Sir. I was not so much acquainted with the law, but I cried and hullooed" (jeo criay e brayay).

The demandant's Attorney. "Judgment outright of his default, and we pray seisin of the land."

Mallore J. "Will you accept the averment that he was hindered as he says?"

The demandant's Attorney. "If you adjudge so, Sir, but since he has admitted that he did not raise the menée, judgment of his admission."

Hengham J. "Keep your days until tomorrow." And on the morrow they were adjourned to the Quinzein of Trinity, which to some seemed strange. (30 & 31 Ed. I. Br. Chr. 30, v. 122.) Not to us, familiar with the law's delay. But space is limited, and we must drop the curtain.— EDWARD MANSON *in the Law Quarterly Review.*

BESIDE THE MARK.

By WENDELL P. STAFFORD.

WHO cares how well the bow is strung,
How finely wrought in every part,
If, when the silver cord has rung,
The arrow has not reached the heart?

TEMPLE STUDENTS AND TEMPLE STUDIES.

By Dennis W. Douthwaite.

II.

THE dawn of the seventeenth century was the hey-day of the Temple. The members still retained much of their old attitude to the rest of the world; but inside they began to develop a clanship and a fashion of their own—the Benchers, as it seems, fostering every movement towards singularity of dress, mien and habit. The student delighted to wear his rue with a difference. He donned "sad-colored clothing" and eschewed "all flowered cloakes," the more readily because, outside, the poet was singing the splendors of a dress as rich and rare as Howard's luckless

> "A vest as admired Vortiger had on
> Which from a *naked* Pict his grandsire won,"

—the earliest version known to us of the action of "taking the breeks off a Highlander." In the same spirit of contradiction he consented to be clean shaved, because, around him, all other gallants went bearded like the pard. So, in the reign of Henry VIII., he had been forbidden to play shove-grote or slyp-grote within the Temple walls on pain of *6s.* and *8d.*,—more because shove-grote was then the play of the commoner sort than because of any fear of its demoralizing influence. Indeed, for many years afterwards, the Temple was a hot-bed of what the unlearned call games of chance and gambling, the usual finish to the Readers' feasts. Some of the old dice were found, not many years since, beneath the Temple floor, and, unless tradition errs, the majority were cogged.

The uprising of this new spirit, though it was a good deal laughed at, was not without its uses to the Inns. It was a great Freemasonry which threw whatever influence it possessed behind its champions and spokesmen, and may have made no little difference to the outcome of its struggles on behalf of the Common Law. "The Court desires to stand well with the Templars in these times of commotion," says one writer; and it would be hard to gauge the worth of the support which his enthusiastic backers may have given to Coke in his duel with the King. If Sir John Rigby was called on to deliver an awkward opinion on Parliamentary Right, we doubt if—quite apart from the question of Sir John's parliamentary reputation—he would find the same blind loyalty to back him. In these piping times of peace, when the Common Law runs no dangers, and all the tendencies are towards the increasing of the people's privileges (including litigation), the barrister can afford to relax his discipline and unbend.

It will be remembered of Mr. Pell's Lord Chancellor that, in expressing his opinion of no less able a lawyer than Mr. Pell himself, he claimed the right to "d—n hisself—in confidence." That, if the flippancy may be pardoned, is, with a trifling and obvious transference, exactly the attitude of the modern bar. Nor, we suppose, is there any great need of something more. The Bar Committee is perhaps right in being content to exist without, like the Greek philosopher, asking for a reason.

"Govern me, if you please," said Lord Bramwell, "as little as possible." Lord Bramwell was, or should have been, a member of the Bar Committee. Not only would he have much enlivened it proceedings, but he might have ensured the continuance of a policy which, we fear, there is at present some danger of its abandoning—to forget, in the turmoil of legislation, old methods, like *Maud*, "Faultily faultless, icily regular, splendidly null."

To return to the time of Coke — it is evident that this new spirit drew some share of public notice to the Templar and his doings. He began to find a place in literature, drama and caricature. There was apparently a good deal of unfavorable criticism in the talk of the time. Being neither fop nor Philistine, he suffered something at the hands of both.

KING'S BENCH WALK, INNER TEMPLE.

By the first, who credited him with a desire for emulation which he would have been the first to disclaim, he was held to be not quite perfection, to have in him a *soupçon* of the wrong side of Temple Bar. On the other hand, the 'prentices of Fleet Street who lived on his borders were sworn to an enmity which, for his own part, he most industriously fostered. Dame Saddlechop's belief that "a frank and hearty London 'prentice is worth all the gallants of the Inns of Court," was one that found ready acceptance in the merchant booths of Fleet Street, and when business was slack, or the students in holiday humor, steel rang on club sometimes for days together.

Inside the Temple, Temple law was supreme. It was a curious code, not going much further than that no bailiff should execute a writ, nor any sheriff effect an arrest for a duel, within the precincts. It was Temple law, too, that no foreign potentate, such as the Lord Mayor, should show any emblem of state therein, — an excellent rule which the chief magistrate, in 1668, saw fit to challenge, entering with his sword of state before him. Pepys tells the sequel: "The students did pull it down and forced him to go and stay all the day in a private councillor's chamber until the Reader could get the young gentlemen to dinner." At any other time such assumptions of dignity and independence would have been merely farcical. Those days lacked a sense of humor, and notions of farce were crude.

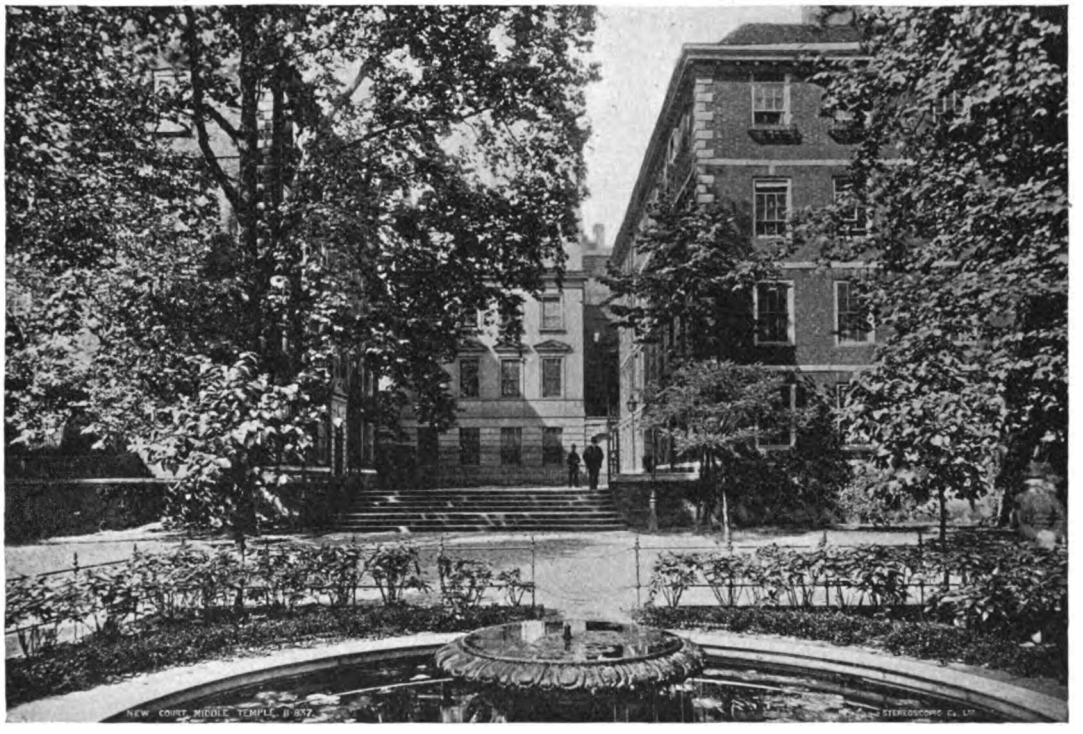
It was so hard to say which of those gallants might not be all-powerful within the year. A ready wit and a handsome build would bear a man as far as solid learning. Coke climbed by the one way and became Chief Justice; Hatton had taken the other and reached the woolsack. Fuller says that Hatton at the Temple "took rather a bait than a meal of legal learning." Yet, since his dancing was to that of the courtiers as "a banquet of bread and cheese," he was taken to Court by his Queen — the author of the simile — and ere long was enthroned in Westminster Hall without having so much as a barrister's degree. That his failure was not as great as might have been anticipated was due to the fact that he never ventured "to wade beyond the shallow margin of equity, where he could distinctly see bottom." Certainly his estimate of the dignity of his position never suffered through any ignorance of its subtler responsibilities. Whatever the worth of his decisions, there has never been a Chancellor whose moral precepts were more readily at the service of the nation; while his love letters to the Queen are, to use a common phrase, models of what such documents should be.

At the time when England was "a nest of singing-birds," it was in the Temple that many of them found their home. Beaumont was a member of the "Inner," like his grandfather, father and elder brother, who were all judges in their day. The Temple had a dozen such at this time, of whom, perhaps, Browne was the greatest. Nowadays the name of Browne is less famous than familiar, but in his day he was reckoned the equal of Beaumont, and known as the author of the prettiest masque of his day — *Ulysses and the Sirens*, — played before the Queen, and brimful of handsome allusions to the maids of honor. As if to stamp the prevailing genius of the time, there is the following entry found in the diary of John Manningham, student of the Middle Temple, under date of February 2, 1601: "At our feast, we had a play called 'Twelve Night or What You Will,' much like the Commedy of Errores, or Menechmi in Plautus. A goód practise in it to make the Steward beleeve his Lady widowe was in love with him, and then when he came to practise making him beleeve, they tooke him to be mad." Thanks to this paragraph, the bold entry on another page of this common-place book — "*non omnis moriar*" — becomes prophetic. For it is a strange jumble, this diary, obtaining most of its interest from causes which Manningham can hardly have foreseen. Fully one-half of the entries are notes of sermons, full, elaborate and conscientious, with such personal comments on the preacher's face and manners as seemed likely to be important. Another quarter is devoted to notes of epigrams, puns, etc., laid up, no doubt, for future use, and giving ample proof of the imperishable nature of all jests. There are quips contained therein which have appeared regularly in all jest books since "genuine Joe Miller's," looking rather weird in their Jacobian dress, as well as gibes which time has robbed of their bitterness, and sharp sayings which have long since lost their point. Manningham's tastes had a wide range — exactly how wide we shall never know, for the other end is lost in a coruscation of stars which adorn the volume on every other page, where he had called a spade a spade with what strikes his present editors as unnecessary bluntness.[1] But when all is done there still remains a body of pleasant gossip which makes good Manningham's claim to be considered the Temple Pepys. There is "scandal about Queen Elizabeth" cheek by jowl with the text of a sermon and remarks on his doublet and hose. There are good stories told by his fellow-student, Overbury, afterwards poisoned by the notorious Countess of Somerset, and by his "chamber-fellowe," Curle. And along with them entries such as: "This day Serjeant Harris was

[1] The Diary was edited for the Camden Society in 1868.

retayned for the plaintiff, and he argued for the defendant; soe negligent that he knowes not for whom he speakes." A similar piece of negligence is told of Dunning, afterwards Lord Ashburton.

"'I was brought up as my friends were able; when manners were in the hall I was in the stable,' quoth my laundress when I told her of her saucy boldness.'" And



FOUNTAIN COURT.

"Ha! the divel goe with thee,' said the Bishop of L. to his boule — when himself ran after it." There is nothing hardly worth remembering in the whole book, and yet all is tempting to quote. Manningham's quaint affectation of shrewdness and evident desire to be up-to-date beget an affectation as hard to justify as it is to avoid.

From this time onward the story of the Temple is an open book. If afterwards the societies lost the power they possessed in the time of James, there have been few great movements in politics or letters to which they have not contributed. Such Puritans as Ireton, Pym and Whitelocke mark one generation; Congreve and Wycherley mark the next. And with them are Somers, North, Jeffreys, Thurlow, Cowper, Yorke and Blackstone — all "behemoths" of their kind, and helping, in some degree, to make the history of their age. It is not necessary to say anything of the years which made them famous. It is more to the purpose to see Whitelocke the Puritan, in 1632, spending much time and money in the production of a masque for the Queen, which was presented by the Inns of Court — the author, James Shirley, once clerk in holy orders, but now set up for a play-maker and turning out five-act comedies with commendable regularity. Or the Chancellor North, in his brother's biography, living in Elm Court, "a dismal hole," and famous as

a "put-case" at the moots, and for arguing with any who would condescend to notice him; never without his books, and his bass-viol, sedulous, pushing and "indifferent honest" — a pettifogger who was to reach the woolsack. Jeffreys used to tell an absurd story of him, that in his briefless days he had been seen riding a show rhinoceros through the London streets — a baseless calumny which the Chancellor never quite lived down. As a set-off to North's early demureness comes the story of Pemberton, afterwards Chief Justice. "In his youth," says Burnet, "he mixed with such lewd company that he quickly spent all he had, and ran so deep in debt that he was cast into jail, where he lay many years; but he followed his studies so close in the jail that he became one of the ablest men in his profession." The obvious moral had better be suppressed. In a modified form it is the advice of Lord Kenyon to the young student: "Let him spend all his money, marry a rich wife, spend all her's, and when he has not a shilling in the world let him attack the law."

Even of the brutal Jeffreys, or Jefferies (for one may not be dogmatic where he himself was so unprejudiced — and he spelled it four different ways), there is something pleasant to be told. It is said that to him was entrusted the choice of a new organ for the Temple church, as a tribute to his taste in music. It is perhaps the only pleasant thing to be told of one who, according to Lord Campbell, "even in his youth, at marbles and leap-frog, was known to take undue advantages," and who continued through life the course of profligacy so soon begun.

To this time belongs the story of the fire which devastated half the Temple. It happened in January, 1678, through the accidental spilling of a lamp, and raged for a day and a half. On the night when it began an iron frost was on the ground, the Thames was frozen, and the Templars were hard put to it for water. In their extremity they brought barrels of ale from the buttery and fed the engine with the malt liquor. Roger Cook has a full account of the burning in his Autobiography, a book which presents the most entertaining picture of student life after Manningham. The next great fire in the Temple was in the young days of the late Baron Maule. That gentleman, it is said, coming home late from a supper-party, put his lighted candle under the bed — a circumstance on which we do not presume to offer any reflections.

To the traveller along Fleet Street, seeing the frowning gateways that open into stone-paved alleys as dingy as themselves, the sight of that pleasant oasis, the Temple Gardens, will come as a surprise. They cover three acres, and are glorious stretches of green even yet, with trim-kept walks and trees which not all London's dust and grime will ever spoil.

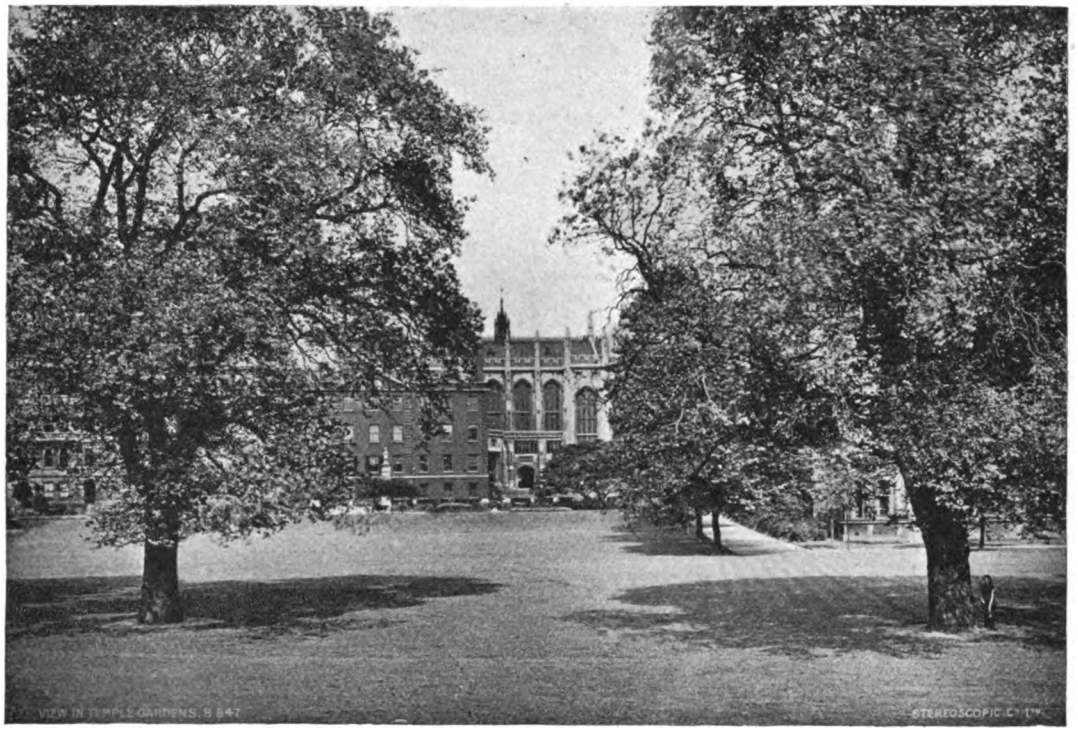
Their history yields to no part of the precincts in age and charm. It is here that Shakespere places the quarrel of Plantaganet and Somerset and the plucking of the red and white roses of the Civil War. Some years since the garden was still famous for red and white roses — the Old Provence Cabbage and the Maiden Blush. But its chief glory now is the chrysanthemums which, exhibited at first as a kind of *lusus naturae* in such a place, have for some years won a sound horticultural reputation on their merits. Shakespere was the first of many dramatists to choose the garden as a scene — always, of course, by the simple expedient of an early allusion to their surroundings by one of the characters.

> "When Burbage played the stage was bare
> Of fount and Temple, tower and stair."

And so it was in Shadwell's *Squire of Alsatia*, whose hero is a Templar, and where Mrs. Bracegirdle played the ingenue. Shadwell was a member of the Middle Temple, and gives an excellent portrait of the law student of the time, with many wise reflections on

the value of early and diligent application to study. It is a pity that so excellent a moralist should have been so greatly addicted to drink. Later allusions to the place by Addison, Steele and Goldsmith are too well known to need repeating. As we have seen in Coke's time, and for long afterwards, the Temple stairs at the foot of the walks were a well-known hiding place for boats in

"Temple Toasts." The Inns have always kept some tinge of their old masters' asceticism, although the presence of lady residents was at one time not unknown. The fact that old Mrs. Dunning was murdered in Tanfield Court by Sarah Malcolm in 1732 proves this. But Sarah, although Hogarth sketched her, is not an example of Temple femininity on whom we would lay any stress.



TEMPLE GARDENS.

days when it was easier to travel to Whitehall or Westminster by the waterway than by a road which was often knee-deep in mud. Now the steamboat ousts the wherry, covering the trees of the garden with its grime; while nearer still, along the bank, runs an underground railway, the sleepers here being placed on layers of tan to deaden the sound of passing trains.

The name of Mrs. Bracegirdle suggests the fact that very pretty reading might be made, in competent hands, of a collection of

Yet she had her vogue, if a short one, when a copy of her confession sold for twenty guineas — in itself a temptation to the literary to commit manslaughter — and Walpole himself paid five pounds for her portrait. Now her story is in the "Gentleman's Magazine" and her skeleton in the Botanic Gardens, Cambridge.

If the Templar's toasts were few they were pleasing, and of his own choosing. He was not like Shallow, "ever in the rearward of the fashion," nor like Falstaff, indiscriminate.

In her day Mrs. Bracegirdle's was a name to conjure with. She turned the heads and stormed the hearts of our forefathers for something like a quarter of a century. This is Dryden's toast for her: —

"I had to-day a dozen billets doux
From fops and wits and Bow street beaux;
Some from Whitehall, but from the Temple more,
A Covent Garden porter brought me four."

It should always be a matter of regret to good Americans that on the day when Anne Bracegirdle first took the town by storm some misguided people were taking ship for the new land called Pennsylvania — rejoicing to leave a city where such heathen practices were ripe. One could give no higher praise to any woman than that her goodness impressed two such men as Walpole and Colley Cibber; and that praise is Mrs. Bracegirdle's. We must not forget an earlier name in this calendar — the only hagiology in which Barbara, Duchess of Cleveland, will ever figure. Our only concern with her now is that Voltaire, and after him Leigh Hunt, tells the story of her visits to the young Templar, Wycherley, in the Inn, "dressed like a country maid in a straw hat, with pattens on, and a basket in her hand."

The next visitor is a much more pompous and reputable dame, — no less than the famous Sarah, Duchess of Marlborough. Her visits were all paid to the chambers of young William Murray, afterwards Lord Mansfield, but then a rising junior living in King's Bench Walk. The Duchess sent Murray a retaining fee of one thousand guineas, for the purpose, apparently, of giving him excellent advice at most unseasonable hours. Often the lumbering Marlborough coach, with its army of lackeys and link-bearers, would rumble down the walk at ten o'clock at night and find Murray out, "drinking champagne with the wits." Her Grace would then invariably wait for him, always with the same gruff rebuke: "Young man, if you wish to rise in the world, *you must not sup out.*" Once, having waited till past midnight for her opinion, she departed furious and complaining. "I do not know, sir, who she was," said the trembling clerk, who, no doubt, had felt the rough side of the imperious tongue; "but she swore so dreadfully that I am sure she must be a lady of quality!"

We must not forget Bessie Surtees, a famous beauty, who ran away to be married to the future Lord Eldon. (Templars have always had a weakness for elopements; the younger Colman and Sheridan are excellent examples). George III. told Eldon when he received the seals that he owed his place quite as much to his wife as himself. There is a delightful story of the struggling years of the young couple, when the future Chancellor undertook to read the lectures of the Vinerian Professor to the students. He received the first only just before the time for its delivery, and proceeded, all unwittingly, to open a treatise on the statute, 4 and 5 Phil. and M., cap. 8: "Of young men running away with maidens." "Fancy me reading, with about 150 boys and young men all giggling at the Professor."

There is Mary Lamb, too, who alone of all these, can claim to have been born within the precincts; and a daughter-in-law of Littleton who has the equally unique distinction of being buried there. We had almost included sweet Ruth Pinch, to whom Fountain Court is sacred, as the place where she and John Westlock were wont to meet.

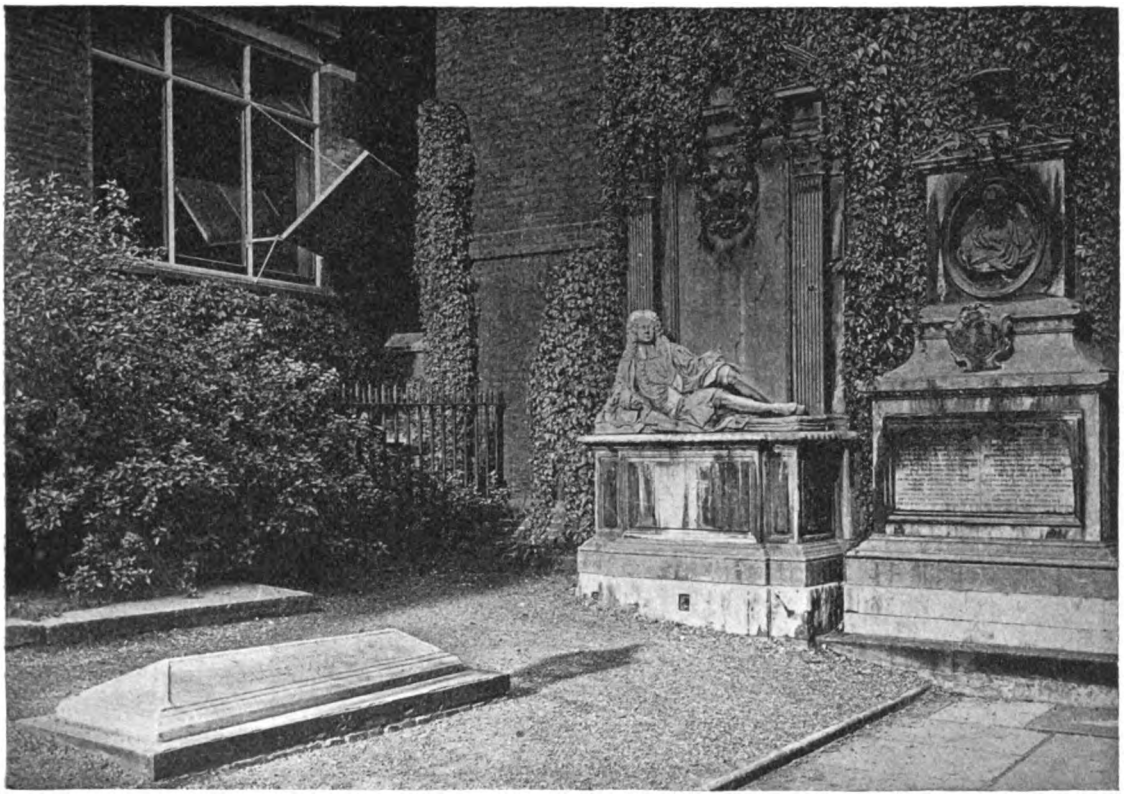
In Queen Anne's day Hatton describes the fountain jet as rising "to a vast and almost incredible altitude." It is a tiny stream now, that bends at a height of some few feet like a silver whip. Its fenced enclosure and mimic fish pond, with the crowd of twittering sparrows that are always on its brim, make it the pleasantest spot of any in the Temple, as it is the best known in song and story.

As we leave the Temple, by Middle

Temple Lane, we pass a dingy pile of buildings, known as Brick Court. Here, at No. 2, we might have seen, in 1768, no less a personage than Blackstone, engaged on the Commentaries, with a bottle of port always before him. He has to pause occasionally to send a polite message to the floor above, begging that Dr. Goldsmith will, in some degree, lessen the noise upstairs. To lodge beneath Oliver was to work under difficulties. Historically, the facts go no further; but yet we look to see the amiable jurist presently take up the port and mount the stairs to join the wits; and hear Dr. Johnson quote, half-defiantly, his own verses — always a pleasant thing —

> "Deign on the passing world to turn thine eyes
> And pause awhile from letters to be wise,"

and listen to Goldsmith's roystering "Hear!" and see him drink a bumper of the port to the success of the Commentaries. And, since Goldsmith has come into this chronicle, we may add the names of two others — Johnson and Charles Lamb — who are foster-children only, but who have left their mark on the Temple buildings. Assuredly the Temple has a better claim on Goldsmith,



OLIVER GOLDSMITH'S GRAVE.

whom she sheltered through good report and ill, than Oxford has on Shelley — whom she expelled. And since the University now boasts the one, the Inn may still cherish the other. To many men the chief charm of the place is in these associations, and the world, which is not moved by the majesty of Smith's "immortal Leading Cases," makes many a pilgrimage to Brick Court, where Goldsmith lived and died, and to the Temple Church where he lies buried.

Ten months after Goldsmith was dead, Lamb was born in Crown Office row, "right opposite the stately stream which washes the garden foot with her yet scarcely trade-polluted waters, and seems but just weaned from Twickenham naiades. A man would give something to have been born in such places."

That is the true spirit, and Elia may claim to have had his degree, and to have written a Thesis in the essay on the Old Benchers of the Inner Temple. It becomes necessary to remember the warning of Rufus Choate about dilating with the wrong emotion, but few people will grudge Elia a place in these notes on his birthplace and real home.

BRICK COURT.

It only remains to say something of the present aspects of the Temple. Of late years its resident population has been decreasing steadily, and modern changes all make for the increase of "business premises" and modern copies of "My Lord Coke's shop." Now the Templar joins in the general exodus of city folk each evening, and "the studious lawyers" whom Spenser hailed, "have their bowers" in country suburbs, such as the Temple was in olden time. Barrister and clerk, bencher and student, homeward plod, north, south, and west, leaving the little world of law and letters to watchmen and a few scattered residents. Even the laundresses desert it, and must needs be brought from some mysterious abode in the basement or the eaves of adjacent streets. Some few tenants there are who may say with Mr. Jorrocks, "Where I dines I sleeps," — the last garrison left on the merchant's frontier by the retreating army of the west. Why this remnant still remains is, and always will be, an insoluble mystery to most of its acquaintance. We suppose that no resident ever yet induced his female relatives to believe that there is any pleasure in the life there. One must have made trial of it to at all understand the delights of so much Bohemianism and aesthetic discomfort. Perhaps the tenant himself has no very satisfactory explanation of his choice. He has all Teufelsdröck's liking for attics without that philosopher's clear, succinct reasons for his preference. Certainly the two popular theories — "their nearness to the courts" and "their cheapness" are equally plausible and equally delusive. The conveniences of modern travel have exploded the one; for the second, it is doubtful if anywhere one may find a more excellent opportunity of obtaining poor accommodation at a high rent than the Inns of Court afford.

Late years, however, have wrought many changes in the buildings. At the far end of the Temple, next the river, is a florid example of Italian art, erected some few years ago, which provides "eligible suites" at the cost of very glaring incongruity with every building round. Opposite Goldsmith's windows in Brick Court the scaffolding is not yet removed from a building which will exhibit the same striking contrast to its neighbors in Middle Temple Lane (though we could hardly plead now any slavish adherence to the style of architecture there), and serve as a handsome tomb for all the memories of Elia's description of Hare Court and its pump. But Temple architects have seldom pleased the critics. "They have lately gothicised the entrance to the Inner Temple hall and the library front: to assimilate them, I suppose, to the body of the hall, which they do not at all resemble." Thus Elia; while Thackeray, who placed Pendennis in Lamb Court, Upper Temple (read Lamb Building, Inner Temple), has something equally charming and equally rude.

If the outward appearance of the Temple is fast changing, its customs are still jealously preserved. The old forms and quaint habits are still kept up, although their significance may have disappeared. The dinner has assumed a more subordinate position in the curriculum than it had some hundred years since. No longer do the functions of chief butler and librarian unite themselves, as in the person of Mr. Joshua Blew, who lies buried, in that dual capacity, hard by Goldsmith's grave. But the ceremonial, already described in these pages, abates hardly one jot. Once it seemed as if the old order were changing — when the student might qualify merely by coming into Hall, and without staying for dinner. To what base uses the vessels were then put may be guessed from the fact that the Loving Cup became "the receptacle for toothpicks." "There's anti-climax for you!" But these niggard times soon vanished in a day of greater splendor when, though the diners numbered less than seventy, and though every member is, by rule, restricted to a sip, thirty-six quarts of generous wine were pledged in the progress of the cup round the tables. It was a tolerable deal of sack for the number of heads.

It is after leaving the Hall with its memories and old-world ceremony that we may best understand the spirit of the place. Night falls on the quaint gables of the houses and the cone-pointed turrets of the church. Scarcely a sound of any kind stirs through all the courts. The little traffic Fleet Street has drops to a pleasant murmur, and only here and there a light from the windows shows the presence of a tenant in the old rooms. So one begins to understand its history and realize its tradition. One may even look to see the Doctor rolling home from the Mitre with the "Scotch sheep-dog" just behind; see Thurlow working the night through in his attic, that he may pretend to an aimless leisure to-morrow; and, further back yet, hear John Manningham sauntering home from the Hall with his chamber-fellow, Curle, and humming a catch from Twelfth Night.

ARE JURIES THE JUDGES OF THE LAW IN ANY CASE?

By Percy Edwards.

THERE are some of my brethren, no doubt, at home and abroad, who will wonder why such a question should be raised. Jurors, having no technical knowledge of legal science and principles, could not possibly apply the law to a given set of facts. "It is absurd," you say. "What the law is must be determined by a legal interpreter, a master of the science."

Very true. No one doubts this to be the theory upon which is based modern jury practice. That, to a mind skilled in the technical science, we should look for a correct interpretation of those principles upon which such science depends, is perfectly natural, leaving facts which are the subjects of ordinary observation to be determined by the process of ordinary reasoning, or that reasoning which requires no knowledge of technical sciences.

Perhaps, generally, this theory of exclusive function in the court of legal interpreter is followed in the civil practice, if not in the criminal practice of our times.

But there is just enough doubt and expressed opposition to this theory, in certain quarters, to render a short essay on this subject of some little interest to the profession, and therefore the writer has undertaken, briefly, to discuss the subject.

It might be well to add that when the terms jury and jurors are used, they refer to such persons serving in courts of record, or the common law jury of twelve.

If we look to the early English common law and practice, we shall find that there was much reason at times for the contention that the jury should exercise this function in criminal cases. Up to the time of the prosecutions for seditious utterances the right was admitted to exist, and although seldom exercised before the corrupt condition of court affairs under the odious Judge Jeffreys caused a vigorous assertion of the right, and in consequence thereof this important function exercised by the jury was looked upon with considerable favor. There was a time in the very early history of the common law, before the crystallization of ideas into a science, when jurors were regarded as judges of almost everything pertaining to the trial. As we have seen, there were times when the judges arrogated to themselves all functions of the court and practice. There was a good deal of divergence of opinion upon this province of the jury. The great Erskine contended strongly for the jury as the judges of the law and the facts in the case of Rex *v.* Dean of St. Asaph[1] Since the jury were to give a general verdict according to the dictates of their consciences they must necessarily be allowed this latitude. If bound absolutely by the charge of the court in regard to the law appertaining to the case, and given no room for the play of conscience, what were they to do if the law said convict and their consciences directed them to acquit? But, notwithstanding the brilliant argument of this foremost of English advocates at this time, Lord Mansfield passed against the proposition; and since that time the practice seems to have been more definitely defined, judging from the numerous English decisions upon this question.

The difficulty with this question seems to have crossed the ocean much as a common plague does, and has affected the constitutions of some states much as the disease affects the human constitution. Illinois, Maryland, Louisiana, Indiana, and Georgia have expressed constitutional provisions by which jurors are declared to be judges of the law in criminal cases. The State of

[1] 3 Term Rpts. 428.

Connecticut has such a statutory provision. Does this condition of things impute the want of confidence in the judicial discretion and integrity of the judges in those States? Assuredly not. More like the mummified remains of the old spirit of opposition driven out of England by the plague of legal reform.

The conservative spirit as shown in these constitutional provisions of the States above named is a fair illustration of how slow progress may be along the line of legal reform. Prometheus bound to the rocks was not more effectually hampered in his efforts to free himself than are we hampered by legal tradition in our effort at reform to a degree of consistency.

Can it be said that some part of the fear expressed by Claudianus, so long ago, in the words, "He is next to the Gods, whom reason, and not passion, impels; and who, after weighing the facts, can measure the punishment with discretion," dictated the action, or aroused the feeling which led to the adoption of such constitutional provisions? Hardly so, it seems. But rather the Ciceronian sentiment: "Great is the weight of conscience in deciding on your own virtues and vices; if that be taken away, all is lost."

The conscience of a juror was recognized as the supreme "power behind the throne." If the evidence was reasonably clear and the law made so by the court, jurors with an abnormally developed, or an elastic conscience, might, if conscience was the ruling guide, cause a verdict to be rendered, as they sometimes do, absurd upon its face. Under the present status of the law, if this verdict is an acquittal, nothing more may be done. But if the jury bring in a verdict of guilty, a remedy is at hand. In some cases a summary remedy. But why not bind the conscience as well as the reason, if as a metaphysical proposition these may be separated. The conscience is too elastic, too sentimental, too immaterial in one man to make it the guardian of another's fate. It may be a good mentor for the one who controls it, at least to an extent. But you do not always find the conscience so governed by good sense as in the case of Judge Thompson, whilom on the bench of the United States Circuit Court of New York. It was said that while in the trial of a criminal case in that court he was requested to charge the jury that they were the judges of the law as well as of the facts, when he replied in the terse, if not polite language, "I shan't, they ain't."

The Supreme Court of the State of Vermont, after attempting to establish this doctrine by repeated judicial decision and opinion, beginning with the case of State *v.* Croteau,[1] and not always as a harmonious whole, and at times the subject of sarcastic reference, as supporting a mere dogma, by the courts of sister states[2] have, just recently, through Mr. Justice Thompson, in the case of State *v.* Burpee[3] announced the opinion that the doctrine that jurors are paramount judges of the law as well as the facts in criminal cases, is contrary to the common law, contrary to the constitution of the state and of the Federal Constitution.

What more could they say? This decision overrules a long line of previous decisions on this question in this State.

The opinion of Mr. Justice Thompson in this case, State *v.* Burpee, is an exhaustive and able resumé of the adjudicated cases, not only of his own State, but of English case and common law. Concluding his opinion he remarks, "We are thus led to the conclusion that the doctrine that jurors are the judges of the law in criminal cases is untenable; that it is contrary to the fundamental maxims of the common law from which it is claimed to take its origin, contrary to the uniform practice and decisions of the courts of Great Britian, where our jury system had

[1] 23 Vt. 14.

[2] See Commonwealth *v.* McManus, Pa. 14, Crim. Law Mag. 18.

[3] 25 Atl. Rep. 964.

its beginning, and where it matured; contrary to the great weight of authority in this country; contrary to the spirit and meaning of the Constitution of the United States; repugnant to the Constitution of this State; repugnant to our statute relative to the reservation of questions of law in criminal cases, and passing the same to the Supreme Court for final decision; and as was said by Walton, Judge in State *v.* Wright *supra* (53 Me. 328), "contrary to reason and fitness in withdrawing the interpretation of the laws from those who make it the business and the study of their lives to understand them, and committing it to a class of men, who, being drawn from non-professional life, for occasional and temporary service only, possess no such qualification, and whose decision would be certain to be conflicting, in all doubtful cases, and would therefore lead to endless confusion and perpetual uncertainty."

This strong language in condemnation of a practice for years upheld by the same court in equally strong argument must furnish food for a good deal of reflection.

Coke, in his First Institute, says, "reason is the life of the law," and that "the common law itself is nothing else but reason." Now if, as argued by the court in the case above, the jury never enjoyed the right to interpret the law, in these cases, under the old common law, what a commentary on Coke's assertion we have in the completion of the reasoning of the court, which at one time held, "there is no qualification of the right of a jury in a criminal cause to disregard the law as given them by the court, and adopt their own theory; and they may, in the exercise of this power, with the same propriety adopt a rule of law more prejudicial to the respondent as well as one less prejudicial."[1] Such a condition of things is apt to lend zest to the claim that "The law is a sort of *hocus-pocus* science that smiles in your face while it picks your pocket; and the glorious uncertainy of it is of mair use to the professors than the justice of it."

It can hardly be said that the great Coke was entirely clear on this question of jury province. In his commentary on Littleton he says: "Although the juries, if they will take upon them the knowledge of the law, may give a general verdict, yet it is dangerous for them so to do, for, if they do mistake the law, they runne into the danger of an attaint."[1]

This by no means admits the right, and may be said to substantially deny such right.

If "the law is the perfection of reason," and juries are permitted "to take upon themselves the knowledge of the law" which is covered in "a general verdict," then their finding would be the law, and they could "run no danger of attaint."

Juries may disregard the direction of the court as to what the law is, to be applied to a given set of facts before them, even where the practice is settled and constitutional or statutory provisions make it obligatory on the jury to take the law from the court. Just so they may totally disregard the common law oath which they take to decide according to the evidence, and the law as given to them by the judge. You can not control the conscience or whim of jurors. But this is the power of might. It is the usurpation of a function in the administration of the law, not upheld by any moral or legal right. A maxim growing out of the early confusion of these functions puts the rule thus: "ad questionem facti non respondent judices; ad questionem juris non respondent juratores,"—an invaluable principle of jurisprudence which has done much to uphold the dignity and efficiency of our system of jurisprudence.

Mr. Forsythe, in his admirable work on *Trial by Jury*, in a discussion of the subject says: "It is impossible to uphold the doctrine. It is founded on a confusion between the ideas of power and right.

[1] State *v.* Myer (Vt.), 2 N. Eng. Reptr. 209.

[1] Coke, Sitt. 228 (a).

"Although juries have undoubtedly the power in such cases to take the law into their own hands, and so, it may be, defeat the ends of justice, or do what they believe to be substantial justice, they do so at a sacrifice of conscience and duty."

After showing that juries became unpopular and finally fell into disuse on the Continent for this very reason, Mr. Forsythe then goes on to state that the case was different in England. The jury was originally called upon to aid the court with information of the facts to which the court would properly apply the law, each keeping within its proper province. And to this *nisi* course of procedure is attributed the vigorous condition of the English jury system to-day, while the old jury system of the Continent has either been abolished or fallen into decay.

In the Dean of St. Asaph, *supra*, a case determined in 1789 upon an indictment for libel, where by the form of pleading the two questions of law and fact are blended together, Lord Mansfield says: "The distinction is preserved by the honesty of the jury. The constitution trusts that under the direction of a judge they will not usurp a jurisdiction which is not in their province. They do not know, and are not presumed to know, the law; they are not sworn to decide the law; they are not required to decide the law."

And this would lead to uncertainty in the administration of the law which would produce 'a miserable condition among individuals, dangerous to society and altogether subversive of a pure administration of the law,' according to this great authority.

In Rex *v.* Burdett (4 Barn. & Ald. 131, 6 Eng. Com. Law, 420), the opinion is given that "the judge is the judge of the law in libel as in all other cases." (See also Regina *v.* Parish, 8 Car. & P. 94, 34 Eng. Com. Law 628; Parmiter *v.* Coupland, 6 Mees. & W. 105; Levi *v.* Milm, 4 Bing. 195, Contra De Solme on the English Constitution).

Again, what force is there in giving to a judge the power to direct a verdict of acquittal,— and may also set aside a verdict of this same jury which judges of the law as well as the facts, where in his opinion the evidence would not justify any other disposition of the case, and, at the same time, claim the right to interpret and apply the law is vested in the jury? This is manifestly absurd. And yet this absurdity is found to exist in some of the States of America and did exist in the practice of the State of Vermont previous to the decision in the case of State *v.* Burpee, *supra*. As before suggested this practice in effect makes jurors paramount judges of the law only in case they acquit. In that case the judge, of course, has no power to interfere and the prisoner can not again be put in peril for the same offense.

This verdict of acquittal is in no sense final because of any authority in the jury to interpret and apply the law, but, because of the rule, well known in criminal jurisprudence, that no man is to be placed in jeopardy a second time for an offense of which he has once been found not guilty.

Besides, the common law oath to jurors indicates pretty clearly that they are not to be the judges of what the law is, but that they are to take that as law which is given to them in open court by the presiding judge. Mr. Justice Campbell of the Michigan Supreme Court, in the case of Hamilton *v.* People,[1] says, "A jury system without a presiding judge who is something more than a puppet is not the jury system which we have inherited." Campbell in this same case says further: "It is necessary for public and private safety that the law shall be known and certain, and shall not depend on each jury that tries a cause." But it shall be interpreted by a professional interpreter and applied to the facts through the medium of a jury composed of men usually of simple habits and ordinary minds.

There is reason in this separation of the functions of judge and jury.

[1] 29 Mich. 191.

Mr. Justice Story has said in the United States *v.* Battiste[1]: "If the jury were at liberty to settle the law for themselves, the effect would be, not only that the law itself would be most uncertain, from the different views which juries might take of it, but in case of error there would be no remedy or redress of the injured party, for the Court would not have any right to review the law as it had been settled by the jury. Indeed it would be almost impracticable to ascertain what the law, as settled by the jury, actually was. On the contrary, if the court should err in laying down the law to the jury, there is an adequate remedy for the injured party by a motion for a new trial or a writ of error as the nature of the particular jurisdiction may require. Every person accused as a criminal has a right to be tried according to the law of the land — the fixed law of the land, and not by the law as a jury may understand it, or choose from wantonness, ignorance, or accidental mistake to interpret it."

This is very able and sound reasoning, no doubt; but, after all, with the play of conscience allowed to jurors in all criminal trials, to ignore the instruction of the judge if it conflicts with the dictates of conscience, the result deplored by Judge Story very often happens.

The chief Justice of Montana in 3 Crim. Law Mag. 497, says of the law as interpreted by juries: "It is a mystery and a myth; no one can lay his hands upon it; no one can construe or interpret it; it affords no guide for the future, for it vanishes into nonentity the moment the verdict is returned, and the verdict makes no sign; the decision and the judges quickly disappear. 'The showman and the show, themselves but shadows, into shadows go.'"

In the noted Anarchist cases, tried at Chicago in 1887, the judge of the trial court instructed the jury that if they could say upon their oaths that they knew the law better than the court itself, they have the right to follow their own interpretation; but that before doing so they should reflect whether from their study and experience they are better qualified to judge of the law than the court. The appellate court held this instruction as proper. (Spies et al. *v.* People, 122 Ill. 25, 3 Am. St. Rpts. 461.[1] Such a spectacle as shown here in the passing of judge and jury, or rather of jury and judge, for the jury is the prominent character in the scene, would almost produce a blush upon the bronze cheek of the statue of Liberty. Yet this spectacle could hardly be different in a state with the same constitutional distrust of the integrity and ability of its judiciary.

The learned Sharswood, while Chief Justice of Pennsylvania in 1879, attempted to establish this doctrine in the jurisprudence of that State (Kane *v.* Com. 89 Pa. 525[2]). He held that the jury judge of the law in all criminal cases. Having the *power*, they have the *right* to give a verdict contrary to the instructions of the court upon the law.

The court may present the considerations which should induce them to follow its instructions, but should not give a binding instruction which it would be powerless to enforce by granting a new trial if the instructions were disregarded.

The great drift of authority in the American States follows the well settled English practice, which regards as repugnant to judicial dignity and usefulness any theory or practice other than that which gives to the judiciary the exclusive right to interpret the law.

And let us hope that it will not be long before the several remaining states of the American Union will lay aside this relic of a semi-barbaric legal age, and adopt the homogeneous principle and practice of the best nations of the earth.

[1] 2 Sumn. (U. S.) 243.

[1] See also Schnier *v.* People, 23 Ill. 17; Fisher *v.* People, 23 id. 218; Mullinix *v.* People, 76 id. 211; Davison *v.* People, 90 id. 221.

[2] See Nicholson *v.* Commonwealth, 96 id. 503.

THE COURT OF STAR CHAMBER.

By John D. Lindsay.

VIII.

RICHARD CHAMBERS, a London merchant who had a dispute with some of the subordinate officers at the Custom House, was summoned before the Privy Council at Hampton Court. He said there "that the merchants are in no part of the world so screwed and wrung as in England; that in Turkey they have more encouragement." For this he was fined £2,000 and required to make a written submission or apology, and, refusing to do so, was imprisoned for six years.

The proceedings which made the court utterly intolerable and brought about its abolition, were the sentences upon libellers, and the proceedings connected with them.

In 1632, William Prynn, who was a barrister of Lincoln's Inn, was informed against for his book called "Histrio Mastix, or a Scourge for Stage Players, etc." [1] Prynn in his answer disclaimed any intention of wrongdoing, declared that the book had been licensed, and urged the court to take into consideration that he had been confined for a year in the Tower pending the trial. The book was certainly a scandalous publication, and at the present time its author would doubtless receive a term of imprisonment for it. Prynn's own counsel apologized for his style. "For the manner of his writing he is heartily sorry, that his style is so bitter, and his imputations so unlimited and general."

While his trial was, like most of the Star Chamber proceedings, dignified and quiet, the sentence, and the immediate language of the judges in pronouncing it, were monstrous. The judgment was that Prynn should be disbarred and deprived of his university degrees, should stand twice in the pillory, and have one ear cut off each time, be fined £5,000, and be perpetually imprisoned, without books, pen, ink or paper. "Yet let him have some pretty prayer book," said Chief-Justice Richardson, "to pray to God to forgive him his sins, but to write, in good faith, I would never have him." Lord Dorset was as brutal in his judgment as Prynn in his book. "Mr. Prynn, I do declare you to be a schism maker in the church, a sedition sower in the commonwealth, a wolf in sheep's clothing, in a word, *omnium malorum nequissimus*. . . . I will not set him at liberty no more than a plagued man or a mad dog, who, tho' he cannot bite, he will foam. . . He is fit to live in dens with such beasts of prey as wolves and tigers like himself. . . I should be loth he should escape with his ears, for he may get a periwig which he now so much inveighs against, and so hide them, or force his conscience to make use of his unlovely love-locks on both sides; therefore I would have him branded in the forehead, slit in the nose, and his ears cropt too." The book was burned by the common hangman.

Five years later, while Prynn was undergoing imprisonment in the Tower, he was again prosecuted at the instigation of Archbishop Laud, together with Dr. John Bastwick and Harry Burton, a dissenting divine, "for writing and publishing seditious, schismatical and libellous books against the Heirarchy." The information was very lengthy, and annexed to it were the five books complained of, namely: Dr. Bastwick's "Latin Apology," and his "Litany," and Mr. Bur-

[1] R. Vashon Rogers makes mention of this case and comments upon Prynn's sentence as "a good specimen of the sentences of this famous infamous tribunal" in the Green Bag for June, 1894, "Some Things about Theatres." I., (G. B., Vol. VI., No. 6, p. 259.)

ton's "An Apology for an appeal to the King's Most Excellent Majesty, with two sermons for God and the King," "The News from Ipswich," and "The Divine Tragedy, recording God's fearful judgment against Sabbath Breakers."

"The Divine Tragedy" contained a passage which reflected on the late Attorney-General, Mr. Wm. Noy, who had conducted the former prosecution against Prynn. "Who," said Mr. Littleton, the King's Solicitor, "was most shamefully abused by a slander laid upon him, as if God's judgment fell upon him for so eagerly prosecuting Mr. Prynn for his Histrio Mastix, which judgment was this: that he, laughing at Mr. Prynn while he was suffering upon the pillory, was struck with an issue of blood in his privy parts, which could not be stopped till the day of his death, which followed soon after."

Mr. Littleton said: "But the truth of this, my Lords, you shall find to be as probable as the rest, for we have here three or four gentlemen of good credit and rank to testify upon oath that he had that issue long before." He called out for room to let the gentlemen come forward, but none appeared.

The "News from Ipswich" vindicated the honor of Matthew Moren, Bishop of Norwich, "as being a learned, pious and reverend father of the church."

Prynn himself, in his petition for relief to the Cromwellian parliament afterwards, thus described the books: —

"Denying the prelates' jurisdiction over other ministers to be *jure divino*, — charging them with many errors and innovations in religion, usurpation of his Majesty's prerogative and subjects' liberty, abuses and extortions in the high commission, and other ecclesiastical courts, suppressing preaching and painful ministers without a cause, licensing Papists, Arminian, and other erroneous books against the Sabbath, setting up altars, images and crucifixes, removing the railings in communion tables, and bowing down to them, altering the book of common prayer, the books for the gunpowder treason, and late fast, in some material passages in favor of Popery and Papists; which things (though very notorious, and oft complained against by this Honorable House in former and late parliaments) were yet reputed scandallous."

The defendants (before answering) put in a cross-bill, under all their hands, against the Archbishop of Canterbury and others of the prelates, charging them with usurping the royal prerogative, with unlawful innovations in church worship, the licensing of Popish and Arminian books, and other misconduct, and also setting forth their answers to the information. Their counsel dared not sign the bill, and Prynn tendered it to Lord Keeper Finch, praying it might be accepted without counsel's signature. Finch, having read it, refused to admit it, and delivered it to the King's attorney. Laud was exceedingly wroth at this evidence of the defendants' defiance, and demanded of the judges their opinion whether the defendants could not be punished as libellers for the matter contained in the cross-bill. They decided (but one judge dissenting) in the negative, "for it was tendered in a legal way, and the King's courts are open to all men."

Thereupon the defendants prepared their answers to the information, but having again set forth an array of defiant and scandalous matters, their counsel refused to sign them. They then petitioned the court for leave to sign the answers themselves, but this was denied, and the court decided that they "put in their answers by Monday sevennight under their counsel's hands, or else the matters of the information to be taken *pro confesso*."

At the end of this time Prynn again petitioned "that having been for above a week debarred access to his counsel, and his servant, who should solicit for him, being detained close prisoner in the messenger's hands, and it being difficult to get his counsel to repair to him during the term, he, having been a barrister-at-law . . . might . . . have liberty to put in his answer under his own hand, and not under his counsel's, who

refused it out of fear and cowardice." He urged the following grounds why his petition should be granted, viz.: —

(1) Close, Dr. Leyton and others had been allowed it, and there was no precedent against it but one, and in that case the defendant was a woman, "not a man, much less a lawyer"; (2) upon an *ore tenus* in the Star Chamber, at the council table, in parliament and in the King's Bench, the defendants made their defense without counsel; (3) counsel were allowed, not of necessity, but of favor, "as a help to the defendants; but when they find them no help, but that they advise them to their prejudice, why may they not answer without them?" (4) the answer was in the eye of the law the defendant's, — not the counsel's; (5) should an innocent man suffer without conviction "through the want, fear, neglect, ignorance, diversity of opinions or treachery of counsels? (6) the law of nature teacheth every creature . . . . to defend himself, and in the present case the defendant's answer rested upon books, matters of divinity and other points wherein counsel have little skill." (7) "At the general day of judgment every man shall be allowed to make answer for himself, much more should earthly judges allow the same where others will not or dare not." (8) "By the judicial law among the Jews, and by the civil law among the pagan Romans, every one might answer for themselves; Nabroth, Susanna, Christ and others, though unjustly condemned, yet were not condemned as guilty for not answering by counsel." (9) St. Paul, when he was slandered and accused by Ananias the high priest, and Tertullus, and several times before Felix, Festus, and King Agrippa (three heathen magistrates), was suffered to speak for himself, without any counsel assigned.

In conclusion he prayed that "being accused by the English prelates and high priests' instigation, of sedition and other like crimes, as St. Paul was," he should "enjoy the same privileges and freedom before Christian judges as St. Paul had among pagans, which his adversaries will not be against unless they will be deemed more unreasonable than Ananias himself."

Bastwick submitted a similar petition urging the same ground, namely, that his counsel refused to sign his answer.

The court adhered to its former ruling, and directed that the answers be put in according to the form decreed, or else the information would be taken *pro confesso.* Prynn and Bastwick thereupon left their answers at the office and tendered another draught thereof to the court.

The court observing that Bastwick's answer "was five skins and a half of parchment, close written, and (as was alleged) contained much scandallous, defamatory matter," ordered that the information as against him should be taken *pro confesso.*

He again petitioned leave to introduce another signature of counsel, but to no purpose.

Prynn in a second petition "desiring of the court not to require impossibilities of him, his counsel's hand not being at his command (for thus the most innocent man may be betrayed and condemned through the unfaithfulness, wilfulness, fear, corruption or default of counsel), he prayed them to deal with him as they would be dealt with themselves were they (which God forbid) in his condition, and as they would have Christ proceed with them at the day of judgment."

The court hereupon directed Mr. Holt, one of Prynn's counsel, to go to him in the Tower and take his instructions for his answer. But the Lieutenant of the Tower was sent for and rebuked by court for having suffered Prynn to dictate such a petition; and one Gardener, who wrote it by the Lieutenant's license, was the same evening, by a warrant signed among others by Laud himself, apprehended, imprisoned for two weeks, and not released till he had given a bond to appear when called.

Holt called upon Prynn in the Tower and received his instructions, Prynn at the same time giving him his fee. The answer being "agreed on and settled" by Holt and also by Tomlins (the other counsel), it was engrossed. Holt, however, then refused to sign it, saying, "he had express orders to the contrary and would not do it for £100." In the meantime Tomlins went away from London.

Upon this state of facts Prynn asked the Lord Keeper, the chief judge, to command Holt to sign the answer. Finch said he had no power to do so.

And finally, on May 19 (two weeks having intervened), the court ordered that for their contempt in not putting in their answers the matters charged against Prynn and Bastwick should be taken *pro confesso*.

Burton's answer, a bulky document consisting of about forty sheets of paper, was signed by Holt, but after it had been in court nearly three weeks, upon the Attorney-General's motion, it was declared scandalous, and the court referred it to Finch and Bramston.

Finch administered a violent rebuke to Holt and told him "he deserved to have his gown pulled over his ears for drawing it."

Holt replied that it was only a confession or explanation of the charge in the information and a recital of Acts of Parliament, and how that could be scandalous or impertinent he could not conceive.

Nevertheless the two judges struck out everything it contained except the formal words in the beginning of it: "The said defendants by protestation not confessing," etc., and the concluding portion containing his plea of not guilty, the averment that he was ready to prove the matters of answer, his prayer of a favorable interpretation, and to be dismissed. "So all the body of his answer was expunged, and nothing but the head and feet remained; and by his plea of not guilty to all, he was made to deny what he had confessed and justified in his answer."

The examiner afterwards came to him in the Fleet, where he was confined, to examine him upon interrogatories based upon his answer. He refused to be examined unless the court admitted his answer already submitted or permitted him to put in another. The court ordered the examiner to go to him the second time, and again he refused to answer. Thereupon the court ordered that the matter of the information be taken against him *pro confesso*.

On the 13th of June, 1637, the court ordered the cause against all three defendants to be heard the next day, and in the meantime it directed that that they might have permission to attend their counsel in the custody of their keepers. "This was looked upon as a short warning by some, who affirmed that by the course of the court, a *subpoena ad audiendum judicium* should have been served upon them fifteen days at least before the day of hearing, which was not done.

Prynn availed himself of this liberty and called upon Tomlins, who had returned to London, and got him to sign his answer, but Holt said he did not dare to do so. Prynn then tendered the answer, thus signed at the office of the court, but the clerk again refused to receive it.

COUNSEL AND CLIENT.

IN a state of barbarism every man's hand is against his neighbor, and personal advantage sets the only limit to his privileges and his duties. With the first gleam of civilization these privileges are circumscribed by his duty toward others, from which no individual is entirely free. In such a society what, then, may a lawyer do in behalf of his client without infringing his duty to the public, and without regard to the inherent justice of his cause? This is a question oft mooted, both by the profession and the laity, and the extremes are wide apart. Memorable on the one hand are Lord Brougham's hot words uttered in the defence of Queen Caroline, the unhappy wife of George IV.: "An advocate in the discharge of his duty knows but one person, and that person is his client. To save his client by all means and expedients and at all hazards and costs to other persons — and among them himself — is his first and only duty; and in performing that duty he must not regard the alarms, the torments, the destruction he may bring upon others. Separating the duty of the patriot from that of advocate, he must go on, reckless of consequences, though it should be his unhappy lot to involve his country in confusion." These words show zeal, but not discretion; they are commanding, but not convincing. All society is founded on the theory, at least, of the greatest good to the greatest number, and such a code as this is utterly subversive of this fundamental principle. In criminal trials, especially, too often the prosecution seeks to secure a conviction by any means, and the defence, we may assume, usually stops at nothing to escape the penalty of wrong-doing. If the public be aroused to participation and clamor in favor of one or the other, the advocate may find himself unduly swerved, and may seek to gratify such public sentiment to the detriment of public justice. Cases involving the freedom of the life of the accused demand in the lawyer a far-seeing discrimination and an all-inclusive view. He may be required to face the indignation of a frowning but unthinking community, and to maintain his integrity at the sacrifice of popularity or ambitions. On the other hand, his recreance to duty may entail the most unfortunate results. A crime is committed which justly outrages public sentiment, and through sharp practice or corrupt methods the perpetrator goes unpunished; his freedom from restraint, even his existence, involves the peace-loving portion of the community in constant apprehension; then indignation bursts all bounds; the law's delays and loopholes are made the exuse for defiance of all law, and property and life pay the penalty of one man's overzeal in behalf of a worthless client.

Opposite to Lord Brougham's position is that of Sir Matthew Hale, who in his early practice would never accept a seemingly unjust cause. But in after life he was convinced that in this he had in a measure erred, for he felt that no one can so thoroughly know a case as to be entitled to a final opinion on its merits until all the facts are thoroughly presented. In every life questions of moral duty arise for daily settlement; paths constantly diverge, and the safe one must hourly and anew be chosen. There is no universal standard; each conscience must settle some things for itself unaided but by an enlightened understanding. One thing positively, however, a lawyer may never do for his client — what the common conscience of mankind would forbid that client to do for himself. He may not espouse the cause of one who seeks to perpetrate a wrong through some chance advantage the law may happen to afford him. But not often, if ever, need a lawyer decline to undertake the

defence of the accused. To undertake his defence, however, is not to decide to make every conceivable effort to save him from conviction; that might include, at last resort, the purchase of perjured testimony in his behalf, which even the most hardened might resort to, but would hardly seek to justify. But to secure to him those advantages and safeguards which the law, in mercy, offers him, is permissible and just. If more than this be expected or required, but one honest course is open — to decline peremptorily the proffered employment and forego the longed-for fee. Honest men decline opportunities for dishonest gain in every walk in life. However, by declining to espouse a cause because there seems to be ground for believing the party guilty, the lawyer would usurp the function of both judge and jury. The Courts appoint attorneys for accused persons in extremity, and where the issue is life or death, counsel thus appointed cannot refuse the trust, so jealous is the law of the security of its subjects, and so averse to judgment against anyone unheard. Sydney Smith justifies the acceptance of any ordinary case that offers, on the ground that truth is best arrived at by the earnest efforts of opposing advocates, and this proposition is no doubt true enough if the contestants use only legitimate weapons. — *American Journal of Politics.*

The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

THE SARATOGA EXERCISES.— As usual the American Bar Association and the Conference on Uniform Legislation held meetings in Saratoga in August. The business of the writer hereof was chiefly in the latter. Since the last meeting of the Conference, at Milwaukee, a year ago, the States of Iowa, Kentucky, South Carolina and Virginia have been added to those represented. Considerable revisory work was done, and an important step was taken by the appointment of a committee to draft a proposed Uniform Act concerning negotiable instruments, founded on the English Act. At the meetings of the Bar Association we had time — and that implies a good deal — to listen to the reading of President Cooley's annual address. Mr. Moorfield Storey's address was a very notable production, devoted to the consideration of the indisputable proposition that the people of this country have lost faith in their legislatures, from Congress down to those of the States. It was not a pleasing nor a complimentary discourse, but it was sound and timely. Its words were faithful, like "the wounds of a friend," although they sank deep into the absurd and careless vanity of our people concerning our institutions. The paper of Mr. Hampton L. Carson on "Great Dissenting Opinions," was interesting, but better adapted to reading in the closet than listening to in a great hall. We were told that his defense of some of his views, in the subsequent discussion, was even livelier and more cogent than his essay. The exercises of the section on Legal Education, embracing papers by Judge Dillon, Mr. Henry Wade Rogers, Mr. John D. Lawson, and Mr. Austin Abbott, were very instructive and of rather novel interest. Judge Dillon paid a glowing and appreciative tribute to the memory of David Dudley Field. The meeting on the whole must be called successful, as these meetings go, although the attendance, we believe, did not much exceed the customary one hundred. That hundred however embraced many influential and widely known lawyers, and if no very positive good or active reform comes of their assembling, yet even their worst enemies must admit that they did no mischief! At all events they presented a refreshing contrast to the disgusting crowd of *nouveaux riches*, horse racers, gamblers, and professional politicians who frequent the Springs in the summer.

CLEOPATRA.— If Mr. Ebers, the author of many stiff, stately and dull romances of history, ever comes to this country, we propose to have him indicted for false pretences. We were seduced into reading his last novel, "Cleopatra," by his declaration in the preface that he had essayed to rehabilitate her somewhat damaged reputation and to vindicate her against the long and common assaults of history. If any body could discover any thing good or new to be said of the various serpent of old Nile, we were curious to learn it, and so we patiently and conscientiously waded through the two volumes, but nothing in the nature of performance of the promise was exhibited. Ebers' Cleopatra is very much like everybody else's, except that he does make a faint effort to invest her with the domestic virtues, and dwells much on her devotion to her bastards by Cæsar and Antony. In fact, he accounts for her sudden and discreditable disappearance from the battle of Actium on the ground that she became "rattled" and yearned to run home and see the children. One can excuse a brilliant defense of a conceded historical rascal like Froude's of Henry VIII., but a dull, faint and timid one, like this, is unpardonable. Our copy is for sale cheap. Mr. Froude himself, in the Cosmopolitan Magazine for September, contributes an article on "Antony and Cleopatra," in which he endeavors to discredit the story that the queen had a son by Julius Cæsar. The basis of his theory is that Cæsar must have been too much pressed by the necessities of his Syrian campaign to find time for dalliance, and that he would not have wished so to bring the queen into disgrace with her people. But Cæsar was no busier than Napoleon in Italy and Poland, and the latter found time for such affairs. In these as in war, he "lived on the country," and so he smoothed the wrinkled front of war with an Italian prima donna and a Polish countess. The Egyptians did not mind a little thing like that, and thought none the worse of the queen's undoubted intrigue with Antony. As to the battle,

Mr. Froude thinks the queen did not fly until nearly all her ships were destroyed by fire, basing his belief on an expression in Horace. This is truly Froudian — poetry is better than history and imagination than sober fact. It is probable the queen did not wait for the fire. But Mr. Froude is never dull.

POLLOCK ON TORTS.— Another book, which is not a novel, is more interesting than many novels — "Cleopatra" for instance — and which we read during vacation, is Mr. Pollock's great treatise on Torts. This is one of the few law books which deserve and have received unmixed praise. The present edition from the publishing house of the F. H. Thomas Company of St. Louis, is furnished with remarkably discreet and pertinent annotation by Mr. James Avery Webb, of Memphis. The eminent author treats of an interesting topic — wrongs are always more entertaining than rights, just as bad men are generally more entertaining than good men — and he sets out with this manifest advantage; but he treats it with such philosophic vigor, vivacity, and originality, that he shows an eminent superiority over all others who have written on the same subject. Compared with the most famous American writer on the same subject, his work is like Macaulay compared with Rollin. What an art it is to know what not to say! Of this art Mr. Pollock is complete master, as any one must confess who will compare his treatise with Addison's tedious and voluminous work. "Enough is as good as a feast" is an old adage. It is a great deal better, for it does not make one sick. Mr. Pollock is an expert who understands his subject so well that he knows precisely what to say, just as a skillful surgeon knows exactly where to cut and never cuts off too much.

"IN PRAISE OF HANGING."— This is the title of an article in the "The New Review," of London, by W. S. Lilly, which has the merit of at least one novel discovery. The writer spends a good deal of time unnecessarily in arguing that society has the right to execute capital punishment. Probably nobody but a maudlin sentimentalist would deny this at this day. Society may justly do anything necessary for its protection, and if capital punishment is necessary for its protection it may just as lawfully hang a murderer as a traveler may kill a highwayman who threatens him. Mr. Lilly then argues, very inconclusively, it seems to us, that the deterrent effect of capital punishment is very strong. Statistics are against him. Hanging does not deter. There is plenty of hanging, yet murder is more common than ever. In the city where we write these lines there have been nine murders in the last four months, and yet electrocution is the rule and the practice. We said Mr. Lilly had made a novel discovery, but he is not the discoverer, he is only the herald. The discoverer is Schopenhauer, and the discovery is that condemnation to death for crime makes men virtuous! Mr. Lilly says that "this certainly often quickens him into new spiritual life and works," or as Schopenhauer expresses it, "effects a great and rapid change in his inmost being." "When they have entirely lost hope they show actual goodness and purity of disposition, true abhorrence of committing any deed in the least degree bad or unkind; they forgive their enemies, and die gladly, peaceably, and happily. To them, in the extremity of their anguish, the last secret of life has revealed itself." They obtain "a purification through suffering." This seems to give them too great an advantage over their victims. The murdered man goes to his account "with all his imperfections on his head," not having the advantage of the prospect of being hanged. It would be better to let these saintly converts live out their natural days in hard work, on poor fare, in order that genuine remorse might have place.

SOLITAIRE.

I LIKE to play cards with a man of sense,
And allow him to play with me,
And so it has grown a delight immense
To play solitaire on my knee.

I love the quaint form of the sceptred king,
The simplicity of the ace,
The stolid knave like a wooden thing,
And her majesty's smirking face.

Diamonds, aces, and clubs and spades—
Their garb of respectable black
A moiety brilliant of red invades,
As they mingle in motley pack.

Independent of anyone's signal or leave,
Released from the bluffing of poker,
I've no apprehension of ace up a sleeve,
And fear no superfluous joker.

I build up and down; all the cards I hold,
And the game is always fair,
For I am honest, and so is my old
Companion at solitaire.

Let kings condescend to the lower grades,
Let queens shine in diamonds rare,
Let knaves flourish clubs, and peasants wield spades,
But give me my solitaire.

HATS. — Man's most influential article of wearing apparel is the hat. It is (or ought to be) the ornament and protection of his chief corporeal member. The privilege of keeping it on in every presence is one of the fundamentals of the Quakers and of certain Spanish grandees, and we believe it appertained to French lawyers even in court at one period. An obscure poet tells us: —

> "So Britain's monarch once uncovered sat,
> While Bradshaw bullied in a broad-brimmed hat."

The members of the House of Commons greatly cherish their customary right of sitting with their hats on in the sessions of that body. Some Jews wear theirs in church. When certain priests die, they are set up in state with a stove-pipe hat on. The hero of that very clever novel, "The Entailed Hat," insisted on dying with the hat on, and being buried with it. What insult so deadly as to knock off a man's hat? Is it not Bret Harte who tells the story of the "tender-foot" who came to the mines wearing a tall silk hat? Whereupon much coarse jeering ensued, patiently borne, until one rash person having dared to lay sacrilegious hand upon the hat, there ensued a cyclone which devastated the band of tormentors. What condescension so great as to take off the hat voluntarily? Our own wittiest of poets, Holmes, discoursing on the relative importance of different articles of clothing, says — we quote from memory: —

> "Coat, boots may fail, the hat is always *felt*."

One has known instances of a very commonplace person rendered highly respectable through a long life by means of wearing an unchanging fasihon of hat. There is no more respectable nation than the English, and they are famous for their addiction to the high silk hat.

There have been certain hats of historic importance. It does not appear that "the bald first Cæsar" wore any, but it is recorded that he put on a wreath of laurel instead, and when he died he did not pull his hat over his eyes, but muffled up his head in his toga. Coming down to more modern times, there was (or rather wasn't, for the tale is a myth) the tyrant Gessler, who elevated his cap on a pole and required his subjects to do it obeisance. The broad-brimmed hat of Rubens is an essential part of his portraits, and a similar article conferred an extra dignity on the small-headed first Stuart, before Cromwell removed that head. The tall bear-skin hats of Napoleon's terrible Old Guard carried victory all over the continent of Europe, and made their last appearance and their first unsuccessful appearance, on the crest of Mt. St. Jean. It was one of the favorite pastimes of their master to stand on the sands of Boulogne and scare the "perfidious" English by the sight of his little cocked hat. A great orator, patriot, and statesman once made a triumphal tour of this country, wearing a broad-brimmed slouched hat, and for years afterward the "Kossuth hat" was a favorite article of wear all over this land.

We were led into the foregoing reflections by a portrait of the late Lord Chief Justice Coleridge in the July GREEN BAG. It was the best portrait of his lordship that we ever saw, and we at once recognized the familiar lineaments of that not-too-fresh piece of head-gear which he wore in America. His lordship was notoriously averse to sitting for his likeness — probably on account of his resemblance to the first Cæsar in respect of the natural covering of his head. When he was in this country he gave out no portraits of himself save one taken at a very much earlier period of his life, when the hairy flush of youth was on his honored skull. We should very much like a half-length of him, showing his hands endued in those well-worn black kid gloves, which looked two sizes too large, and as if they had been despotically given out to him by the undertaker on some occasion when he was acting as pall-bearer. Mr. Edmund Yates, his lordship's adroit and unrelenting enemy, is also recently depicted in a "chimney-pot."

But the grandest hat in modern portraiture is that which surmounts Daniel Webster's head in a picture in "The Century" magazine a few years ago. It is truly an awful hat. It looks like a part of the great man, and as if he ate and slept in it. Sidney Smith said that Webster looked like "a Cathedral in breeches," and this hat looms up like the dome of St. Paul's, and his big black eyes gleam mournfully beneath like the windows around its base. It is a worshipful hat, and shows how a grand character and a superb head can redeem this grotesque article of apparel from its natural condition of being ridiculous. It would seem that Coleridge and Webster always wore one fashion of hat, and always wore one hat long enough to confer on it the respectability, not to say the grandeur, of antiquity. We know of another portrait of Webster representing him in a low-crowned, broad-brimmed, straw hat, taking his stately ease at Marshfield, and we have a portrait of Napoleon at St. Helena with a similar hat. These are very impressive presentments, but in them the subject had not to struggle against and assert his native superiority to the ugliest, most inconvenient and most senseless thatch that man's milliners ever arrayed his head withal.

MARLBOROUGH. — Among our vacation reading we took up a very agreeable book in which General

Viscount Wolseley essays to do for John Churchill what Mr. Froude tried to do for the lecherous Tudor. To those who have been accustomed to regard Marlborough in the view of Macaulay and Thackeray, the present attempt will seem arduous. We cannot say that the noble author has changed our own opinion, nor does it seem to us probable that he will change that of others. He has to concede a great many unpleasant facts about his hero. That his sister was a king's mistress and that he himself was the "fancy man" of a king's mistress; that his brother was a public peculator; that his wife was an ignoble and selfish favorite of a stupid queen, whom she ruled in the interest of herself and her husband; that Marlborough heaped up a great fortune at court by some means; that he was a shameless hypocrite; that he was a traitor to his king and deserted him and went over to the enemy almost on the field of battle, for which he should have been shot had his king prevailed; that after the new king came in he was in correspondence with the French court for the purpose of selling him out and bringing back the old king; — these are charges which the biographer frankly admits, but which he palliates on the ground that he was no worse than many other public men of his time, and that by the standard of morality of his time he must be judged. Even on this argument it seems to us that the noble biographer is lame, for there were comparatively few such scoundrels as Marlborough even in his own time; many, perhaps most of the public men, even then refrained from treason and double treason. The apology seems as unsatisfactory as that offered by Mr. Dixon for Bacon's bribe-taking — many judges took bribes or presents. The answer is, that even then it was deemed immoral, and he was punished for it. Gen. Wolseley also proffers another excuse, which apparently is much like washing a dirty man with dirty water. He says that Marlborough was insincere in his letters to the French court proposing the return of the Pretender; he was only hedging. Very likely he was. He seems to have been a most adroit trimmer, utterly selfish and completely unscrupulous. But the biographer insists strongly that he was patriotic — that all these shifts and turns and mean actions were because of his love for his country. His proofs seem quite inconclusive. If Marlborough loved his country it was only that he might prosper, and be great and rich. He viewed his country only as a means to his own ignoble ends. Imagine Churchill going to prison or the block for country's sake! The biographer also finds another virtue in his hero — he was pious; he prayed all night before Blenheim. If he did, it was only because he had the belief that it would help him succeed next day. He always prayed the Lord to help Jack Churchill — never to prosper the right independent of him and his fortunes. The two volumes now presented bring the subject only down to Anne's accession, and the military career of the great soldier is reserved for future consideration. In the additional volumes doubtless the biographer will essay to vindicate his hero against the charge that he prolonged the war and so conducted it as to advance his own fortunes irrespective of patriotism or piety. Those persons who believe that Shakespeare did not write his plays because he was uneducated, will derive little corroboration of their theory in the contemplation of Jack's spelling and rhetoric. The former is grotesquely illiterate, the latter that of a peasant.

THE JURY SYSTEM. — Under this somewhat misleading title, Mr. George M. Curtis, of New York City, has an article in the June number of the "Yale Law Journal." This gentleman is known, we believe, as an able criminal lawyer and a remarkable verdict-getter. He sets out with several recommendations to the constitutional convention now sitting in that State, which would be more appropriately and just as effectively addressed to the legislature, such as allowing the prisoner's counsel the last address to the jury, providing for the payment by the public of stenographers' fees and the expenses of printing appeal papers for poor prisoners, and the setting aside of jurors who have formed any opinion in the case although removable by evidence. Mr. Curtis is the gentlemen who succeeded in clearing Buford of the charge of murdering Judge Elliott of Kentucky. This gentleman, in an unfortunate access of whiskey, rushed out and shot down the ill-advised judge because he had lately decided a case against him. Mr. Curtis got him off on the ground of emotional alcoholism, if we recollect right. He tells us here, however, that he "shall always believe that he saved his life by an earnest appeal to the religious sentiments of the jury." We had not given Mr. Curtis credit for so much humor. He tells us also of several other notable triumphs of his forensic skill. Among his clients was a kingly Irish adventurer named McCarthy, charged with thieving. He was guilty enough, but our narrator rescued him from a jury of Irish Roman Catholics by rehearsing Macaulay on the battle of Landen, "where the Sarsfields and McCarthys broke forever the British boast of invincibility with the bayonet." He says "the effect of this allusion was electrical." It must have been, for "the jury retired and acquitted McCarthy with nine cheers." We should call the effect cheering. If one of Mr. Curtis's tales, attributed to James W. Gerard, is authentic, he cught to ask the constitutional convention to prohibit sheriffs from con-

versing with jurors while they are in consultation as to their verdict. According to this account, Gerard asked the sheriff why a certain jury hung fire, and he replied: "There is a man on that jury who says he will never find for the plaintiff because he wears a gold-headed cane." Girard told him to go back and tell him it was brass; he went, and the plaintiff got a verdict in five minutes. But though Mr. Curtis has some fault to find with the administration of criminal justice, he has nothing but good words to say of the judiciary of the city. In fact, according to his generous estimate, there cannot possibly be another such gifted Bench in this country. He calls the roll of these magistrates, and sizes them up with adroitly varied and laudatory adjectives after the manner of Mr. John W. Donovan. With some of his opinions we should not disagree in the main — such as his estimate of Judge Van Brunt, Judge Pryor, Judge McAdam, ex-Recorder Smyth, and some others — but once in a while we recognize the disadvantage of having always lived in the rural districts, as when, for example, he assures us that Judge Barrett "is intellectually the peer of any jurist in the country." It also fills us with surprise to learn that there is any incompatibility between courtesy and legal learning, as seems to be implied in his statement that "Judge Bench is a gentleman of the old school of manners, *but* is justly esteemed as a very learned and accurate lawyer." Even the police justices come in for good words, but we note the omission, unintentional we trust, of the honored name of Justice Pat Dyvver, who is certainly just as much "a self-made man" as the somewhat better known Judge Friedman. Mr. John R. Fellows, the public prosecutor, certainly ought to "set it up" to Mr. Curtis, who says he has "never seen or met his equal," and that "many innocent men have been made the victims of his power." We only wish that Fellows would convict more of the guilty ones. It would seem that the best hope for innocent or guilty in New York, so long as Fellows is on deck, would be in retaining Mr. Curtis and instructing him to "appeal to the religious sentiments of the jury."

NOTES OF CASES.

Obscene Literature.— In the matter of the Worthington Company, New York Supreme Court 32 L. R. A. 110, it was held that Payne's "Arabian Nights," Fielding's "Tom Jones," the works of Rabelais, Ovid's "Art of Love," the "Decameron" of Boccaccio, the "Heptameron" of Queen Margaret of Navarre, Rousseau's "Confessions," "Tales from the Arabic," and "Aladdin," are not so immoral that a receiver will be prevented from disposing of them when found among the assets which come into his hands. The Court very discreetly observed:

"What has become standard literature of the English language — has been wrought into the very structure of our splendid English literature — is not to be pronounced at this late day unfit for publication or circulation and stamped with judicial disapprobation as hurtful to the community. The works under consideration are the product of the greatest literary genius. Payne's 'Arabian Nights' is a wonderful exhibition of Oriental scholarship, and the other volumes have so long held a supreme rank in literature that it would be absurd to call them now foul and unclean. A seeker after the sensual and degrading parts of a narrative may find in all these works, as in those of other great authors, something to satisfy his pruriency. But to condemn a standard literary work because of a few of its episodes would compel the exclusion from circulation of a very large proportion of the works of fiction of the most famous writers of the English language. There is no such evil to be feared from the sale of these rare and costly books as the imagination of many, even well-disposed, people might apprehend. They rank with the higher literature, and would not be bought nor appreciated by the class of people from whom unclean publications ought to be withheld. They are not corrupting in their influence upon the young, for they are not likely to reach them. I am satisfied that it would be a wanton destruction of property to prohibit the sale by the receiver of these works — for if their sale ought to be prohibited the books should be burned; but I find no reason in law, morals or expediency why they should not be sold for the benefit of the creditors of the receivership. The receiver is, therefore, allowed to sell these volumes."

This seems very good sense. Unless it is the proper rule, it will become difficult to know where to draw the line. Under any other rule the taint of obscenity would condemn the Old Testament, "Othello," all of Sterne's works (except his dull sermons), "Humphrey Clinker," and many other well approved classics. It would seem a good test that nothing should be deemed obscene now unless it was deemed obscene when it was written. Judged by that standard none of the above named classics are obscene. On the other hand they afford invaluable historical pictures. The purists would be much better employed in suppressing that which is written at the present day and is now deemed obscene. There is plenty of it. The classics in question are of no greater immoral influence than the statue of the Apollo Belvidere or Rubens' sprawling naked women.

Corporeal Inspection.— We find the following in an exchange: —

"Lately in an English court, in the course of the hearing of an application, the plaintiff's solicitor asked his honor to make an order for a special inspection of a woman's mouth for the purpose of examining a set of false

teeth to see whether or not they were properly made. The magistrate read the section of the Act of Parliament, and said the application came under the words 'property or thing.' 'Could a woman's mouth be called a property or a thing?' He was not prepared to say that it could be, therefore he could make no order on the application."

This is commended to those wiseacres who in two or three states have recently enacted statutes compelling plaintiffs in actions for corporeal injuries to submit their bodies for surgical inspection at the defendant's demand.

THE POLICE POWER.—The paternalism of government has never been more amusingly illustrated than in a statute which came up for construction in *Ex parte* Hodges, 87 Cal. 162. The Act in question required all owners and occupants of land in a certain county, within ninety days "to exterminate and destroy the ground squirrels on their respective lands," and make any violation of it a misdemeanor. The Court said: —

"We regret exceedingly that we cannot see our way clear to uphold and enforce such an important and original piece of legislation. Indeed, it would give us great pleasure to see the power here assumed applied to snakes, tarantulas, ants, flies, fleas, and other reptiles, insects and pests which tend to make man's life a burden, and to have it exercised and enforced in every county in the state. But we are unable to see by what right or authority of law a board of supervisors can impose upon a landowner the burden and expense of exterminating animals *ferae naturae* on his own land or elsewhere."

Such legislation might be judiciously extended to innkeepers and housekeepers, commanding the former to exterminate the vermin in their beds, and the latter to extirpate the cockroaches in their kitchens.

NEGLIGENCE — REFORM SCHOOL.— In Williamson *v.* Louisville Industrial School of Reform, Kentucky Court of Appeals, 23 L. R. A. 200, it was held that a reform school under the control and oversight of the legislature, which is an agency of the state and maintained by taxation and state aid, is not liable to an action for damages for negligent or malicious injuries to an inmate by its servants or employés. The Court said: —

"Its object and business was to take charge of such youths as might be committed to it, and care for their moral and physical training and education. It was a charity, and its purpose was reformation by training its inmates to habits of industry, and by instilling into their minds the principles of right living, to the end that they might become useful citizens of the state, rather than fill its prisons and poorhouses. The incorporators and their successors are under the control and oversight of the legislature, and are mere instrumentalities of the commonwealth. The state interposed in behalf of neglected and abandoned children within its confines in its capacity of *parens patriae*, and assumed the guardianship of such children as were committed to the institution. It was an agency of the state, and maintained by taxation and state aid. The functions of the institution are governmental. As said in Farnham *v.* Pierce, 141 Mass. 203, 55 Am. Rep. 452: 'It is a provision by the commonwealth, as *parens patriae*, for the custody and care of neglected children, and is intended only to supply to them the parental custody which they have lost.' In Perry *v.* House of Refuge, 63 Md. 20, 52 Am. Rep. 495, it was held that an action does not lie against a state house of refuge for an assault on an inmate by an officer thereof. It is there said: 'Youths, in whom the seeds of vice have already germinated, are placed there under proper restraint, so that the growth of crime may be arrested or eradicated in its incipiency. Funds are contributed by individuals impelled by philanthropic motives, and donations are obtained from municipal and state treasuries. These are the funds of the institution, contributed by the managers, not for their own profit or benefit, but solely for the charitable purposes designated by its organic law. . . Several of the most eminent judges in England expressed themselves with much emphasis in opposition to an allowance of damages out of a fund so held by fiduciary agents'; and the principle determined in a number of English cases, that 'damages are to be paid out of the pocket of the wrongdoer, and not from the trust fund,' was approved. It is contended that these cases followed the older decisions in England, and that the latter have been since overruled. Be this as it may, the principle announced seems entirely just and reasonable. If the funds of these institutions are to be diverted from their intended beneficent purposes by law suits and judgments for damages for negligent or malicious servants, their usefulness — indeed, their existence — will soon be a thing of the past."

CYPHER TELEGRAM. — The economical persons who save money by sending cypher cablegrams must not expect anything more than nominal damages in case of failure in transmission. In Western Union Tel. Co. *v.* Wilson, 32 Florida, 527, 37 Am. St. Rep. 125, the despatch ran: "Dobell, Liverpool: Gladfulness — shipment — rosa — bonheur — luciform — banewort — margin," and really related to an authority to sell lumber, but the Court said it "contained nothing that would indicate to the defendant's operator whether it contained a criticism upon the 'Horse Fair' painting by the great artist Rosa Bonheur named in the message, or whether it related to a matter of dollars and cents." This case contains a valuable list of authorities *pro* and *con*. See Primrose *v.* W. U. Tel. Co., 14 Sup. Ct. Reps. 1098.

The Green Bag.

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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 readers are familiar with Judge Bleckley's poetical ability, and will read the following communication with interest: —

ATLANTA, GA.

Editor "Green Bag."

DEAR SIR, — It is so seldom that the dry and hard details of judicial opinions arouse the slumbering muse in a judge's breast, that even a short couplet in such a connection is not without interest.

In the case of Railroad against Roberts, reported in the 91st Georgia, page 513, one of the points under consideration relates to the competency of a juror by reason of the fact that his step-daughter had married the plaintiff's brother. The decision holds him competent, Chief Justice Bleckley rendering the opinion. The discussion of the question is closed with the following couplet: —

"The groom and bride each comes within
The circle of the other's kin;
But kith and kin are still no more
Related than they were before."

Yours very truly,
ALEX. W. SMITH.

PITTSBURGH, PA.

Editor the "Green Bag."

In an abstract of title to property in this city, which I recently bought, I find the enclosed legal curiosity: —

EXTRACT FROM THE WILL OF ADAMSON TANNEHILL. — "In making my will I do not calculate on pleasing every expectant, my great and primary object is to please myself. I have but little to give, therefore it would be attended with the greater difficulty in mincing it out among all who might expect a little of that little."

"In a former will I had directed two busts to be executed and placed in the Court House in Pittsburgh as legacies to two of the most unprincipled scoundrels who ever appeared before a court of justice; one of them is dead in reality, and the other dead to all feelings of moral principle. I now decline a continuation of that appropriation and direct it to be applied to a tombstone and epitaph for myself as follows, viz.:

Adamson Tannehill
Was Born the 23rd of May, 1750,
Died
—— of ——, 18—, Aged ——— years.

"He served his country as an officer during the American Revolution, with the confidence of his superiors," &c., but in the year of 1798, his character was assailed unjustly by the slander of unprincipled men and virulence of Party.

Has left this world with the hope of a better —

Farewell vain world: I've seen enough of thee,
And am now careless what thou sayest of me —
Thy smiles I court not, nor thy frown I fear,
My cares are past, my head lies quiet here —
What faults you saw in me take care to shun —
And look at home, enough's there to be done.
False swearing and vile slander can't reach me here,
Of each, when living, I had my share."

Very truly yours,
J. M. STONER.

LEGAL ANTIQUITIES.

AMONG the Romans it was customary to write the name of the testator on the first page of a will, that of the heir or heirs on the second, and the description of the property followed.

THE first plea by a lawyer for a client is said to have been made in the year 788, when Ethelbard, a hunter of stags, was charged with claiming the quarry of a rival, which was proven had fallen by the rival's cross-bow. The advocate asserted that the accused had refused to pay protection money to the keeper of the forest, hence the prosecution.

FACETIÆ.

MANY years ago the Supreme Court of New York adopted a rule that briefs (there called points) of lawyers, in appeal cases, should be

printed on paper of a certain prescribed length and width, leaving on each page a *blank margin of two inches.* The more conservative of the older members of the Bar were greatly opposed to this rule, and insisted that it caused a needless outlay of money for their clients, etc., etc. Among those so objecting was the late Judge Rosecrans, then at the Bar of Saratoga County. It soon happened that the Judge had a case on appeals to argue before the court at general term. Determined to disregard or evade the rule, he prepared his points very carefully and committed them to memory. The time came for argument of the cause. His opponent was the late Judge Hay, famed in his day for keen, incisive wit. When the case was called Rosecrans arose and began his argument. Presently the presiding Judge stopped him and asked him where were his printed points. "They are here, if the court please," replied Rosecrans, tapping his magnificent forehead with the tip of his finger. "Yes," snapped out Judge Hay, "*and a great deal more blank margin than the rule requires.*"

For once in his life, the laugh was decidedly on Judge Rosecrans.

A GEORGIA magistrate was perplexed by the conflicting claims of two women for a baby, each contending that she was the mother of it. The judge remembered Solomon, and drawing a bowie knife from his boot, declared he would give half to each. The women were shocked, but had no doubt of the authority and purpose of the judge to make the proposed compromise.

"Don't do that," they both screamed in unison, "you can keep it yourself."

EPHRAIM FLINT, the veteran lawyer of Dover, Me., who died recently, was once fined by a country justice of the peace for contempt of court in telling the magistrate too bluntly what he thought of one of his decisions. Mr. Flint was not taken back by the justice's order to his clerk. "All right," he said, "I have got a note in my pocket against you which I have been trying to collect for the past ten years, and I'll endorse the fine on it. I never expected to get that much," and suiting the action to the words, he pulled out the note and made the endorsement.

A CONTEMPORARY tells a good story of the rather cheap amusement to be gained from attributing to counsel, as a private individual, the pronouncements he makes in the name of his client. "The fact is, my lord," said a barrister in the courts lately, on behalf of an imprisoned artisan, "during the last three months we have not made enough to keep ourselves and our family." The signs of merriment were at once perceivable among the members of the Junior Bar, who of late have not been overburdened with work, and the judge smilingly remarked: "No, no. The fact is you are making very good wages, but you won't pay your debts."

THE late Senator Vance of North Carolina was as prominent as a lawyer as he was in public life. Many anecdotes are related of him.

Soon after the famous Burchard incident, he married a second wife, who was a Roman Catholic, while he was a Presbyterian. To some one who expressed surprise at this, he said he had "tried Rum and Rebellion, and thought he would now see what virtue there was in Romanism."

In 1870 he was elected to the United States Senate, but his "disabilities" not having been removed — he had been Governor of North Carolina during the war — after waiting a year without admission, he had to send in his resignation. On his way home in a despondent mood, he happened to sit behind two ministers who learnedly discussed the doctrine of "election." Knowing his Calvinistic faith, they finally appealed to him. "Well, gentlemen," said he, "my experience is that 'election' will not amount to much unless you first get your 'disabilities' removed."

On one occasion he was being driven across the country by a colored driver, who talked about the doctrine of election and free grace. Finally the Senator ventured to ask what the driver thought of his chance of election to salvation. "Well, Mass Vance," said the polite driver, "I ain't never heard of nobody being 'lected to anything 'thout he were a candidate."

IN a recent written examination of applicants for admission to the Bar of Ohio, the following question was put to one of the candidates:

What is bigamy? *Answer* (which is given verbatim et literatim) : "A pretend marag by man or women to one of the opposite sect having at the time a living companion."

NOTES.

THE Bar has been curious to know why, among the symbolical figures that adorn the central hall of the new Court House in Boston, "Equity" is thrust into a corner, from which but half of her person emerges, while "Guilt," "Innocence," "Fortitude," and other emblematic ladies and gentlemen stand boldly out in full relief. We believe that there is no doubt that the learned and artistic commissioners who sponsored these typical figures intended a subtle allusion to the limited jurisdiction in equity to which the Massachusetts Court has always restricted itself, and has been coy about extending, while "Guilt" and (?) "Innocence" are to be found in full development in all the courts. This conception is indeed worthy of the poetic nature of its authors.

THE transcript of a case taken on change of venue from one Indiana squire's court to another bore the following certification : —

"Comes now the parties, both the plaintiff and the defendant, being represented by eminent council, namely, Ryner & McGuire for plaintiff, and Jackson & Dickson for defendant; whereupon, Jackson making a motion for a change of venue, which matter was duly supported by $1.50 in silver money, the motion was immediately granted without agreement of council, in the name of our most merciful Lord, this 26th day of October, 1893."

IT being admitted that sound is all one is able to hear; *quære*, is not a judge who has heard an argument estopped from deciding that it is not sound?

AT the last session of the Connecticut legislature a law was passed forbidding the killing of deer in the state for a period of ten years, under a penalty of $100 fine. Since then two deer have been seen at large, doubtless truants from enclosures. In this connection it may be of some interest to give a copy of a law passed by the old Colonial Court of Assistants, at a session held at Hartford in May, 1677, and which also furnishes precedent to the statute which forbids the transportation of game beyond the borders of the state. The old law, which may be found in the colonial records, is as follows :—

"Whereas, It is fownd to be prejudiciall to the pub : weale to transport out of this colony the skinns of bucks and dows, which are so serwiceable and vseful for cloathing, it is now ordered by this court that after the publication hereof, whosoever shall ship on board any vessel greater or lesser for transportation, or otherwise shall transport any such skinns out of this colony, he shall forfeit the skinns so shipped, or the full value of them; the one-halfe to the complayner, and the other halfe to the county treasury; except they be shipped to be transported to another place in this county, and in such case before they ship them they shall give sufficient bond to the full value of the skinns so shipped that they will deliver them to such place in the colony as they pretend to and will not transport them hence."

— *Forest and Stream.*

A TEST case of a kind to gladden the hearts of the lawyers has been brought before the French law courts by the members of a Freemason's lodge, who deposited, on the 3d of June last, a funeral crown on the statue of Joan of Arc in Rue de Rivoli, Paris. The crown was taken away by a young man named Cochin, who is being prosecuted for willful damage to a public monument. M. Cochin has secured the services of Maître Eugène Godefroy of the Paris Bar, who seems to be a remarkable adept at casuistry. According to M. Godefroy, a crown placed on a monument ceases to be the property of the person placing it there, since it has been voluntarily given up without what is called a commerce consideration received. Neither is it the property of the city, or of the state, since the legal formalities required in the case of a deed of gift to a public body have not been complied with. It is no wonder that the judge whose fate it is to solve this knotty point has taken time to consider his decision. M. Cochin's act was prompted apparently by a desire to avenge the destruction of a similar crown placed on the same monument by the society styled the Royalist Youth of France. — *London Daily News.*

LITERARY NOTES.

SCRIBNER'S MAGAZINE for September has a notable list of contributors, including F. Marion Crawford, Thomas Nelson Page, Carl Dumholtz, Octave Thanet, Mrs. James T. Fields and Harriet Prescott Spofford. Marion Crawford writes of Bar Harbor from the point of view of one who has seen most of the summer resorts of the world, and has spent considerable time at Bar Harbor viewing it as an outsider. With his power of description and his abundant experience he writes with a vivacity and freshness that is unusual in articles of this kind. He has caught the very spirit of the place picturesquely, and suggests its quaint features socially with a very amusing account of the evolution of the present Bar Harbor from the old fishing village.

THE ATLANTIC supply of fiction in September is somewhat more than usually large. Besides Mrs. Deland's "Philip and his Wife," there are three stories — "Tante Cat'rinette," by Kate Chopin, the writer who is coming into deserved prominence through her pictures of Louisiana life; "For their Brethren's Sake," a powerful tale of a Derbyshire town, during the Great Plague, by Grace Howard Pierce; and Mrs. Catherwood's "The Kidnapped Bride," the last of a series of early French-American stories. "Old Boston Mary: A Remembrance," by Josiah Flynt, tells the tale of a strange old woman of the tramp class so vividly as to leave one uncertain whether it is fiction or fact. In Mrs. Louise Herrick Wall's sketch, "In a Washington Hop Field," too, there is so much of human interest that one may almost think of it as a story. "Up Chevedale and Down Again," by Charles Steward Davison, is again a record of actual events — a thrilling narrative of Alpine adventure.

THE CENTURY for September contains two entertaining papers adapted to the season for the re-opening of the schools, the first being an account of "School Excursions in Germany," by Dr. J. M. Rice, author of the volume, "The Public-School System of the United States." This paper includes a record of an excursion of this kind in which Dr. Rice participated, and has the advantage of being the first article on the subject printed in America, where the idea of school excursions has already taken root, and promises to spread. The article is fully illustrated by Werner Zehme. The other paper is on "Playgrounds for City Schools," and is written by Jacob A. Riis, whose studies in New York tenement-house life are well-known. An important paper, which will be in the nature of a revelation to many readers, is the article by Joseph B. Bishop, entitled "The Price of Peace," in which is set forth the wide-spread system of blackmail practised by legislative strikers upon the New York business community.

JUDGE Walter Clark, an Associate Justice of the Supreme Court of North Carolina, writes in the September ARENA on "The Election of Senators and the President by Popular Vote, and the Veto." Judge Clark is in favor of the election of senators by popular vote, but is opposed to the extension of the principle to Presidential elections, as he believes it would imperil the republic. But he considers the powers of patronage and the veto vested in the President anomalous and dangerous, and would have them curtailed.

THE ideal magazine prints not only timely articles on events and places, but stories of the right length to read aloud by the evening lamp. The September HARPER'S contains "A New England Prophet," the story of an Adventist alarm, by Mary E. Wilkins; "The General's Bluff," founded on a frontier campaign of General Crook, by Owen Wister; "The Tug of War," a tale of English men and women in Greece; chapters of "The Golden House," Charles Dudley Warner's novel of New York society, and the first of a two-part story of Narragansett Pier by Brander Matthews.

BOOK NOTICES.

A SELECTION OF CASES AND OTHER AUTHORITIES UPON CRIMINAL LAW. By JOSEPH HENRY BEALE, JR., Assistant Professor of Law in Harvard University. Harvard Law Review Publishing Association, Cambridge, Mass., 1894. Cloth. $5.00.

In a volume of nearly 1000 pages Prof. Beale has collected a number of leading cases upon almost every branch of the criminal law. The selection has been made with evident care and discrimination, and for the purposes for which the work is designed it appears to be admirably adapted. It is a students' book, and in order that they may derive the greatest possible benefit from its study, the head notes of each case have been omitted. For the purposes of the practicing lawyer, however, an index has been added, enabling one quickly to find the authorities upon any subject therein contained. One or two of the cases are now printed for the first time, being taken from a contemporary manuscript, in the

library of the Harvard Law School, entitled "Anonymous Reports, temp. Eliz. and Jac., Vol. II.

TABLES FOR ASCERTAINING THE PRESENT VALUE OF VESTED AND CONTINGENT RIGHTS OF DOWER, COURTESY, ANNUITIES, AND OF OTHER LIFE ESTATES, DAMAGES FOR DEATH OR INJURY BY WRONGFUL ACT, NEGLIGENCE OR DEFAULT. Based chiefly upon the CARLISLE TABLE OF MORTALITY. Computed and compiled by FLORIEN GIAUQUE, A.M., and HENRY B. MCCLURE, A.M. Robert Clarke & Co., Cincinnati, 1894. Law sheep. $3.00.

This work is made up entirely of tables for ascertaining the present value of contingent life estates, including inchoate rights of dower and courtesy, and will be of much assistance and value to all those who have occasion to use them. The greatest care has been taken by the compilers to insure the accuracy of the tables, and they can undoubtedly be fully relied upon.

THE LIVES OF THE CHIEF JUSTICES OF ENGLAND. From the Norman conquest till the death of Lord Tenterden. By John, Lord Campbell. New and revised edition, with illustrations, and numerous annotations. Edited by JAMES COCKCROFT. Edward Thompson Co., Northport, Long Island, N.Y., 1894. Six volumes. $30.00. ($5 a volume.)

We take up this work with a feeling that words are almost inadequate to express our unbounded delight and admiration. No such superb contribution to legal literature has ever before been made. Each volume is filled with rare and interesting portraits and illustrations, while paper, typographical work and exquisite binding all combine to render the publication a very triumph of the book-maker's art. With the work itself all students of the lives of great lawyers are familiar, and with the illustrations, which Mr. Cockcroft has spent years in collecting, the present edition possesses an almost inestimable value. In the three volumes now ready (the succeeding three are in press and will appear shortly) may be found portraits of John, Lord Campbell, Sir William Gascoyne, Henry V., Henry VII., Cardinal Woolsey, Thomas Cromwell, Sir Thomas Moore, Henry VIII., Sir Walter Raleigh, George Coke, Sir Edward Coke, Lord Bacon, Francis Bacon, John Selden, John Pym, Chief Justice Crewe, Sir Harry Vane, Sir Matthew Hale, Roger North, Titus Oates, Algernon Sidney, John Bunyan, Richard Baxter, Sir George Jeffreys, Lord Somers, Sir Thomas Jones, Lord Raymond, Sir Robert Walpole, Chief Justice Lee, John Horne Tooke, Chief Justice Willes, Sir Bartholomew Shower, Lord Chief Justice Holt and a host of others too numerous to mention.

The lover of rare old portraits will find a perfect treasure-house in these volumes, and the mere sight of the work will tempt every lawyer to practice the greatest self denial in other matters in order to become its happy possessor.

Our praise may seem extravagant but it is fully warranted, and our opinion will be more than sustained by anyone who examines Mr. Cockcroft's work.

Three volumes are now ready, and we are promised the remaining three at an early date.

LAWYERS' REPORTS ANNOTATED, BOOK XXIII. All current cases of general value and importance decided in the United States, State and Territorial courts, with full annotation. By BURDETT A. RICH and HENRY P. FARNHAM. Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1894. Law sheep. $5.00.

There seems to be no falling off either in quality or quantity in these Reports. The selections are good, the annotations very full, while the general index to opinions, notes and briefs, is a complete digest in itself, enabling the reader at a glance to familiarize himself with the contents of the volume.

THE AMERICAN AND ENGLISH ENCYCLOPAEDIA OF LAW, VOL. 25. Compiled under the editorial supervision of CHARLES F. WILLIAMS, assisted by THOMAS J. MICHIE. Edward Thompson Company, Publishers, Northport, Long Island, New York.

The American and English Encyclopædia of Law has been so long and favorably known, and has received so many flattering commendations from both Bench and Bar, that further words of praise would seem superfluous. It is, perhaps, the most valuable and important contribution to legal literature of recent years. The work presents, in convenient form and within reasonable compass, the whole body of modern law. No law library can be said to be complete without it. Indeed it is a library in itself.

Among the list of contributors appear names of writers who have met with a favorable reception from the profession, and not a few who have taken high rank as authorities upon particular branches.

The plan of the work is both a novel and happy one, and worthy of notice. The body of the law is divided into such titles (alphabetically arranged) as are susceptible of independent treatment, and in their selection prominence is given to many which,

heretofore, have been only briefly discussed or barely mentioned in standard text-books. Indeed, it is quite difficult to conceive of any question of practical value that is not fully treated. At the same time, those topics which are obsolete, or possess little or no value on account of their purely local character, have been discarded. With each article there is a carefully prepared analysis, which not only indicates the scope of the article, but serves in an admirable manner as an index thereto. The very minute subdivisions, which are not sufficiently important to occupy a place in the text, are relegated to the notes, and marked by black-letter catch lines. There is a table of cross-references from one title to others closely related, thus avoiding duplication. The text consists of concise and clear statements of principles, the practical application and operation of which being illustrated in the notes. The notes are more than a mere collection of cases; they comprise by far the larger, and perhaps the more valuable part of the work. They are admirably prepared — full, exhaustive, and to the point — evincing much labor, good judgment, and discrimination on the part of the writers. The leading and important cases are, as a rule, selected for the purpose of illustration — and so well are the facts summarized, and the points decided stated, that an examination of the original report is unnecessary. The practitioner may turn to the notes with the confidence of finding, if not every case, certainly every important one, bearing upon the subject.

Another feature of the work is the collection of adjudged words and phrases. These will be found very valuable, as presenting authoritative definitions of the various words and phrases employed in the law.

The publishers deserve the unqualified thanks of the profession for undertaking the work, and the highest praise for its successful execution.

This latest volume contains among the subjects discussed therein, Taxation, Telegraph and Telephones, Tender, Territories, Testamentary Capacity, Theatres, Threats and Threatening Letters, Tickets and Fares.

THE SUPREME COURT OF THE UNITED STATES. Its History. By HAMPTON L. CARSON of the Philadelphia Bar. Parts 3, 4, and 5. A. Keller Co., Philadelphia, 1894. Paper. 50 c. a part.

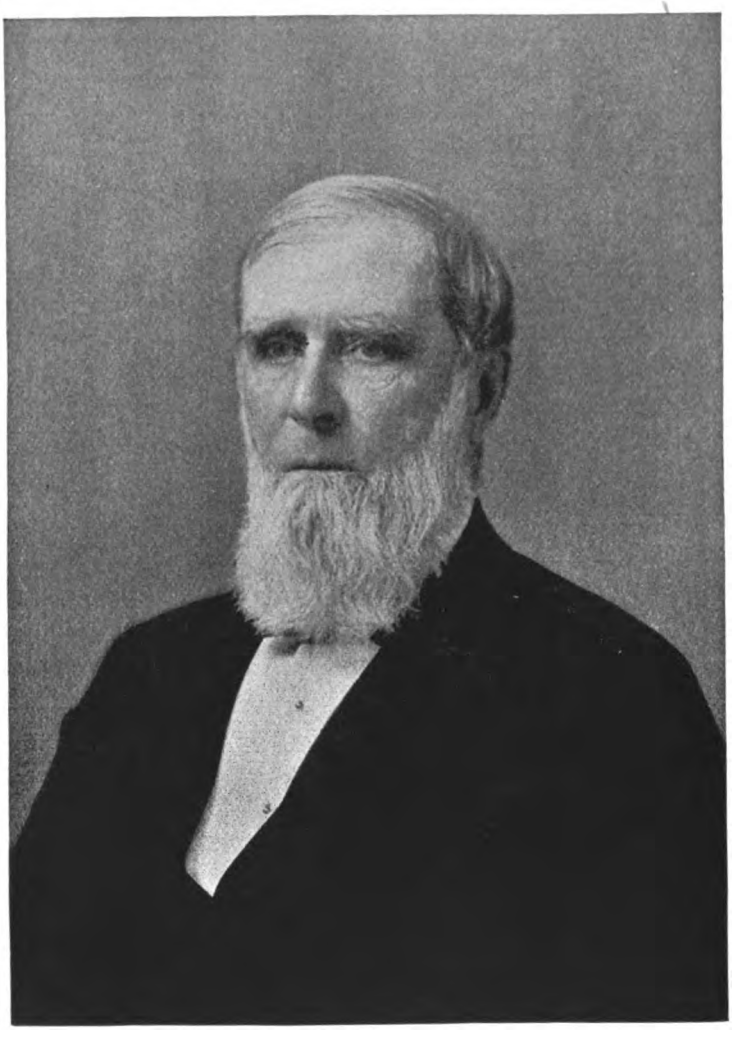
We have given several extended notices of this valuable work in previous numbers of THE GREEN BAG. We can only once again impress upon our readers the great intrinsic worth of Mr. Carson's book, and congratulate them that in its present form it is now brought within the reach of many who would not feel that they could afford to take it as a whole. At 50 cents a part it should have a vast number of subscribers. The three parts just issued contain fine etchings of Justices Thos. Johnson, Paterson, Sam'l Chase, Washington, Moore, Wm. Johnson, Iredell, and Chief Justices Ellsworth and Marshall.

A TREATISE ON GENERAL PRACTICE. Containing rules and suggestions for the work of the advocate in the preparation for trial, conduct of the trial, and preparation for appeal. By BYRON K. ELLIOTT and WILLIAM F. ELLIOTT. The Bowen-Merrill Co., Indianapolis and Kansas City, 1894. Two vols. Law sheep. $12.00.

The "Work of the Advocate," published in 1888, though now some years out of print, is still well known to the profession. It received the warmest commendation upon its appearance, and to the kindly reception it met and the earnest requests of those who knew and appreciated its great merits, is due this present work, which is "The Work of the Advocate" enlarged into a treatise on general practice. The names of its distinguished authors are in themselves a sufficient guaranty of the excellence of this treatise, and for the young practitioner it will prove an invaluable aid and guide in the, perhaps, most important branch of his profession, while the older lawyer will derive almost equal benefit from its perusal. Starting with the first steps in gathering facts, it follows minutely all the proceedings through the preparation for trial, the conduct of the trial and the preparation for appeal. There are many good suggestions, much valuable advice, and numberless warnings scattered throughout the work, and the lawyer who avails himself of them will be pretty certain never to go astray in the conduct of his causes. We welcome the treatise as one which is a really valuable addition to our legal literature, and bespeak for it a hearty reception from the legal profession. Both authors and publishers deserve the gratitude and hearty thanks of every lawyer, for making the way clear and easy in one of the most difficult paths of the profession.

HAND-BOOK OF COMMON LAW PLEADINGS. By BENJAMIN Y. SHIPMAN. West Publishing Co., St. Paul, 1894. Law sheep. $3.50.

This work presents in a clear and concise form the rules and principles of common law pleading. While designed especially for the student's aid, it will be found useful by the regular practitioner. The publishers have given the text an attractive setting, both paper and typographical work leaving nothing to be desired.



Chas. P. Daly

The Green Bag.

VOL. VI. NO. 11. BOSTON. NOVEMBER, 1894.

CHARLES P. DALY.

BY A. OAKEY HALL.

"An upright judge, a learned judge."—*Merchant of Venice*, Act 4, Sc. 1.

NEW York State jurisprudently ranks with Massachusetts in historic excellence of its Bench and Bar. Among its galaxy of judges are to be readily remembered John Jay, Smith Thompson, Samuel Nelson, the two Kents, John Duer, Hiram Denio, Chief Justices Church and Folger and Samuel Blatchford. Most worthily with these is to be ranked the jurist whose name heads this article. They have passed away from earth, but he, in a vigorous age of seventy-eight, still lives to remember forty-one years of judicial life in New York City, the place of his nativity, a term longer by ten years than was the memorable judicial life of Lord Mansfield; and by seven years than that of John Marshall and Joseph Story; although by the same number of years shorter than the entire judicial career of Samuel Nelson in State and Federal Courts.

Perfunctorily retired from the Bench by reason of a constitutional age limit, as was Chancellor Kent, Ex-Judge Daly, like the former, after retirement, follows legal studies with accustomed assiduity, and similarly with Kent writes legal treatises; thereby substantially and indeed sarcastically convicting the Constitution-makers of blundering in ordaining a perfunctory period at which legal or judicial acumen shall cease to exist.

Like as Joseph Story encountered on his appointment the criticism which had in the last century assailed Lord Thurlow, that he was too young to become a judge, Charles P. Daly found the same allegation made by some of the veterans of the Bar, when he began judicial duties at the early age of twenty-seven years; and this only a few years after his admission to the Bar. Indeed, with his ever characteristic modesty, himself had pleaded his own youth, to the Governor who proposed the office to him, as a bar to his acceptance. The term was then expiring of an incumbent who was of opposite politics to the appointing power. Many of his friends however in the dominant party were solicitous for his re-appointment, upon the score of his fitness, and from anxiety to keep judicial appointments free from party bias. Among these was young Charles P. Daly, who expressly visited the state capital in order to press the claims of his friend, this incumbent. He was met by the Governor, who was then the sole appointing power, with the objection that party claims positively forbade the retention of the incumbent, and that a lawyer of his own political faith must be imperatively preferred. Added the Governor, "Why not take it yourself? You have just fulfilled a term in the legislature to the approbation of the democratic party, to which we both belong; and your legal ability has been shown by yourself in committee and in the debates."

"Impossible," answered young Daly; "I am honorably bound to advocate the claims of my friend. It would be treason to friendship to think of the proposition."

In some way the incident soon reached the knowledge of the retiring judge, who, becoming convinced that his political affiliations with the Whigs of the period prevented his re-appointment, and that the choice of some successor from the dominant Democratic party was inevitable, voluntarily released Mr. Daly from his position, and himself preferred a magnanimous request that his successor should be Mr. Daly.

But I am anticipating. The details of his youth are interesting. He was the son of Irish parents who had arrived in New York City a year before the battle of Waterloo. The future judge was born two years later, in a house built upon the site on which the scandalous and wicked execution of the Dutch patriot Jacob Leisler occurred, by command of an English governor with the appropriate name of Sloughter. The elder Daly had been a Galway architect, but in New York assumed the calling of a boniface; and his small but popular hotel was where the tall tower of the "Tribune" newspaper now looks down on the statues of Greeley, Franklin and Nathan Hale. The Daly house was next door to a law bookstore, and only a few doors from the then Tammany Hall, where the Bucktails, immortalized by the verse of Fitz Green Halleck, held political revels. The daily sight of the law books, and of lawyers and witnesses attending the City Hall immediately opposite, and some furtive excursions at campaign times into the partisan temple, produced impressions upon young Charles. He attended a neighboring school—at that time, early in the twenties, down-town New York teemed with residences. He there had for classmates the after Cardinal McCloskey and the shortly to be popular advocate James T. Brady. All were Catholics, and diligently studied the 'humanities,' as was the phrase of the clergy applied to mundane studies. While young Daly was still declining the latin noun *lex*, from nominative to ablative, at his school, his father died, and he, to adopt a traditional phrase, was cast upon his own resources. He bethought him of travel—the thought really presaged, unknown to himself, the time when he would become president of the American Geographical Society as well as an honorary and frequent corresponding member of all the Geographical Royal Societies of Europe; and would publish a piquant and learned treatise with the title, "What we know of maps and map-making before the time of Mercator." The adventurous boy, with the blessing of Bishop Dubois who predicted great things of all those three scholars, sailed for Savannah, where he had heard of a clerical situation. He obtained it only to also obtain such treatment as was accorded to the South Carolina slave of the period, and to be overworked. Chafing over it, his constitutionally plucky spirit asserted itself; and like Erskine in his own youth, young Daly took to the sea—going before the mast, as in after years young Richard H. Dana went. Three years of a life on the ocean wave, and of being rocked in the cradle of the deep, ensued. His ship in 1830 happened to be anchored in the harbor of Algiers at the time when it was being besieged, prior to its capture as a colony, by the French. The rugged marine school taught him what the vicissitudes of life meant, and unfolded to his mind views of diversified human nature that were destined to become valuable lessons to his, then undreamed of, career as lawyer and judge.

Voyaging back to New York the young sailor found that he must work. On shipboard he had made friends with the ship carpenter, and had found pleasure in use of adze, chisel and plane. He inherited from his father skill in form and design.

Wherefore he apprenticed himself to a master carpenter, and surrendered his days to faithful, untiring work. But he was neither like the idle apprentice of Hogarth, nor him whom we read about in the early chapters of Ainsworth's novel of Jack Sheppard, who both wasted nights and leisure moments. There was a literary society in his neighborhood which he joined; and not far away was the library and reading-room of the Mechanics and Traders' Society, to which by its by-laws he had entrance. In the one he learned to debate; and in the other he tasted the Pierian spring and drank deeply. His logical force, compactness of statement, cleverness of illustration and elocution at length became remarked by a frequent visitant of the debates, William Soule, who had a law office in the neighborhood. The latter advised the young debater to study law, and offered him money with which to enter college. But young Daly was then, as ever throughout life, indisposed to incur an obligation. In a short time after the offer the master of the apprentice died, and within a year and a half of the time when the articled term would expire. This death however, as advised Mr. Soule, immediately terminated the contract of apprenticeship. The business was left in financial and confused embarrassment, which harassed the widow. Young Daly's sympathies were touched, and he fulfilled the remainder of his term and to a large extent by his attention relieved the business embarrassments, and those of the widow. But when finally and honorably relieved of his service, he accepted the long deferred offer to enter the law office as junior clerk at the salary of three dollars a week.

The office itself served him for residential chambers, the restaurant of the well known Windust, kept in the basement of a site long afterwards successively occupied by Barnum's Museum and the second "Herald" building, afforded him economical but agreeable provender. It was the resort of pundits and wits much as had been the famous Fleet Street tavern to which Johnson, Boswell, Fielding and Goldsmith resorted. At Windust's came fresh opportunities for the young law clerk to study human nature, and to acquire that tact which is often of more service to the lawyer and the judge than mere book-learning. At that time, early in the thirties, legal apprenticeship was tedious. Law was then a full profession and not, as some cynics claim it to be now in New York City, with guidance of codes and encyclopaedias, a trade. The term of study was then precisely that which was awarded to Jacob in serving for Rachel. Young Daly was however more fortunate than he who wrestled with the angel, for whereas Jacob was deceived, student Daly was not put off with a Leah. He had so grasped time by the forelock that he became ready for examination long before, as card players have it, the "seven was up." Samuel Nelson was then Chief Justice of the State Court, and he readily granted a motion (A. D. 1839) for reducing the term of Daly's service by one half. The young attorney had again attracted notice, that of lawyer Thomas McElrath, then an alderman, who proposed a partnership. The latter however became three years later a business colleague with Horace Greeley in founding the "Tribune newspaper"; and this connection dissolved the law firm of McElrath and Daly. The youngster then removed his "shingle" to the office of William Bloomfield, an elder member of the Bar. The new law firm of Daly and Bloomfield in its success fully realized the pleasant surname of the senior partner. The latter however soon, but with perfect magnanimity, felt the truth of the old couplet: —

"To teach his grandson draughts his leisure he'd employ,
Until — at last the old man was beaten by the boy."

Mr. Daly was soon entrusted with the main direction of the business, and with its conduct at *nisi prius et in banco.*

The era was pre-eminently a political one. There was, as Halleck sang about that time in his poem of "Fanny," as a parody upon Moore's current "There's a bower of roses by Bendemere's stream": —

> "A barrel of whiskey in Tammany Hall,
> And the bucktails were swigging it all the night long."

The strong political fumes of the period — but never of whiskey — attracted young Daly. It was the season of "Tippecanoe and Tyler too," and during which the Whigs sang prophetically how "Van, Van was a used-up man." The young lawyer soon became an enthusiast for Martin Van Buren's re-election, and entered Tammany Hall as a young stump speaker, as well as drafter of resolutions and creator of newspaper partisan squibs. His value became recognized by party leaders, and three years later he found himself, after an election, an assemblyman to represent what was then one of the wealthiest districts of the city. In the legislature the "Honorable" Mr. Daly soon became a marked man; not so much in debate — although therein he ably crossed rhetoric swords with veterans — as in the less interesting, but more valuable, work of committees. He was entrusted with a measure of an escheat affecting the beneficence of the famous Leake and Watts Asylum trust — litigation about the realty of which became as noted in New York as was the Dartmouth College case in New Hampshire. Assemblyman Daly's report on the subject attracted the eulogistic attention of the lobby lawyers engaged on both sides, as well as that of his party leaders. He was then, as ever, a delver into legal principles, and not a mere devotee to case law. Throughout his career, it may be added, he has been noted for analytical methods, for seeking after principles, and as a disciple of the maxim *eadem ratio ibidem lex.*

"Now that you have told us what judges have decided about this question," he once said to a lawyer who was arguing before him, "let us hear your views about the reason for your contention."

The year succeeding voluntary retirement from office as Assemblyman occurred the vacancy in the Court of Common Pleas hereinabove described, and with the pleasant and honorable result mentioned. Governor Bouck, who appointed, was an old-fashioned, home-spun, "up-country Democrat," with a fair sense of humor. When Mr. Daly pleaded his youth as a possible bar, not only to his appointment, but to his usefulness, the Executive answered, "True you have only been five years at the bar, but youth is a disqualification that you will doubtless outgrow in five years more."

The Daly appointment proved to be something of an unpleasant surprise to several of the Tammany leaders in New York, because strong political petitions had been already forwarded to the Governor, praying for the selection of Thomas Jefferson Smith, then a judge of the Marine Court, or of Wm. D. Waterman, who was an old lawyer and author of legal treatises. So that in reality by his selection the Governor was saved some political embarrassment of choice or recrimination, while perhaps tempted to sing from Gay's "Beggars' Opera": "How happy could I be with either if—" etc.

At the time Mr. Daly took the oath of office as third judge of the Court of Common Pleas, his associates were two veteran Knickerbockers: Michael Ulshoeffer and Daniel P. Ingraham, who were each a score of years his elder. They received him cordially. Not so the oldsters of the Bar. Its junior members, however, hailed him with enthusiasm. There had been long seemingly established for Bar and Bench a close corporation of mutual admirationists in court proceedings. A dozen or so counsellors appeared to monopolize the control of the *nisi prius* and appeal cases. The elder

judges appeared to have their Bar favorites, and to show to these a partiality. Judge Daly at once began to change that regime. Newcomers were welcomed to trials and arguments. They were treated with a deference equal to that shown to veterans. He also expedited business that had become more or less perfunctory. He hastened the course of witness examination, and severely applied rules about relevancy and cumulation that had fallen into desuetude. His rulings began to indicate that epigrammatic condensation that always has been his forte. He endeavored to curb technicality, and to search for the spirit of the law, as well as to regard its letter. Sometimes veterans would endeavor to misquote to him. "The case is in such a volume, not the one you have inadvertently mentioned," he would interrupt with impressive courtesy, "and the headnote of the cited case does not seem to include the principle that you wish to apply." Or "The statute you refer to has been repealed or modified." Or "I think a distinction is to be drawn between the facts in that case and the one at bar." In short, veterans or juniors alike found that the new judge was well equipped in treatises, reports and statutes. Judge Daly had already discounted in his own mind his own experience as to be compared with that of practitioners who had been a score of years before the public. And he was gifted with excellent memory and a tendency to accuracy. More or less "roughing it" in youthful days had quickened his powers of observation and comparison. Little by little, therefore, Bar antagonism faded; and before a year of service had elapsed his uniform serenity, courtesy, impartiality and dignity had compelled witnesses, jurors and lawyers to remain his firm supporters. He became especially popular as a Chambers judge by reason of his early plodding over procedures; and his quickness to perceive the flaws of a motion, or the incompleteness of an affidavit, or the weak link in a demurrer, or the tricks of applications for enhancing costs. His charges to juries bared delusive spots and clothed uncertainties, while disintegrating appeals *ad hominem* and putting controverted points so aptly that jurors, when reaching their retiracy could fairly meet these categorically. He was a model listener while on the Bench, and often patient to an exhaustive degree while counsel prosed before him. Adverse critics of the newcomer were compelled to admire his qualities of will and intellect, his evidences of laborious study, his skill in logic, his self-control, and his patient forbearance.

Years passed on, and at the termination of each one, love and admiration for Judge Daly had intensified in court, business and social circles. So that it came to pass when his appointed term ended, and a change of State constitution had made his office elective, he was renominated by his party, and no opposition candidate expected to stand canvass against him except for the compliment of a party nomination. With this new constitution soon came a change in, and a simplification of, procedures. Away had been swept, by codification, pages of nomenclature. By the board had gone pleas in abatement, pleas *puis darein* of Norman origin, rejoinders, re- and surre-butters; leaving only from the ancient cargo of special pleas that frequent life-raft of a harassed defendant, the demurrer. While many lawyers, and not a few judges, inveighed against, or looked coldly and misunderstandingly upon the innovations, Judge Daly applied himself to the dissection and vivisection of the old and new procedures in contrast or comparison.

It soon became professional property that Judge Daly was a proficient in the new procedures, and plaintiffs poured their plaints into his court, and lawyers manœuvred to have their actions, if possible, come before him for hearings. How well he produced order out of the apparent chaos produced by the crash of the old system, and by the

threatened wreck of the new, appears abundantly from the practice reports issued between the years 1848 and 1852.

His party soon offered him what was called promotion from the Common Pleas to the Bench of the Supreme Court or Court of Appeals, but he refused to quit his own Court. How well he knew its history and its beloved traditions, its attractions and its associations, can be learned by a perusal of his most exhaustive monograph about the Court, that he contributed as the introduction to the first volume of E. D. Smith's reports of Common Pleas cases. So attractively is that prefatory paper written that its perusal interests the dullest of laymen readers. Indeed, while three of his subsequent colleagues on the Common Pleas Bench left it to take election in the Supreme Court, he never once thought of quitting the tribunal with which he was first identified, and where he continued until age limit bade him retire. Moreover, he refused nominations for Congress, and turned a deaf side to many importunities to lend his popularity and his confidence gained from the public to the aid of his party in a close contention for the office of mayor. He declined to permit his name to be used as a gubernatorial candidate at the time when the nomination finally fell to Grover Cleveland *en route* to the White House. It was well known, however, among his political friends, that Judge Daly would have accepted a seat on the Federal Supreme Bench had his party found such opportunity on occurrence of a vacancy; and indeed such promotion was known to be upon the party programme had it become feasible. Yet perhaps it was a better record on the roll of fame for him that he continued two score of years within one sphere through the trials of judicial duty; encountering, meantime, the ordeal of five popular elections; one of which — his last one — came unanimously, because he had then left in the minds of all citizens the conviction that he had always administered justice without fear or favor, caring only for the law and the testimony that he diligently studied.

Many *causes célèbres* came before him during that long period. The civil ones are to be found in the volumes of the reports of his Court, the major portion of which issued under his own hand and name, following the custom of many of the earliest English judges, such as Dyer and Saunders. Daly's reports are largely quoted in other States, and Bench and Bar everywhere testify to the lucidity of the head notes, and the aptness of arrangement and differentiation of arguments and opinions to be found within them. These reports attest the supremacy of his learning in the complicated matters of New York municipal law. Judge Daly wrote an opinion on the law of eviction that stands as an exhaustive treatise on the whole doctrine of eviction and absolute ouster. This opinion reached the Court of Appeals, and, it was in the sustainment, verbally copied and adopted without credit by the judge who finally adjudged the matter in the name of the Court. An opinion by Judge Daly "in the matter of Snooks" is a treatise on the law and philosophy of surnames; in the case of Cromwell against Stephens, on the law relating to hotels; and in other cases, on the law of trade-marks, replevin, landlord and tenant, telegraphs, telephones, and construction of the limitations in the statutes of frauds, running back to the Stuart era.

His most important *cause célèbre* was the trial of the Astor Place rioters, who broke up the playing of the great actor, Macready, in 1849. The Recorder, having acted in suppressing the riot, was disqualified from presiding, and Judge Daly was commissioned in his stead for the Court of Sessions. His charge to the jury in the riot case stands as an exposition of the whole law relating to riot.

The clerk of the Court of Common Pleas is authority for the statement that between

four and five thousand opinions were, during his long career, written and filed by Judge Daly, who, by the by, should be most properly denominated Chief Justice, because that rank in his court he sustained during the greatest portion of his services, as is attested by the now elaborately gold-mounted gavel which he used during his service as Chief, and which was presented to him as a souvenir by Bar subscription on his retirement.

That event was a conspicuous one in the history of the metropolis of his nativity and honors. It occurred on the New Year's eve of 1885, and for its announced celebration probably every member of the Bar then in the city assembled to bid Chief Justice Daly a personal farewell. Ex-President Chester A. Arthur was in the chair. His first case, as a young lawyer, had been pleaded before Judge Daly. David Dudley Field, as the Nestor of the occasion, made the opening speech. It was inexpressibly tender and eloquent. He was followed by William Allen Butler, who is regarded by his fellows of the Bar Association as, in his dual capacity of lawyer and poet, the modern Sir William Jones.

Many other lawyers and judges echoed the justly eulogistic resolutions and speeches. The now Ex-Chief Justice, instinctively quivering through emotion his characteristic shaggy eyebrows, and with his voice mellowed to an unaffected tremolo, responded amid a silence that proved to be more eloquent than the most spontaneous applause could have been. In the course of his singularly appropriate response, he said: —

"Erasmus has prefigured the general situation of a judge in the exclamation of, 'Unhappy is the man who sees both sides,' to which may be added, and still more unhappy is he who hopes to satisfy both sides. I early recognized this truth, and when I had applied all my powers to the examination of a case and had decided it, I never thought of it afterwards; and as a judge's duties lie chiefly in the settlement of legal controversies, in which one party is gratified and the other disappointed, it is very satisfactory for me to feel that, as far as I know, the discharge of this duty over so many years has left behind it no unpleasant recollections."

He also felicitously thus summed up the relations of a judge, which none now on the Bench anywhere can fail on reading it to recognize the truth of expressions as applied to his own career: —

"I feel this honor from the Bar the more because judges, in the discharge of their duties, cannot always be as affable or as courteous as they would be under other circumstances. Having generally to give the closest attention to the matter before them — to concentrate all their faculties for the immediate decision of questions that may be new, intricate or difficult — the earnest discharge of such duties frequently brings about a highly nervous condition, that shows itself in a brusqueness of manner and curtness of speech that sometimes gives offense when none was intended, and as I have, with my judicial brethren, shared in this infirmity, I feel, as I have said, more sensibly the courtesy always shown me by the Bar."

Upon the same New Year's eve a banquet tendered to the Ex-Chief Justice by all the judges of the courts was held at Delmonico's, whereat all formalities were dispensed with, such as toasts and speeches; while each guest silently drank Lady Macbeth's sentiment, "general joy to the whole table."

Concurrent with his judicial career came with Judge Daly the life of a man of society; of an orator on many public occasions; of the President of the Friendly Sons of St. Patrick; and of an adviser to many public men and statesmen. And indeed it was not only on the Bench that Judge Daly used his legal knowledge in the service of the public. When the War of the Rebellion

broke out he was a Union Democrat, always speaking in defense of the integrity of the Union and insisting that the rebellion must be put down at all hazards. He was in frequent consultation with President Lincoln and members of the Cabinet, who often sought his legal advice and generally acted upon it. When the crew of the rebel privateer "Jefferson Davis" were convicted and sentenced to be hanged as pirates in 1861, Judge Daly met the President and his Cabinet and urged that they be pardoned and exchanged as prisoners of war. He reasoned that as a question of law there was no difference between the Southern soldier fighting the Union soldiers on land and the Southern privateer capturing our ships afloat. His arguments were so impressive that the President asked him to put them in the form of a letter, which he did, publishing it. Three days afterwards the President adopted his views and the prisoners were exchanged.

A few evenings after the seizure of Mason and Slidell, Judge Daly was dining with Chief Justice Chase, when the question of the right to take them from a British vessel was discussed. The Judge was the only Democrat present, except Montgomery Blair. The feeling was universal at that time that the two rebel ambassadors ought not to be given up. Judge Daly's opinion was asked by the Chief Justice, and he promptly answered: "I think we shall have to surrender them. Their seizure would be perfectly justifiable by the English law, but not by our own; I think that our cases are against us." The Judge promised to hunt up the authorities, and he did so the next morning, finding a decision of Chief Justice Marshall that was flatly against holding the prisoners. He referred Secretary Seward to this, and that evening he saw William M. Evarts and told him his views. Mr. Evarts did not agree with him, but Mr. Seward evidently did, for four days afterwards he published a letter consenting to the return of Mason and Slidell to the protection of the British flag. What might have happened had this decision of Judge Daly's, made in the face of strong opposition, not been accepted it is not pleasant to reflect, now that the passions engendered by the war have passed away. At that time Sidney Bartlett, the eminent Boston lawyer, was the only person in Washington who agreed with Judge Daly on this important question of international law.

Chief Justice Daly was always a welcome visitant of his Century Club, whereof he was one of the founders. When its president, the gifted and honored scholar, Julian C. Verplank, died, to the Chief Justice was given the pleasant, if mournful, duty of preparing a eulogistic address. The Club, recognizing its eloquence, duly published it, and the pamphlet remains in libraries to attest the accustomed clear Saxon style of the orator and his perfect mastery of biographical skill.

The Ex-Chief Justice ranks high as a conversationalist and a litterateur. Humboldt, in his published correspondence, to be hereinafter referred to, has left a charming testimonial to that ranking, consequent upon meeting Chief Justice Daly in Berlin upon one of the latter's three pilgrimages to Europe. During these journeys he found his reputation was cosmopolitan.

The Chief Justice married in middle age, and the wedlock proved a singularly happy one. His chosen wife was of the noted Knickerbocker Lydig family, a notable beauty in her girlhood, and to her latest matronhood charming society with her graceful majesty of mien, that was coupled with a queenly courtesy perhaps too rare of late years. She became a perfect companion as a wife, and she realized to the Chief Justice the full sense of that sweet old-fashioned word, "help-mate": ever sympathizing intellectually with all his pursuits, and proud of his career. Only a few months ago there

came to her the "transition to the fields Elysian" that Longfellow has substituted for the incorrect word "death." The blow proved a severe one to her widower, who, while remembering his *In Memoriam* and repeating, "Oh for the touch of a vanished hand and the sound of a voice that is still" aims to assuage his mortal grief by professional and literary work at his beautiful home in old Knickerbocker Clinton Place, where the happy pair spent so many years of unruffled domesticity, and where the *salons* of the Daly couple became notable social events. That now semi-desolate home the Ex-Chief Justice keeps intact as its mistress left it. The rare paintings, articles of vertu and priceless bric-a-brac that her artistic taste had collected in foreign rambles remain untouched as she last arranged them. The widower jurist now spends nearly all his time in his wonderful library of ten thousand volumes. It is rich in every known work of physical science, in every volume relating to early common law from Fleta and Bracton to Stephens, in rare biographies, in matchless collections of Americana, in local histories regarding New York City, and in the literature of the drama — for Judge Daly has studied its development in America from the times of Dunlap and Cooper — and in Shakespearian literature. He is recognized by all students of the bard as an eminent critic of the plays, as a fellow commentator with all the authors who have touched upon Shakespeare from Malone to Furniss, and as an intimate with all the great actors of the past half-century. In one of the four rooms devoted to the library collection hangs a composite painting of Shakespeare painted by that wizard of American portraiture, Paige. It has been regarded by Shakespearian scholars as embodying their idea of a Shakespearian head and expressive face better than any other painting of the immortal Stratfordian extant. Not far away from this painting are two rare Watteaus, a Hogarth, a Rembrandt, and many specimens of more modern art. No one can visit the Ex-Chief Justice in his attractive domestic retreat, and quit him and it, without perceiving what a prismatic sided man he is — jurist, scholar, dramatic critic, author, commentator, cheerful and practical optimist, and withal presenting an emotional side calculated to draw towards him friends and "hook them to him as with bands of steel."

If any reader of the GREEN BAG deems any of the foregoing tributes too panegyrical, let him be commended to this paragraph extracted from a letter of Humboldt to Freiherr (or Baron) Von Bunsen, written as long ago as 1857, and years before the visitant touched upon in the letter had reached his fuller intellectual development: —

"I cannot close without thanking you for the acquaintance I made with Judge Charles Daly, from New York, who, upon his return from Italy, about a week ago, passed through here (Potsdam) and gave me almost a whole day of his time. All that you communicated to me about him, I have found confirmed in a much higher degree. Few men leave behind them such an impression of high intellect upon the great subjects that influence the march of civilization; in estimating the apparently opposite direction of character of those nations which surround the ever-narrowing basin of the Atlantic. Moreover, what is uncommon in a North American, and still more uncommon in the practical life of a greatly occupied magistrate, is that this highly intelligent and upright man has a deep and lively interest in the fine arts, and even in poetry. In my conversation with him about slavery, Mormonism and Canadian feudalism, I have directed his attention upon those questions which are especially interesting to me, particularly whether there is anything to be looked for with respect to the literature of a people, the noblest productions of whose literature have had their roots in another country."

THE RIGHT TO PRIVACY.

THE extension and development of the law of individual rights has become a study of absorbing interest since the late Sir Henry Maine traced the history of many modern legal conceptions to the earliest records of juristic thought in Ancient Greece and Rome. From the time that he gave his labors to the world, a large body of workers in the domain of jurisprudence are devoting their attention to its study as a progressive science. While the demands of a progressive society compel a shifting of the ancient boundaries of rights and duties, a historical grasp of legal ideas liberates the mind of the jurist from the conventions and artificial trammels peculiar to each age and facilitates a recognition of new rights. Starting from the conception of corporeal property, we have arrived at the notion of incorporeal rights and the law has come to recognize property "in the products and processes of the mind, as works of literature and art, goodwill, trade-secrets and trade-marks." The law has also accorded its protection to the free and undisturbed pursuit of one's calling which is the means of acquiring property.

We have again, beginning with the notion of a right to personal safety and to personal freedom, advanced to the recognition of a right to the society of certain relations and to freedom of contract. The scope of personal immunity has been extended beyond the body of the individual to his reputation. Thoughts, emotions and sensations have acquired legal recognition in certain respects. The progress of civilization is forcing into prominence the necessity for recognizing and giving adequate protection to new rights. To quote from an article in the 4th vol. of the "Harvard Law Review," p. 195, "Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life, and numerous mechanical devices threaten to make good the prediction, that what is whispered in the closet shall be proclaimed from the house-tops. For years there has been a feeling that the law must afford some remedy for the unauthorized circulation of portraits of private persons." Messrs. Warren and Brandeis have in the course of a very able review demonstrated, in the article we have already referred to, and from which we shall make no apology to quote very largely, the necessity for the recognition of the right to privacy. There is no decided case in the English reports in which the right in question has obtained distinct acceptance.

In a recent American case, Schuyler *v.* Curtis, Judge O'Brien has accepted the position contended for by Messrs. Warren and Brandeis. In an action for an injunction to restrain certain enthusiasts from setting up a bust after her death, of one Mrs. Schuyler who was largely interested in private charities, though she had never entered public life, Judge O'Brien granted the injunction on the ground that she was a private character and that there was a right to privacy entitled to protection. The English case of Monson *v.* Tussaud, which is an action for an injunction against the exhibition of an effigy of the plaintiff in waxwork, and an account of which has recently appeared in the English "Law Journal," raises the question, and the decision of the judges is awaited with great interest. There are, of course, English cases which vaguely shadow forth a principle which, there is good reason to believe, is not much removed from the right to privacy. "The legal doctrines relating to infractions of what is ordinarily termed the common law right to intellectual and artistic property are, it is believed, but in-

stances and applications of a general right to privacy." In the case of Miller *v.* Taylor, 4 Burr, 2,362, Mr. Justice Yates said, "Ideas are free. But while the author confines them to his study they are like birds in a cage which none but he can have a right to let fly, for till he thinks proper to emancipate them they are under his own dominion. It is certain every man has a right to keep his own sentiments, if he pleases; he has certainly a right to judge whether he will make them public or commit them only to the sight of his friends. In that state, the manuscript is in every sense his peculiar property and no man can take it from him, or make any use of it, which he has not authorized, without being guilty of a violation of his property. And as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to the first publication."

Whether the intellectual product is a piece of poetry, a play put upon the stage, Maiklin *v.* Richardson cited Ambl. 695, a manuscript copy of a history lent to a friend, Duke of Queensbury *v.* Shebbeare, Copinger on copyright, p. 8, a lecture delivered to an audience, Abernethey *v.* Hutchinson, 3 L. J. Ch. 209 and Nicols *v.* Pitman, 26 Ch. D. 374, a letter written to a friend, Gee *v.* Pritchard, 2 Swans, 402, a doctor's recipe for a disease, Yovall *v.* Winyard, 1 J. & W. 394, a secret in the compounding of a medicine, Morrison *v.* Moat, 9 Hare, 241, or a gallery of etchings made by a person, Prince Albert *v.* Strange, 1 Mac. & G. 25, the owner is entitled to an injunction restraining the unauthorized publication of it. Apart altogether from the Copyright Acts, which only apply to works published, the judges answered the question put to them by the House of Lords in Donaldson *v.* Buckett, 4 Burr, 2408, that at common law the author of any book or literary composition had the sole right of first printing and publishing the same for sale and might bring an action against any person who printed, published, and sold the same without his consent. The ground of the protection afforded has been variously stated by judges in different cases, that the injunction is directed against a breach of trust or confidence by the publisher, he having obtained knowledge of the intellectual product while in a position of confidence, that it seeks to prevent a breach of an implied contract on the part of the publisher not to publish, or that there is a right of property which needs to be protected. It is impossible to accept these explanations as altogether satisfactory in all the cases we have enumerated.

What right of property is there in a collection of gems or a gallery of etchings that entitles the owner to prevent the publication of a descriptive catalogue? And yet in Prince Albert *v.* Strange, the court issued an injunction against the publication of a catalogue of a collection of etchings made by her Majesty the Queen and the late Prince Consort. Is it a right of property in one's personal appearance that entitles the person to prevent the publication of a photograph? Pollard *v.* Photographic Co., 40 Ch. D. 345. If the photographer could be restrained from selling copies where the person had consented to sit for a photograph, would the latter be less entitled to protection where the photograph is taken without his consent? It is not on the ground that the publication of the photograph is a libel that the injunction can be rested, for the photograph may be worthy of all commendation as that of a handsome personal appearance. The theory of breach of confidence, although the circumstances of Abernethy *v.* Hutchinson, 3 L. J. Ch. 209, Tuck *v.* Priester, 19 Q. B. D. 639, and Pollard *v.* Photographic Co., 40 Ch. D, 345, enabled the court to invoke it successfully is inadequate for restraining the publication of a letter by a stranger or by the addressee who was in no position of trust at the time of the receipt of the letter or the publication of a trade-secret where the knowledge was surrepti-

tiously obtained. Whether the work is literary or artistic or commonplace, whether the product of labor is intellectual or tangible property, the common law recognizes the right of the owner to protection against publication. The Copyright Acts are levelled against the reproduction of published works, but do not prevent a publication of an abstract, a catalogue, or digest, for such works "may be liable to be translated, abridged, analysed, exhibited in morsels and complimented."

But the protection afforded to unpublished products is greater. The Vice-Chancellor Knight Bruce said, in Prince Albert *v.* Strange, 2 DeGex & Smale, p. 689: "I claim leave to doubt whether, as to property of a private nature which the owner without infringing on the right of another may and does retain *in a state of privacy*, it is certain that a person who without the owner's consent, express or implied, acquires a knowledge of it can lawfully avail himself of the knowledge so acquired to publish without his consent *a description of the property*." In appeal, the Lord Chancellor, Lord Cottenham, said that "privacy was the right invaded in the case, and that a man was entitled to be protected in the exclusive use and enjoyment of that which was exclusively his." To quote again from Messrs. Warren and Brandeis: "The protection afforded by the common law to the author of any writing is entirely independent of its pecuniary value, its intrinsic merits, or of any intention to publish the same, and of course also wholly independent of the material, if any, upon which and the mode in which the thought or sentiment is expressed." The proper ground upon which the right to protection for thoughts and sentiments expressed in words or in writing or in works of art must rest is, that there is a right to privacy against the infringement of which the law must afford relief. If there is a right to privacy for thoughts, feelings and sentiments, it is entitled to protection, whether they find expression in writing, speech or conduct. As observed in the article from which we have quoted so largely already, "If the invasion of privacy constitutes a legal injury, the elements for demanding redress exist, since the value of mental suffering caused by an act wrongful in itself is recognized as a basis for compensation. The right of one who has remained a private individual to prevent his public portraiture, presents the simplest case for such extension; the right to protect one's self from pen-portraiture, from a discussion by the press of one's private affairs, would be a more important and far reaching one. If casual and unimportant statements in a letter, if handiwork however inartistic and valueless, if possessions of all sorts, are protected not only against reproduction but against description and enumeration, how much more should the acts and sayings of a man in his social and domestic relations be guarded from ruthless publicity," when all the appliances of civilization are tending to make a knowledge of each man's belongings the property of the public and the feelings of man become more sensitive to publicity require even greater protection than his physical safety.

The absence of malice and the truth of the publication can of course be no defence to an action, for the gist of the complaint is the fact of the publication itself. As pointed out by Judge O'Brien in the case of Mrs. Schuyler, there is nothing to prevent the publication of matter of public or general interest, or where the owner has himself published it or impliedly sought publication by inviting the public attention by his conduct. According to the maxim *ubi jus ibi remedium*, the recognition of the right involves a remedy for its violation, which may be damages for the breach or an injunction to prevent the infraction of the right.

It may seem intolerable that any thing said or done by any individual should be so far protected that any communication of it by the hearer or observer which is not ex-

pressly or impliedly authorized or justifiable as privileged should be deemed to be a violation of a right. It has also to be considered whether any repetition will amount to a sufficient publication so as to constitute an invasion of the right to privacy. It may be that we shall have to recognize the necessity of special damage which may include injury to the feelings, to render the publication actionable. But we can feel no doubt as to the recognition of the right itself. — *Madras Law Journal.*

OLD CONNECTICUT TRIAL JUSTICES.

ONE of the most popular justices in the early history of Norwich, says the "Hartford Times," was Richard Bushnell. In fact, he was a man prominent in almost every enterprise that was set on foot in the place, as he is recorded as having been townsman, constable, schoolmaster, poet, deacon, sergeant, lieutenant, captain, town agent, town deputy and court clerk.

Cases were brought before him from Windham, Plainfield, Canterbury, Killingly, Preston, North Groton, and North Stonington. The record of these is interesting as showing the state of the local conscience during those early years. The frank simplicity of some of these quaint records acquaints us with more than the mere judicial side of the public life during the early part of the eighteenth century.

"3rd of June, 1708. Joseph Bushnell of Norwich complained against himself to me, Richard Bushnell, Justice of the Peace, for yt he had killed a Buck contrary to law. I sentenced him to pay a fine of 10 shillings, one half to ye county treasury and one half to complainant."

"July 20, 1720. Samuel Sabin appeareth before me, R. B. Justice of the Peace, and complaineth against himself that the last Sabbath at night, he and John Olmsby went on to Wawecoas Hill, to visit their relations, and were late home, did no harm, and fears it may be a transgression of ye law and if it be is very sorry for it and don't allow himself in unseasonable nightwalking."

"An inferior court held at Norwich ye 19 Sept. 1720. Present R. Bushnell justice of ye Peace. Samuel Fox, juror pr. complaint, Lettis Minor and Hannah Minor plaintiffs, for illegally and feloniously about ye 6 of Sept'r. inst. taking about 30 water-millions which is contrary to Law and is to his damage he saith ye sum of 20 shillings and prays for justice. This Court having considered ye evidence don't find matter of fact proved, do therefore acquit the defendants and order ye plaintiff pay the charge of Presentment."

"May 6, 1721. A complaint was entered by the constable against Samuel Law, doctor, for profane swearing; he was fined 10 shillings."

On one occasion an Indian having been found drunk was sentenced by the justices according to the statute to pay a fine of ten shillings, or receive ten lashes on his naked body.

The Indian immediately accused Samuel Bliss of selling him two pots of cider. Now the fine for the latter offense was twenty shillings, one-half to go to the complainant. The Indian thus obtained the exact sum necessary to pay his fine. But we will let the justice himself tell the story:

"Feb. ye 7-1722. Apeonuchsuck being drunk was brought before me R. B. Justice of ye peace. I do sentence ye s'd Apeonuchsuck for his transgression of ye law to pay a fine of 10 shillings or to be whipt ten Lashes on ye naked body, and to pay ye cost of his prosecution, and to continue in ye constable's custody till this sentence be performed.

"Cost allowed 6 shillings 6d.

"Apeonuchsuck accused Samuel Bliss yt he sold him 2 pots of cider this afternoon. Mr. Samuel Bliss appeared before me and confessed

he let s'd Indian have some cider and I do therefore sentence s'd Bliss to pay ye fine of 20s. for ye transgression of the law, one-half to ye town and one-half to complainant."

Justice Bushnell was no more strict in his rulings than was his neighbor, Justice Isaac Huntington, among whose records appear the following:

"1738, July 12, John Downer and Solomon Hambleton for profaning the Sabbath day by oystering, fined 5 shillings and costs."

And again:

"2nd day of November, 1738, Mary Leffingwell, on ye 24th day of September last, it being the Saboth or Lord's day (and not being necessarily detained) did not duly attend ye public worship shall pay as fine to ye treasury of ye town of Norwich the sum of 5 shillings and cost of suit."

In 1749 Mr. Huntington fined a person twenty shillings for playing cards, and another five shillings for laughing in meeting.

Justice Richard Hide was another strict administrator of the laws, as is evidenced by his record of findings between the years 1760 and 1780.

A man presented for profane swearing, having been heard to say at the public house — "*damn me.*" Sentenced to pay 6 shillings 3 pence.

Another, for a similar offense, the culprit using the words — "*go to the Devil.*" Fined 8 shillings 10 pence.

A breach of peace by tumultuous behavior, 18 shillings 8 pence.

1771. A young woman presented for laughing in a meeting for public worship at Mr. Grover's, Sabbath evening — two females for witnesses — culprit dismissed with a reprimand.

1774. Eben'r Waterman, Jr., presented by a grand juror, for profaning the Sabbath in the gallery of the meeting-house in West Society, by talking in the time of divine service, in a merry manner, to make sport. Plead guilty — fine 10 shillings.

Paul Davenport of Canterbury, appeared and acknowledged himself guilty of a breach of law by riding from Providence to Canterbury on the Sabbath Day — paid the fine of 20 shillings.

In 1721, Henry Holland of Plainfield was brought before Justice Bushnell and bound over to appear at the next county court and answer for breaking the peace and the law, by saying, "in a tumultuous violent threatening manner, yt he would take the head of Jona'n Tracy off his shoulders."

Two young men and two young maids, presuming to "meet and convene together and walk in the street in company, upon no religious occasion," were fined 3 shillings each.

Justice Bushnell lived to the age of 75 to preside over the administering of law in his native town. His tombstone bore the following record: —

Here Lies ye Body
of Capt. Richard
BVSHNELL ESQVIRE
Who Died AVGVST
ye 27 . . 1727 . . and in ye
75th year of His Age.

. . . . . .

As you are
So Was We
But as We Are
You Shall Be.

MADNESS AND CRIME.

THE controversy between lawyers and doctors as to the criminal responsibility of the insane is so inveterate and has hitherto been both so jejune and so largely academic, that its reappearance at the present dull season may not seem to call for any comment. But the definite proposal made at the recent meeting of the British Medical Association, that the House of Lords should be invited without delay to ask the judges to answer "certain questions with regard to the defense of insanity in criminal cases," imparts to the latest revival of this interminable feud not a little extrinsic interest and importance. Five distinct tests of criteria have at different periods in the history of English law been employed for the purpose of determining the criminal responsibility of the insane. First we have what has been compendiously described as "the boy of fourteen" theory. For this we are indebted to Sir Matthew Hale. "Such a person," said that great jurist, "as laboring under melancholy distempers hath yet ordinarily as great understanding as a child of fourteen years, may be guilty of treason or felony." In the beginning of the eighteenth century this primitive standard was superseded. One would gladly think that its abandonment was due to the eventual perception by the judges of the day that no two states of mind could be more unlike or less capable of comparison than the healthy immaturity of a boy of fourteen and the diseased maturity of a lunatic. But, unfortunately, this comforting hypothesis is untenable. For the boy of fourteen theory gave place to a still more unscientific test. On the trial of Edwin Arnold, at Kingston, in 1723, for wounding Lord Onslow, Mr. Justice Tracey, in charging the jury, said that "a prisoner, in order to be acquitted on the ground of insanity, must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no (*sic*) more than an infant, a brute, or a wild beast." No such lunatic ever existed, and the only excuse that can be offered for Mr. Justice Tracey's famous dictum is that he merely gave an exaggerated and inaccurate description of the violent and acute mania to which the asylum system of his day steadily reduced all other types of insanity. The "wild beast" theory, however, marks the lowest depth to which the law of England as to the criminal responsibility of the insane descended. Its subsequent ascent has been curiously fitful and irregular. On the trial of Hadfield in 1800 for shooting at George III. in Drury Lane Theatre, Lord Chief Justice Kenyon told the jury that the prisoner's responsibility depended on the question "whether at the very time when he committed the act his mind was sane." But this advance was not long maintained. For in 1812, on the trial of Bellingham for the murder of Mr. Perceval in the Lobby of the House of Commons, Sir James Mansfield prescribed another test of punishable insanity—namely, whether the accused possessed sufficient capacity to distinguish between right and wrong in the abstract. In the course of time this theory of responsibility also was felt to be inadequate. Scientific observers of the phenomena of mental disease established the existence of a type of lunatic whose general notions of right and wrong were perfectly clear and correct, and who, nevertheless, committed acts forbidden alike by morality and by law, under a fixed belief that his conduct was not only pardonable but meritorious. It might well be that such persons deserved punishment. But it was certain that the existing law offered little guidance as to the principles on which their punishment should be based. This deficiency the present legal test of lunacy

purports to supply. It is embodied in answers given by the judges to questions propounded to them by the House of Lords after the acquittal of Daniel Macnaughton in 1843, on the charge of having murdered Mr. Drummond, the private secretary of Sir Robert Peel; and it makes the guilt or innocence of a person accused of crime, and defended on the ground of insanity, depend on whether he did or did not "know the nature and quality" of his act at the time of committing it. Against this standard of responsibility the British Medical Association is now in full tilt, and not without reason. The "rules in *Macnaughton's Case*" represent accurately enough the state of medical knowledge in 1843, and are still comparatively harmless when judiciously manipulated. But they ignore the fact that mental disease may, and does, impair its victims' wills, as well as their other faculties; and, after the criticisms that have been passed upon them by judges so eminent as the late Lord Coleridge, the late Sir James Stephen, and Sir Henry Hawkins, it is high time they were revised. We regard, however, with considerable apprehension the proposal that the revision should take the form of questions put to the judges by the House of Lords. We should have thought that this species of catechism had already been sufficiently discredited by the experiment of 1843; and we know of no other authority for the proposition that the House of Lords has a right to question the judges except in the exercise of its legislative or judicial functions. What is wanted is that some barrister should be found of sufficient daring to challenge the authority of the Macnaughton "rules" in defending a prisoner on whose behalf a plea of insanity is put forward. There is every reason to believe that the mental soil of the Bench is already not unprepared for such a suggestion. And, in any event, the point would be brought before the Court for Crown Cases Reserved — a tribunal undoubtedly competent to decide it. — *Saturday Review.*

CONTRASTS IN ENGLISH CRIMINAL LAW.

I.

By Hampton L. Carson.

ONE of the most singular facts in the history of the criminal law of England is the sad contrast between the theory and the actual administration of the law.

For more than six hundred years the following maxims have been familiar: "Every man's house is his castle"; "No freeman can be deprived of life, liberty, or property save by the judgment of his peers and the law of the land"; "The presumption of the law is in favor of innocence"; "The judge is counsel for the prisoner"; "To no one will we sell, deny, or delay either justice or right."

GEORGE, LORD JEFFREYS.

Lawyers and judges, statesmen and historians have echoed and re-echoed these striking phrases until the general impression prevails that, with the exception of five or six instances of shocking barbarity on the part of a Jeffreys, a Scroggs, or a Wright, the people of England were governed by laws of benign and gentle sway, humanely administered. The glories of the Great Charter, with its essential clauses for the protection of personal liberty and the property of freemen from arbitrary imprisonment and arbitrary spoliation, were dwelt upon so constantly and strenuously as to dazzle the eyes of men and to blind them to the truth that the law as actually administered was full of brutality, avarice, superstition, fanaticism, hatred, and fear; a truth boldly spoken by Beccaria, when he said: "The laws are always several ages behind the actual improvement of the nation which they govern." But his voice was as one crying in the wilderness. Lord Coke, in his detailed commentary on the famous 39th and 40th chapters of Magna Charta, observed: "As the gold finer will not out of the dust, shreds, or shreds of gold, let passe the least crum, in respect of the excellency

of the metal, so ought not the learned reader to passe any syllable of this law, in respect of the excellency of the matter." The same sentiments were uttered by Sir John Davys, Sir Matthew Hale, Sergeant Hawkins, Sir Michael Foster, and Sir William Blackstone. The Earl of Chatham, in his noble panegyric upon the barons of Runnymede, exclaimed: "My lords, I think that history has not done justice to their conduct, when they obtained from their sovereign that great acknowledgment of national rights contained in Magna Charta: they did not confine it to themselves alone, but delivered it as a common blessing to the whole people. They did not say, These are the rights of the great barons, or these are the rights of the great prelates. No, my lords; they said, in the simple Latin of the times, *nullus liber homo*, and provided as carefully for the meanest subject as for the greatest. These are uncouth words, and sound but poorly in the ears of scholars; neither are they addressed to the criticism of scholars, but the hearts of freemen. These three words — *nullus liber homo* — have a meaning which interests us all; they deserve to be remembered — they deserve to be inculcated in our minds — they are worth all the classics." Even the sober-minded Mr. Hallam asserted that it must have been a clear principle of the Constitution from the days of John that no man could be detained in prison without a trial, and that from that era it became the right of every subject to demand the writ of *habeas corpus*.

In no one of the authorities referred to can a line or a word be found in denunciation of existing wrongs, or a suggestion for the amelioration of a savage code. It is not until the student turns to the State Trials and the Statutes that he can begin to realize the magnitude of the task undertaken by those immortal criminal law reformers — Sir Samuel Romilly, Lord Brougham, Jeremy Bentham, and Rev. Sidney Smith. Before attempting a sketch of their labors, it is proper to trace in outline the actual condition in practice of English criminal law.

This is the purpose of this paper.

The point that we wish to emphasize and illustrate is that while the theory was noble and humane, the practice was barbarous and cruel.

Starting with the most comprehensive division of crimes into felonies and misdemeanors, we notice that felonies embraced all offenses that were punished by death by custom, and included all the crimes of highest grade, from treason and murder to robbery and breach of prison, while misdemeanors embraced all the lower grades of crime, from assaults and batteries to perjury and libel, the punishment being generally by fine and imprisonment, sometimes by transportation for life or years. *A priori*, it would be asserted that the greatest safeguards would be thrown about men charged with felonies, and that fewer rights or privileges would be accorded to those charged with misdemeanors. In point of fact, however, the exact reverse was the case. At common law, the graver the charge the more hopeless was the task of defense, not because of any inherent difficulty, but solely because of the failure of the law to throw actual safeguards about the unhappy wretch on trial.

The evidence for the Crown was always given under the solemnity of an oath, a solemn adjuration, indeed, in superstitious days, but the prisoner was prevented by fixed rule from calling any witnesses in his behalf. This was not relaxed until the days of bloody Mary, and then the Court was simply admonished to listen to whatever could be said in favor of the subject. No witnesses, summoned for the defense, could be sworn, until the days of Anne. In all felonies the prisoner was denied a copy of the indictment, and he was expected to be astute

enough to pick out its flaws upon hearing it read for the first time. He was denied also knowledge of the names of the jurors and of the names of the witnesses against him. His worst enemy might be upon the panel, but he was left to his own presence of mind to challenge in time, *propter affectum*. He was always refused the assistance of counsel in the court room, and even the advice of counsel in prison, except by special leave of court, and this privilege, when granted, which was but seldom, was shorn of its value, because he was deprived of the use of any papers drawn up by counsel to prepare him for trial. He was tried at the same assizes, very often on the same day, on which the indictment was found. He was bullied and insulted by bloodthirsty attorneys-general, and browbeaten by the judge. His exact situation was truly this — in a case where his life was at stake, and he most needed the assistance of an eloquent and dauntless advocate, he was denied the right to counsel, and was left to struggle single-handed against the tyranny and overwhelming influence of the Crown, ignorant as he was of law, ignorant of the charge, ignorant of those by whom he was to be confronted or to be tried. No wonder that accusation became tantamount to conviction, while conviction meant death. How full of significance was the exclamation of the Duke of Norfolk upon his trial: "I know that one suspected is more than half condemned." (1 State Trials, 965.)

SIR EDWARD COKE.

To be legally exact, the rule was as follows: At common law, in all cases, whether of treason, felony, or misdemeanor, and at all times, the prisoner had the right to address the jury in person in his own behalf. In misdemeanors he was always allowed to do this by counsel; but it is universally agreed that, at common law, a prisoner, whether peer or commoner, was not entitled to defend by counsel, upon the general issue, "not guilty," on any indictment for treason or felony. (1 Archbold's Crim. Prac. & Pl., Pomeroy's Edit., 551; Weeks on Att'ys at Law, sec. 184; 1 Chitty's Crim. Law, 407; Hawkins' Pleas of the Crown, b. 2, c. 39, sec. 1; Foster's Crown Law, 281; Hale's Pleas of the Crown, 236.)

There were certain exceptions. Thus in *appeals*, which were private rather than public prosecutions upon accusations of

murder, counsel were allowed to the appellee, on the theory that the proceedings were conducted with individual spleen. (2 Hawkins, c. 39, sec. 3; 1 Chitty Crim. Law, 410; 17 State Trials, 430.)

So, too, the prohibition of counsel applied only to matters of fact, as the court assigned counsel to argue a doubtful point of law arising at the trial, but it was held that the prisoner must propose the point, and if the court thought it would bear debate, counsel would be assigned. (7 State Trials, 1523.) At the trial of Lord Preston in 1691, Chief Baron Atkyns said: "It is not the doubt of the prisoner but the doubt of the court that will occasion the assignment of counsel." (12 State Trials, 659.)

A third exception arose where the issue turned on collateral facts, such as a plea of sanctuary, or a pardon, or upon an assignment of error to reverse a sentence of outlawry. Upon these matters the prisoner was entitled to counsel. (Foster's Crown Law, pp. 42, 46, 56, 232; Ratcliffe's Case, 4 State Tr. 47.)

It is quite clear that these exceptions were of but little practical benefit to those who were ignorant of law.

The apologists for the rule that prisoners tried for felony should not have counsel were men of high legal station and renown. Lord Coke declared that the reason of its adoption was because the evidence by which the prisoner was to be condemned ought to be so very evident and so plain that all the counsel in the world should not be able to answer it. (3 Inst. 137.) Sir John Davys (preface to Davys' Reports) wrote: "Our law doth abhor the defence and maintenance of bad causes more than any other law in the world," while Sergeant Hawkins contended that the rule was reasonable, "as every one of common understanding may as properly speak to a matter of fact as if he were the best lawyer," and that "it requires no manner of skill to make a plain and honest defence, which in cases of this kind is always the best, the simplicity and innocence, the artless and ingenuous behavior of one whose conscience acquits him, having something in it more moving and convincing than the highest eloquence of persons speaking in a cause not their own." (2 Hawkins, c. 39, sec. 2.) Shades! of Dunning, of Erskine and of Scarlett, how destructive of your noblest triumphs would these boasted oracles of the law have proved, had not milder views prevailed in happier ages than those of Bacon and Hale.

We now turn to the cases which illustrate the statements above made.

Upon the trial of Thomas Howard, Duke of Norfolk, for high treason, in the fourteenth year of the reign of Elizabeth, he besought the Lord Chief Justice, presiding over the House of Peers, to assign him counsel for the purpose of answering the indictment, and was told in reply that: 'in case of high treason he cannot have counsel allowed, and that he was to answer to his own fact only, which himself best knew and might without counsel sufficiently answer." Norfolk urged: "I was told before I came here, that I was indicted upon the statute 25 Edward III. I have had very short warning to provide to answer so great a matter; I have not had fourteen hours in all, both day and night, and now I neither hear the same statute alleged, and yet I am put at once to the whole herd of laws, not knowing which particularity to answer unto. The indictment containeth sundry points and matters to touch me by circumstance, and so to draw me into matters of treason which are not treasons themselves: therefore with reverence and humble submission, I am led to think I may have counsel . . . I am hardly handled; I have had short warning and no books; neither book of statutes nor so much as the Breviate of Statutes. I am brought to fight without a weapon."

To which Sir James Dyer, Lord Chief

Justice of the Common Pleas, replied: "All our books do forbid allowing of counsel in the point of treason." (1 State Trials, p. 82.) him to speak to them. The judges in reply refused his request, immediately overruled his points, alleging that counsel were not

SIR MATTHEW HALE.

On the trial of Sir Henry Vane for high treason, in the fourteenth year of Charles II., he suggested five different points of law, which he prayed the court to consider, and earnestly requested to have counsel assigned allowable in criminal cases for life, and asserting that if it be held in criminal cases for life, then every felon in Newgate might plead the same, and so there would be no jail delivery. Upon which Vane pointed

out that this made the law "less careful for the preservation of a man's life than any particulars of his estate, whereas life was the greater, and all innocent blood when spilt was irreversible: as to that matter, it cannot be gathered up again." Vane then tendered a bill of exceptions, and pointed out that it was the duty of the judges, under the statute of Westminster II., chap. 31, passed in the thirteenth year of Edward I., to seal it. The judges not only refused, but fell upon him in a body with all sorts of arguments. After his conviction, he presented reasons for an arrest of judgment, written out by himself, which the court refused to hear. (2d State Trials, p. 435. et seq.)

Upon the trial of John Crook in 1662 for a refusal to take the oath of allegiance and supremacy, the prisoner requested certain information of the court touching the indictment, and then used these words: "And you that are judges upon the bench, ought to be my counsel, and not my accusers, but to inform me of the benefit of those laws; and wherein I am ignorant, you ought to inform me, that I may not suffer through my own ignorance of those advantages which the laws of England afford me as an Englishman."

The Chief Judge, Sir Robert Foster, in reply said: "We sit here to do justice, and are upon our oaths, and we are to tell you what is law, and not you us; therefore, sirrah, you are too bold."

Crook: "Sirrah is not a word becoming a judge; for I am no felon, neither ought you to menace the prisoner at the bar."

Judge, interrupting Crook: "It is an evil zeal."

Crook then refused to plead to the indictment, but continuing his argument with the court, the judge directed his mouth to be closed with "a dirty cloth." (2 State Trials, p. 463.)

Upon the trial of William Penn and William Mead at the Old Bailey, for a tumultuous assembly, in the twenty-second year of Charles II., the Recorder asked Mead this question: —

"What say you, Mr. Mead, were you there?"

Mead: "It is a maxim in your own law, *nemo tenetur accusare seipsum*, which if it be not true Latin I am sure it is true English, that no man is bound to accuse himself. And why dost thou offer to ensnare me with such a question? Doth not this show thy malice? Is this like unto a judge that ought to be counsel for the prisoner at the bar?"

Recorder: "Sir, hold your tongue. I did not go about to ensnare you."

Penn, a youth of twenty-five years of age, asked the Recorder whether he was indicted under the common law or by statute. The Recorder answered, "Upon the common law."

Penn in reply: "Where is that common law?"

Recorder: "You must not think that I am able to run up so many years and ever so many adjudged cases which are called common law, to answer your curiosity."

Penn: "This answer, I am sure, is very short of my question, for if it be common it should not be so hard to produce."

Recorder: "The question is whether you are guilty of this indictment."

Penn: "The question is not whether I am guilty of this indictment, but whether this indictment be legal. It is too general and imperfect an answer to say it is the common law, unless we know both where and what it is. Where there is no law, there is no transgression, and that law which is not in being, is so far from being common, that it is no law at all."

Recorder: "You are an impudent fellow; will you teach the court what law is?"

Penn: "Certainly. If the common law be so hard to be understood, it is far from being very common."

Recorder: "Sir, you are a troublesome

fellow, and it is not for the honor of the court to suffer you to go on."

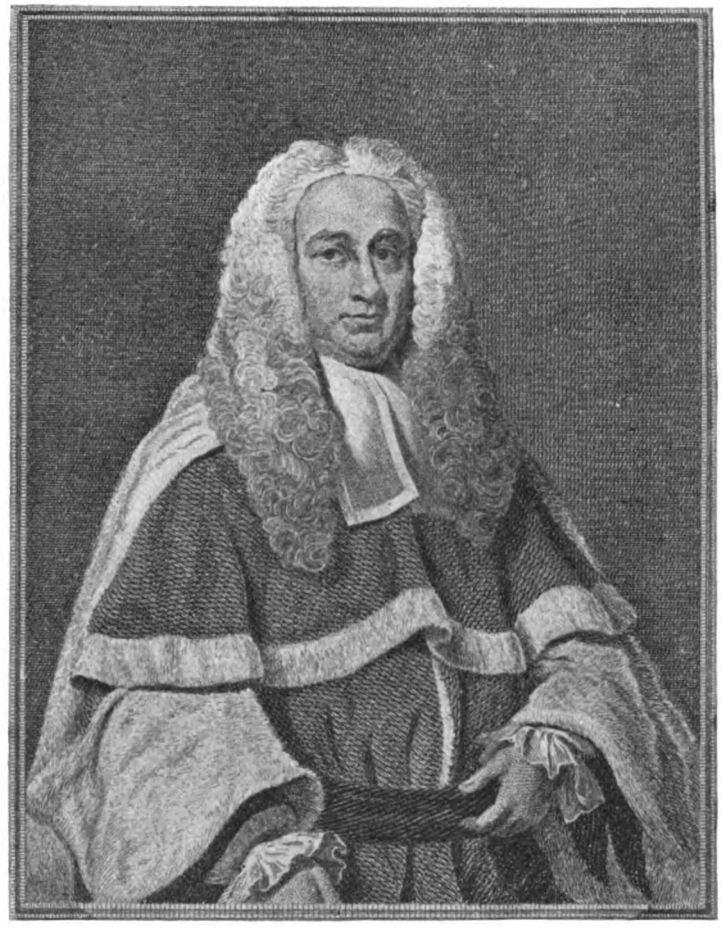
Penn: "I have asked but one question, and you have not answered me, though the rights and privileges of every Englishman be concerned in it."

Recorder: "If I should suffer you to ask questions till to-morrow morning, you would be never the wiser."

Penn: "That is according as the answers are." (2 State Trials, p. 610.)

Upon the trial of John Lilburne for high treason, the prisoner contended for the appointment of counsel, alleging that the court went about to ensnare him, and to take advantage of his ignorance of the formalities of the law for the purpose of destroying him. He maintained his rights with great spirit and courage, but was refused; when, bursting out with long-suppressed wrath, he exclaimed: —

"Oh, Lord, sir, what strange judges are you, that you will neither allow me to have counsel to help me to plead, nor suffer me myself to speak for my own life! Is this your law and justice?" He then appealed to the jury, denouncing the cruelty and injustice of the court in denying him the privileges of an Englishman when upon trial for his life.



SIR MICHAEL FOSTER.

Justice Jermin then told the jury that "it was expected by the court that some

matters of fact, or some questions of law, might arise upon the evidence; which if it had, it was the duty of the court to have cleared it; but there does not appear to be any, and therefore there is an end as to the dispute of the law." To which the foreman of the jury replied: "We are no lawyers, indeed, my lord," and requested a copy of the Act for treason, while one of the jury desired to drink a cup of sack, for they had sat so long, and how much longer the debate of the business might last he knew not. Upon which the jury were told that however in ordinary cases they might be permitted to drink before they went from the bar, that in cases of felony and treason the court had never so much as heard it even asked for, and therefore the request was refused.

As the jury retired, Lilburne in a loud voice appealed to them to see that he had fair play, and upon their return to court they pronounced a verdict of "not guilty," which was received with extraordinary acclamation from the multitudes of people in the hall, such as is believed "was never heard in Guild Hall, which lasted for about half an hour without intermission, which made the judges for fear turn pale and hang down their heads." (2 State Trials, p. 80.)

Upon the trial of Lady Alice Lisle for high treason, on the 27th of August, 1685, in the first year of the reign of James II., Lord Chief Justice Jeffreys denounced a witness produced for the Crown, who was unable to give any testimony adverse to the prisoner, as a "vile wretch," and behaved with such violence as to "clutter him out of his senses," and upon the witness's continued failure to recollect, exclaimed: "Oh, blessed God, was there ever such a villain upon the face of the earth; to what times are we reserved? Dost thou believe that there is a God?" and continued to drive the witness into a state of mental confusion, and then, observing that he stood silent, exclaimed to the jury: "I hope, gentlemen, you take notice of the strange and horrible behavior of this fellow; and with all you cannot but observe the spirit of this sort of people; what a villainous and devilish one it is."

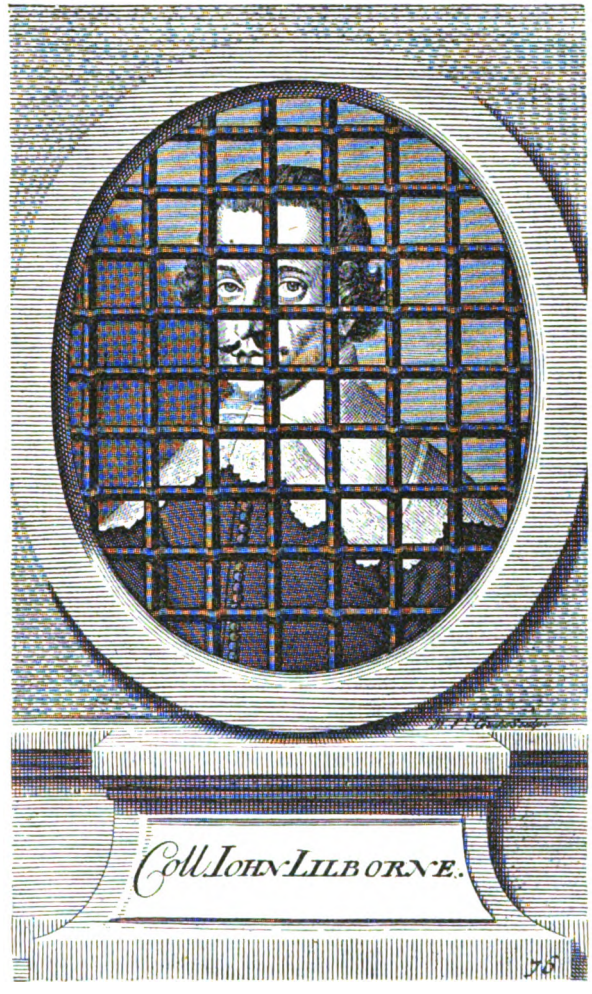
After sentence was pronounced that the gentle lady should be executed by burning her alive, which was graciously changed to causing her head to be severed from her body, the prisoner, in tones of affecting emphasis, said: "I have been told the court ought to be counsel for the prisoner, instead of which there was evidence given from the Bench which, though it were but hearsay, might possibly affect my jury. My defense was such as might be expected from a weak woman; but such as it was, I did not hear it repeated again to the jury." (2 State Trials, 105.)

The foregoing cases, while striking instances of judicial barbarity, are not uncommon illustrations of what repeatedly occurred during the State trials of England. It is true that the rule that a prisoner indicted for felony should not have the aid of counsel did not pass unchallenged. As far back as the reign of Edward II. the author of the "Mirror of Justices" had declared that counsel learned in the law "were more necessary for the defense of indictments and appeals of felonies than upon other venal causes." The venerable Bishop Whitelocke assailed it in debate; Sir Robert Atkyns declared it a severity, and significantly said that he knew from experience what the maxim meant that the judge was counsel for the prisoner. Even Jeffreys declared that "it was an injustice that a man should have counsel to defend a twopenny trespass, but that in defense of life he should have none."

It was not until 1695, however, that a bill for regulating trials in cases of high treason was brought forward in the House of Commons. After much opposition it became a law known as the Seventh William III., chapter 3, and gave among other

things, to a prisoner charged with high treason, "the assistance of counsel, not exceeding two, throughout his trial, to examine his witnesses and to conduct his whole defense, as well in point of fact as upon questions of law."

Many wise men predicted the complete ruin of the State. Bishop Burnett, after stating that the bill had passed contrary to the hopes of those then at the head of affairs, said: "The design of it seemed to be to make men as safe in all treasonable practices as possible."



The judges were the avowed enemies of the change. The Act was to go into effect on the 25th of March, 1696. On the 24th of March, Sir William Parkyns, a wealthy knight, bred to the law, was brought to trial for having been concerned in a Jacobite plot to assassinate the King. He urged that counsel might be allowed him, and cited the preamble of the statute as declaring that such a demand was reasonable and just. Lord Holt, the great Lord Chief Justice Holt, the jurist who ruled Coggs *v.* Bernard, replied: "God forbid that we should anticipate the operation of an Act of Parliament even by a single day." (13 State Trials, 72.) Parkyns then asked that the trial be postponed; but his application was refused, and the unlucky man was actually convicted and executed six hours before the bill went into effect.

The first instance on record of the assignment of counsel under the Act is on the trial of Rookwood and others, for having been concerned in the same conspiracy as Parkyns. Sir Bartholomew Shower was assigned as counsel. The craven cowardice of his language is striking. "My lord," said he, addressing Lord Chief Justice Holt, "we are assigned of counsel in pursuance of an Act of Parliament, and we hope that nothing which we shall say in defense of our client shall be imputed to ourselves. . . . We come not here to countenance the practices for which the prisoners stand accused, nor the principles upon which such practices may be presumed to be founded; for we know of none, either religious or civil, that can warrant or excuse them."

In strong contrast with this abject apology is the splendid bearing of Erskine on the trial of Tom Paine. "I will forever — at all hazards — assert the dignity, independence, and integrity of the English Bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment

that any advocate can be permitted to say that he will, or will not, stand between the Crown and the subject arraigned in the court where he daily sits to practice, from that moment the liberties of England are at an end."

Impeachments had been expressly excepted from the statute of William III., and therefore counsel were denied to Lords Winton and Lovat, the latter of whom, broken by the weight of 80 years, was too feeble to struggle even for his life. It is significant that Sir William Yonge, who was the leader of their impeachment, introduced into the House of Commons a bill that in 1747 became known as 20th George III., correcting this abuse. It was not, however, until 1836 that the last remnants of this barbarism were swept away. The 6th and 7th William IV., chapter 114, enacted that all persons tried for felony should be admitted to make their defense by counsel or attorney.

Enough has been displayed in this paper to satisfy the American lawyer of the value of the Sixth Amendment to the Constitution of the United States, adopted in the year 1790, which provides, among other things, that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, . . . and to have the assistance of counsel for his defense."

Having considered some of the rules of practice relating to criminal trials, and the method of procedure, in a subsequent paper we will turn to the crimes themselves and their punishments, in order to form an adequate idea of the nature of the English criminal code.

NOTE: — Since writing the foregoing paper, the author has come into possession of a most interesting original document, which shows that even in cases of misdemeanor King's counsel required a royal license to defend prisoners charged with crimes of the grade of misdemeanors. The document is signed by George IV. and by Sir Robert Peel, and is addressed to the celebrated James Scarlett, afterward Lord Abinger. It reads as follows:—

"Wheras the Committees of The Earl Cadogan, have by their Petition humbly represented unto us, that an Indictment hath been preferred against the said Earl and Sarah D'Oyly, (since deceased) for certain Misdemeanors. That they are desirous of advising thereon on behalf of the said Earl with James Scarlett, Esquire, one of Our Counsel learned in the Law, and that the said James Scarlett should defend the said Indictment for the said Earl; but for as much as he cannot Plead for the said Earl without Our License, The Petitioners therefore humbly pray that We will be graciously pleased to grant Our Royal License for the said James Scarlett, Esqre., to be of Counsel for the said Earl on the Trial of the said Indictment. We being graciously pleased to condescend to the Petitioners' request, do accordingly dispense with the said James Scarlett, Esqre., and grant him Our Royal License and authority to be of Counsel for the said Earl as often as there shall be Occasion.

"Given at Our Court at Carlton House the twenty-first day of June 1822 in the Third Year of our Reign."

By His Majesty's Command

ROB. PEEL. GEORGE, *R.*

One Pound
Ten Shillings
Stamp.

Endorsed: JAMES SCARLETT, Esqre., Licence to Plead.

LEGAL REMINISCENCES.

By L. E. Chittenden.

VIII.

THE BEAUTIES OF CHANCERY.

THE Lord High Chancellor is a creature of the past. He exists only in history and comic opera. He has gone into the beyond with the generation which endured Jarndyce and Jarndyce, burned witches, hung men for larceny and imprisoned them for debt. The number of his surviving descendants can be counted upon the fingers. They live because they are too insignificant to be destroyed. They are the survivals of an age that was essentially reptilian, and they are rapidly becoming fossil. At long intervals of time they show signs of life, and, true to their ancestral conditions, continue to amuse the bar, burlesque justice and show into what unsounded depths of absurdity a legal institution has the capacity to fall.

In my present summer vacation I have met with the most recent case with which chancery has had to deal. I do not care to give its title or *venue*, lest I might be sued for libel and enjoined from giving the truth in evidence. The reader will have to accept it upon its intrinsic evidence and my own endorsement of its truth. These were the facts.

There was a wicked millionaire who owned a wood which he was preserving for a public park in his native town. A neighbor who owned an adjacent wood had offered to sell to the millionaire, and the latter had agreed to buy it. The latter had a passion for preserving trees, for he believed that our descendants would repent in sackcloth for the sin of their fathers in stripping the hills and mountains of their verdure, their value and their beauty. The cutting of the neighbor's forest would go far towards destroying the beauty of the projected park, and he expected to pay for it and take the deed at his convenience.

There was a speculator of the French persuasion who conceived the project of buying the neighbor's wood and selling it to the railroad. He waylaid the owner, and did not leave him until he had agreed to sell his trees for $1,400, to be removed from the land within two years, the Frenchman to give security for the payment of the purchase money.

The millionaire was exceedingly troubled in his mind when he heard of this sale. It was his hobby that the hills and the mountains would not praise the Lord after they were stripped of their glorious apparel; and the cutting of this wood would ruin his projected park; so he went to the Frenchman and tried to buy his contract. He offered him five hundred dollars more for it than any two neighbors would say it was worth.

The Frenchman thought his ship had come in; "Ah lak for be reech man lak you own sef," he said. "Ah feel good! mos lak reech man alretty, pooty soon! Ah don' sell mah leetly trade for no cinq cents piastre, vat you call dollaire. You geef me five tousan' dollaire, den you geets mah leetly trade avec all dose big trees! Ah, no sell heem for someting mo small, not for one soumarkee, begar."

Having found the Frenchman inflexible the millionaire applied to the owner, who said that as the Frenchman had failed to give the promised security he regarded himself as no longer bound to him by his contract. Moreover, the contract was oral and could not be enforced. He therefore sold the 138 acres of land, with the wood and

trees upon it, to the millionaire for $4,500, its value, and gave him a deed which was duly recorded.

In the state where the land was situated, as in most other states of the Union, public policy had required the passing of a statute, called the "Statute for the prevention of Frauds and Perjuries," which, in substance, declared that a contract for the sale of an interest in land was worthless unless there was some note or memorandum of it in writing signed by the party to be charged with its obligations. It was the clear duty of the courts to refuse to enforce a contract for the sale of standing trees unless it was proved by such a writing.

The wicked millionaire wished to oppress the Frenchman with this statute. He brought his bill in chancery against the Frenchman, in which he set forth that the latter had not given the security promised, that he was insolvent, that his contract with the owner was "verbal only and invested the Frenchman with no title to or legal interest in the standing trees," that he had bought the land and trees, that the cutting of the trees would cause irreparable injury to the proposed park, wherefore he prayed for an injunction against the removal of the trees by the Frenchman. The chancellor granted the injunction. The Frenchman answered that it might be true that he had not given the security, but he had done what in chancery would do just as well, he had sent the owner a letter from the wood agent of the railroad company to which he expected to sell the wood, saying that the agent was very busy, but he expected, about "week after next," to meet the Frenchman and make a contract for the sale of the wood, in the meantime, as they understood each other, he could go on with his work. This letter the owner had not returned, and, by failing to do so, had led the Frenchman to believe that he was satisfied,—that the contract, having thus been partially performed, was taken out of the statute, and although the Frenchman knew that the millionaire "claims such contract to be void under the statute of frauds, and purchased with a view of asserting such claim," still, the Frenchman claimed the protection of chancery.

On the coming in of this answer, the chancellor dissolved the injunction; the millionaire, as he had a right under the rules of chancery to do, dismissed his action and paid the costs. Then he commenced a new action, in which he set forth his claim that the contract was void under the statute of frauds with great prolixity and diffusion, and another chancellor granted a second injunction. The Frenchman answered as before, the case was referred to a master who reported the facts as they are herein above stated, the chancellor made a final decree, making the injunction permanent, and giving judgment for the wicked millionaire, that the Frenchman's contract was void: and the Frenchman appealed from one to the full bench of seven chancellors.

Now to anybody outside the fog and murkiness of chancery, this was a perfectly clear case. The contract was not in writing, there was not a scrap of writing around it, except the wood agent's letter, and he had no legal interest in the property. The statute declared such a contract to be opposed to the public policy of the state, and void. To a plain man it would seem to have been the plain duty of the appellate court to affirm the chancellor's decree and say no more about it.

But chancery calls upon suitors to open their eyes and behold the wondrous things out of its law. The appellate court did not affirm the decree; it *reversed* it, and the grounds of that reversal a lawyer could not guess if he went on guessing until doomsday.

Before entering upon the difficult work of explaining the decision, I should say that, there being no necessity for it whatever, the

Frenchman, in conformity with chancery practice, had filed a cross-bill, in which he asked the chancellor to enforce his contract, although it was not in writing; to which the millionaire answered that it was void under the statute of frauds.

The opinion of the one majority of the court traces the history of chancery from its prehistoric origin to the present time. This was necessary in order to disclose its unsuspected capability to disregard the constitution, repeal a statute and nullify a public policy. Prolix and minute as this history was, it omitted all explanation of the term "getting a man into chancery," an expression supposed to have some connection with the noble and manly act of self-defense. With this exception the history is satisfactorily complete. The relation of chancery to infants, married women, idiots, unmarried spinsters and other insane persons and the rest of mankind was discussed, with incidental references to the fish of the sea, the fowl of the air, and every creeping thing that creepeth. Having laid this broad and comprehensive basis, the opinion with extreme caution approached the case before the court. There were expressions in and connected with the first bill of complaint which might lead an inexperienced person to suppose that the millionaire intended to claim that the Frenchman's contract was void under the statute. But he did not say so. He said that the contract was verbal, that it was not in writing, that it conveyed no title to or interest in the property. But he did not say that it was void *by the statute of frauds*. The statute of frauds was not mentioned in the first bill. Except to plead that statute there might be no sense in his bill. That the contract was void under that statute was an inference from the facts stated. A party had no right to compel the court to draw an inference. Therefore the court decided that the first bill was fatally defective. Again it was argued that the purpose of a pleading was to bring out the understanding of the parties that here the answer of the defendant stated in express terms that the millionaire claimed that the contract was void *under the statute of frauds*, and that he purchased for the express purpose of claiming the benefit of the statute, that this averment showed how the Frenchman understood the first bill, and that was sufficient. But there was a conclusive answer to this claim. Chancery never permitted a defective pleading to be amended or helped out by another pleading. The first bill was therefore incurably defective in its omission to aver that the contract was void by the statute of frauds.

There was one point made in the argument which had given the court some trouble. It seemed that the first bill had been dismissed, and the second, the only bill now before the court, was not open to the objection, for it set out the statute of frauds as a defense to the Frenchman's claim with great prolixity of detail. It was argued that if the present bill was a good one it was of no consequence how many bad ones had been dismissed.

To the unlearned mind there did appear to be a certain plausibility in this argument. Those who were unfamiliar with the mysteries of chancery were frequently misled by such suggestions. The statute of frauds was a technical defense. Chancery discouraged technical defenses and never permitted them to be made but once. These defenses were boomerangs which a party hurled at his peril. If not fixed right end first, they were like the vaulting ambition mentioned in Hamlet, *ex parte*, 4 Shaks. 221, that o'erleapt itself and fell on the other side. In chancery they were subject to an invariable rule. If one of them, the statute of frauds, for example, was not pleaded correctly the first time, the party was held to have *renounced* it and could never plead it again. In this case then the averments of the second bill were not before the court and would be disregarded.

In this case the counsel for the millionaire had been persistent. He insisted that the rules of chancery gave a party the right to discontinue a defective bill for the express purpose of filing a new bill curing the defects by proper averments, and that the court had no power to nullify his right by the present decision. He had cited the rules and many statutes and decisions in support of his point.

The Court wished to have the Bar understand that it did not approve of this method of presenting cases. The citation of authorities, especially decisions of this Court, was embarrassing and enormously increased the labors of the Court in conforming a decision to decisions already made. It had sometimes happened that this could not be done with any amount of labor. The Bar should acquiesce in the decisions and speak of them only with respect. When the Court is asked how it can distinguish this case from one where a bill is dismissed under the rules, the Court replies that it will deal with such a case when it arises. It has had trouble enough to decide this case in favor of the Frenchman to lead it utterly to decline the consideration of supposed cases.

It might at first sight appear, said the chancellor, that some of these views of the Court rested upon rather narrow foundations, but when a party, after writing out the contract in his bill, claimed that it was void because it was not in writing, he, too, stood upon narrow ground and should take heed to his footsteps. Chancery was designed to supply the defects of the law. It was bound to do its work effectually, and it could not if it was constantly hampered by statutes, rules and precedents. What was the use of chancery if it could not protect a poor Frenchman against a rich millionaire? If it could not defeat such mischievous and technical objections as a statute or a legislative notion of public policy? Chancery was like number nine in the root practice of medicine, nobody knew exactly what it was, but it was intended to be resorted to when all other remedies failed.

Another point had been pressed by counsel. The Frenchman was insolvent; he had agreed to give security for the $1,400 which he was to pay for the trees. It had been argued that this agreement was material, that had it not been made the owner would not have consented to the sale. This might be true; it was true that the security had not been given, but that was not the fault of the Frenchman. He had shown due diligence. He expected to sell to the railroad company for a profit of two thousand dollars. He was ready to make the contract, but the agent put him off with a letter until week after next, when he would try to meet him and make a contract; meantime, he could go on with his work. The Frenchman sent this letter to the owner, who never returned it. This was all he could do. The agent said he could go on with his work. True, he had no right to say so, but when the knowledge came to the owner that the agent was giving directions about it, and he did not object, chancery would assume that he consented to the Frenchman's going on with his work.

In chancery that which ought to be done *is presumed to be done.* The wood agent ought to have signed that contract with a provision in it that a part of the payment for each cord of wood should be paid to the owner. That would have given the owner security, and *that* chancery presumed had been done! Upon the whole case, then, the decree must be reversed, and a mandate be issued declaring the parol contract valid, and that the Frenchman might go on and cut the wood. The mandate directed the wood agent to execute his contract, but upon a suggestion that he was not a party to the action, and might object to any decree against him on that ground, that part of the mandate was withdrawn.

Only one event prevented this case from passing into legal history as the greatest

triumph of chancery over the common law and common sense to be found in the reports. But there is no limit to the tyranny of wealth. Like a huge devil-fish the wealth of the millionaire now put forth its mighty tentacles, grasped the property and tore it away, just as the Frenchman was about to harvest his profit. Chancery had ignored public policy, repealed a statute, and made itself ridiculous to no end. For no sooner had this extraordinary decision been made public than the people, as one man, objected; they said they would not have it. They wanted their park. Fifty of them came to the chancellor with a statute in their hands, which authorized the dedication of the property to the use of the public, and demanded that he set the machinery in motion to that end. He did so; in an incredibly short time the land and trees were dedicated to the use of the public, and the park stands to this day, "to witness if I lie."

Then the wicked millionaire gave a final exhibition of the tyranny of his wealth. Just as if no court of chancery had ever existed, he ascertained the value of the poor Frenchman's contract, added to it a douceur of five hundred dollars, and paid him the full amount without discount or deduction. It was more money than he ever saw before or will ever see again. So the last state of that Frenchman was better than the first, and, like the characters in a well ordered novel, all but the wicked millionaire having been previously married, the millionaire, the Frenchman, and the fifty citizens lived happy ever afterwards.

SEVEN AGES OF THE LAWYER.

By Edward A. U. Valentine.

ALL the world's a court,
Where some are lawyers, and the rest are lawed;
And life's an action to which all are parties;
They get discharged and enter their appearance;
Their acts being seven ages.

First then the "*infant*,"
The *Joseph Junior* of the lecture room,
For whose untutored eye is drawn aside
The cumbrous drapery of words obscure,
To show the naked beauty of the truth;
Who constant cons the horn book of the law—
Smith's Leading Cases—wherein he is taught
By the *Six Carpenters* to nail the facts
And build with rule and saw a knowledge high
Of *trespass ab initio;* to learn
From *Scott & Shephard*, the important art

Of throwing squibs to scorch his legal brethren
And blind them in the practice of their trade;
And lastly pick from out the poor sweep's case
Its germ of truth long hidden in the dust.

Next, *Simon Senior*, with his hasty step,
And mind well-stuffed with legal provender
Of rules and usages and state reports;
Who deems his thesis an explosive bomb
That, when he's fired it off, will surely shatter
The many froward errors of the law,—
A nostrum for the cancer spots that gnaw
The breast of Justice 'neath her mantle fold;
Who dreams in him the soul of Webster dwells,
Tho' yet inglorious and to fame unknown;
Who pines impatient for the day to come
When he may like an eagle spread his wings
And mount to glory in the legal skies;—
And from his sheep-skin get a golden fleece;
Whose moot-court case is a momentous thing,
Fraught with grave issues and the bays of fame;
There with a disputatious flood of words,
He beards the judge on points of evidence,
And *sweeps* with tongue persuasive all before him—
Unconscious that he uses borrowed *Brougham*.

Next *Lewis Lawyer*, newly dubbed *B. L.*,
Who sighs like a furnace that is full of *Coke*;
Who woos his coy, capricious mistress, Law,
That lightly holds him, playing fast and loose
With his devotion and his awkward suit;
Who idly drums upon the window pane,
While clients that were looked for never come.

Then next *Charles Counsellor*, adorned with scars
Won lawfully in midst of wordy wars;
The wily soldier of the legal field;
Followed by witnesses that swear strange oaths;
Jealous of others, ready and quick in quarrel,
Seeking to win a judgment even against
The *canon's* mouth; calling his rival, "*brother*,"
But oftener *cozening* him.

Next, *Joseph Justice*,
Raised to the pleasant woolsack's high degree;
In awe-inspiring wig and sable gown,
With solemn verdict and an eye severe;
With fair round belly and his purse well lined.

Sixth age: the judge retired; at his club,
Taking his comfort in his easy chair;
Mellow with many years and good old port;
Much given to speech and seasoned anecdote
And wit and repartee of bench and bar,
And graphic scenes of legal days gone by;
On whom prosperity and honor smile;
While time and he together play the rubber
Of life's long game of many tricks and suits.
. . . . . .

Last scene of all: *old age*, and that grim goal,
Where Death, the sheriff, waits to serve the writ
Of summons to that higher record court,
Where all our deeds are filed and titles searched
By the impartial eye of the great Judge.
For him who's kept the sword of justice clean
And helped to make the bulwark of the law
Fit for the sentinel tread of peace, for him
"No mere oblivion" waits, but being dead,
Yet will his voice in after ages speak
In code and valued volume of the law
And monuments of honor, to the mind.

THE COURT OF STAR CHAMBER.

By John D. Lindsay.

IX.

PRYNN'S answer was an attack upon the hierarchy, and in the same style as his books.

Burton's set forth the substance of his sermon touching the innovations in the church. Bastwick's was the most aggressive and defiant. It termed the prelates "invaders of the King's prerogative, contemners of the Scriptures, advancers of popery, superstition, idolatry, profaneness, oppression of the King's subjects, in the impious performance of which they showed neither wit nor honesty; enemies of God and the King, and servants of the Devil."

The following day the court assembled, and the defendants were brought to the bar to receive sentence.

Sir John Finch, the Chief Justice of the Common Pleas, looked earnestly toward Prynn, and said: "I had thought Mr. Prynn had no ears, but methinks he hath ears." This directed general attention to Prynn, and for the satisfaction of the court the usher was directed to turn up Prynn's hair and show his ears, which being done, "the lords were displeased there had been formerly no more cut off, and cast out some disgraceful words of him."

Prynn humbly replied: "My Lords, there is never a one of your honors but would be sorry to have your ears as mine are." "In good faith, he is somewhat saucy," said Lord Coventry. "I hope your Honors will not be offended. Pray God give you ears to hear," replied Prynn.

Prynn renewed his application for permission to file his cross bill, which was again refused. He also asked that the prelates among the members of the court be dismissed from any voice in the censure of the court, "as being no way agreeable with equity or reason, that they who are our adversaries should be our judges."

"In good faith, it is a sweet motion, is it not!" observed Lord Coventry. "Herein you are become libellers. And if you should thus libel all the lords and reverend judges, as you do the most reverend prelates by this your plea, you would have none to pass sentence upon you for your libelling, because they are parties." Prynn argued that the case was not in point, as there were but one or two members of the court who, it was claimed, had been libelled, and he referred to a case where the Lord Keeper had absented himself from the hearing because a party. But this availed him nothing, and a further motion to file his answer without his counsel was also denied.

The information was then read, and each of the King's counsel was given one of the books annexed thereto (of which there were five), and proceeded to speak in turn upon their character and unlawfulness.

Lord Coventry then told the defendants that lest they should afterwards claim they had not had liberty to speak for themselves the court proposed to give them leave to say what they had to say; provided they spoke within the bounds of modesty, and that their speeches were not libellous. The defendants all answered that they hoped to deliver their speeches within the bounds prescribed. "Then speak, in God's name," said the Lord Keeper, "and show cause why the court should not proceed to censure."

Prynn proceeded to point out the hardship of his situation. "The court ordered me to put in my answer under counsel's hands. I endeavored it; they refused to

sign it. I had no power to compel them, and desired the court to order them to sign it, but the court replied they had no power to force them. How then could I, a close prisoner, compel them, if the court could not? By this means the most innocent person in the world may be made guilty of what crimes you please. I appeal to Mr. Holt if I have not used all my endeavors to get him to sign my answer."

Holt said that he found the answer "so long and of such a nature that I durst not set my hand to it for fear of giving your Honors distaste."

"My Lords," said Prynn, "I did nothing but according to the directions of my counsel; but I spake my own words. My answer was drawn up by his consent. It was his own act, and he did approve of it. And if he will be so base a coward to do that in private which he dares not acknowledge in public, I will not have such a sin lie on my conscience, — let it rest with him. Here is my answer, which though it be not signed with their hands, yet here I tender it upon my oath, which you cannot in justice deny."

"Your case is good law," said Finch, "but ill applied. The court desires no such long answer, but whether you are guilty or not guilty."

Prynn referred to the statutes of Philip and Mary, and of Elizabeth, which required in cases of libels upon the sovereign, the confession of the defendant or the testimony of two witnesses, in order to warrant a conviction, "and here is neither, nor is there in all the information one clause that doth particularly fall on me, but only in general. . . . This were both unjust and wicked. . . . You do impose impossibilities upon me. I could do no more than I did."

Coventry had heard enough, "Well hold your peace; your answer comes too late. What say you, Dr. Bastwick?"

Bastwick expressed himself in language plain but strong and in a strain of defiant irony. It was the pointed, unaffected deliverance of a persecuted man. "My honorable Lords," he began, "methinks you look like an assembly of gods, and sit in the place of God. Ye are called the sons of God. And since I have compared you to God, give me leave a little to parallel the one with the other, to see whether the comparison between God and you doth hold in this noble and righteous cause. This was the carriage of Almighty God in the cause of Sodom: before he would pronounce sentence or execute judgment he would first come down and see whether the crime was altogether according to the cry that was come up. And with whom doth the Lord consult when he came down? With his servant Abraham, and he gives the reason: 'For I know (saith he) that Abraham will command his children and household after him, that they shall keep the way of the Lord to do justice and judgment.' My good Lords, thus stands the case between your Honors and us thi day. There is a great cry come up into your ears against us from the King's attorney. Why now be you pleased to descend and see if the crime be according to the cry, and consult (with God), not the prelates, being the adversary part, who as it appears to all the world do proudly set themselves against the ways of God, and from whom none can expect justice or judgment, but with righteous men who will be impartial on either side, before you proceed to censure, which censure you cannot pass on us without great injustice before you hear our answers read. Here is my answer, which I here tender upon my oath. My good Lords, give us leave to speak in our own defense. We are not conscious to ourselves of anything we have done that deserves a censure . . . but that we have ever labored to maintain the honor, dignity and prerogative royal of our Sovereign Lord the King. Let my Lord the King live forever. Had I a thousand lives I should think them all too little to spend for

the maintenance of His Majesty's royal prerogative. My good Lords, can you proceed to censure before you know my cause? I dare undertake that scarce any one of your Lordships have read my books. And can you then censure me for what you know not, and before I have made my defense? Oh, my noble Lords, is this righteous judgment? This were against the law of God and man to condemn a man before you know his crime. The governor before whom St. Paul was carried (who was a very heathen) would first hear his cause before he would pass any censure upon him. And doth it beseem so noble and Christian [an] assembly to condemn me before my answer be perused, and my cause known? Men, brethren and fathers, into what an age are we fallen! I desire your Honors to lay aside your censure for this day, to inquire into my cause, and hear my answer read: which if you refuse to do I here profess I will clothe it in Roman buff, and send it abroad into the view of all the world, to clear mine innocency, and show your great injustice in this cause."

"But this is not the business of the day," interrupted the Lord Keeper; "why brought you not in your answer in due time?"

"My Lord," said Bastwick, "a long time since I tendered it to your Honor . . . And if my counsel be so base and cowardly that they dare not sign it for fear of the prelates (as I can make it appear), therefore have I no answer? My Lords, here is my answer, which tho' my counsel out of a base spirit dare not set their hands unto, yet I tender it upon my oath."

In answer to questions put by the Lord Keeper, Bastwick admitted having sent one of the books complained of to a nobleman's house, with a letter directed to him, whereupon Lord Arundel interposed: "My Lord, you hear by his own speech the cause is taken *pro confesso*."

"My noble Lord of Arundel," said Bastwick, "I know you are a noble Prince in Israel, and a great peer of this realm. There are some honorable Lords in this court that have been forced out as combatants in a single duel. It is between the prelates and us, at this time, as between two that have appointed the field. The one, being a coward, goes to the magistrate and by virtue of his authority disarms the other of his weapon, and gives him a bullrush, and then challenges him to fight. If this be not base cowardice I know not what belongs to a soldier. This is the case between the prelates and us. They take away our weapons (our answers), by virtue of your authority, by which we should defend ourselves, and yet they bid us fight. My Lord, does not this savor of a base, cowardly spirit? I know, my Lord, there is a decree gone forth (for my sentence was passed long since) to cut off our ears."

The Lord Keeper inquiring how he undertook to prophesy what the censure of the court should be, he answered that he could prove that the prelates had agreed long before that he should lose his ears. "The cause, my Lords, is great. It concerns the glory of God, the honor of our King. . . . And doth not such a cause deserve your Lordships' consideration before you proceed to censure? . . . My good Lords, it may fall out to be any of your Lordships' cases to stand as delinquents at this bar, as we do now. It is not unknown to your Honors the next cause that is to succeed ours is touching a person that hath sometimes been in greatest power in this court; and if the mutations and revolutions of persons and times be such, then I do most humbly beseech your Honors to look upon us as it may befall yourselves. But if all this will not prevail with your Honors to peruse my books and hear my answer read, which I here tender upon the word and oath of a soldier, a gentleman, a scholar, and a physician, I will clothe them (as I said before) in Roman buff, and disperse them through-

out the Christian world, that future generations may see the innocency of this cause, and your Honors' unjust proceedings in it; all which I will do though it cost me my life."

"Mr. Doctor, I thought you would be angry," sneeringly remarked the Lord Keeper.

"No, my Lord," said Bastwick, "you are mistaken. I am not angry or passionate. All that I do press is that you would be pleased to peruse my answer."

"Well, hold your peace. Mr. Burton, what say you?" said the Lord Keeper, addressing the third defendant.

Burton was discouraged with the experience of his fellows, and made no very vigorous effort to state his cause. But he did not weaken a jot. He faced his unjust judges manfully.

His answer had been expunged from the records.

He said he confessed having written his book, but intended nothing inflammatory nor seditious. "In my judgment, and as I can prove it," he said bravely, "it was neither railing nor scandalous. I conceive that a minister hath a larger liberty than always to go in a mild strain. I being a pastor of my people whom I had in charge and was to instruct, I supposed it was my duty to inform them of these innovations that are crept into the church, as likewise of the danger and ill consequence of them. As for my answer, ye blotted out what ye would, and then the rest, which made best for your own ends, you would have me to stand. And now for me to tender only what will serve for your own turns, and renounce the rest, were to desert my cause, which before I will do, or desert my conscience, I will rather desert my body, and deliver it up to your Lordships, to do with it what you will."

"This is a place where you should crave mercy and favor, Mr. Burton," said the Lord Keeper, "and not stand upon such terms as you do."

"There wherein I have offended through human frailty I crave of God and man pardon," responded Burton. "And I pray God that in your sentence you may so censure us that you may not sin against the Lord."

The prisoners desired to speak further, but were commanded to silence, and the court proceeded to pass sentence.

Lord Cottington was the first to express himself: "I condemn these three men to lose their ears in the Palace yard at Westminster, to be fined five thousand pounds a man to His Majesty, and to perpetual imprisonment in three remote places of the kingdom, namely, the Castles of Carnarvon, Cornwall and Lancaster." Burton was also to be deprived of his ecclesiastical benefice and degraded from his ministerial function and degrees in the university.

All were denied the use of pen, ink and paper, and all books except the Bible, Book of Common Prayer and a few books of private devotion.

Finch proposed that in Prynn's case, whom he regarded as the worst of the lot, he should be branded in the cheeks with the letters "S" and "L," for a seditious libeller.

All the lords agreed to this sentence.

Thereupon Archbishop Laud delivered a lengthy address, wherein he defended himself against the numerous charges that had been made against him in the book, and concluded by saying: "I humbly crave pardon of your Lordships for this my necessary length, and give you all hearty thanks for your noble patience, and your just and honorable censure upon these men, and your unanimous dislike of them, and defense of the church. But because the business hath some reflections upon myself I shall forbear to censure them, and leave them to God's mercy and the King's justice."

The sentence was afterwards executed in the Pillory in Cheapside in the most cruel

manner conceivable. The executioner had been cautioned to make no mistake this time, and he carried out his instructions with barbarous fidelity. He heated his irons twice to burn each of Prynn's cheeks, and cut one of his ears so close as to cut off a part of the cheek. All of the defendants' ears were cut so close as to sever arteries, and the surgeon had considerable difficulty in stopping the flow of blood.

The offending books were publicly burned at the same time.

OLD WORLD TRIALS.

VII.

REG. *v.* CONSTANCE KENT.

IN the case of Constance Kent are raised some curious points as to criminal responsibility, and also as to the medico-legal value of confession as an evidence of guilt.[1]

On the morning of 30th June, 1860, Francis Saville Kent, a little boy four years of age, was found murdered in an outhouse on his father's premises, Roadhill House, Wiltshire. The throat was cut to the bone, and the chest had been wounded to the heart. The corpse was wrapped in a blanket belonging to the bed on which the child had slept the night before. A piece of flannel, such as women sometimes wear as a chest protector, was lying under the body; and a portion of a newspaper, which had evidently been used for wiping a bloody knife, lay beside it. No other *indicia* of guilt were discovered, and even the owner of the piece of flannel could not be traced.

The household consisted of twelve persons, of whom only the names of Mr. and Mrs. Kent, the nurse, Elizabeth Gough, and Constance Kent, a daughter of Mr. Kent by his first wife, are material to the present story. The murdered boy, a younger child, and the nurse, Elizabeth Gough, slept in the nursery, each in a separate bed. Early on the morning of the 30th, Gough awoke and found the little boy's bed empty, but supposing that Mrs. Kent had taken him to her own room, gave herself no uneasiness on the subject, and fell asleep again.

When the family came down stairs to breakfast it was found that the child was missing, and soon afterward the body was discovered in the plight we have described. All the doors and windows of the house had been securely locked and closed the night before; but the housemaid, on coming down in the morning, had found the drawing-room door and window open. There were, however, no blood stains in the house or garden, and no marks of any struggle, nor had any noises been heard by any member of the family.

Mr. Kent, Mrs. Kent, Gough, and Constance, who was then about sixteen years of age, were in turn the objects of popular and police suspicion; and certain expressions of dislike towards the murdered child, which the young lady had on several occasions been heard to utter, together with the disappearance of the nightdress she had been wearing on the night before the murder, led to her arrest. But she bore herself in this trying ordeal in a natural and apparently innocent manner, and was soon discharged. She then went to school for two years, and afterwards entered St. Mary's College, Brighton, a semi-conventual order

[1] An interesting article on this question by Dr. William A. Hammond, will be found in the papers of the New York Medico-Legal Society, 1st ser., p. 318.

connected with the Church of England, with a rector and a lady superior.

In the spring of 1865, the world was surprised to learn that Miss Constance Kent had voluntarily come forward and confessed herself guilty of her step-brother's murder. At the trial before Mr. Justice Willes, she plead guilty, and Mr., afterward Lord, Coleridge, made the following statement at her instance after the plea was recorded: "Before your Lordship passes sentence, I desire to say two things. First, solemnly, in the presence of Almighty God, as a person who values her own soul, she wishes me to say that the guilt is hers alone, and that her father and others, who have so long suffered most unjust and cruel suspicion, are wholly and absolutely innocent; and secondly, that she was not driven to this act by unkind treatment at home, as she met with nothing there but tender and forbearing love. And I hope I may add that it gives me a melancholy pleasure to be the organ of these statements for her, because, on my honor, I believe them to be true." The prisoner was then sentenced to death by the learned judge with an emotion which he could not repress; but the capital sentence was afterwards commuted to penal servitude.

With regard to this case three different theories prevail. The first and least satisfactory one is that Constance Kent was simply a precocious criminal of the ordinary type. The second and probably the correct view is that she belonged either to the denizens of the borderland between sanity and insanity, whose mental equilibrium is at any moment liable to be disturbed, or to the category of moral lunatics, with whose idiosyncrasies all students of continental jurisprudence are familiar. Her mother had died a lunatic, and Constance herself, though described as a girl of warm and generous disposition, possessed a dull and sluggish intellect. At the time of the trial, she was an exceedingly plain-looking young woman, with a broad, full, uninteresting face, and large eyes that glanced uneasily around her as if expecting some danger.

Dr. Hammond, in his interesting comments upon this case, suggests a third theory; viz., that Miss Kent, persistently brooding over the murder, knowing that her father's heart had been broken by the suspicions resting upon him, subjected in St. Mary's College unconsciously to the action of influences calculated to exalt her cerebral sensibility, already abnormally heightened by hereditary predisposition, gradually lost her consciousness of innocence and made an insane and false confession of a crime which she had never committed. Although this ingenious theory cannot, of course, be disproved, the coincidence between the confession and the circumstances that caused Miss Kent's original arrest; viz., her dislike to the murdered child, and the unaccountable disappearance of the nightdress that she wore the night before the murder, goes a far way towards discrediting it.

THE ELOQUENCE OF SILENCE.

"SOON after I had commenced the practice of my profession in Boston," said Mr. Webster, "a circumstance occurred which forcibly impressed upon my mind the sometimes conclusive eloquence of silence, and I wondered no longer that the ancients had erected a statue to her as to a divinity.

"A man in New Bedford had insured a ship, lying at the time at the wharf there, for an amount much larger than its real value, in one of our insurance offices at Boston; this ship had suddenly taken fire and been burned down to the water's edge. It had been insured in the Massachusetts Insurance Company, of which General Arnold Wells was president and myself attorney.

"General Wells told me of the misfortune that had happened to the company in the loss of a vessel so largely insured, communicating to me at the same time the somewhat extraordinary manner in which it had been destroyed.

"'Do you intend?' I asked him, 'to pay the insurance?'

"'I shall be obliged to do so,' replied the General.

"'I think not, for I have no doubt, from the circumstances attending the loss, that the ship was set on fire with the intent to defraud the company of the insurance.'

"'But how shall we prove that? and what shall I say to Mr. Blank, when he makes application for the money?'

"'Say nothing,' I replied, 'but hear quietly what he has to say.'

"Some few days after this conversation Mr. Blank came up to Boston, and presented himself to General Arnold Wells at the insurance office. Mr. Blank was a man very careful of his personal appearance, and of punctilious demeanor. He powdered his hair, wore clean ruffles and well-brushed clothes, and had a gravity of speech becoming a person of respectable position. All this demanded civil treatment, and whatever you might think of him, you would naturally use no harsh language toward him. He had a defect in his left eye, so that when he spoke he turned his right and sound eye to the person he addressed, with a somewhat oblique angle of the head, giving it something such a turn as a hen who discovers a hawk in the air. General Arnold Wells had a corresponding defect in the right eye.

"I was not present at the interview, but I have heard it often described by others who were. General Wells came out from an inner office, on the announcement of Mr. Blank's arrival, and *fixed* him (to use a French expression) with his sound eye — looking at him seriously, but calmly. Mr. Blank looked at General Wells with *his* sound eye, but not steadily — rather as if he sought to turn the General's right flank.

"They stood thus, *with their eyes cocked at* each other, for more than a minute before either spoke, when Mr. Blank thought best to take the initiative.

"'It is a pleasant day, General Wells, though rather cold.'

"'It is, as you say, Mr. Blank, a pleasant, though rather cold day,' replied the General, without taking his eye down from its range.

"'I should not be surprised, General,' continued Mr. Blank, 'if we should have a fall of snow soon.'

"'There might be more surprising circumstances, Mr. Blank, than a fall of snow in February.'

"Mr. Blank hereupon shifted his foot and topic. He did not feel at ease, and the less so from his desperate attempts to conceal his embarrassment.

"'When do you think, General,' he replied, after a pause, 'that Congress will adjourn?'

"'It is doubtful, I should think, Mr. Blank, when Congress will adjourn; perhaps not for some time yet, as great bodies, you know, move slowly.'

"'Do you hear anything important from that quarter, General?'

"'Nothing, Mr. Blank.'

"Mr. Blank by this time had become very dry in the throat—a sensation, I have been told, one is very apt to feel who finds himself in a embarrassing position, from which he begins to see no possibility of escape. He feared to advance, and did not know how to make a successful retreat. At last, after one or two desperate and ineffectual struggles to regain self-possession, finding himself all the while within point-blank range of that raking eye, he wholly broke down, and took his leave, without the least allusion to the matter of insurance.

"He never returned to claim the money."

JUSTICE IN BRITISH HONDURAS.

WE went to the Grand Court. On the back wall, in a massive mahogany tablet, were the arms of England; on a high platform beneath was a large circular table, around which were heavy mahogany chairs with high backs and cushions. Five of the judges were in their places; one of them was a mulatto. The jury were empanelled, and two of the jurors were mulattoes; one of them, as the judge who sat next me said, was a Sambo, and of the descending line, being the son of a mulatto woman and a black man. I was at a loss to determine the caste of a third, and inquired of the judge, who answered that he was his (the judge's) brother, and that his mother was a mulatto woman. I had noticed the judges and jurors, but I missed an important part of an English Court. Where were the gentlemen of the bar? Some of my readers will, perhaps, concur with Captain Hampton, that Balize was the last place made, when I tell them that there was not a single lawyer in the place and never had been; but, lest some of my enterprising professional brethren should forthwith be tempted to pack their trunks for a descent upon the exempt city, I consider it my duty to add that I do not believe there is the least chance for one. As there is no bar to prepare men for the bench, the judges, of course, are not lawyers. Of the five then sitting, two were merchants, one a mahogany cutter, and the mulatto, second to none of the others in character or qualifications, a doctor. This Court is the highest tribunal for the trial of civil causes, and has jurisdiction of all amounts above £15. Balize is a place of large commercial transactions; contracts are daily made and broken, or misunderstood, which require the intervention of some proper tribunal to interpret and compel their fulfilment, and there was no absence of litigation; the calendar was large, and the court room crowded. The first cause called was upon an account, when the defendant did not appear, and a verdict was taken by default. In the next the plaintiff stated his case and swore to it: the defendant answered, called witnesses, and the cause was submitted to the jury. There was no case of particular interest. In one the parties became excited, and the defendant interrupted the plaintiff repeatedly, on which the latter, putting his hand upon the shoulders of his antagonist, said in a coaxing way, "Now don't, George; wait a little, you shall have your turn; don't interrupt me, and I won't you."

All was done in a familiar and colloquial

way; the parties were more or less known to each other, and judges and jurors were greatly influenced by knowledge of general character. I remarked, that regularly, the merits of the case were so clearly brought out, that when it was committed to the jury there was no question about the verdict, and so satisfactory has this system proved, that, though an appeal lies to the Queen in council, but one cause has been carried up in twenty-two years. Still, it stands as an anomaly in the history of English jurisprudence; for, I believe, in every other place where the principles of the common law govern, the learning of the Bench and the ingenuity of the Bar are considered necessary to elicit the truth. — *Stephens' Central America.*

The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

THE PICKWICK LAWYERS.— Mr. Frank Lockwood, Q. C., has published a clever address on "The Lawyers in the Pickwick Papers," with a frontispiece of Serjeant Buzzfuz, drawn by Mr. Lockwood. Mr. Lockwood informs us that there are three hundred and sixty characters in this book!—a statement almost incredible, but we rely on his census. Another statement is quite original and striking—that Serjeant Buzzfuz's address to the jury is the best known speech in legal annals. It is indeed, and Mr. Snyder ought to have included it in his "Great Speeches by Great Lawyers," although perhaps it is an instance of greatness thrust upon the person and the subject. Mr. Lockwood records, with true British pride, that on the occasion of the delivery of this address he was introduced to the audience by Lord Chief Justice Russell, and he gives us his speech of introduction, but we regard with greater interest his record of the fact that Charles Dickens's son was present and made a neat little speech.

"THE DEADLY YEW."—We once perpetrated a poem under this title for THE GREEN BAG. At that time we were ignorant of a curious fact in natural history, recently brought to light by the "Albany Law Journal," which probably has been consulting with the Forestry Commission. That journal, in speaking of the celebrated case reduced by us to metre as aforesaid, and of another more recent English case concerning projecting branches, describes the trees in question as "Ewe" trees. If that designation is correct, the English Courts ought to be more lenient towards their ramifications.

THE NEW CONSTITUTIONAL CONVENTION.— It is highly probable that Mr. Joseph H. Choate, the presiding officer of this body, did not find his position last summer an "Easy Chair." He seemed however to bring his good nature and bright humor to bear at every point of stress, and to do his best to convince the struggling minority that their rights were not being sacrificed by the rapacious majority. Probably he was grateful for the silver "loving cup" presented to him at the close of the unloving performances. It is reported that nearly four hundred amendments were introduced, but only some twenty-five came out alive. Perhaps the most important measure rejected was that for woman suffrage, which seems to have been defeated on the ground that there are already too many voters, many of them bad, and that to suffer women to vote would be to admit some more bad voters. The convention seems to have done nothing to obviate the delays in the courts, unless *abolishing* a number of courts in cities may be considered a step in that direction. The convention proposes to prohibit free passes on lines of travel. It also proposes to apportion the State into election districts by the constitution, instead of leaving the matter to gerrymandering legislation. To provide for increase of population it is proposed gradually to increase the number of senators up to fifty and of assembly men up to one hundred and fifty instead of thirty-two and one hundred and twenty-eight, as at present. What would Moorefield Storey say to this? Doubtless that is a provision for more patriots to be bribed and otherwise corrupted. It seems to us that the great State has already got as many patriots as it can stand, although some of the New England States have more. But patriots come higher in New York than in New England. It is said that some of the lawyers in the convention contend that the amendments approved by it became a part of the constitution without submission to the people. The constitution does not seem explicit on this point. Amendments recommended by the legislature must be submitted, but in respect to those recommended by conventions the constitution seems to make no provision. The uniform practice however has been to submit them, and unquestionably this will prevail. Much criticism has been made on the submission of most of the amendments on a single ballot, which is manifestly unjust, as a voter may be compelled to vote for several bad ones for the sake of a single good one.

"I. D."— Somebody sends us a very much marked copy of "The Representative," a Minneapolis comic newspaper in its tender second year, which apparently represents nobody but "I. D.," who signs nearly all the articles. These initials mean Ignatius Donnelly. At the same moment that we took it in, we bought a penny newspaper in which the most prominent head-line was "Corbett is Mad!" Well, so is I. D., and one is just about as important as the other, although as reported it seems to us that the bruiser is the more gentlemanly and writes the better English. Much of the present number of this "Representative" is given up to abusing the lawyers. I. D. starts out thus: "The lawyers are to politics what the Jews are to finance — they are too devilish smart for anything." This does not consist very well with the motto of the newspaper, which is: "Speak to the children of Israel that they go forward." To substantiate his attacks on the lawyers I. D. quotes Christ's denunciation of "lawyers," either not knowing or not being honest enough to admit that Christ meant the expounders of the church law — the ministers. He does admit that there have been a few "honest" lawyers who "tower above the darkness and baseness of their age," and among them he puts Lord Bacon! (By the way, why has I. D. omitted thus far to claim for Bacon the authorship of the Bible?) He argues that lawyers are not fit for statesmanship because they have been trained "to defend wickedness as vigorously as virtue." He seems to forget that lawyers laid the foundations of this government, and have mainly administered it and made its laws up to this time. The radical trouble with I. D. is that he takes himself too seriously. His newspaper is comic, even funnier than his cypher — not serious. He is what Artemus Ward would have called an "amoosin cuss," and he is both adjective and noun. He is a Populist, and he is particularly down on somebody of the name of Macdonald who is running for office, and probably is a lawyer, and "has been bought up by the Republicans." He writes his "editorials on the cars," and they *are* "red-hot." He styles the people who don't believe in issuing a billion more of currency, "senseless old idiots." He calls Gov. Waite a "grand old man," and he backs up the bloody bridles utterance. The old parties "are really one double-jointed back-action sham." The lawyers are mainly "vermin," the editors are too frequently "donkeys" and "lunatics." "Lincoln and Tom Jefferson were "patriotic and honest lawyers," and he names eight of the same sort in Minnesota, and says there are "a number of others." I. D. would much better have stayed in the profession and salted it. Just now he is peppering it. He observes: "It was the proud boast of the People's Party during the first year of its existence that it had no lawyers in it. But now the aurora of victory brightens the Populistic sky, and the lawyers are rushing into our ranks by the wholesale. You couldn't keep them out with a club," and so I. D. is trying Samson's favorite weapon on them.

A Novel Club. — In Buffalo there is a club which has been in successful operation for several years, and so far as this Chair knows, is peculiar to that city. It has and needs no club-house. It flourishes only in the winter. It causes no grief to wives by late hours of husbands and doubtful fumbling at keyholes, and ill-concealed, awkward mounting of stairs. All it essays to do is to give four or five dinners every winter at a hotel. But these occasions are distinguished by giving great prominence to the "feast of reason." At each dinner some distinguished public man is invited to address the diners on his hobby, which is always one of radical public interest and current general discussion, embracing politics, religion, law, science, culture, finance, education. The widest liberality is shown in the choice of speakers and topics, and to indicate this purpose the association is named "The Liberal Club." The membership has been limited to one hundred and twenty-five, but it is to be increased to one hundred and seventy-five. The list of waiting candidates for membership is always very large. The members consist of the most prominent and representative men of the city — lawyers, physicians, clergymen, editors, teachers, merchants, manufacturers and others. After the dinner is eaten and cigars are lighted, the invited speaker gives his address, about an hour in length. Then two or more members of the club, previously appointed, give their views on the subject, and then the matter is thrown open for general questioning and discussion. Last winter one of the most interesting subjects was Classical Education, on which President Eliot, of Harvard, was the principal speaker. Another evening was given to Theosophy, another to Bi-metallism, This winter the Single Tax and Government of Cities are to be discussed. A new feature, introduced this season, is a memorial evening, devoted to the consideration of some prominent man recently deceased. This winter that evening will be set apart to George William Curtis. While the principal speaker is always treated with the respect due to a guest and an expert, it must not be supposed that his views escape criticism and dissent. Frequently his utterances are "handled without gloves." The following subjects have been expounded by the following speakers: —

Public Duty, President Andrews, of Brown University; the New Education, President McAllister, of Drexel Institute; the Silver Question, Prof. Taussig, of Harvard University; the Evolution of Religion, President Schurman, of Cornell University; Religion's Debt to Science, Rev. Samuel R. Calthrope, of Syracuse; the Relation of Invention to Labor, Carroll D. Wright; the Duties of American Citizenship, Theodore Roosevelt; the Government of Cities, William Horace Hotchkiss of Buffalo; the Drift of Modern Philosophy, President Schurman; Social Life and Literature in America, Hamilton W. Mabie; Problems in Psychology, President Hall of Clark University; the Progress of Psychical Research, Richard Hodgson of Boston; the History of Religions, Prof. Toy, of Harvard University; Classical Education, President Eliot, of Harvard University; Bi-metallism, General Francis G. Walker.

This club has become a recognized influence in Buffalo, and has already demonstrated the possession of skilled knowledge and the ability to convey it in an attractive and illuminating manner by a large body of citizens, whose talents have hitherto lain concealed and unused. It seems to this Chair that this institution affords a great deal better way of spending one evening a month than wasting it at an ordinary club-house, talking politics, disseminating gossip, and going home more conceited and no better informed than at the beginning of the evening. It seems that it would be a good plan for lawyers to adopt in other cities. The dinner is a rather simple one, and nothing "to drink" is provided except coffee and a claret-cup. The whole expense is defrayed by a subscription of $12 per member. No "ladies" are supposed to be admitted, but almost always there is a suggestion of feminine flutter behind screens at one end of the hall. The women have themselves set up a similar club, called "The Contemporary," which meets in the afternoon of the same day, has nothing to eat, and listens to an address by the same invited speaker, — not necessarily on the same subject. It is said that these occasions are "improving." But this Chair once overheard the following dialogue between two women coming home from one of them: *A.* "My! but wasn't he deep, though!" *B.* "Yes, but he makes you think awfully." But if our women expect to vote they must be getting up their education.

THE FLITCH OF BACON. — The following is extracted from "The Brief": —

"The annual trial of the various claims to the Dunmow Flitch of Bacon is a much more realistic piece of forensic mummery than many people suppose. The judge wears a wig and scarlet robe; the counsel for the claimants orate with fervor and feeling, and the jury look quite as wise as some of the juries who hold the balance at the Royal Courts of Justice. The foreman, in particular, makes the accustomed show of being the possessor of a special fund of intelligence, and the Dunmow oath is administered with a solemnity which is not always exceeded by the swearing of witnesses in courts of justice."

The origin and the *modus operandi* of this matter may not be known to all legal readers. The legend is that Juga, a noble lady, in 1111, established a custom, restored by Robert de Fitzwalter, in 1244, that "any person from any part of England, going to Dunmow, in Essex, and humbly kneeling on two stones at the church door, may claim a gammon of bacon, if he can swear that for twelve months and a day he has never had a household brawl nor wished himself unmarried." After the claim is substantiated, a procession is formed on horseback, headed by a piper, next succeeded by one bearing the flitch, then by the happy couple on one horse, and completed by the friends and relatives. Of all this Stothard gives a pleasing picture, which has been reproduced in an engraving. The claim has been substantiated several times in recent years, and on one occasion the prize was carried off by a pair from this country. It is understood that Chief Justice Bleckley contemplates putting in a claim to the flitch in company with his recent spouse and their single issue — which we believe his Honor does not regard as immaterial. On several points in this matter we are ignorant, and we call for information from our English friends. How is the baconian fund provided, and can more than one flitch be awarded in the same year? Before whom is the oath taken and the examination conducted? Could perjury be predicated of a false oath? It seems to us that "I. D." should at once assert Lord Verulam's claim to the foundation of the custom.

This is not the only ancient and curious custom celebrated in very recent days in England. The ride of Godiva through Coventry is regularly kept up, or at all events has been recently imitated by a lady of affluent charms, in tights, with her back hair down. The bacon matter probably is better founded than the latter. When we were on the spot some years ago we were metrically moved to the following reflections upon the legend: —

GODIVA.

'Tis sweet in Coventry to walk,
And dream that round the square
A palfrey may demurely stalk,
And on his back may bear
Godiva of the shining tresses,
The sheerest of go-diving dresses.

And every day "the shameless noon,"
With just the same twelve strokes,
Sends forth the same melodious tune
Above the ancient oaks,
While shimmering the sunbeams quiver
Upon the dimpled, lazy river.

And at this corner stands the house
Where Peeping Tom did lie
Ensconced in garret like a mouse,
To see the dame ride by; —
Poor fool, to risk both eyes when one
For his mean purpose would have done!

But taxes now the town enrich
As if the rider fair
Had been restricted to a "switch"
Instead of her own hair;
And doubtless she had been less hot
If she had worn a "Psyche knot."

'Tis sad to let such legends die,
But this enchanting tale
Was never fact at Coventry,
Or people would not fail
To stuff the lady's horse when dead,
And show him at some pence a head.

NOTES OF CASES.

SCHOOL TEACHER'S CONTRACT — ACT OF GOD. — There is no state of facts, however curious, that is not sooner or later duplicated. In Gear *v.* Gray, Appellate Court of Indiana, in June, 1894 (37 N. E. Rep. 1059), it was held that where one employed to teach in a public school for a certain time is able and willing to teach during that time, the fact that the school was necessarily closed part of the time by order of the Board of Health, because of the prevalence of a contagious disease among the pupils, does not deprive the teacher of the right to compensation for the entire time, since such closing of the schools is not caused by the act of God. This decision is based on Dewey *v.* Alpena School District, 43 Michigan, 480; 38 Am. Rep. 206; 1 Eng. Ruling Cases, 347, note, where the school was closed, by order of the school authorities, more than three months on account of the prevalence of small-pox. The Court said: —

"It seems to us that if this case is well considered (and we think it is), it can make no difference whether the order was made by the school authorities themselves or by the Board of Health. In either case it will be presumed that it has been properly made until the contrary appears. But the closing of a school by the order of a School Board or a Board of Health is not the act of God, however prudent and necessary it may have been to make such order. It was one of the contingencies which might have been provided against by the contract, but was not. It was the misfortune of the appellant, and if the appellee was present, ready and willing to teach the school (which is alleged in the complaint, and not denied in the answer), the fact that no pupils were provided her by the School Board will not deprive her of recovering her wages under the contract."

TOWN CONTRACT TO SUPPLY WATER. — In Watson *v.* Needham (Mass.), 24 L. R. A. 287, it was held that a contract to supply water for a boiler to make steam to heat a green-house is one which a municipal corporation may legally make, where it has a municipal water supply, and for a breach of which it may be liable in damages. The Court said: —

"It may be a matter of some difficulty to determine precisely what uses are included within the public purposes for which water lawfully may be taken. In regard to uses strictly domestic, there can be no doubt. We are of opinion that other uses are included, such as are fairly incidental to the ordinary modes of living in cities and large towns, and as involve the operation of motors requiring but a small quantity of water, which may reasonably be supplied from an aqueduct of such capacity as would be needed to meet the ordinary requirements of the inhabitants for domestic and other similar purposes. We are of opinion that the use in the present case was one for which the town might legally furnish water."

"The town was acting in the performance of a public duty, in supplying water for public use, and incidentally was making contracts with individuals, adapted to the circumstances of each particular case. It would not be expected to guarantee a supply of water against all contingencies, but only to guarantee proper effort to insure a constant supply. In the regulations, which were made part of the contract, the right to shut off the water in all cases when it becomes necessary to make extensions or repairs, and whenever the commissioners deem it expedient, was expressly reserved. Subject only to that reserved right, the town was bound to use reasonable care and diligence to have ready for delivery a sufficient supply of water for the plaintiff's use, so long as the contract remained in force. Merrimack River Sav. Bank *v.* Lowell, 152 Mass. 556, 10 L. R. A. 122."

This case must be distinguished from that of a municipal corporation undertaking to supply water for general use, but not making contracts to supply individuals, or furnish any particular facility. In that case there is no liability. Vanhorn *v.* City of Des Moines, 63 Iowa, 447; 50 Am. Rep. 750; Black *v.* City of Columbia, 19 S. C. 412; 45 Am. Rep. 785; Painter *v.* City of Worcester, 123 Mass. 311; 25 Am. Rep. 90; Wheeler *v.* Cincinnati, 19 Ohio St. 19; 2 Am. Rep. 368.

INHERITANCE — MURDER OF ANCESTOR BY HEIR. — In Shellenberger *v.* Ransom, the Supreme Court of Nebraska have recently, upon a re-hearing which

has been pending three years, reversed their former decision, and now hold that the murder of an intestate by one of his natural heirs does not estop the murderer from taking the inheritance. The former decision was based on the celebrated case of Riggs *v.* Palmer, 115 N.Y. 506. Since the decision of the latter case however, an Ohio circuit court have held to the contrary of the New York case, in Dean *v.* Milliken, 28 Ohio Law Journ. 357; and in Owens *v.* Owens, 100 N. C. 240, a widow, accessary to the murder of her husband, was still held entitled to dower. The last two cases were cited by the court in the principal case, but no reference was made to the celebrated case of Cleaver *v.* Mutual Reserve Fund Life Association, 1 Q. B. [1892], 147. There it was held that the executors of Mr. Maybrick could recover an insurance on his life effected by him for the benefit of his wife, although she had murdered him; but it was put on the ground that the moneys formed part of his estate, the trust for her benefit having become void by reason of her crime, and as between the insurer and the executors the question of public policy could not arise. Esher, M. R., said: "That the person who commits murder, or any person claiming under him or her, should be allowed to benefit by his or her criminal act, would no doubt be contrary to public policy. But if the matter can be dealt with so that such person should not be benefited," the company should not be allowed to avoid the policy for which they had received premiums for many years. Fry, L. J., said: "It appears to me that no system of jurisprudence can with reason include amongst the rights which it enforces rights resulting directly to the person asserting them from the crime of that person. If no action can arise from fraud, it seems impossible to suppose that it can arise from felony or misdemeanor." Lopes, S. J., said: "I do not doubt that the principle of public policy would prevent the wife from recovering the amount of the policy money from them, and so reaping benefit from her crime." These observations are of course *obiter*, but they express the common and right sense of the matter. The Nebraska court now repudiate the New York doctrine, because they have discovered that the latter court misapprehended the case of Insurance Company *v.* Armstrong, 117 U. S. 599, in assuming that the action was brought by the representative of the murderer instead of the representative of the insured. That does not help the Nebraska court. If the right of action was denied to the representative of the innocent insured, much more would it be denied to the representative of the murderer. (The Armstrong case is contrary to the Maybrick case, but that is unimportant; our court simply go further than the English court on the same road.) It really seems to us that the question is too clear for debate. The position of the Nebraska, Ohio and North Carolina courts, that a murderer may inherit from his victim, because the statute of descent does not say that he shall not, seems almost grotesque in its blind narrowness amounting to practical immorality. One might as well contend that a highwayman who kills a traveler and takes his horse, although he must go to prison for the crime, is still entitled to the horse because the statute does not provide to the contrary! The Saviour probably did not think that the wicked men in the parable were sound in law when they said: "This is the heir; come, let us kill him, and the inheritance shall be ours." And the "Central Law Journal" is equally grotesque when it pronounces this Nebraska decision to be on "a safe and sound basis."

ADMINISTRATION ON ESTATE OF LIVING PERSON. — Another decision almost equally grotesque, in our judgment, was that of the New York Court of Appeals, in Roderigas *v.* Institution, 63 New York, 460; 20 Am. Rep. 555, that letters of administration on the estate of a person still living would protect his debtor in paying the debt to that administrator. This judgment was pronounced by four judges against three, and has always stood alone, and has recently been disapproved by the United States Supreme Court, in Scott *v.* McNeal. It was denied in Devlin *v.* Commonwealth, 101 Pa. St. 273; 47 Am Rep. 710, and disapproved in Johnson *v.* Beazley, 65 Mo. 250; 27 Am. Rep. 285; and the contrary was declared in Melia *v.* Simmons, 45 Wis. 384; 30 Am. Rep. 746; Thomas *v.* People, 107 Ia. 517; 47 Am. Rep. 458; Stevenson *v.* Superior Court, 62 Cal. 60; D'Arusment *v.* Jones, 4 Lea, 251; 40 Am. Rep. 12, Gray, J., in the principal case, also cites to the same effect; French *v.* Fraziers Adm'r (1832), 7 J. J. Marsh. 425, 427; State *v.* White (1846), 7 Ired. 116; Duncan *v.* Stewart (1854), 25 Ala., 408; 60 Am. Dec. 527; Andrews *v.* Avory (1858), 14 Grat. 229, 236; 73 Am. Dec. 355; Moore *v.* Smith (1858), 11 Rich. Law, 569; 73 Am. Dec. 122; Morgan *v.* Dodge (1862), 44 N. H. 255, 259; 82 Am. Dec. 213; Withers *v.* Patterson (1864), 27 Tex. 491, 497; 86 Am. Dec. 643; Mo., 250, 264; Perry *v.* Railroad (1882), 29 Kan. 420, 423. The learned justice observes: —

"All proceedings of such courts in the probate of wills and the granting of administrations depend upon the fact that a person is dead, and are null and void if he is alive. Their jurisdiction in this respect being limited to the estates of deceased persons, they have no jurisdiction whatever to administer and dispose of the estates of living

persons of full age and sound mind, or to determine that a living man is dead, and thereupon undertake to dispose of his estate. A court of probate must indeed inquire into and be satisfied of the fact of the death of the person whose will is sought to be proved or whose estate is sought to be administered, because, without that fact, the court has no jurisdiction over his estate; and not because its decision upon the question, whether he is living or dead, can in any wise bind or estop him, or deprive him, while alive, of the title or control of his property. As the jurisdiction to issue letters of administration upon his estate rests upon the fact of his death, so the notice given before issuing such letters assumes that fact, and is addressed, not to him, but to those who after his death may be interested in his estate, as next of kin, legatees, creditors, or otherwise. Notice to them cannot be notice to him, because all their interests are adverse to his. The whole thing, so far as he is concerned is *res inter alios acta*. Next of kin or legatees have no rights in the estate of a living person. His creditors indeed, may, upon proper proceedings, and due notice to him, in a court of law or of equity, have specific portions of his property applied in satisfaction of their debts. But neither creditors nor purchasers can acquire any rights in his property through the action of a court of probate, or of an administrator appointed by that court, dealing, without any notice to him, with his whole estate as if he were dead. The appointment by the Probate Court of an administrator of the estate of a living person, without notice to him, being without jurisdiction, and wholly void as against him, all acts of the administrator, whether approved by that court or not, are equally void. The receipt of money by the administrator is no discharge of a debt, and a conveyance of property by the administrator passes no title."

The notion that a living person can be deprived of his estate by letters of administration, because the probate court has jurisdiction to grant letters upon estates of dead persons, and having decided that the man is dead, he *is* dead, is funnier than the notion that a son may kill his father and thus capture his estate, but it seems no less unsound, albeit less immoral. The New York court is not quite consistent in its views of "reading into" statutes.

TORT—SELLING GLANDERED HORSE.—In State *v.* Fox, 29 Atl. Rep. 601, the Court of Appeals of Maryland has recently decided that one who sells a horse, fraudulently concealing the fact that he has the glanders, may be held liable in an action for damages for the death of a man who afterwards contracts the disease in taking care of the horse, provided it appears that such is the natural and probable consequence of contact with such a horse, and that the man was in some way acting for the purchaser and was not merely an intermeddler or volunteer. The Court, after citing Thomas *v.* Winchester, 6 N. Y. 397, and Heaven *v.* Pender, 11 Q. B. Div. 503, said: "Without deeming it necessary to pass upon all of them, or to go to the full extent that Thomas *v.* Winchester has gone, we are of the opinion that the authorities, and a proper regard for the protection of innocent persons, fully justify us in the conclusion that if a vendor sells any property which he knows to be imminently dangerous to human beings, and likely to cause them injury, to an innocent vendee, who is not aware of the danger, and to whom false representations have been made as an inducement to the sale, he may, under proper allegation and proof, be held responsible, not only to the vendee, but to such person or persons as the vendee may, in the ordinary course of events, call upon to take charge of the property for him." It appears to us that the court go further than Thomas *v.* Winchester: that was a case in which a manufacturer of medicines put up and sold belladonna in a jar labelled "dandelion," and he was held liable for injuries to the plaintiff, who bought it from a druggist to whom it had come in the course of business. Sir William Brett, in Heaven *v.* Pender, says of this case, it "goes a very long way," and "I doubt whether it does not go too far." But Sir Frederick Pollock, in his treatise on Torts, regards it as good law, and it is followed in Norton *v.* Sewall, 106 Mass. 143; 8 Am. Rep. 298. In that case the poison sold under a harmless guise was certain to do mischief. In the principal case the glandered animal was not naturally certain to do mischief, although it was possible. Therefore it seems that the principal case goes even further than the Thomas case. But we are not inclined to dispute its soundness. It seems a not unreasonable extension of the liability of the consequences of fraudulently selling an article that may probably cause infection. If the horse had been sold for food the liability of the seller could hardly be doubted. The New York Court of Appeals however, in Loop *v.* Litchfield, 42 N. Y. 351, 1 Am. Rep. 543, set a bound beyond which they refused to carry this doctrine. A balance wheel, with invisible defects, was sold by the manufacturer to one who bought it for his own use with oral notice of the defects. After some years' use he lent it, and it broke and killed the borrower. The manufacturer was held not liable in damages for his death. The Thomas case was distinguished on the ground that "Poison is a dangerous subject" and the injury was the natural and probable consequence. Heaven *v.* Pender is cited in Van Winkle *v.* Am. St. Boiler Co., 52 N. J. L. 240; and Phillips *v.* Library Co., 55 N. J. L. 307.

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.

Editor of the "Green Bag."

IN your July number, p. 346, in reporting that the British lion has been held by John Bull's Court of Appeals not to be a "domestic animal," Mr. Browne referred to the Bird of Freedom as domestic. But he omitted to give his authority. Please now amend by adding the proper "reference," namely: See 8th Wisconsin, "Old Abe's Case." CRITIC.

LEGAL ANTIQUITIES.

IT was a peculiar feature in the trials at Athens, that they were divided into two classes, assessed (τιμητοὶ) and non-assessed (ἀτίμητοι). In the former, if the case was in the nature of a civil action, the plaintiff laid his damages at a certain amount; or if it was a criminal case, the prosecutor named a certain penalty to be paid by the accused. The Court then, after hearing the evidence, gave judgment simply for or against the defendant, and if their verdict was unfavorable, provided it was not a capital case, he was allowed himself to name the punishment or penalty, which he thought ought to be inflicted upon him. Afterwards the dicasts voted a second time, and decided whether the original penalty or the one proposed by the defendant, or even, in some cases, one differing from both, should be finally adjudged.

FACETIÆ.

IN the early days of Indiana, John B. Chapman was state's attorney for all the region north of the Wabash River. He was not an Erskine, nor a Choate, nor a Webster, nor the equal in learning of some other great lawyers who might be mentioned; but his eloquence before a jury was something extraordinary. On the trial of an assault and battery case, Cooper, for the defendant, went out of his argument to allude in terms of severity to the district attorney, provoking his wrath and causing him to retaliate, in his closing speech to the jury, in this style: —

"Gentlemen of this ere jury! The day is coming when the heavings and the yearth shall be rolled together like a scroll! — aye, gentlemen, when they shall be lit into a blaze by the breath of God Almighty Jehovah! — aye, gentlemen, when the angel Gabriel shall knock time out of eternity and I shall stand before you a solitary and eternal monument of myself."

JUDGE JOHN D. ELLIS, the well-known Bellevue (Ky.) attorney, tells the following good story on himself, which goes to prove the genuineness of pure rural nerve, still flourishing, it seems, in some out-lying districts. One of the judge's farmer friends called at the Bellevue office a short time ago and submitted a complicated case as to the ownership of some fence rails. After spending nearly two hours in consultation the judge announced the case was a winning one if properly handled. "Well, I'm much obliged, Judge," said the farmer, making for the door; "I'll go and hire a lawyer," and away he went to the office of another attorney before Mr. Ellis could locate his shotgun and get quick revenge.

AT a Circuit Court in Chenango County, N.Y., a slander suit was on trial. A very candid appearing witness testified to the speaking of the words charged. Counsellor H., an excitable attorney, cross-examined the witness fully without shaking his testimony. At last with emphasis he put the question: —

"Witness, you are not on friendly terms with my client here, are you?"

"Perfectly, sir, for aught I know," said the witness, in the most undisturbed manner.

"Do you swear, witness, that you have no hard feelings toward my client?" asked H., in a highly excited manner, — "no hard feelings, sir!"

"Not that I am aware of," said the witness in the same quiet way.

"Now sir," said H., springing to his feet and shouting, "Didn't your cows get into his garden and eat his garden up?"

"Yes, sir," said the witness, "but I did not lay up any hard feelings against him for that."

The counsellor and the house came down together.

JUDGE CALDWELL of N.C. was slow to see the point of a joke. On trying a case on one occasion the solicitor called in vain for a witness named Sarah Mooney. As she did not answer he informed the court that he could not proceed "without ceremony." The Bar laughed but the Judge looked puzzled. Some weeks after that when at home the point dawned on him and he broke into a loud laugh. Upon his wife inquiring the cause of his merriment, he explained that the solicitor had called Sallie Mooney and when she did not answer he had said he could not proceed without ceremony. The wife said she did not see the point. The judge said it had taken him three weeks to find it, but when she did see it, it would be very funny.

WHEN Judge Buxton of N.C. as a young lawyer made his first appearance at the bar, the solicitor, as is customary in that state, asked him to take charge of a case for him. The young lawyer did his best, and the jury found the defendant, who was charged with some petty misdemeanor, guilty. Soon after one of the jurors, coming round the bar, tapped him on the shoulder. "Buxton," said he, "the jury did not think that man guilty, but we did not like to discourage a young man."

JUDGE SAUNDERS of N.C. (afterwards Minister to Spain) had occasion to try a Pollard-Breckenridge case at Harnett County Superior Court. He had clear opinions on the merits of the case and thus charged the jury: "Gentlemen, I tried a case like this in Rockingham County last week, and the jury sized the defendant's pile, *sized* his pile, gentlemen. It is for you to say whether female virtue is prized as highly in Harnett as it is in Rockingham. Take the case."

IN North Carolina "befo' de wah" they had the whipping-post. A celebrated case was tried in Fayetteville, N.C., wherein Ann K. Simpson was charged with murder. In that county, a large element are descendants of the Scotch who were defeated at Culloden. Many of these were on the jury, which, to the surprise of the public, acquitted the defendant. One of these jurors being spoken to about it replied, "Toot, man, toot. We could na hang a woman. If we could hae *whooped* her, we would hae found her guilty."

APROPOS of this, the whipping-post is still retained in Delaware. A North Carolina darkey who was lately convicted of larceny in Delaware and conducted to his punishment remarked with much simplicity to the sheriff, "That sort o' reminds me of old times."

IN a suit for separation, counsel for the plaintiff pleaded, among other reasons, incompatibility of temperament. He depicted the character of the husband as "brutal, violent, and passionate." The husband's advocate rose in his turn, and described the wife as "spiteful, short-tempered, and sulky."

"Pardon me," interrupted the judge, addressing both limbs of the law; "I cannot see, gentlemen, where the incompatibility of temperament comes in."

THE reformed system of procedure was adopted in North Carolina in 1868, but the older members of the Bar were reluctant to become acquainted with it. The well-known limitation upon evidence by a party in regard to a personal communication or transaction with a deceased person under whom the opposite party to the action claims was Sec. 343 of the Code of Civil

Procedure — now Sec. 590 of the Code. On one occasion General R., who was more familiar with the old practice than the new, and with procedure in the United States Senate than with either, appeared in a reference case. Capt. T. W. Mason (now one of the Railroad Commissioners) was the referee. Capt. Robert B. Prebles was the opposing counsel. The first question the General put to the witness, Capt. Prebles promptly said, "I object, see C. C. P. 343." As promptly the referee said, "Ruled out." The General looked at the referee, and looked at the opposite counsel. Both seemed perfectly satisfied with themselves. The General asked another question. Promptly came the same objection and the same ruling. Yet on scrutiny both young men seemed unabashed. In fact they showed no doubts on the subject and no regrets whatever as to their conduct.

A third, a fourth and a fifth question "speered" at the witness had the same result. Becoming uneasy, but too senatorial to show it, the General in a most stately and elegant manner asked a little adjournment, stating some good reason. This being granted, he took the referee into another room and with some warmth of manner asked, "What in —— *does* Bob Prebles mean by his See-see-see-pee, three forty-three?"

GEN. JAMES MADISON LEACH was at times a member of Congress from North Carolina. He was an excellent advocate, but had never thought it worth his while to be "up" on the *details* of the law. On one occasion he was associated in a case with Mr. Ball, a very careful and painstaking lawyer, but very matter-of-fact. He had the same estimate of a joke as the traditional Scotchman of whom Sidney Smith said that it required "a surgical operation to get a joke into his head." On this occasion a point of law occurred to General Leach, but being a little doubtful of it himself he did not submit it to his associate. He simply just turned it loose on the judge. Not meeting with much encouragement he involuntarily turned to his associate. But he quickly and easily read disapprobation and dissatisfaction in his face. So when, a few minutes later, the judge blandly asked, "General Leach, do you think that can possibly be law?" the General with a Chesterfieldian bow and an air of positive relief replied, "I agree entirely with the intimation of your Honor. In fact I only presented the point out of deference to the opinion of my brother Ball." Instantly Mr. Ball, with a flushed face and a *sotto voce* heard all over the court room, said in an earnest manner, "Why — it — is — all — a — d—d — lie."

THE following letter was sent by a newly elected alderman of a Pennsylvania city to the debtor of a clothing house in the same city: —

DEAR SIR:

You are charged before me by Messrs.—— and —— of the City of ——, County of —— and State of Pennsylvania, with breach of "*Assumsit, Criminis in Personæ*" in default of the sum of $38.50. Will you call and settle the same instanter, save costs, expenses, trouble etc., or shall I send a bailiff for your apprehension? Answer.

Very sincerely yours, —— ——
Alderman and ex-officio Justice of the Peace.

NOTES.

RUFUS CHOATE once told Judge Warren that he was going to write a book. "Ah," said the Judge, "what is it to be?" — "Well," replied Mr. Choate, "I've got as far as the title-page and a motto." — "What are they?" — "The subject is 'The lawyer's vacation,' the motto,— I've forgotten. But I shall show that the lawyer's vacation is the space between the question put to a witness and his answer."

SOME investigators have detected curious peculiarities in the handwriting of criminals. Lombroso, for instance, divides 520 criminals into two groups, the first of which includes homicides, highway robbers, and brigands.

The greater part of these make letters much lengthened out; the form is more curvilinear than in ordinary writing and at the same time more projecting; in a considerable number the cross for the "t" is heavy and prolonged, and is common also among soldiers and energetic persons. All ornament their signatures with small strokes and flourishes; some terminate their names with a short hook; assassins are apt to end each word with a sharp vertical stroke.

The second group is composed exclusively of thieves, who do not make their letters curvilinear.

In their cases the characters are small, and the signature has nothing striking about it. On the whole, the writing is like that of a woman.

Characteristic of the handwriting of thieves is the bending of almost all the letters.

Lombroso suggested to an irreproachable young man who had been put in the hypnotic state that he was a brigand, whereupon his handwriting wholly changed: he made large letters and enormous "t's."

L. B. PROCTOR, the distinguished historical writer, and author of the "Bench and Bar of the State of New York," was among the distinguished guests at the annual meeting of the Provincial Historical Association at Quebec. His response to the toast "Canada and the United States, controlling powers of the American Continent," was exceedingly appropriate to the occasion, pleasingly delivered, and elicited rounds of applause.

AMONG the popular fallacies which still exist is the idea that imprisonment for debt is a thing of the past. It may surprise some people to learn that in England alone no fewer than 6,984 persons were sent to prison in 1892 for not paying their debts. This is no chimerical statement nor vague estimate, but an actual fact, certified by the Superintendent of the County Courts, Department of the Treasury.

Of this large number, equivalent to 134 imprisonments per week, or 22 per day, 253 persons were sent to prison more than once in respect of successive installments of the same debt. Two persons, one at Bacup and one at Dursley, were imprisoned five separate times for paltry debts of £1 2s. 3d. and £2 9s. 8d. respectively!

In matters statistical, London is nearly always at the head of the list, but in this account it comes very low down, only fifteen persons out of its vast population having been sent to prison in 1892 for not "paying up."

Leeds is at the head of the list with 397 such cases. Stockton-on-Tees comes next with 374 petty debtors sent to prison. Birmingham is third with 301.

The list is a miserably paltry one. The largest amount recorded is a debt of £36 18s. 10d., with court charges amounting to £1 6s. in addition. For the non-payment of this a Wandsworth unhappy wight is now suffering durance vile. There are a few £20 and £10 debts scattered among the 6,984 cases, but in the vast majority of them the amounts do not exceed one sovereign, and very many are debts of a few shillings. Does it not seem ridiculous to put a man in prison for so paltry an amount, and thus make him a non-producing member of the community? One man at Sleaford was actually sent to prison for a debt of 3s. only.

A WELL known lawyer of Philadelphia representing the defendant in a certain case, being urged to have his client liquidate the amount of a claim, responded as follows: —

My client came to me to-day
In truth and verity to say
That he had naught to pay.
Some of the debt he owns is just,
But poor and humbled in the dust,
Have mercy, he will say.
Have mercy now, he loud doth call,
In time I'll surely pay you all
If you will give me time.
Now, in this case, what can be done,
But let the debt in judgment run
Till money takes the place of rhyme.

The plaintiff's lawyers, not to be outdone in that kind of warfare, in reply feelingly portrayed the sad predicament of their client, a carpenter: —

Your muse inspired you to say
In lofty rhyme and polished verse,
If execution should but stay
The plaintiff's cause would not be worse.
Long has he labored amid the dust,
(The saw-dust kind), and inward "cussed"
The law's delay. Alas, how true,
And as he works he makes his moan
That he must toil, unhelped, alone.
If when your client called that day,
He noted well that pay he must,
Reluctantly we grant a stay;
Though short of cash, we will be just.

NEW States are prolific of amusing occurrences, as well as new legal propositions. Judge C., a very dignified and capable lawyer, was one of the first judges of the District Court upon the admission of the State of Nebraska, and was assigned to the third district, which comprised nearly all

that portion of the State north of the Platte River. At the time the events which we are about to relate transpired, the railroad extended from Omaha to West Point, a distance of about eighty miles. The regular term of the District Court of Madison County was called for the latter part of August, and the Judge, district-attorney, and an attorney appointed to defend a prisoner under indictment, journeyed to West Point by rail, and there hired a team, driver, and wagon, to take them to Norfolk, the then county seat of Madison County, a distance of nearly fifty miles. The roads were good, and they made fair progress until about noon, when they espied from the road a fine water-melon patch about twenty rods away. There was a cabin of a settler near by, and one of the party went to the cabin to negotiate for some melons. Being unable to find the owner and being loth to forego sampling the melons, it was finally decided to "confiscate" a sufficient number to satisfy the demand. Thereupon all three went to the melon patch and each selected one or more. The district-attorney felt somewhat guilty, and taking his portion, he returned to the wagon at once. The Judge and the other party however scorned to be in haste. The Judge had a fine melon in each hand, and in a very dignified and leisurely manner was returning to the wagon. He had not passed over much of the intervening space when the owner of the premises appeared on the scene. He called to the Judge: "What the h—ll are you doing in my melon patch?" The Judge was somewhat taken aback, but replied: "We were passing along and saw the melons. We endeavored to find the owner, but being unable to do so, we concluded to appropriate a few and settle afterwards. We did not intend to steal your melons." "*I see you didn't!*" replied the irate owner. Here was an embarrassing position, the Judge and prosecuting officer caught in the very act, and not likely to pacify the owner, who evidently wanted blood money. At this juncture the attorney appointed to defend the prisoner accused of a felony came forward and said: "I am ———, of ———, and this is Judge C.; that man at the wagon is ———, prosecuting attorney, and we are on our way to Norfolk, to hold court." To which the owner replied, with an oath: "I don't care who you are; you can't steal my melons." The matter was compromised by paying him fifty cents. The members of the party were sworn to secrecy, as it would not do to let a joke of that kind get out, but on their return to West Point the first man they met inquired: "What is the price of melons?"

LITERARY NOTES.

B. O. FLOWER, the editor of the ARENA, writes a strong paper in the October number, on the increase of the military spirit in the United States. On the question of militarism Mr. Flower is a Quaker, and he would like to see in our American Democracy a resort to arbitration and reason for the settlement of all domestic and foreign troubles. He believes with Hosea Biglow, "As for war, I call it murder"; and he views the increase of militarism in our schools, and the multiplication of armories in our cities, as a discouraging sign that there still lurk depths of barbarism beneath the drama of civilization, even in America, and that, as Saint Beuve pointed out, we are but twenty-four hours from savagery and carnage. It is an interesting paper.

AMONG the topics of timely interest singled out for editorial comment in the "Progress of the World" of the October REVIEW OF REVIEWS, is the Elmira Reformatory system. The editor takes the ground that whether or not Superintendent Brockway has erred in certain details of administration, the signal services rendered by him in the building up of such an institution are not to be ignored. Attention is called to the character of a large proportion of the young criminals with whom the Reformatory has to deal, and to the remarkable record of apparently permanent reformations.

THE vigor with which Mrs. Deland brings her novel "Philip and his Wife" to an end gives unusual importance to the October ATLANTIC. "The Retrospect of an Octogenarian," by the Rev. Dr. George E. Ellis, stands second in the number, and will command the earnest attention of the many listeners Dr. Ellis won for himself long ago, not only as a clergyman but as an antiquarian. A paper of rare historical value is the Hon. Henry L. Dawes' "Recollections of Stanton under Johnson." It presents an intimate inside view of a period of government life at Washington which of course was quite without parallel, and can never lose its interest and significance. The short stories of the number are

"His Honor," by Miss Ellen Makubin, a vivid picture of events in a Western army post, and "Heartsease," a bit of true New England life, by Miss Alice Brown.

UNDER the title "People We Pass," Julian Ralph begins in the October number of HARPER'S MAGAZINE a series of short stories of East-Side life in New York, where East Side is usually synonymous with the under side. The first tale, "A Day of the Pinochle Club," describes one of the semi-political, semi-social organizations which flourish in conjunction with the saloons, and help to explain the misrule of the metropolis. This story will be read with unusual interest while the investigation of New York's police department is fresh in mind.

THE complete novel in the October number of LIPPINCOTT'S is "A Question of Courage," by Francis Lynde. It deals with a feud in the mountains of Tennessee, and the question of the Northern hero's courage, after sundry doubts and adventures, is settled to the hero's own satisfaction and that of the heroine. Gertrude Atherton, in "Famous Rivalries of Women," recalls many moving tales of the past, and George J. Varney traces the progress of "Telegraphy up to Date."

THERE is no better aid to the acquirement of a sound literary taste than the continuous reading of the weekly issues of LITTELL'S LIVING AGE. Gleaning as it does from the richest literary field that exists; skillfully and carefully winnowing the wheat from the chaff, it makes the reader acquainted with the best specimens of English literature, and keeps him abreast of the times on all the many questions of public interest; the various phases and departments of science and art; biography and history; travel and discovery; in short on every subject that touches modern life or interests the cultivated mind.

IN THE CENTURY for October is an editorial consideration of the question "Is Bi-metallism Desirable?" by the writer of the previous article on Cheap Money Experiments, which have appeared in this department. There is also a paper on "The Nation and Its Toilers" in continuation of the articles on the American Laboring Class, published in the same department last year. The latter subject is further considered in the "Open Letters" department by Dr. James Weir, Jr., on "The Methods of the Rioting Striker an Evidence of Degeneration," and by Prof. Albert S. Bolles of the University of Pennsylvania, entitled "Is the Friction between Employed and Employer Diminishing?" The Rev. Washington Gladden returns to the discussion of the A. P. A. in an Open Letter on "Secret Societies in Politics." Hon. Lambert Tree, ex-minister to Belgium and to Russia, prints an Open Letter on the Consular Service and the Spoils System. He agrees with the large majority of ministers who took part in the symposium of the June number in thinking that the consular service would be much improved by being made more permanent in its personnel.

SCRIBNER'S MAGAZINE for October is full of interesting matter. The illustrations are particularly attractive. George A. Hibbard writes of the charms of "Lenox"; H. G. Prout contributes an article on "Railroad Travel in England and America," and Dr. Carl Lumholtz concludes his observations on the "Tarahumari." The number is also strong in fiction.

BOOK NOTICES.

LAW.

PLEADING AND PRACTICE OF THE HIGH COURT OF CHANCERY. By the late EDMUND ROBERT DANIELL, Barrister at Law. SIXTH AMERICAN EDITION, with notes and references to American decisions; An Appendix of Precedents; and other additions and improvements, adapting the work to the demands of American Practice in Chancery. Based on the Sixth English Edition, and the Fourth and Fifth American Editions. By JOHN M. GOULD, Ph.D. Little, Brown & Co., Boston, 1894. 3 vols. Law sheep. $18.00.

To comment upon the character and scope of this famous treatise of Mr. Daniell's, would be a work of supererogation. No book is better known to the profession. From its very first appearance it has been regarded as an authoritative commentary upon Equity Practice, and successive editions have greatly enhanced its value and enabled it to easily maintain its position as the standard authority upon the subject.

For the preparation of this present edition, the publishers have been fortunate in securing the services of such a man as Mr. Gould. He is not only one of our foremost law writers, but is thoroughly conversant with the law of Equity. The vastness of the work accomplished by him has required more than three years' time for its performance. The citations now added nearly double those of the last American edition, and the new cases number fully ten thousand. The treatise is complete to date and

is in every respect as exhaustive as the most exacting practitioner could demand. An interesting and valuable feature is the annotation, with all the Federal decisions relating to their construction, of the Equity Rule of United States Supreme Court, and their Amendments. Mr. Gould has also given special attention to the Equity side of the Code procedure prevailing in a majority of the States.

That the profession will fully appreciate the value of this new edition, there can be no doubt. While there have been other good works on the subject of Equity, Pleading and Practice, "Daniell's" treatise has always been recognized as the "fountain head," and in our opinion it will long continue to be.

AMERICAN ELECTRICAL CASES. Vol. I. A collection of all the important cases (excepting Patent cases) decided in the State and Federal Courts of the United States, on subjects relating to THE TELEGRAPH, THE TELEPHONE, ELECTRIC LIGHT AND POWER, and other practical uses of Electricity. Edited by WILLIAM W. MORRILL. Matthew Bender, Albany, N Y., 1894. Law sheep. $6.00, net.

Electricity has attained an importance in litigation during the last few years which entitles it to special consideration at the hands of our law-book writers, and this new series of Reports of Cases bearing upon the subject will prove of great value to the profession. The present volume covers a period of thirteen years, from 1873 to Jan. 1, 1886, and contains 155 complete reports, and memoranda of over thirty additional cases. During the past nine years the increase of cases has been such that the Editor estimates it will require four more volumes to cover the time to Jan. 1, 1895, and that after that time a volume a year will contain all the principal cases. The series is one that will be frequently consulted by every practising lawyer, and should find its way into every public and private law library.

ARCHITECT, OWNER AND BUILDER BEFORE THE LAW. A Summary of American and English decisions on the principal questions relating to building and the employment of Architects, with about eight hundred references. Including also practical suggestions in regard to the Drawing of Building Contracts, and Forms of Contracts suited to Various Circumstances. By T. M. CLARK, Fellow of the American Institute of Architects. Macmillan & Co., New York, 1894. Cloth. $3.00.

This work will prove a valuable aid and assistant to the legal profession upon an exceedingly technical and troublesome subject, while to architects and builders it will give a very clear understanding of their responsibilities and liabilities. Mr. Clark's experience as an architect eminently fits him for the preparation of such a treatise, and he has accomplished his task in a most thorough and systematic manner. The catch lines are printed in distinct type upon the margin of each page, as are also the names of cases to which reference is made in the text. Altogether the work is a notable addition to legal and architectural literature and the author is entitled to the thanks of the two professions.

THE AMERICAN STATE REPORTS. Vol. XXXVIII. Containing the cases of general value and authority decided in the courts of last resort of the several States. Selected, reported and annotated by A. C. FREEMAN. Bancroft-Whitney Co., San Francisco, 1894. Law sheep. $4.

We can add nothing to the many words of praise we have already bestowed upon this series of reports. Admirable selections of cases and valuable and exhaustive annotations still characterize Mr. Freeman's work, and each new volume is fully up to the high standard of its predecessors. No lawyer of extensive practice can afford to be without these Reports.

TRIAL PROCEDURE. A Treatise on Procedure in Civil Actions and Proceedings in Trial Courts of Record under the Civil Codes of all the States and Territories. By JOHN C. FITNAM. West Publishing Co., St. Paul, Minn., 1894. Law sheep. $6.00 *net.*

The object of this work is to point out to young and inexperienced practitioners "what to do in procedure from the initiatory state in an action or proceeding, step by step, through its various stages: how to do it correctly; and what not to do, because improper. Mr. Fitnam has devoted much study and careful research to the preparation of the work, and it should prove a valuable aid not only to "inexperienced practitioners" but also to the veterans of the bar.

A TREATISE UPON THE LAW OF PLEADING. Under the Codes of Civil Procedure of the States of New York, Connecticut, North Carolina, South Carolina, Ohio, Indiana, Kentucky, Wisconsin, Minnesota, Iowa, Missouri, Arkansas, Kansas, Nebraska, California, Nevada, Oregon, Colorado, Washington, North Dakota, South Dakota, Montana, Idaho, Wyoming, and the Territories of Arizona and Utah. By PHILEMON BLISS, LL.D. THIRD EDITION, revised and annotated by

E. F. Johnson, Instructor in Law in the University of Michigan. West Publishing Co., St. Paul, Minn., 1894. Law sheep. $6.00 *net.*

Judge Bliss's work has stood the test of sixteen years' use by practitioners in the Code States, and is universally recognized as an authority. This new edition will therefore be heartily welcomed by the profession in those States. Mr. Johnson has added many valuable notes and annotations, and has enhanced the usefulness of the book by inserting a short and terse statement of the principles contained in each paragraph, in black type in a separate sentence immediately preceding the paragraph, beside which the "leading cases" cited are printed in large type.

Miscellaneous.

The Chase of Saint Castin, and Other Tales. By Mary Hartwell Catherwood. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.25.

It is always a pleasure to take up a book by this gifted author, and it would be hard to find a more delightful collection of short stories than the seven contained in this last volume of Mrs. Catherwood's. The scenes of all are laid in the olden times, and stirring events are portrayed with a reality which brings them home at once to the heart of every reader. Aside from the absorbing interest of each story Mrs. Catherwood's writings are valuable contributions to historical literature.

The Little Lady of the Horse. By Evelyn Raymond. Roberts Brothers, Boston, 1894. Cloth. $1.50.

This story is one which will delight the juvenile reader. It is pure, clean, and wholesome, inculcating the best of lessons and yet withal vastly interesting and entertaining. The Little Lady of the Horse is a most lovable creation, and will win her way into the hearts of the readers of this story, as she did into those of all with whom she came in contact. We can conscientiously recommend the book as one which parents can place in their children's hands, without fear.

Cœur D'Alene. By Mary Hallock Foote. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.25.

A graphic description of the great strike of 1892, in the Cœur D'Alene mines, renders this story one of absorbing interest. The contests between the union and non-union men are vividly portrayed, and give the reader a timely object-lesson on the subject of strikes. A charming love story, skillfully blended with the recital of the events of those exciting times, serves to still further enlist the reader's sympathy. Mrs. Foote always writes charmingly, and this book is one of the best we have had from her pen. The characters are strongly drawn and the situations intensely dramatic.

The Boss. An Essay on the Art of Governing American Cities. By Henry Champernowne. Geo. H. Richmond & Co., New York, 1894.

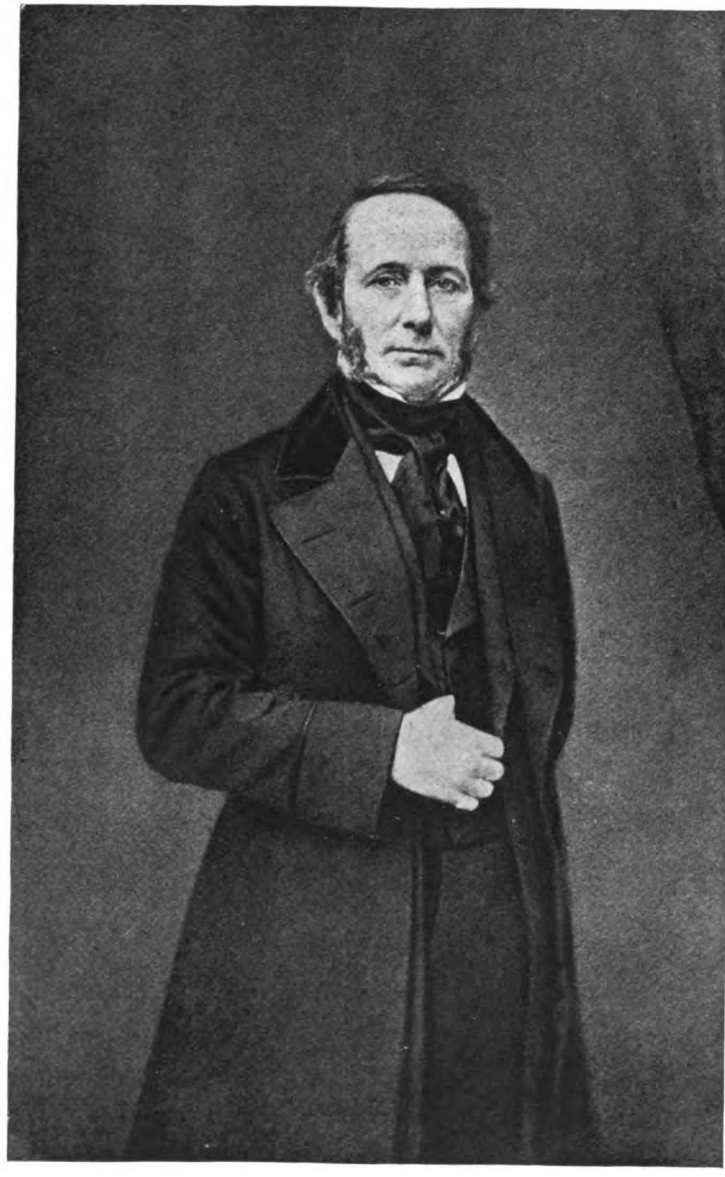
The amateur politician desirious of becoming a professional "Boss" can find no better instruction book than this bright satirical essay. The author evidently knows whereof he writes, and he lays bare all the internal workings of the "machine." We trust the book will be widely read and inwardly digested. It is an object-lesson, the study of which cannot fail to be of benefit. Written in a most entertaining manner, it gives the reader much enjoyment, and at the same time furnishes good solid food for reflection.

Studies in Folk-Song and Popular Poetry. By Alfred M. Williams. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.50.

The development of folk-song in literature is an interesting study, and these essays by Mr. Williams contain much valuable illustrative matter upon the subject. A good portion of the work is devoted to "American Sea Songs," and "Folk-Songs of the Civil War." Other essays include "English and Scottish Popular Ballads"; Folk-Songs of Lower Brittany"; "The Folk-Songs of Poitou"; "Some Ancient Portuguese Ballads"; "Hungarian Folk-Songs," and "Folk-Songs of Roumania." Altogether the book is very readable and instructive.

Sweet Clover. A Romance of the White City. By Clara Louise Burnham. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.25.

Mrs. Burnham has made the "Columbian Exposition" the background for a very pretty love story. "The Court of Honor," "The Ferris Wheel," "The Midway Plaisance," etc., all furnish delightful trysting places for the two pairs of lovers, and everything moves along fairly smoothly to a satisfactory end. "Sweet Clover" was doubtless intended by the author to be the real heroine of the story, but to our mind her sister Mildred, charmingly natural and impulsive, is much the more interesting character of the two. The book will possess a double attraction for those who visited "the White City," as many of Mrs. Burnham's descriptions are exceedingly graphic.



Wm Cullen Noyes.

The Green Bag.

VOL. VI. No. 12. BOSTON. DECEMBER, 1894.

WM. CURTIS NOYES, LL.D.

BY A. OAKEY HALL.

"The Law: It has honored us, may we honor it." — *The toast of Daniel Webster at the Charleston Bar dinner, May* 10, 1847.

THE tourist who may visit the beautiful village of Clinton in Oneida County, in midland New York, will undoubtedly be introduced to the grounds there of Hamilton College, and be shown through its library building, in which he can examine a fine collection of about seven thousand volumes, that are mainly devoted to legal literature. His inquiries will develop that these constitute a bequest to the institution from Wm. Curtis Noyes, whom the institution had honored with the deserved degree of LL.D. This inquiring visitor, if of this generation, will be informed in a tone of eulogistic pride that the donor died at New York City on the Christmas morning of 1864, while he was an acknowledged leader of its then remarkably distinguished Bar; and that from its then Nestor, Charles O'Conor, at a memorial meeting of it, received this substantial epitaph: "Wm. Curtis Noyes honored the names of Christian and Gentleman, and his decease is a loss not only to his profession, but to the country."

The traditions of Bench and Bar, not only in New York City, but in many States, keep his memory green; and although the compeers of his own age and generation have passed away, scores of the younger lawyers of his day remain to remember and praise his exact and comprehensive learning, his clear and precise apprehension of legal distinctions, and his dignity of manner that was brightened at all times by a courteous and urbane action, and under all circumstances of professional contest. Those junior lawyers of his day also recall the especial kindly treatment that he ever awarded them during their infancy of practice; and they recall a famous *bon mot* of the late George Ticknor Curtis, — "Mr. Noyes might have well been prophetically christened William Courteous in view of that future characteristic at manhood."

His middle name was the surname of his mother in her maidenhood, and his father was a New Englander who traced his Puritan ancestry to Rev. James Noyes of Newburyport, Mass., where the latter settled not many years succeeding the "Mayflower" advent. Young Noyes was born at the ancient Dutch village of Schodack, situate not far from Troy and Albany in New York State, where his parents (1805) resided. During his boyhood they removed to Oneida County, where business reverses to his father, caused by undue reliance upon the engagements of debtors, prevented the schoolboy from procuring a college education. When only twelve years old he strayed into the court-room of a justice of the peace, and after listening to its procedures a while, returned home to surprise his parents with this announcement, — "I intend to become a lawyer." Only two years later he began legal studies in the office — not far from his Knickerbocker birthplace — of attorney Elsick, who, meeting a comrade of his circuit, the late Aaron Vanderpoel of Kinderhook, afterwards its member of Congress and later a justice of the Superior

Court of New York City — said to him, "I have a remarkable boy-student in my office only fourteen years of age, of whom we shall both hear much, if his assiduities do not injure his health." Both did hear the 'much'; and while the preceptor did not live to realize the full extent of his prediction, Judge Vanderpoel lived to hear from his own Bench many arguments made by the boy grown to manhood, — the finished briefs of which are scattered through the volumes of Sandford's reports — and also to marry his son to the daughter of Mr. Noyes, upon whose library table reverently lies a volume scrap-book filled with elegiac correspondence and newspaper or magazine notices that commemorate proceedings of associations, clubs and societies taken upon her father's decease.

Young Noyes soon took studentship in offices of larger practice, and with better libraries — notably with counsellors Fowler and Storrs. One of these preceptors remarked the excessive passion that his student displayed for books, and the avidity with which he would pore over treatises far beyond his apparent comprehension. His apprenticeship lasted the customary seven years, at the end whereof he passed examination before the Supreme Court at Albany, and began practice at Rome, a midland town of his native State; and next removed to Utica, — named after the "pent-up" town of poetic fame. That growing but infant city could not, however, "contract his powers," and soon he determined to remove to New York, where, together with a senior member of the Utica Bar, — William Tracy, afterwards a commissioner in a third revision of the State Statutes, — he formed a partnership. It may not be invidious to state that when these new comers joined the Metropolitan Bar, it included greater professors of legal science and practice than that Bar has since possessed, and that the Bench (which then confronted the Bar) included more renowned jurists than the New York courts have since then known. Nevertheless, almost immediately, Mr. Noyes invited attention and enlisted clients. His physique and manner were attractive, and his perseverance and readiness in performance of labor were notable. During his novitiate he had suffered from ophthalmia, accidentally contracted from using a towel which, unknown to him, had been in the keeping of one so infected. For a long time thereafter he entirely lost the use of his eyes, and was compelled to call upon some one among his nine younger brothers and sisters to supply his enfeebled vision in the matter of reading and writing. In after life he often remarked, "Ah, those dreary months passed in the darkened room quickened my thought, my power of analysis, exercised my memory, and brought a mental discipline that, all in all, has compensated in the end for my apparent misfortune and suffering." "I fancy," he remarked to a friend upon one occasion, "that my love for the Miltonian poetry was somewhat traceable to my sympathy for the malady which afflicted Milton and that I so well understood." Fortunately, — but Mr. Noyes, rigid Presbyterian and exemplary Christian in thought and action that from youth he ever was, would have used in such a connection the word "providentially," — however, his ophthalmia in after years left only occasional weakness of vision, and did not dim the extreme beauty of his expressive blue eyes, nor eclipse their soft, amiable light in repose, or power of visual gesture when he became interested in conversation or argument. I have seldom beheld franker eyes, or eyes that glowed with more transparent truthfulness. They were, indeed, of his soul, what Tennyson has termed eyes, their very windows. The truthfulness of Mr. Noyes became proverbial with Bar and Bench. "I can bring an affidavit from Mr. Noyes as to what transpired at the reference in question," once remarked an attorney, in addressing that great jurist, Judge John Duer, upon a mo-

tion. "That is not necessary," was the judicial answer; "let Mr. Noyes write me a note narrating the incidents." The remark meant, in the hearing of all the auditors in the chambers, "The unsworn assertion of Mr. Noyes equals in sincerity and accuracy the statement of any ordinary affidavit maker." "I seldom look up authorities cited at length upon a Noyes brief," was another remark credited to another judge (Chief Justice Henry E. Davies, of the Court of Appeals). The implication gave another tribute to his fairness of quotation. Moreover, Bar and Bench ever recognized his innate sense of justice, and his clear and precise apprehension of legal distinctions that proves so valuable to the Bench in oral argument and illustration.

Mr. Noyes, like Federal Justice Patterson of the early days of the Supreme Court,—that jurist to first broach in the tribunal presided over by Marshall, excellent and eloquent anathemas on retroactive or unjust legislation,—was not a man of commanding height; and yet, as one of his adversaries once remarked of him, "he seems to grow tall as he speaks."

When Mr. Noyes joined the New York Bar, there was a dividing line, as in England, between the attorney and counsel. Practically, it then broadened beyond the technicalities attached to the distinction; and Mr. Noyes became soon employed as counsel by attorneys, especially in appeal cases. A connection in that respect which he formed with James Lorimer Graham, who was attorney for several large corporations, proved advantageous to Counsellor Noyes, who soon became known as a specialist in corporate law, then in a sort of chaotic statutory condition. He early attracted commercial attention from his elaborate briefs during a long and tedious litigation involving a great corporation of half a century ago,—the North American Trust Company,—which had a long list of British investors and creditors attached to it, and whose international operations gave rise to new and embarrassing legal questions. Commercial clients poured into the Noyes office their plaints and defenses, and he soon took rank in the specialties of marine and fire insurance with such old established lawyers as Theodore Sedgwick, John Anthon, Daniel Lord, George Sullivan, and George Wood. His business rapidly increased as a jurisconsult, and his opinion on legal complications became accredited and potent factors in Wall Street. "I like Noyes, because he is so thorough," was once said of him by bank president Gracie. The adjective was well placed. "Drink deep or taste not the Pierian spring," was a quotation from Pope's essay on criticism that seemed always in the mind of Mr. Noyes when creating brief or awarding opinion. In those he was fond of tracing doctrines to their source.

When his library was inspected upon its reaching Hamilton College, it was found to contain a Bracton bearing the autograph of Charles Carroll of Carrollton, of '76 memory; also a complete historical set of British statutes; a Statham's abridgement printed at Rouen, 1470; a Conell's "Interpreter" (the original of 1637, and not the revised edition after suppression by Sir Edward Coke); a copy under date of 1671 of Dugdales' "Origines Judiciales," and all the Dome-Day books. "What won't Noyes want us to import next from the London second-hand shops?" was an exclamation by the elder David Banks, the veteran law publisher. Nor must be omitted mention of the set of Chinese and Gentoo codes and volumes of Mohammedan law, or of the Virginia general reports of the years 1730–46. That rare volume "Jardine's Use of the Torture" also belongs to the library. These are specimens of library luxury; but the collection contained every possible working tool, so to speak, that the active and cosmopolitan practitioner could desire for his professional workshop. And while I write I cannot help thinking what a joy it would

have been for the old lawyer to have lived to this his eighty-ninth year, in order to add to his library the encyclopædias and treatises that are from time to time advertised or reviewed in the GREEN BAG. In 1857 Mr. Noyes removed from a delightful residence he already occupied, solely in order to secure a Fifth Avenue mansion that had annexed to it a three-story library rear building, in which he could store his bibliopole treasures. This was before the Law Institute, of which he was long a manager, and that passed memorial resolutions after his death, had assumed its present large proportion of volumes; or before the club-house of the Bar Association had been erected for the housing of its varied and exhaustive library. Mr. Noyes threw open his new library-house freely to his brethren, and even encouraged the youngest of the profession to avail themselves of its use. He often also extended its hospitalities to the holding of references during winter evenings. These acts, added to his amenities in court, tended to make him the idol of the Bar that in his later career he became. No practitioner ever heard an asperity debited to his professional or social account; for although often unduly assailed by an adversary, his remarkable self-control never played his temper false. This self-control was so strong that, while awaiting a call in court or during a recess, he could close his eyes, cease thought, and indulge in the brief luxury of a nap.

Another of the professional successes of Mr. Noyes resulted in what is known to the Bradford Surrogate reports as the Rose Will case, involving the doctrine of resulting trusts. To this day his briefs in the various appeals of that case are turned to by lawyers as imparting lucid learning to the abstruseness of the subject-matter.

The great Huntington *cause célèbre* is perpetuated in the volume devoted to an account of the celebrated trial of a Wall-Street forger, at which Mr. Noyes acted as special attorney-general in successfully resisting a defense of "moral insanity," that the counsel of the accused euphuistically gave as a name to a depravity which destroyed a realization of the difference in ethics between *meum* and *tuum*. It is a trial that is also commemorated in many recent treatises upon insanity. The trial was remarkable for the appearance, as experts in behalf of the defense and its theory, of two great metropolitan physicians—Gilman and Parker. The latter had been adroitly selected by James T. Brady, counsel for Huntington, because he was the family physician of Mr. Noyes. But the latter, with rare delicacy of treatment, mastered friendship for the occasion, and his cross-examination of both experts covered their theories with successful ridicule.

When the New York and New Haven Railway Company organized, Mr. Noyes was appointed standing counsel at the metropolitan termination of the road; and when the remarkable bond forgeries of its first president, Robert Schuyler, reached discovery, it became his duty to obtain indictments against the absconding official (who, however, died in exile), and to defend or prosecute a series of actions, legal and equitable, that resulted from the fraud. The controversies resulted in the trial of an action, intended to embrace all the mooted questions, which became popularly known in New York and New England legal circles as "the Omnibus suit," and consumed forty-two days in the hearing. Arrayed against Mr. Noyes as leader for the Railway in the *cause célèbre*, appeared some three hundred lawyers in all, and with him were only the Messrs. Tracy and Comstock as associates, the latter of whom had been first a reporter and then a judge of the Court of Appeals. The magnitude of that legal controversy can be gathered from an inspection of the fifteen bound volumes of the cases and bills of exceptions and appeal records, and the dozen volumes of briefs and arguments that are to be found in all great law-libraries, and forming beacon lights and guides regarding

the law of differentiated responsibilities and liabilities for forged paper among innocent successive holders. Among all the briefs, those of Mr. Noyes stand pre-eminent for arrangement, lucidity, and authoritative points. The Railroad Company not only thanked him by formal resolution for his successful saving to it of immense claims, but cheerfully awarded him on the whole controversy fees amounting to a small fortune. Here it may be remarked that during the last quarter century his annual fees averaged over a hundred thousand dollars. He well remembered a remark of the elder Bulwer-Lytton, in his Caxtoniana, to the effect that "almost any man of ordinary talent could accumulate money, but only a man of genius could keep it after it was made." He lived at a reasonably luxurious rate of expenditure, was dexterously hospitable, and while spending income liberally for books and works of art, — and he possessed fine æsthetic taste, — he made excellent investments. Among these was a purchase of the old revolutionary Tallmadge estate and mansion, near Litchfield, in Connecticut, that belonged originally to the Benjamin Tallmadge who, as a heroic and valuable officer in the Revolutionary War, is worthily best commemorated in the pages of Lossing's "Pictorial Field-Book of the American Revolution," and whose memory is kept brilliantly alive by his grandson, Frederick S. Tallmadge, President of the "Society of Sons of the Revolution." The latter became partner with Mr. Noyes, and they proved indeed in a double sense to be brothers-in-law, for Mr. Noyes as a widower wedded the sister of Mr. Tallmadge and daughter of Frederick A. Tallmadge, who, after serving New York as alderman and congressman, became its recorder, and in that capacity, when the mayor, on occasion of the famous Astor-Place Macready *cum* Forrest riot of 1849, showed the white feather, assumed command of the military and peace-officers present, and under shelter of the riot-act as read by himself during a riotous shower of missiles, restored order and saved much loss of life and property: confirming thereby the bravery of his Revolutionary parent as an hereditary trait. The widow of Mr. Noyes, who, much his junior, survives, in residence was with that daughter in New York City who is the widow of a son of the Judge Vanderpoel hereinbefore mentioned. In their library, which keeps green the Noyes's love of books, hangs a fine bronze bas-relief of the great lawyer, made by the sculptor Park, and also a speaking bust from the same chisel; and on a table always lies the folio volume first herein referred to.

A large portion of Mr. Noyes's professional income was devoted to private and unostentatious charity. On one occasion, at the end of a certain year, his brother-in-law and partner asked the bookkeeper of the law firm to draw an account of Mr. Noyes's expenditures for eleemosynary purposes during that year, and the balance footed to seven thousand dollars. The junior, mentioning the fact to his senior in a pleasant sort of deprecatory or surprised tone, was answered, "Perhaps it is more than I ought to have spent in that direction; but, Fred, we shall get it all back again, as bread cast upon the waters." Mr. Noyes, as a member of the Charity Committee of the New England Society, gave great attention to its benevolent duties.

Mr. Noyes also found time to attend to political matters. In early life he was a member of the Whig party, but in 1855 joined the new Anti-Slavery Republican party, and attended in the capacity of delegate the famous Pittsburg Convention that practically founded the party of Fremont and Lincoln. To the conventions that successively nominated those two leaders, he was also a delegate. He formed his antipathy to slavery in youth, for his father served as an agent of what was known as the "Underground Emancipation Railway." Fugitive slaves from the South, escaping

into free States, were received, clothed, fed, and forwarded to Canada by benevolent Abolitionists residing along the country stretching from the region where Thaddeus Stevens lived to that where Gerrit Smith had his estate, near to the Canada line. The father of Mr. Noyes was one of these philanthropists; and long before the sensational advent of "Uncle Tom's Cabin," young Noyes had heard from the lips of fugitive slaves stories of misery equally harrowing with those in Mrs. Stowe's novel. These excited his sympathy, and undoubtedly tinctured his after political leanings.

In 1857 he received the nomination of his party for Attorney-General of the State of New York, and although running some thousand votes beyond the rest of his ticket, he was unsuccessful. In the year following, when Judge Harris was elected United States senator, defeating Messrs. Evarts and Greeley in the caucus, Mr. Noyes had been approached by party leaders who expressed themselves willing to name him as candidate upon his paying a certain sum by way of party assessment. His family well remember the indignation that followed the proffer. Mr. Noyes, however, was, on the election of Mr. Lincoln and the dawn of secession, opposed to war, and accepted the post of delegate to the Peace Congress. Referring to that body afterwards, while the war progressed, — and he died before the Appomatox event, — he likened that Congress to the efforts of Madame Partington's broom when breasting the Atlantic. He had been an orator at the New York indignation meeting consequent upon the assault against Senator Sumner, which led to an intimacy between them; and the family prize a letter from the great Charles of the Bay State, requesting permission to use the name of Mr. Noyes as a candidate for the vacant chief-justiceship after the death of Mr. Taney. But Mr. Noyes had already become an advocate for Mr. Chase, who so nobly vindicated his own selection by his independent judicial action upon his own Greenback legal-tender act, the offspring of his secretary of the treasuryship.

When codification became the fashion of the New York Legislature, Mr. Noyes was selected as a commissioner, in company with David Dudley Field and Alexander W. Bradford, to codify all the statutes relating to the common and commercial law, and that affecting real estate and wills. Their report exists in the archives of the Legislature, which body laid it upon the table. Now that the indefatigable codifier, Mr. Field, has died, such a code will not probably ever be enacted in New York State, the large majority of jurists therein opposing the attempt as calculated to mar the elasticity of old systems; but the notes in the report as prepared by Mr. Noyes remain as testimony to his learning, and to his now traditional assiduity.

Like nearly every very active lawyer, Mr. Noyes was eminently sociable in his nature. At his own dinner-table, as host to many distinguished guests from time to time, he could alternately be the piquant leader of conversation or the tactful listener. At the salons presided over by his companionable and cultured wife, he was particularly brilliant, and he came eminently under the celebrated description, by Dr. Sam Johnson, of the "clubbable man." No member of either the earlier Century, or later Union League Club, each of which he assisted in founding, was more welcome to his fellows than Mr. Noyes, and he could "talk shop" without boring his customers of the club circles. None who were guests at his last social function, when, three days before his demise, he presided as newly-elected president at the annual Forefathers' dinner of the New England Society, — from which returning he contracted the disorder that, connected with recent over-zealous professional labor, worked his death, — have ever forgotten his genial sociability, his eloquent welcome of guests, and tactful direction of the banquet on that evening.

Mr. Noyes was, however, prepared to leave mortality, although the summons was sudden. He had early in life united with the church of his ancestors; but his religion was of more than mere membership; he carried it into his every-day life and conduct without ever making a show or intrusion of his views. Faith was his great watchword; and when he moved his library into its new building, every one of his family and friends knew the significance of his purchasing and placing on the walls an important copy of "Palmer's Faith," that as a work of art is so widely known to the public through photographic copies of it.

It was ever a rule with him in his profession to never accept a retainer in a case unless equitable considerations connected themselves with its treatment and result. Persuaded of the ethics of his retainer, he was happy in carrying out its behests.

The career of Mr. Noyes offers a grand moral to all students of the law. First, to earnestly embrace legal pursuits as a high and honorable profession, and to so embrace it with heart and head; to accept as a standing motto of practice, *rectus in curiam;* to become thoroughly imbued with the principles of jurisprudence; to love the pursuit of justice for the purpose of rectifying the wrongs and abuses of society, and to make society better and happier through professional efforts; to keep utter faith with clients, adversaries, judges, and juries; to spare no labor in search after legal principles and precedents; to love books and the ever fresh pursuit of knowledge; to cultivate frankness and sincerity in all intercourses; to practice courtesy to everyone, and, without ever impairing self-respect, to accord unto others due respect toward their feelings and idiosyncrasies and rights; to cultivate good citizenship, and remember in practice those grand lines of advice from the poet Bryant, that were written and first chanted as a hymn to Death amid the Berkshire mountains: —

— "Sustained and soothed
By an unfaltering trust approach thy grave,
Like one who wraps the drapery of his couch
About him, and lies down to pleasant dreams."

A STRANGE STORY OF THE SEA.

THE admiralty division of the High Court of Justice in England seldom rivals, much less excels, its probate and divorce companions, in point of interest and attractiveness. But every rule has exceptions, and not long since Mr. Justice Govell Barnes, the puisne admiralty judge, was engaged for nearly a week with a special jury in trying a case of the most romantic and sensational character.

In point of form it was a suit for damages of the most ordinary and commonplace kind. The plaintiff, Mr. Henry Smethurst, an alderman of the borough of Grimsby on the English east coast, and a justice of the peace, sued the owners of the trawler "Ibis" for damages on the ground that the skipper of that vessel had run down and sunk his smack, the "Fortuna," on the morning of seventeenth August, 1892, in the North Sea. The defendants (and it was here that the case assumed a startling character) pleaded first that the skipper of the "Ibis" had sunk the "Fortuna" deliberately, and secondly that he had done so by the orders of Mr. Smethurst himself. In order to bring home this charge to Mr. Smethurst, the defendants maintained that he had a motive for the crime which they alleged against him, inasmuch as the "Fortuna" was insured above her value and he was anxious to get the sum covered by the policy. The attempt to prove motive however ludicrously collapsed. The "Fortuna" was insured for £975 in a club of which Mr. Smethurst was a director. She was worth as a game concern from £800 to £1000. The jury were therefore substantially invited to believe that a man of unblemished reputation, and in no pecuniary difficulties, conspired to perpetrate an offence of the most abominable character, which in a certain event might have cost him his life, merely in order to get a sum of money equal to the value of his ship, and certain to be reduced far below that value (1) by the contribution which he himself as a member of the insurance club would have to make to the payment of the £975, and (2) by the bribe (alleged by the defendants to be £120) payable to the accomplice of his infamy. That any man in possession of his senses would be guilty of such a hideous blunder was impossible — and there was no evidence that Mr. Smethurst was insane. The absence of anything like a motive for the crime told heavily in the plaintiff's favor. But the defendants made a further attempt to convict Mr. Smethurst of the foul play imputed to him. They confronted him with an alleged confession by the skipper of the "Ibis." This man's name was Harry Rumbell. In the month of November following the loss of the "Fortuna," he murdered his mistress and was tried and condemned at Lincoln Assizes. Shortly before his execution he made two statements, one of which was signed by him, accusing Mr. Smethurst of having bribed him to run the "Fortuna" down. There was a battle royal in court as to whether or not these statements were admissible in evidence. Mr. Lockwood, Q.C., for the defendants, urged that they were "declarations against interest," since a claim for damages would lie, in respect of them, against Rumbell's estate. Sir Edward Clarke, Q.C., and ex-Solicitor-General, on the other hand maintained on behalf of Mr. Smethurst that they were not admissible; and Mr. Justice Barnes, without stating his reasons, upheld the objection. The point may probably come before the Court of Appeal. But in the mean time the learned judge's decision is law, and I think good law. These statements were made in the plaintiff's absence, at a time when Rumbell had nothing to lose, and everything, viz., life, to gain by

making them. The security of society would be shaken if testimony of this kind were received. Any convict might gratify his hatred or seek to prolong his days by accusing the fair fame of his fellows; and then if the capital sentence were after all carried out, counsel relying on the confession would say, as Mr. Aspinall, Q.C., junior counsel in the "Ibis" case, did say to the jury, "Would such a man be likely to lie, going as he was before the seat of his maker, and bearing in mind the teachings of his youth, "Thou shalt not bear false witness against thy neighbor," and "Lying is an abomination unto me, saith the Lord"? The answer is twofold. Rumbell was probably trying to avoid appearing before the tribunal to which the learned counsel referred; and a man who had coolly disregarded the sixth commandment was not likely to consider the ninth of very peremptory obligation. Foiled in this line of defense the owners of the "Ibis" fell back on indirect and circumstantial testimony. Rumbell, said they, willfully sank the "Fortuna." But the jury took the opposite view, and having regard to the facts that the collision occurred in broad daylight, that the excuse given by Rumbell for approaching the "Fortuna," his need of twine to mend his trawl, was proved to be a genuine one, and that the steering gear of the "Ibis" was shown to be in a condition which might make it difficult to arrest her progress, it is impossible to deny their right to come to that conclusion. Then it was said that Smethurst found Rumbell a command in his own employ after the loss of the "Fortuna," that he provided him with the means of defending himself against the charge of murder, and that he gave the convict's mother a present of £10. But the plaintiff's books stood the strictest inspection, and no jury would have been justified in putting down to a sense of guilt and a fear of detection acts of which charity offered a sufficient explanation. The case properly ended in a verdict for the plaintiff. In addition to its other "notes" of distinction, it gave Sir Edward Clarke the opportunity of making what many regard as the finest forensic appearance in his career.

LEX.

AN ABSTRACT OF TITLE.

Abstract

OF

The Title

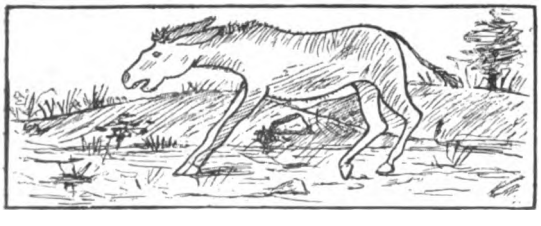
OF

HENRIETTA SYNDECKER

TO

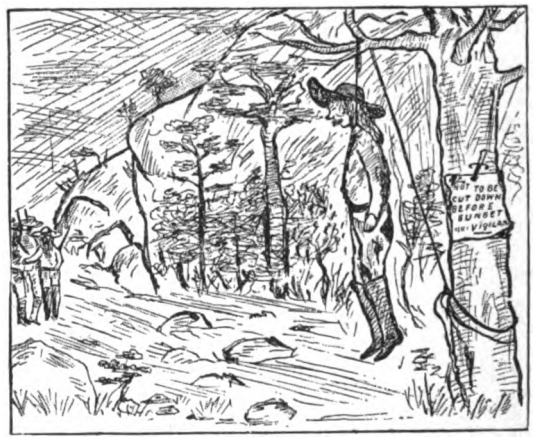
The MULE Shown on the Following

Diagram.



THE early title to the mule in question extends back to the year 1860, when we find it vested in Robert Roundup, Esquire, of Harleam Commons. It appears of record that one Charles Johnson, a farmer living in the vicinity, complained of losing a mule from his barn on the night of July 6, 1860. It is about this time that we find Robert Roundup seized of the mule under examination, and it is not improbable that the mule was seized from this Mr. Johnson.

Robert Roundup, Esquire, died in September, 1867, intestate, as shown on the following diagram: —



He left him surviving a widow, Rebecca Roundup, and the following heirs-at-law and next-of-kin, to wit: —

(1) Robert Roundup, a son;

(2) Mary Roundup, a daughter, who subsequently intermarried with Stephen Perkins and died June 14, 1869, intestate and without issue;

(3) Phoebe Roundup, a daughter, who afterwards intermarried with Philip Havemeyer.

The following partition-suit was brought by Rebecca Roundup: —

IN CHANCERY.

REBECCA ROUNDUP,
Plaintiff,
vs.
ROBERT ROUNDUP, MARY ROUNDUP and PHOEBE ROUNDUP.

JOHN JAWKINS, Plff's Sol'r.

1868 Jan'y 2 Complaint and lis pendens filed. Complaint alleges death of Robert Roundup, September 16, 1867, intestate, seized of the mule in question, leaving plaintiff and the defendants his only heirs-at-law and next-of-kin; that by the death of Robert Roundup the plaintiff became seized in fee simple of an undivided one-third interest in mule, and the defendants each became seized in fee simple of an undivided two-ninths interest therein. Prays for partition of mule and for the appointment in the meantime of a Receiver of the rents, issues and profits thereof.

Jan'y 29 Joint and several answer of defendants. Denies none of the material allegations of the complaint.

March 14 Order of reference to Rhilo Phuggles, Esq., to take proof of plaintiff's title and interest in the mule, and to ascertain and report the rights, shares and interests of the several defendants therein, and an abstract of the conveyances by which the same are held; also to ascertain and report whether the mule, or any part thereof, is so situated that an actual partition thereof cannot be made without prejudice to the parties in interest (including the mule), and if he arrive at the conclusion that a sale of the mule is necessary, that he specify the same in his report; also to ascertain and report whether the mule should be sold as an entirety or in parcels, together with reasons which render a sale necessary.

March 30 Referee's report filed.

April 7 Decree. Finds plaintiffs and defendants respectively seized of mule, as alleged in the complaint, and that the mule should be sold in one parcel.

April 8 Order of sale.

RHILO PHUGGLES,
Referee,
TO
RICHARD JONES.

Referee's Deed.
Dated June 1, 1869.
Recorded June 2, 1869.
Liber 827 of Cons. p. 1.
Consideration $10.00.

Recites proceedings in partition suit above set forth.

Conveys mule in question.

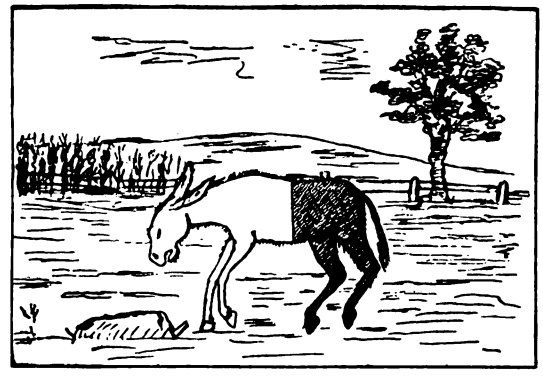
Habendum in fee.

Richard Jones thus became seized of the mule in question. He made the following mortgage: —

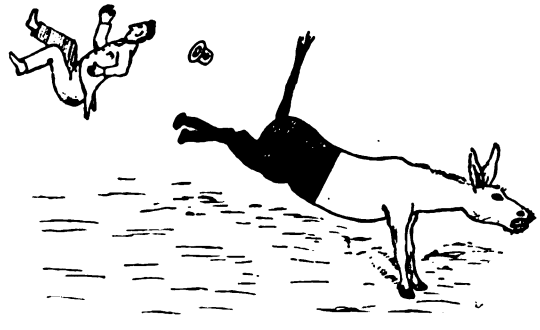
RICHARD JONES,
Unmarried,
TO
PHILIP SYNDECKER.

MORTGAGE.
Dated May 17, 1871.
Recorded May 18, 1871.
Liber 941, of Morts. p. 9.
To secure $15.76.

Covers that portion of the mule in question colored black on the following diagram.



This mortgage was subsequently foreclosed (by the mule) as shown on the following diagram: —



LAST WILL AND TESTAMENT
OF
PHILIP SYNDECKER.

Dated Aug. 15, 1872. Proved before the surrogate of New York County, Sept. 16, 1872. Recorded in Liber 436 of Wills, p. 76.

EXTRACT: "I, Philip Syndecker, being of sound disposing mind and memory, but being possessed of an undivided interest in a certain mule of some asperity of temper, and being mindful of the uncertainties of this life, do make, publish and declare this my Last Will and Testament.

* * * * * * *

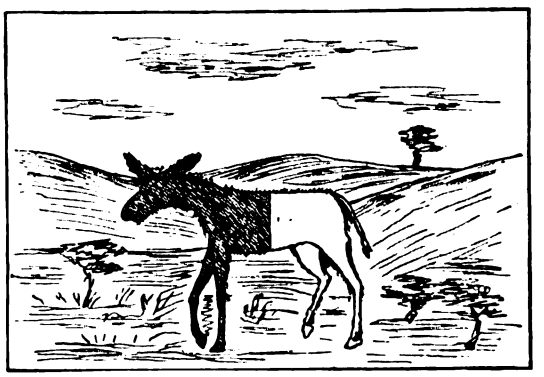
"I give and bequeath to my beloved wife, Henrietta, my undivided one-third interest in a certain mule, secured by mortgage recorded in the office of the Register of the City and County of New York in Liber 941 of Mortgages, page 9: this bequest being intended as and to be accepted by my said wife in lieu of all dower or other interest in or claim upon my real and personal estate."

Richard Jones subsequently made the following conveyance: —

RICHARD JONES
TO
HENRIETTA SYNDECKER.

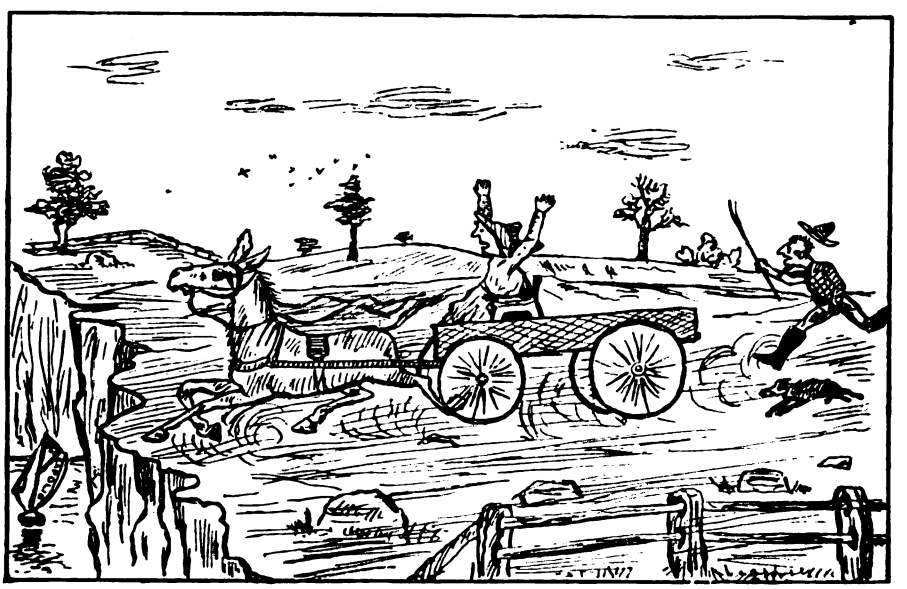
Quit-Claim Deed. Dated Oct. 23, 1873. Recorded Oct. 29, 1873. Liber 868 of Cons., p. 27. Consideration — Desire to Get Rid of the Mule.

Conveys that portion of the mule under examination colored black on the following diagram: —



By the conveyance last above recited, Henrietta Syndecker became seized of the whole of the mule in question.

A break in the chain of title follows, the last deed of record being the following conveyance of Henrietta Syndecker by the mule in question: —



LETRAM WERD.

THE CHLOROFORM POISONING CASES.

ABOUT the middle of the present century a curious medico-legal controversy arose on the question whether chloroform, which had then been only recently introduced, could be used to facilitate robbery. Public and professional opinion was pretty evenly divided on the point.

1. The romantic aspects of anæsthesia by chloroform seized upon the public mind. "The early accounts," says a well known writer, "of the use of this agent in surgery and midwifery, which appeared in all the papers, contained a description of its fruity odor, and its administration on a handkerchief." Nothing was said of any disagreeable property it might possess, or of any unpleasant phenomena attending its administration, which would render its use by the criminal classes dangerous and unsatisfactory. For the purposes of thrilling narrative it was necessary that chloroform should be a criminal agent, and a criminal agent it accordingly became.

2. Moreover, a series of cases — which were supposed to establish the popular theory — was soon forthcoming. A waiter in a California hotel was accused, tried, and condemned to a long term of imprisonment for rape, alleged to have been perpetrated under the following remarkable circumstances. His victim was a servant girl in the same hotel. The alleged criminal, having learned from a druggist that chloroform introduced into a room by means of a spray apparatus would cause insensibility, proceeded to act upon this assurance, and successfully carried out his criminal design. The most elementary knowledge of the subject would have sufficed to discredit this extraordinary tale. How was the ignorant operator to know when unconsciousness was effected? Why was the victim to give no sign? How was the potency of the volatile fluid to be preserved? But the temper of the day was not critical, and the Californian case was raised unchallenged to the dignity of a precedent. Second in order of time came another American case of the alleged application of chloroform in the service of robbery. A watch-dog, shut up in a small room containing a safe, was rendered insensible by towels saturated with chloroform being thrown into the room, and then the safe was robbed. The facts in evidence were the towels, still smelling strongly of chloroform, and the sickness of the dog throughout the following day. Assuming its authenticity, this case no doubt proved that under such conditions as the facts presented, the narcotization of a dog was possible; that chloroform could, however, be freely used on the human subject in the same way and under the same conditions, by no means followed. But here again the great faith of the laity came to the rescue of the tale, and it received the *imprimatur* of public approval. The last of the chloroform poisoning cases, to which we shall at the present stage refer, occurred in Kendal, England, in the latter part of 1851. The intended victim was awakened by a man attempting to suffocate him by a rag steeped in chloroform. In spite of the disadvantage at which he was taken by his midnight assailant, his cries of "help," "murder," roused the inmates of the hotel at which he was stopping; and when assistance arrived, the intruder was found the worse anæsthetized of the two. This story marks a decided advance on the Californian case, where the waiter was, curiously enough, able to breathe in, and was not overpowered by, the atmosphere which had stupefied his victim, and might, one would have thought, have allayed the popular panic which the chloroform poisoning scare had created.

3. It had, however, directly the opposite effect, and merely provoked from a distin-

guished editor of the day the savage suggestion that culprits of the same class should in future be put out of the way of repeating their acts by being compelled to drink a fatal dose of chloroform. The romantic side of the chloroform question would not have produced any permanent effects but for the Kendal and similar cases. The feelings excited by these were, however, so strong, that in 1851 Lord Campbell introduced into his "Prevention of Offences Bill" a clause making "the unlawful administration or application of chloroform and other stupefying agents felonious," and argued vigorously in favor of its enactment. But Lord Campbell abandoned the idea that chloroform had been or could be used to facilitate robbery, *without the knowledge of the person taking it*, and thus gave a severe blow to the chloroform scare.

4. The public mind was at length released from this incubus by the concurrence of two sets of circumstances. In the first place, the medical profession had all along protested against it. In the second place, fresh cases occurred which showed this protest to be well founded. A man and his wife, living in hired apartments in London, were alleged to have induced a jeweler to send one of his shopmen to their rooms with diamonds of very considerable value for inspection. While pretending to look over the jewels, the woman went behind the shopman and placed a handkerchief dipped in chloroform over his mouth and nostrils, the husband holding his arms. As he became senseless, they pinioned him and made off with the jewelry. Subsequent evidence transpired, however, which went to prove that the shopman was a consenting party to his own narcotization. Other cases of the same kind occurred and were exposed, and then the voice of medical science was heard, and the panic brought to an end. It is obvious, indeed, now that it has been clearly pointed out, that chloroform poisoning is attended with so many risks of detection through the necessity of administering the vapor slowly, and through the resistance, the chloroformic excitement, and the sickness of the subject, and with such imminent danger to life, that no prudent thief would dream of employing it; and the terrors of a surreptitious application and unconscious inhalation of this valuable agent for criminal purposes have ceased to disturb the quiet of law-abiding citizens.

LE GARÇON QUI RIT.

By Wendell P. Stafford.

HAS life to this, my little boy,
An underflow of hidden joy?
Often, the house in silence deep,
I hear him laughing in his sleep.
It is a happy, gurgling sound,
As if the river of his dream
Had overleaped the silver bound
That broke the tenor of its stream, —
Had sparkled in the sun, and then
Glided away in shade again.

Laugh on, unheeding, not unheard,
Like some unseen, untroubled bird
That sings his song and never knows
What hearts are lightened as it flows.

Thank God for laughter! Later years
That thank Him for the gift of tears
Shall hold the boons of equal worth,
And bless Him for the gift of mirth.

PRISONERS AND SPECTATORS.

LORD MACAULAY, in his graphic description of the state of English society in the seventeenth century, illustrates the callousness of the age by stating that "Gentlemen arranged parties of pleasure to Bridewell on Court days for the purpose of seeing the wretched women who beat hemp there whipped." In the present day any man of decent habits would be shocked at the imputation of having voluntarily witnessed the corporal punishment of a criminal; and the idea that a delicate woman should do so, is barely conceivable.

The humanity of the age has so progressed that the Legislature has put an end to public executions. Heavy fines are inflicted for torturing animals of the brute creation, and optimism consoles itself with the thought that the reign of mercy has been established. Yet every assizes exhibits a sight which is only not shameful because it is customary. Cruelty, indeed, arises more from thoughtlessness than from temperament; and so it happens that in criminal courts at the assizes throughout England, women educated as ladies are to be seen seated in a line with the judge, and listening intently to the trial of cases. Perhaps they would argue, if objection was taken to their conduct, that the administration of justice is a thing worthy of observation and admiration, that they desire to see the judge, to hear the bar and note the procedure, and that causes at *nisi prius* are to them unintelligible. The issue, whether the prisoner is guilty or not, is easily grasped, and the points of the case are as simple as they are attractive. In that view excuse is possible. But then the contest is not for an estate, but for the life or liberty of a human being, and there is something awful in the position of the accused, who is not only hunted down by the ministers of the law, but whose fall is a subject of morbid excitement to ranks of mere spectators.

"It is a strange duel in which arguments are the swords, and in which one word may be fatal. It is a horrible agony, in which the vague hope of escape is one torment the more." What a prisoner endures while the jury consider their verdict cannot be described, but at least the torture is more intense than any punishment which follows. And yet this spectacle of misery is beheld by men and women who not only shrink not from the sight, but follow the game with the interest of gamblers, and turn from it with the levity of play-goers. They would shudder at the infliction of the judgment, but the process by which that judgment is given is to them a source of strange diversion. To the criminal the majesty of justice, the anxiety of the hour, the dread of the future, are terrible enough; what need is there to add the contrast between the gaiety of the sightseer and his own despair? — *The Law Journal.*

CONTRASTS IN ENGLISH CRIMINAL LAW.

II.

By Hampton L. Carson.

IN a former paper we dwelt upon the singular contrast between the theory and the actual administration of the criminal law of England. In this paper we propose to point out the increasing severity in the list of English statutory crimes, as contrasted with the common law. In fact, the punishments for a multitude of offenses, which constantly augmented in number until the catalogue of crimes became appalling, were "*very strait, sore, extreme, and terrible*," to borrow the language of the preamble of 1 Edw. VI., chap. 12, a statute intended to abrogate the severity of the legislation of Henry VIII. against heresy and papal supremacy.

To one who casts a rapid and comprehensive glance at seven hundred years of English history, the eye is attracted with awful fascination to Temple Bar, red with blood, decked with gory, gruesome, ghastly heads and limbs stuck upon poles, amid which the solitary harper, undeterred by stench and fearless of pestilence, would strum his couplets, while the curious vulgar would stare at them from below, and even as late as the days of Horace Walpole would peep through spyglasses at the cost of one

WESTMINSTER HALL.

halfpenny. Hogarth's picture represents the truth. They were days when men were drawn to death on sledges; when the bodies of murderers were exposed to the gaze of the galleries in Surgeons' Hall, attached to the Old Bailey; while men like Titus Oates, convicted of perjury, were stuck up in the pillory; when malefactors were hanged in chains at crossroads, and the boatmen on the Thames were accustomed to the sight on every headland of corpses in various stages of decomposition swinging in the breeze. Such were the horrors of the landscape in "Merrie England" in the days of Shakespeare and Bacon, and even as late as those of Pope and Burke and Wilberforce and Hannah Moore.

WILLIAM PRYNNE.

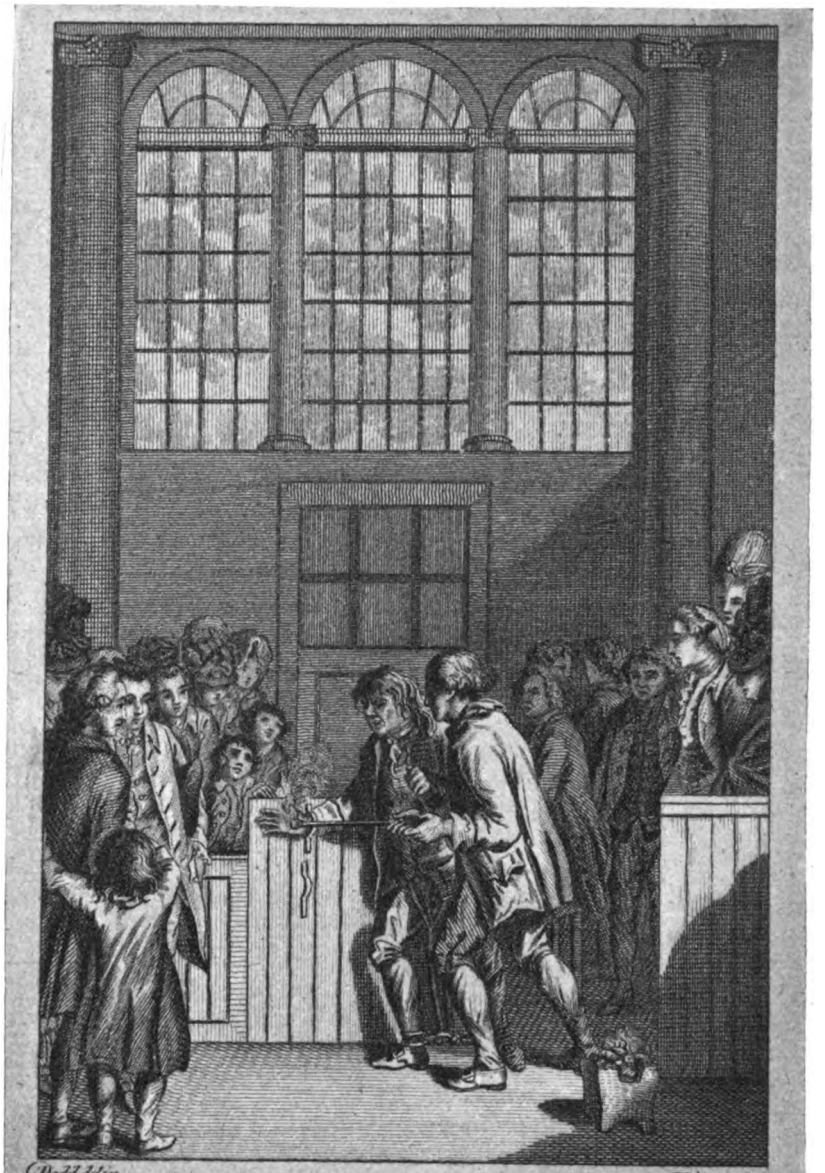
It is quite clear that the common law in itself was not a savage or a sanguinary code, if we take into consideration its ancient origin, and the barbarism of the tribes among whom it prevailed.

The term "felony" originally comprised every species of crime which occasioned the forfeiture of lands and goods. At common law, in addition to the crimes coming strictly under the head of treason, the chief, if not the only felonies, were murder, manslaughter, arson, burglary, robbery, rape, sodomy, mayhem, and larceny. The punishment of these, where the offender could not claim the benefit of clergy, was death by hanging, forfeiture of lands and goods, and corruption of blood. The benefit of clergy was not permitted to high treason nor to misdemeanors, and in the former the death penalty was added to by the sentence that the felon should be drawn and quartered and, sometimes, burnt.

In discussing capital punishments, that great master of crown law, Sir Matthew Hale, dwelt upon the punishments inflicted by the laws of several countries, especially in the two offenses of homicide and theft, which he stated were the most common and obvious. He makes it very plain that, among the Saxons, the punishment of homicide was not always for the most part capital, for it might be redeemed by recompense. It went under the name of "Wera" and "Weregild," which was a rate set down upon the heads of persons of several ranks; and if any of them were killed, the offender was to make good that rate to the kindred of the party slain. This custom continued even to the time of Henry I., but shortly after grew obsolete, as being contradictory to the Divine law, that "Whosoever sheddeth man's blood, by man shall his blood be shed."

More recent studies in the law of crimes have resulted in the discovery that it was a general practice of most of the Northern nations to commute the punishment of the

most heinous offenses for a pecuniary mulct; and even Tacitus, in speaking of the ancient relations of him that were slain received satisfaction. Mr. Reeves, in his History of



Dodd delin. White sculp.

Mode of punishment by BRANDING, *or burning on the* HAND, *at the New Sessions House.*

Germans, says that it was customary among them to punish homicide with a certain number of sheep and oxen, out of which the the English law, emphasizes the thought that the idea of pecuniary compensation ran through the entire Saxon code, and even

states the varying prices at which human lives were rated according to their rank, — a *capitis estimatio.*

Although in time the custom of "Weregild" was abrogated in England, and William the Conqueror took away all capital punishments and substituted physical mutilation, — the loss of arms, of hands and feet and eyes, — yet by the time of Henry IV. the punishment of homicide was, regularly, death. A custom then sprang up of instituting two kinds of proceedings, the one being at the suit of the heir or wife by an appeal, the other at the suit of the king by indictment. In the case of an appeal, Lord Coke has pointed out that the offender was to be hanged by the neck till he be dead; and in case he was convicted on an appeal, the ancient usage was that all the relations of the slain should drag him with a long rope to the place of execution. (3 Coke's Ins., 131; Plowden, 306, B. 11.)

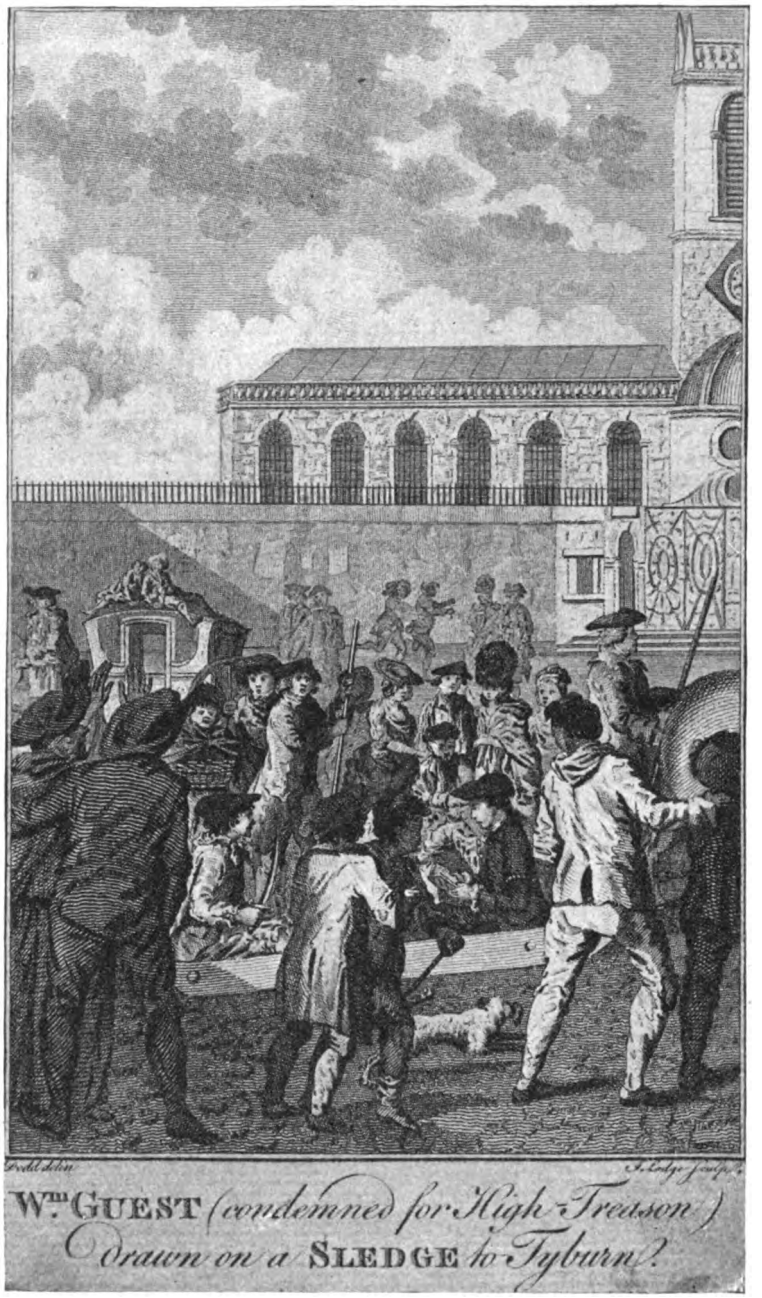
In theft, Sir Matthew Hale points out that the punishment varied from time to time, according as the offense grew and prevailed, more or less. By the laws of Ethelbert, if one man stole anything from another, he was to restore threefold, besides a fine to the king; if he stole anything from the king, he was to restore ninefold. By the laws of Ina, a thief was punished with death; but if a rogue who had been often accused, but never convicted, should be taken in a theft, he was to have a hand or foot cut off. By the laws of Alfred, whoever stole a mare with foal, or a cow with a calf, was to pay 40*s.*, besides the price of the mare or cow; while whoever stole anything out of a church, was to pay the value and a fine, according to the value, and also was to have the hand cut off which committed the act. Malmsbury tells us that in the time of William I. theft was punished with castration and loss of eyes; but in the time of Henry I. the ancient law, which continued until the early part of this century, was that the thief or the robber should be hanged by the neck until dead.

The comparative clemency of the Saxons was soon supplanted by the ferocious and warlike spirit of the Normans; and as time went on, crimes punishable by death were created by the score. A study of the statutes cannot fail to impress us with the fact that from century to century the mass of sanguinary legislation rolled on, augmenting in bulk and black with terror. Bigotry, avarice, ambition, fanaticism, the selfish pleasures of the rich, the jealousies of landowners, the brutalities of sheriffs, the greed of gaolers, and the interests of scheming monopolists, alike demanded victims, and cried out for blood.

The laws of Edward I., of Edward III., and Richard II., inflicted upon offenders the punishment of death, whenever a man purveyed victuals without warrant, or imported "false and evil coin;" whether he stole a falcon or concealed a hawk, or exported wools, leather, or lead; and by the 14th statute of Edward III., chap. 10, if a gaoler or underkeeper by too great duress of imprisonment and by pain made any prisoner in his ward to become an appealer against his will, and thereof be attaint, he should have judgment of life. The importation of false and evil money was prohibited under pain of life and liberty, and the exportation of coin or bullion was prohibited under pain of forfeiture, one branch of this being declared treason by the statute of 25 Edward III. The statute of 27 Edward III. prohibited the exportation of wools, leather, or lead by any English, Irish, or Welshman, under pain of loss of life and liberty, and forfeiture of land and goods. This was subsequently amended, as the spirit of commerce grew to strength, by allowing merchant denizens to pass with their wool, as well as foreigners, without being restrained.

In the reign of Henry IV. it was ordained, by statute passed in the fifth year of that

king, that "none, from henceforth, shall multiply gold and silver, nor use the craft of multiplication; and if any do, he shall incur the pain of felony in this case," — a strange tribute to the power of the alchemists. But at a later date, when royal avarice conquered superstitious fears, William and Mary repealed the statute, with the proviso that the gold or silver extracted by the art of smelting should be carried to



Wm. GUEST (condemned for High Treason) Drawn on a SLEDGE to Tyburn?

the Tower of London for the making of moneys, and be not otherwise disposed of. So, too, the cutting out of the tongue, or putting out of the eyes of the king's subjects, of malice prepense, and other dismemberment, was enacted to be a felony; while two temporary statutes, passed in the reign of Henry VI., by which it was directed that a proclamation should issue that all *Britons* should depart out of the realm before the Feast of John the Baptist next, upon pain of life and liberty, and that no confederacies be made by masons in their assemblies whereby the good order of the Statute of Laborers was violated, are instances of the ancient methods of dealing with dissatisfied workingmen.

In the reign of Henry VII., any unlawful hunting in a forest, park, or warren, by night, or with painted faces, was declared to be a felony, and the rescue of any party so taken was also declared to be a felony. So also, what was termed "stealing an heiress," that is, the marriage of a maiden or widow, possessed of lands or tenements, against her will, was declared to be a felony; and any procuring, abetting, or receiving the woman so taken against her will, with knowledge of the facts, was declared to be a felony; and such misdoers, takers and procurators and receivers were to be reputed and adjudged as principal felons, provided, however, that the act should not extend to any person taking any woman upon the claim that she was his ward or bondwoman. (3 Henry VII., chap. 2.)

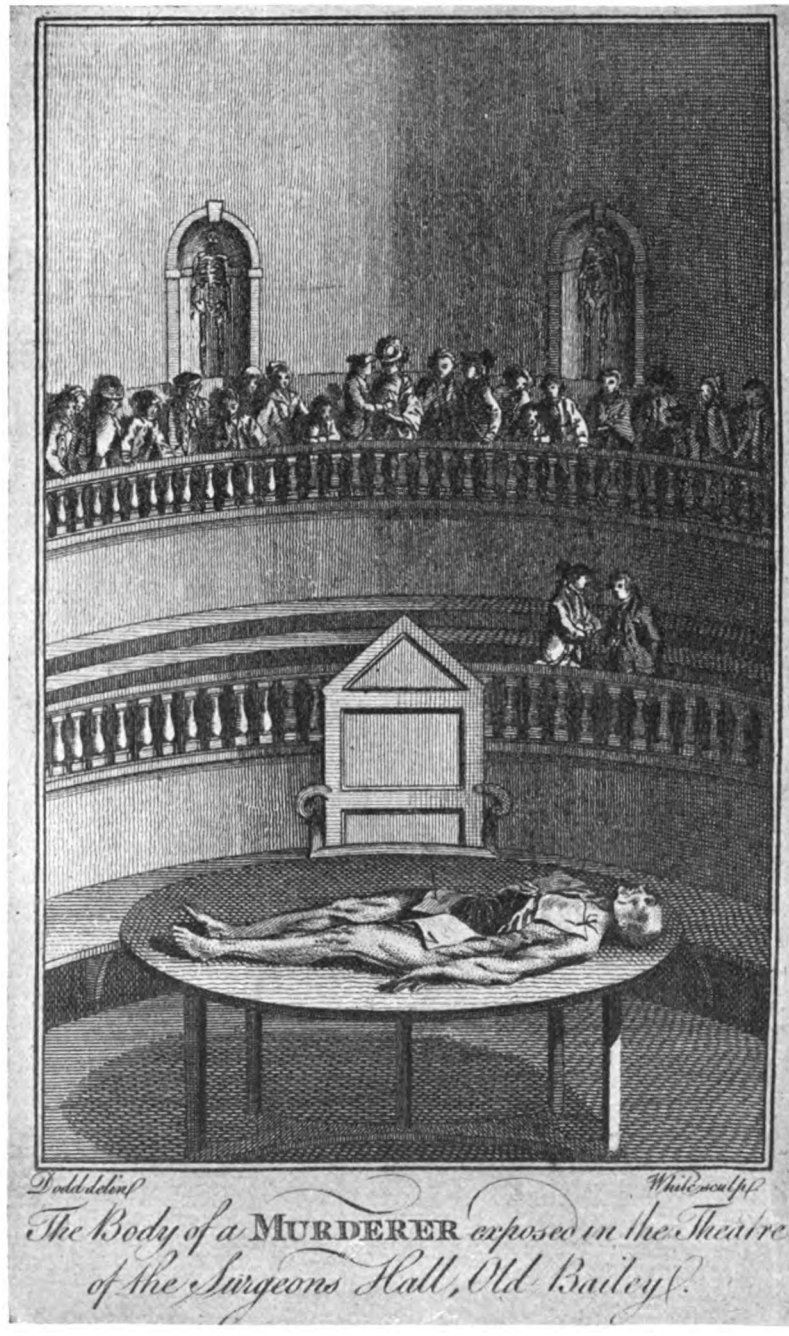
By 21 Henry VIII., chap. 7, it was provided that if any "servants, to whom caskets containing jewels, moneys, goods, or chattels, had been delivered for safe keeping by their masters or mistresses, should depart therewith with the intent to steal the same and defraud the master, contrary to the trust or confidence bestowed, they shall be adjudged guilty of felony, if the embezzlement should be of the value of 40*s.* or above; while by the statute of 22 Henry VIII., chap. 11, any perverse and malicious cutting down of dykes or banks made for the protection of the land against the inroads of the ocean, was declared to be felony. So, too, if soldiers ran away from their captains, or deserted from the king's service, except in cases of notorious sickness, they should be punished as felons; while similar offences on the part of mariners and gunners serving on the seas, taking wages of the king or queen, were punishable under 5 Elizabeth, chap. V.

By 22 Henry VIII., an act was passed for "the voiding and banishing out of this realm of certain outlandish people, calling themselves *Egyptians*, using no craft nor merchandise for to live by, but going from place to place in great companies, using subtle and crafty means to deceive the king's subjects, claiming that they by palmistry could tell men and women's fortune."

In the time of Elizabeth, all seditious books, letters, prophecies, and calculations of the queen's nativity were declared to be felonies in the twenty-third year of her reign; an instance of feminine delicacy as to her age on the part of the Virgin Queen; while in forgeries of any deeds, charters, or court rolls, or of wills, whereby the interest of any person in lands might be fraudulently affected, the offender was to be set upon the pillory, have his ears cut off, and also his nostrils slit and seared with a hot iron, and he be imprisoned during life, and forfeit the profits of all his lands. A proviso was attached that the act was not to extend to any attorney or lawyer pleading a forged deed, nor being a party or privy to the forgery, nor to the exemplification of a forged deed, nor to any judge who should cause the seal to be set to such exemplification. As late as the days of George II., one Japhet Croke, alias Sir Peter Stranger, was convicted of forging a deed, and suffered all the penalties of the act.

If any man delivered, or brought, or sent, or received, or procured to be brought, or

sent, or received, in any ship, any manner of sheep alive, to be carried or conveyed



out of the realm, or out of Wales, or out of Ireland, he was to suffer, for the first offence, imprisonment and loss of his left hand, and

for the second offence he was to be convicted of felony: and by the 35th Elizabeth, chap. 1, it was enacted that if any person above the age of sixteen years should obstinately refuse to attend church or chapel,

or hear prayers or divine service, or go about to persuade others to impugn her Majesty's power in causes ecclesiastical, or to persuade others to forbear going to church to hear divine service, that he should, upon conviction, be committed to prison, there to remain without bail or mainprise until willing to go to church, or listen to divine service. The only humane feature of this law was the proviso that it was not to extend to women or Popish recusants. The instances of parties claiming that they were less than sixteen years of age were numerous, and led to a general discontinuance of the growth of beards.

In the reign of James I., if any dangerous or incorrigible rogue was found begging or wandering in the lanes or streets, he should be branded in the shoulder with the letter "R" and be sent to the place of his last dwelling, and if that could not be ascertained, then to the place of his birth; while idle and wandering soldiers or mariners were adjudged to be felons, without benefit of clergy.

In the first year of James I. there was a general codification of the law against conjuration and enchantment, and it was enacted that "if any person should use drugs, or exercise any invocation or conjuration of any evil or wicked spirit, or should consult, covenant with, entertain, employ, feed, or reward any wicked or evil spirit; or take up any dead man, woman or child out of his or their grave, or any other place, or the skin, bone, or any other part of any dead person, to be employed in any manner of witchcraft, sorcery, charm or enchantment, or should use drugs, or exercise any witchcraft, sorcery, charm, or enchantment, whereby any person shall be killed, destroyed, wasted, consumed, pined, or lamed in his or her body, or any part thereof," he should suffer death as a felon, without clergy: and "if any person take upon him by witchcraft or sorcery to tell wherein treasure of gold or silver might be found, or where lost or stolen goods could be found, or employed sorcery with the intent to provoke any person to unlawful love, or whereby any cattle or goods or any person should be destroyed, wasted or impaired," he should, upon the first conviction, suffer one year's imprisonment without bail, and once a quarter stand two hours in the pillory, and publicly confess his fault; and if, after conviction, he commit a like offence, and be convicted and attaint of the second offence, he should suffer death as a felon, without clergy.

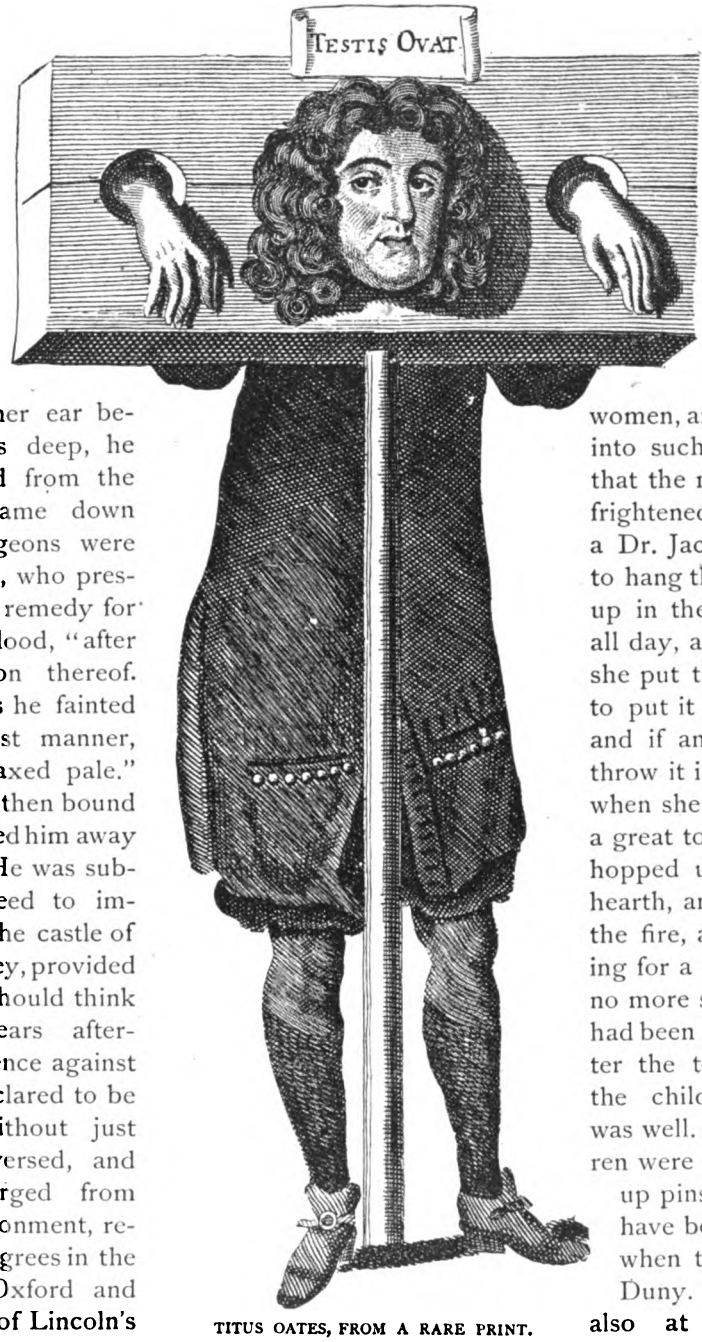
No new felonies were enacted in the time of King Charles I. Such then, is a general review of the condition of English Criminal Law at the time that Sir Matthew Hale closed his work upon the Pleas of the Crown.

We now glance at a few specific instances to be found in the State Trials.

In 1637, which was the thirteenth year of the reign of Charles I., proceedings were instituted in the Star Chamber against William Prynne, Burton, and Bastwick. Prynne was a barrister-at-law, Bastwick was a physician, and Burton was a clergyman. The offence charged against them was that they had published books reflecting upon the Court and the Church, and at their trial they were roughly handled, being denied the assistance of counsel, or a fair opportunity to speak. They were each condemned to lose their ears in the palace yard at Westminster, to be fined five thousand pounds, and to undergo perpetual imprisonment in three remote places of the Kingdom; to which Finch, the Chief Justice of the Common Pleas, added that he condemned Prynne to be stigmatized in the cheeks with two letters "S" and "L" for a seditious libeller, to which all the lords agreed.

Prynne behaved with great courage. When the executioner had cut off one ear, which he had cut deep and close to the head, in a cruel manner, he never flinched, moved, nor stirred, although an artery had been cut, so that the blood ran streaming

down upon the scaffold, and divers persons, standing round, dipped their handkerchiefs in it as a thing most precious, the people giving a mournful shout and crying for a surgeon. The other ear being cut no less deep, he was then freed from the pillory, and came down where the surgeons were waiting for him, who presently applied a remedy for stopping the blood, "after a large effusion thereof. Yet for all this he fainted not in the least manner, although he waxed pale." His head being then bound up, two friends led him away to his house. He was subsequently decreed to imprisonment in the castle of the Isle of Jersey, provided the governor should think fit. Three years afterwards the sentence against Prynne was declared to be illegal, and without just cause, and reversed, and Prynne discharged from fine and imprisonment, restored to his degrees in the University of Oxford and to the Society of Lincoln's Inn, and to the exercise of his profession as an Utter Barrister-at-Law, and to his chamber at Lincoln's Inn. (1 State Trials, p. 481.)



TITUS OATES, FROM A RARE PRINT.

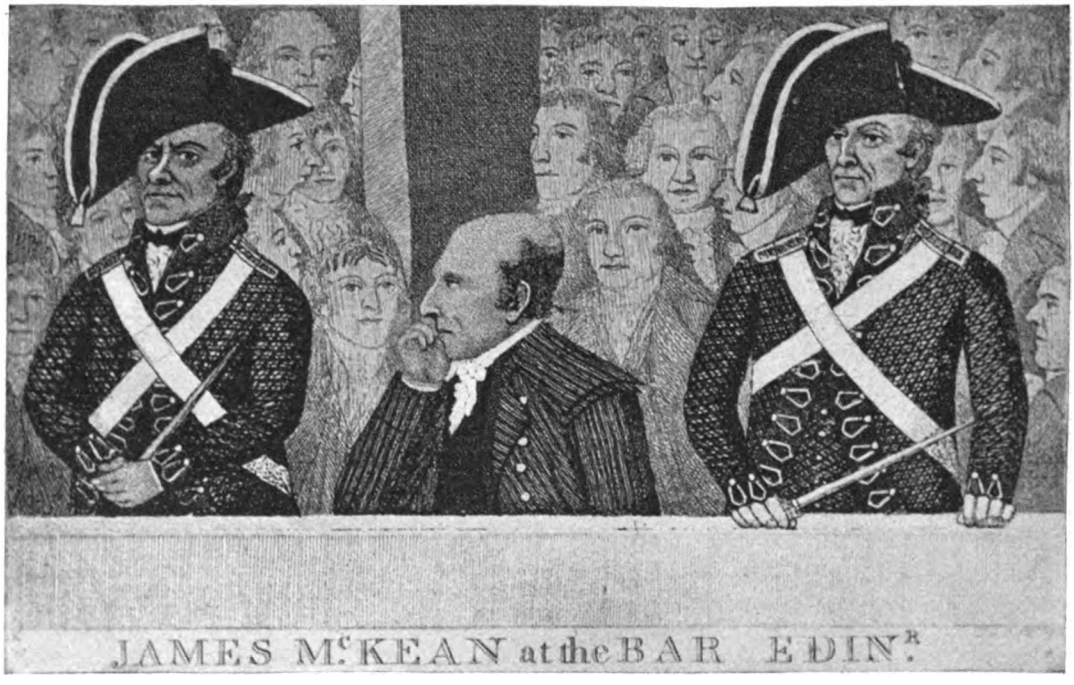
In the trial of the witches at Bury St. Edmunds, before Sir Matthew Hale, the charge was that Amy Duny and Rose Collender, two wrinkled old women, had bewitched several children. The mother of one child had left her infant for the day with one of the old women, and at night he fell into such fits of swooning that the mother was much frightened. She went to a Dr. Jacob, who told her to hang the child's blanket up in the chimney-corner all day, and at night when she put the child into bed to put it into the blanket, and if anything fell out to throw it into the fire; and when she took the blanket a great toad fell out, which hopped up and down the hearth, and she cast it into the fire, and after sputtering for a while "there was no more seen than if there had been none there." After the toad was burned, the child recovered and was well. The other children were said to have cast up pins and nails, and to have become speechless when touched by Amy Duny. The children had also at some previous time declared that the witches had visited them in the form of a bat and a mouse. At times the children would see things run up and down the house like poultry and mice, and one of them cried out like a rat when touched with the tongs.

There was no evidence at all to connect the so-called witches with these foolish fancies: The evidence rested on the simple hearsay of the declaration of the children, who would not, or could not, testify in court because some of them were too sick to be brought there, and the rest were speechless. Then the famous Dr. Thomas Browne, the author of the "Religio Medici" and a man of great knowledge and repute, was put upon the witness stand as an expert. He was clearly of the opinion that the children were bewitched, alleging as a reason that "in Denmark there had recently been a great discovery of witches, who afflicted people by conveying pins into them, and needles, and nails," and his argument was that "the devil in such cases did work upon the bodies of men and women as upon a natural foundation; that is, he stirred up and excited humors in the body, whereby he did, in an extraordinary manner, afflict them with distemper, only heightened by the subtlety of the devil, co-operating with the malice of the witches who instigate him to villainy." This learned nonsense fully satisfied the great Sir Matthew Hale, until some ingenious person in the court-room suggested that the children might be guilty of deceit, and so they were brought in blindfolded, and told that the witches were approaching, and then another person touched them, which produced the same effect as the touch of the witch by throwing them into fits. This puzzled the learned jurist exceedingly, until it was remarked at the bar that possibly the children might be deceived with the suspicion that the witches had touched them when they had not. This shrewd suggestion removed all doubt, but evidence was still further produced that Rose Collender must be a witch, because two years since a carter had run his wagon against her house, and she was angry, and must have bewitched his cart, because it upset several times during the day, and one of his horses afterwards died. The Judge, instead of telling the jury that there was absolutely no evidence to show that the prisoners were guilty, briefly declared that witchcraft existed, and that the Bible tells us "Thou shalt not suffer a witch to live." In half an hour the jury convicted the prisoners, and at the same moment the children recovered their speech and health, and slept well that night, only little Susan Chandler felt a pin-like pricking in her stomach, which did not disappear until after the witches had been hanged.

On the trial of Titus Oates, in 1685, before Lord Chief Justice Jeffreys, upon a charge of perjury, the prisoner suffered from the rapid manner in which the jurors were sworn; and, although objecting that the clerk was too quick, and that he could not speak, and that his objection was that the men upon the petit panel had also been upon the grand jury, Jeffreys replied, "We cannot help it now." Oates then stated that he had three witnesses most material to his defense, who were prisoners in the King's Bench, and he asked that he might have a rule of court to bring them up; but it was objected that they were in execution, and could not be brought. "I tell you," said Jeffreys, "we cannot do it by law, as it will be an escape." Oates: "My lord, I shall want their testimony." Jeffreys: "Truly, we cannot help it; the law will not allow it, and you must be satisfied." Conviction, of course, followed; but before the jury retired, Jeffreys distinctly told them that there did not remain the least doubt that "Oates was the blackest and most perjured villain that ever appeared upon the face of the earth," and then offered the jurors the opportunity to drink, which they discreetly declined.

The prisoner was sentenced to pay a fine of one thousand marks, to be stripped of his canonical habits, to stand upon the pillory before Westminster Hall gate for an hour's time with a paper over his head declaring his crime, with which he must first walk round about through all the courts in

Westminster Hall, and that on the next day he should stand again in the pillory for the space of an hour, with the same inscription above him; that on the third day he should be whipped from Aldgate to Newgate; that on the following day he should be whipped from Newgate to Tyburn by the hands of the common hangman; and that on the 24th of April of every year, as long as he lived, he was to stand upon the pillory at Tyburn, just opposite to the gallows, for



the space of an hour, and then be brought to the pillory at Westminster Hall on the 9th of every August, in every year as long as he lived; and on the 10th of August, during his entire life, to stand in the pillory at Charing Cross, and again at Temple Gate upon the succeeding day; and on the 2d of September he was to stand upon the pillory at the Royal Exchange, and to do this in every year during his life, and to be committed a close prisoner as long as he lived. This sentence, which was afterwards executed with great severity, was subsequently reversed by the House of Commons four years later, on the 11th of June, 1689; but it was not until the House of Lords addressed the king to grant him a pardon that the unhappy man found relief. (4 State Trials, p. 66.)

An Act had been passed in the reign of Charles II., by which any person adjudged guilty of putting out an eye, or slitting the nose, or cutting off the nose or lip of any person, should be guilty of felony, without benefit of clergy. This Act had been occasioned by an assault in the street upon Sir John Coventry, a member of the House of Commons, in which his nose had been slit, and hence became known as the "Coventry Act." Under this statute, as late as 1721, in the eighth year of George I., Coke and Woodburne were both condemned and executed at the Suffolk Assizes for slitting the nose of a Mr. Crispe. Coke had contended that no nose could be slit, within the meaning of the statute, unless the edge of it had been cut through; but the Lord Chief Justice, Sir Peter King, replied: "It is true the edge of the nose was not slit, but the cut

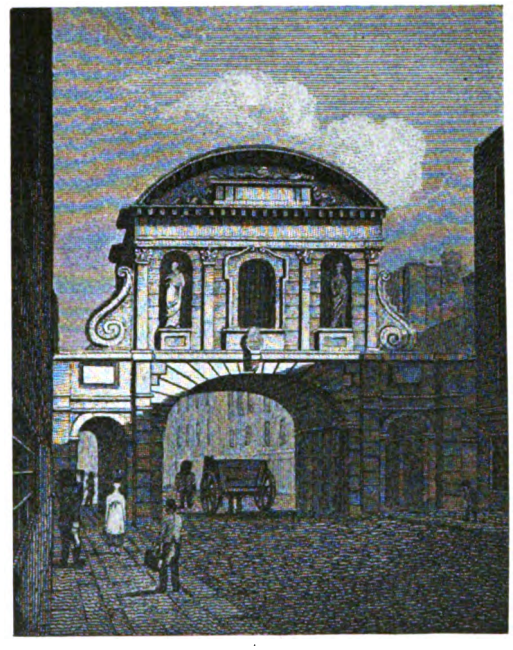
was athwart the nose, which separated the flesh of the nose, and cut it quite through into the nostril"; and this he took to be a slitting of the nose, "besides which," said the judge, "the surgeon swore that the nose was slit." The sentence was that each of the prisoners should "go from hence to the place from whence you came, and from thence to the place of execution, where you shall be severally hanged by the neck until you be severally and respectively dead, and the Lord have mercy on your souls."

The rapidity with which new felonies were created in the reigns succeeding those of Charles II. is apparent by simply reading the titles to the statutes; and while no full list can be given without occupying much space, yet here are some of the offenses, indicative of the spirit and temper of the times, which were thought by English kings and queens, lords and commons, to merit the death-penalty: —

To maliciously burn stacks of corn, or kill cattle in the night; to personate bail; to counterfeit lottery-tickets, stamps, the seal of the Bank of England, exchequer bills; to blanch copper and mix it with silver; to willfully destroy any ship; to assault a privy counsellor in the execution of his office; to burn any wood or coppice; to steal a pump from any ship; to return from transportation, or take a reward for the recovery of stolen goods; to engage in any riotous assembly; to spoil the garments of any person in the street; to engage in smuggling; to counterfeit the name of, or personate, a proprietor for transferring stock, or receiving dividends; to assault any master woolcomber, weaver, or maliciously break tools; to break down any turnpike gate; to steal any lead, iron bar, or palisade from any dwelling-house, garden, court-yard, or fence; to assault with intent to rob; to counterfeit the acceptance of a bill of exchange; to appear in disguise in any forest; unlawfully hunt deer; rob any warren, or to steal any fish out of any river or pond; to break down the hedge or mound of any fish pond, whereby the fish might escape; to kill, maim, or wound any cattle; to cut down any trees planted in any avenue, or growing in any garden, orchard, or plantation, either for ornament, shelter, or profit; to set fire to any house, barn, or outhouse, or stack of hay or corn; to send anonymous letters demanding money, venison, or other valuable thing (this was the celebrated Waltham Black Act); to damage Westminster bridge; to enlist in the service of any foreign prince; to export wools from Great Britain; to steal sheep or cattle; to steal any woolen yarn, or wool left out to dry on bleaching-fields; to assist in the escape of prisoners from lawful custody; to steal linen fustian and cotton goods and wares; to send threatening letters; to break by day or by night into any house or shop with intent to cut or destroy any velvet, raw silk, or silk mixed with other materials in the loom, or in warp or shute, tools, tackle, or utensils; to destroy any such tools used in the weaving or making of velvet; to cut or destroy any oak, beech, ash, elm, fir, chestnut, or other timber tree, without the consent of the owner; or to pluck up in the night time and carry away any root, shrub, or plant of the value of five shillings, in any garden or nursery-ground; to counterfeit the copper coin of the realm; to receive stolen jewels, gold and silver plate, in the case of burglary or highway robbery; to counterfeit any stamp or seal issued for securing the duties on starch; or to slaughter any horse, mare, ass, bull, cow, calf, sheep, hog, or goat, for any other purpose than for butcher's meat; to steal from a person to the value of five shillings; to interfere with the collection of duties on hats; to steal oysters from oyster-beds; to aid in the escape of prisoners; to embezzle letters from the post-office; to destroy stocking or lace frames; to shoot at or wound revenue officers; to demolish engines belonging to collieries; to forge certificates, or other vouchers of pay of navy

officers; — all these were punished by the dreadful penalty of death!

The number of executions almost exceeds belief. Beginning with the reign of Henry VI., more persons were executed in England in one year for highway robbery alone than the whole number executed for all crimes in France in seven years. In the reign of Henry VIII. 72,000 thieves were hanged, at the rate of about 2,000 a year. In 1785, in the reign of George III., no less than 97 persons were executed in London alone for the offence of shoplifting; and as late as the reign of George III. twenty persons were executed on the same morning in London for privately stealing.



TEMPLE BAR.

Without going into further detail, we see a spirit of unmitigated ferocity, of savage application of the brute force of the criminal law as the only remedy for every evil, enshrined on the judgment seat. As one writer observed, "the system went on until society was heartsick at its atrocities, and then rose up the equivocating system which Lord Chancellors and Lord Chief Justices and doctors in moral philosophy upheld as the perfection of human wisdom — the system of making the lightest as well as the most enormous offenses capital, that the law might stand up as a scarecrow — an old, ragged, ill-contrived and hideous mawkin — that the smallest bird, after habitually pilfering the fields of industry, despised, while he went on pilfering."

No wonder that humanity revolted. No wonder that judges devised expedients for the purpose of evading the law which Parliament was unwilling to change; no wonder that Lord Mansfield, in a case of grand larceny, where the prisoner, a mere lad, had stolen a gold snuff-box from a nobleman, and under the evidence was undoubtedly guilty, instructed the jury that, as they were masters of the facts, they could find the value of the snuff-box under 12*s.* in order to reduce the grade of the crime to petty larceny. The owner protested that the mere fashion of the box was worth sixty guineas, upon which Lord Mansfield sternly replied: "Sir, we sit not here to hang men for fashion's sake. The jury may find that box worth what they please." The jury, acting on the hint, found it, much to the disgust of the owner, to be worth 4*d.*, and it was only by a technical juggle of this kind that the boy's life could be spared.

We have now reached, in a rapid review, a stage from which we can, in a subsequent paper, judge with some accuracy of the magnitude of the task of law reform and the amelioration of the criminal code undertaken by Sir Samuel Romilly, aided by the caustic wit of Sydney Smith.

RUSSIAN PROCEDURE IN DIVORCE.

A RECENT *De Bene Esse* commission issued from Russia to an arch-priest of the Greek Church in New York City, for the examination of witnesses in behalf of a Russian husband residing at Moscow, who seeks divorce from his unfaithful wife, who had fled to New York with the co-respondent, has brought to its bar and its jurisprudence experience as to the Russian procedures in divorce. It seems that ecclesiastical authorities in the empire of the Czar are exclusively charged with the trial of divorce cases; civil marriages being therein unrecognized. Two jurisdictions make up this authority — one called the Consistory and the other the Holy Synod. The first — a preliminary tribunal — is a court of inquiry and investigation; while the second jurisdiction is a permanent grand council invested with every authority in religious matters and composed of metropolitans, archbishops, secretaries and a procurator general. From its central seat at St. Petersburg it governs the spiritual affairs of the empire and the financial business of the church, with authority over all consistories and prelates; exercising censorship over religious books, newspapers and publications, while enjoying a wide-reaching power in civil matters and especially in matrimonial cases.

Its head procurator, who governs it, represents the Czar, and in religious matters subjects even him to ecclesiastical authority. Wherefore, the Russian autocrat is not pope in his vast kingdom, if despotic Emperor. It is sometimes erroneously averred that this Holy Synod obeys the orders of the Czar.

In the New York case alluded to, the injured husband — a Russian merchant — had addressed a complaint to the Consistory, which had first examined the allegations in order to determine, like a grand jury, if these constituted a *prima facie* case for divorce if true. Its first duty was then to try and reconcile the petitioner and respondent; having power to summon both parties before it, in seeking to persuade the one to condone and the other to return to duty. In the case aforesaid Mr. Petitioner had declined pardon, having appeared personally; wherefore it was unnecessary to summon the absent wife to duty. The attempt at reconciliation having been duly certified as a failure, the Consistory made out to the Holy Synod the petition for divorce, and a narrative of the attempt at reconciliation, with statement of its failure. Whereupon, the last named tribunal had assumed jurisdiction and issued a commission and citation to take proofs; and to take these although there was default in appearance of the erring wife. Usually after a decree of divorce against the party guilty of infidelity, the latter is condemned to penance and celibacy. The penance to a woman commonly is confinement for a period in a convent. But that enforced retirement may be commuted on petition by the payment of a sum of money discretionally fixed by the Head Procurator. If the decree of celibacy goes against a husband, it can only be set aside by imperial rescript after recommendation of the Holy Synod, based upon his subsequent virtuous life. This feature was some years ago borrowed into the statutes of New York, that allow the decreed celibate to be restored to marital rights by the Supreme Court after due inquiry through a referee. The New York procedure, however, equally applies to the wife; but in Russia this grace is withheld from her always if she has been perjurious to her marital vow. Incompatibility of temper in a maximum degree is, however, a cause of Russian divorce, wherein the punishment of

celibacy becomes waived and also the penance. In early Russian times divorce was primitive — the spouses who longed for separation simply journeyed from their houses to a public square, holding each the end of brittle muslin, which they there publicly pulled apart, declaring with that act a mutual wish for separation.

In the New York case the testimony of infidelity was complete; and when the executed commission of inquiry shall reach the Holy Synod there will be, undoubtedly, a decree in favor of the Russian merchant; and doubtless one *in contumacia* of penance to the wife so as to operate should she ever return to Russia. Of course a decree of celibacy would not have effect out of its jurisdiction.

THE COURT OF STAR CHAMBER.

X.

By John D. Lindsay.

AFTER about ten weeks' confinement at the places named, the Star Chamber ordered "that Dr. Bastwick should be removed to the Castle or Fort of the Isles of Scilly, Mr. Burton to the Isle of Guernsey, and Mr. Prynn to which of the two castles on the Isle of Jersey the Governor should think fit; and that none be admitted to have conference with them, or to have access to them, but whom the captains of the said castles or their deputies should appoint; they not to be allowed pen, paper or ink, nor any books, but the Bible and common prayer book, and other books of devotion consonant to the doctrine and discipline of the Church of England; no letters or writings to be brought them, but what shall be opened, nor any to be sent from them; that the wives of Bastwick and Burton should not land or abide in any of the said islands, and if they did they should be detained in prison till further order from the board; and the conductors of the three said prisoners, either by sea or land, to suffer none but themselves to speak to them in their passage."

They were accordingly sent to the islands, where they remained till the beginning of the Long Parliament in 1641, when their sentences were declared illegal, and they were released and reparation directed to be made by the members of the court who participated in the proceedings.

The barbarity of the punishment inflicted in these cases was indeed monstrous.

By the statute of 2 Mary it was provided that if a libeller went so far as to libel the King or Queen by name, no greater fine could be imposed than £100 with a month's imprisonment, and no corporeal punishment unless the defendant refused to pay the fine, in which case some other punishment in lieu of the fine might be inflicted at the month's end; and this penalty was not to be passed except the offense were confessed or fully proven by two witnesses who were required to produce certificates of their character for veracity.

The 7 Eliz. increased the imprisonment to three months and the fine to £200, but in other respects the statutes were alike.

The disparity between these times and those of Charles I. was therefore startling.

A libeller in Queen Mary's time was fined but £100, in Queen Elizabeth's £200. In Queen Mary's days it was a month's imprisonment, in Queen Elizabeth's three months, and this only if the libel were against the King or Queen.

In Charles I. however it was £5000, perpetual imprisonment and infamous public corporeal punishment, with the loss of blood and all the cruel aggravations in the method of its infliction that could be devised — and this though the alleged libel

related but to the prelates and not the King.[1]

The last Star Chamber case of which any fair report is extant, is that of John Lilburn, who was proceeded against "for sending of factious and seditious libels out of Holland into England. The report was written by Lilburn himself, but is probably substantially correct. The case is noticeable particularly because it shows the intense popular disfavor of one of the principal features of the Star Chamber procedure. This was what was known as the *ex-officio* oath. It was one of the methods, then in use in the ecclesiastical courts, of obtaining evidence against the defendant whereon to base a prosecution, and was doubtless borrowed from those courts. In the common law courts this oath is yet commonly used without objection in interlocutory proceedings under the name of the "voir (*vrai*) dire," — "You shall true answer make to all such questions as shall be demanded of you," — but in the old ecclesiastical courts, and especially the High Commission, and in the Star Chamber it was understood to be and was used as a means of compelling a defendant to furnish evidence against himself.

Those who found themselves subjected to this oath urged that it was against both the law of God and of nature, and that the maxim "*nemo tenetur prodere seipsum*" was in accord with the former and a part of the latter.

Stephen says,[1] "In this, I think, . . . the real truth was that those who disliked the oath had usually done the things of which they were accused, and which they regarded as meritorious actions, though their judges regarded them as crimes. People always protest with passionate eagerness against being deprived of technical defenses against what they regard as bad laws, and such complaints often give a spurious value to technicalities when the cruelty of the laws against which they have afforded protection has come to be commonly admitted."

There is certainly some ground for these remarks. Indeed we might perhaps go farther, and admit that those who found the *ex-officio* oath most oppressive and distasteful were usually guilty men whose only protection would have been the inability to prove their guilt by the testimony of others. However this may be the unpopularity of the *ex-officio* oath is clearly shown by Lilburn's account of his own case.

After having been committed to the Gatehouse, he was ordered by the Privy Council to be examined before the Attorney-General, Sir John Banks. He was taken to the latter's chambers, and was there referred to be examined by the chief-clerk, Mr. Cockshey. "At our first meeting together," says Lilburn, "he did kindly entreat me, and made me sit down by him, put on my hat, and began with me, after this manner: 'Mr. Lilburn, what is your Christian name?'" A number of interrogatories followed, leading up to the subject of the charge, some of which Lilburn answered. But at length he declined to answer further, saying, "I know it is warrantable by the law of God, and I think by the law of the land, that I may stand on my just defense, and not answer your interrogatories, and that my

[1] And yet this same man Prynn, after the restoration of Charles II., held Catharine of Braganza in high esteem. When Charles II. was asked what course should be pursued with Prynn, who was beginning to get very troublesome, "Odds fish," replied the King, "he wants something to do. I'll make him keeper of the Tower records, and set him to put them in order, which will keep him in employment for the next twenty years." "The restless activity of the antiquarian republican exerted itself to good purpose in reforming the chaos that was committed to his care; the value he felt for the muniments of history imbued him with a veneration for regality itself, and the man who had refused to drink King Charles's health, or to doff his hat while others drank it, became a stickler for the right divine of kings, and an advocate for the restoration of the privileges and immunities accorded in the good old times to their consorts. He even went so far as to justify the severity of the Star Chamber sentence that had been inflicted on his own person, declaring "that if they had taken his head when they deprived him of his ears, he had been only given his deserts."

accusers ought to be brought face to face to justify what they accuse me of." Being afterwards asked by the Attorney-General to sign his examination, he refused, but offered to prepare an answer of his own to the charge brought against him. Some days after he was taken to the Star Chamber office that he might enter his appearance. He objected that he had not been served with any *subpœna*, and that no information had been drawn against him. He was informed that he must first be examined and that then the Attorney-General would prepare the information. Lilburn, seeing that the examination was intended to procure material for the bill when the oath was again tendered him "that you shall make true answer to all things that are asked you," objected to taking it, saying at first, "I am but a young man, and do not well know what belongs to the nature of an oath." Afterwards he said that he was not satisfied of the lawfulness of the oath, and after much pressing, finally altogether refused to take it. A fortnight later he was brought before the Star Chamber, where the oath was again tendered to him, and again he refused it, saying it was an oath of inquiry, for the lawfulness of which there was no warrant.

Lilburn had a fellow-prisoner, "old Mr. Wharton" (who, according to the report, was eighty-five years of age), who was asked to submit to the oath at the same time with Lilburn. The old man refused, and began to rail about the bishops, of their cruelty to him, and how "they had him in five several prisons within these two years for refusing the oath."

Lilburn and Wharton were again brought up the following day. Lilburn declared upon his word, and at length, that the accusations against him were false, and that the books objected to had been imported by another person, with whom he had no dealing. "Then," said the Lord Keeper, "thou art a mad fellow, seeing things are thus, that thou wilt not take the oath and answer truly." Lilburn repeated that the oath was one of inquiry, and unwarranted by the word of God. "When I named the word of God," says he, "the Court began to laugh as though they had nothing to do with it." Failing with Lilburn, the Court asked Wharton whether he would submit to the oath. The venerable defendant, first obtaining leave to speak, "began to thunder out against the bishops, and told them they required three oaths of the King's subjects, namely, the oath of churchwardenship, the oath of canonical obedience, and the oath *ex-officio*, which, said he, are all against the law of the land, and by which they deceive and perjure thousands of the King's subjects in a year." "But," says the report, "the lords, wondering to hear the old man talk after this manner, commanded him to hold his peace, and to answer them whether he would take the oath or no. To which he replied, and desired them to let him talk a little, and he would tell them by and by. At which all the Court burst out laughing; but they would not let him go on, but commanded silence (which, if they would have let him proceed, he would have so peppered the bishops as they never were in their lives in an open court of judicature)." As both absolutely refused to take the oath, they were each sentenced to stand in the pillory, and to pay a fine of £500, and Lilburn to be whipped from the Fleet to the pillory, which was erected between Westminster Hall gate and the Star Chamber. Lilburn, it is said, received upwards of five hundred lashes, and was kept standing in the pillory for two hours afterwards.

In May, 1641, the Long Parliament resolved "that the sentence of the Star Chamber given against John Lilburn is illegal and against the liberty of the subject, and also bloody, cruel, barbarous, and tyrannical."

LONDON LEGAL LETTER.

LONDON, Nov. 3, 1894.

WE are all at work again, and most of us are complaining of shrunken cause-lists and a non-litigious public, but every one appears to be fairly prosperous notwithstanding. Lord Russell is doing splendidly on the bench. He is not only punctual in his appearances, but sometimes comes into court a few minutes before his time. This is a unique phenomenon. Although intolerant of prolixity on the part of counsel, and scornful of irrelevant detail, he enters into the core of every case most conscientiously, and his judicial demeanor is much more gentle than was anticipated. To the surprise of the profession, Mr. Frank Lockwood was appointed Solicitor-General he other day when Sir John Rigby went to the Court of Appeal and Sir Robert Reid became Attorney-General. Mr Lockwood is a most popular man, and no one regretted his promotion, for he is the first wit at the Bar, and really a very humorous person; but his legal endowments are not those usually associated with a law-officer of the Crown. What the new Solicitor-General aims at is a judgeship, and this he can look forward to as a matter of right from his new position.

Since term commenced, there have been a good many complaints by litigants of the manner in which their interests have been neglected by the eminent counsel employed by them at great expense. There is, I fear, a good deal of foundation for this grievance: fashionable advocates have so much work thrust upon them that they cannot possibly do full justice to all their briefs; in this respect lay clients are not entitled to so much sympathy, if it is by their own express desire that the leaders of the Bar have been retained; but this is too often done by the solicitor, who is merely anxious to obtain notoriety for his case by its association with the names of distinguished lawyers, and in this way the interests of litigants are frequently imperiled.

The electric light has at last been introduced for general use in the Temple. It may be some time before the new illuminant entirely displaces the dingy lamp which is so highly favored in legal chambers, but it is now so comparatively inexpensive that it must surely prevail over all rivals. It has been already installed in the Temple Church, where it gives as much satisfaction as in all the other great London churches which have adopted electric lighting.

Sir Richard Webster earned, during the legal year which closed last August, about £40,000, the largest figure even his great professional income has ever reached. His fees in four days at the summer assizes amounted to £3,000. At this rate a colossal sum is soon realized. Sir Richard has certainly made more money at the bar than any man of his time, and few have ever equalled him. Lord Russell never made an income of the same proportion. Sir Richard Webster is employed in almost all great mercantile and patent cases where it is generally immaterial how much is spent on counsel's fees.

Every one wonders when Mr. R. B. Haldane, Q.C., M.P., is going to accept preferment. Mr. Haldane is one of the most interesting figures in public life; he is only thirty-eight years of age, yet he is the confidant of the Prime Minister, and wields more political authority than most of the members of the Cabinet. He enjoys a large and lucrative leading practice at the Chancery Bar and before the Privy Council, he enriches parliamentary debate with graceful and philosophical disquisitions on the questions of the hour, he is a frequent contributor to periodical literature, the editor and translator of works on philosophy, and yet finds time to deliver constant lectures on socialism and politics to radical clubs throughout the metropolis. This remarkable young man has refused several offers of a seat in the Cabinet, and is reported to have twice declined a law officership. There are few in whom talent and fortune are so equally blended.

Lord Russell has already signalized his advent to the Bench by determining to institute a special court with a selected roster of three judges for the trial of commercial causes. The revived Guildhall sittings have become a ludicrous failure, and it is thought the new proposal will find more favor with the mercantile community.

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The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

A POETICAL LAWYER. — It is well understood by publishers, if not by poets, that with rare exceptions poetry does not "pay." To pay, it must be extremely good, like Tennyson's or Browning's or Aldrich's, or extremely commonplace and newspaporial, like Riley's or Carleton's or Field's. The vast mass of slender volumes of rhymes with which the press is flooded in these days is published at the authors' expense, and they are the principal buyers. Still less has it been found that legal poetry or poetry by lawyers "pays." Bearing these truisms in mind, the fact that a Brooklyn lawyer has made poetry "pay" deserves to be chronicled. He ought to be an orator as well as a poet, for his name is Mirabeau Lamartine Towns. There is nothing in a name, however, for we once knew a lawyer of the name of Demosthenes Lawyer, who was neither a great orator nor a great lawyer, although a very commendable gentleman. Unless our memory is at fault, Mr. Towns had attention drawn to him by the "Albany Law Journal" several years ago on account of a poetical pleading he had filed. It cannot be correctly said that his poetry is of the inspired order. It is about as bad as that which Dr. Owens has cyphered out of Shakespeare and attributed to Bacon. Mr. Towns appears to be a crank, and naturally his verses are of the machine kind. But he has made money out of his faculty. It came about in a manner described by the Troy "Times" as follows: —

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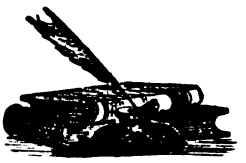

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LEGAL BIOGRAPHY. — In some recent remarks in this Easy Chair on legal biography a little gentle fun was made at the propensity of writers on lawyers and judges in this country to spread the color thick, to make the geese all swans, to pat our legal men on the back to that extent that it is apt to hump them up, so to speak. Now the goose is a much more useful bird, dead or alive, than the swan, and it would be ill to turn all the plain but useful geese into useless although ornamental swans. We alluded in no unkind spirit, and with no intention of being offensive, to the propensity of some writers to overwork the laudatory adjectives in such biography. That we are not peculiar in this view is evidenced by the following extract from the London "Saturday Review" in respect to Lord Russell's recent biographical sketch of Lord Coleridge, in the "North American Review": —

"The temptation to indulgence in vague and indiscriminate laudation of persons alike, but not equally, worthy of praise is not far from any one of us, and it has seized the American public — whom Lord Russell primarily addresses — with an almost demoniacal possession. It is, perhaps, in the region of legal memoirs that the ravages of this disease have been worst. To an insatiable desire to read the lives of the members of their numerous and ever-changing judiciary, our American neighbours appear to unite a determination that the lives of those worthies shall be written in a manner adequately reflecting the greatness of their institutions. Neither in quantity nor in quality has the supply fallen short of the demand. Every month there is a fresh and full consignment of judicial sketches to meet the popular taste. Short delivery is unknown. Nor is any portion of the cargo ever vitiated by want of conformity to order. The producers of this perennial literature are oblivious to all varieties of mental calibre or differences of level. Each member of the American Bench, National or State, is either 'the brightest and most enduring light in the legal constellation,' or 'intellectually the peer of any jurist in the world,' or 'one of the most learned and scholarly men who ever administered justice in any tribunal.' On these few notes the changes are unceasingly rung. How a sensible and imaginative people, with the names of John Marshall and Kent and Story on their judicial roll-call, can tolerate fustian of this kind we do not stay to inquire. But our friends on the other side of the Atlantic have long passed out of that stage in their constitutional development when they were disposed to deem every criticism an affront. They have absolved the memory of Charles Dickens for the wrong that he did them in 'Martin Chuzzlewit.' They forgave Lord Coleridge his gentle irony at the expense of their national self-consciousness. They have taken in good part Mr. Bryce's attacks upon Bossdom. And they will certainly profit by the object-lesson — none the less forcible because it is indirect and unavowed — which Lord Russell's article is fitted to give them on the spirit in which legal biography should be written."

ELLIOTT'S "GENERAL PRACTICE." — Many of our readers will remember with pleasure Judge Byron K. Elliott's treatise entitled "The Work of the Advocate," a pleasing and profitable law-book which had, or at least needed, no citations of authorities. That learned lawyer and scholar, with the assistance of his son, William F. Elliott, has now taken that work as a basis, and enlarged it to a more technical and practical form, in two portly and comely volumes, from the house of the Bowen-Merrill Company, of Indianapolis, so that it fully answers its description of "a thorough and practical treatise on the preparation and trial of causes, containing rules and suggestions for the work of the advocate in the preparation for trial, conduct of the trial, and preparation for appeal," and is really "new in conception and in execution in the literature of the law." The wisdom, wide reading and scholarly charm of the elder book are retained. The chapter on Theories is alone of sufficient value to justify its publication as a monograph. Never before have we found references in a law book to such authorities as Tennyson, Bunyan, Donovan, Montaigne, Holmes, Hobbes, Locke, Mill, Jane Austen, Dickens, Dr. Watts, Southey, De Quincey, Goethe, Hooker, and Boyd, the "Country Parson." These have been fortified by, but not buried under references to law cases forming a table of two hundred and fifty-six pages, which we probably owe to the industry of the younger author. Whatever is in the book is made conveniently accessible by tables of contents covering forty-six pages, and an index extending to two hundred and six. There is nothing simply local in these pages, nor ephemeral. One might almost say that it is a practice book "not of an age but for all time," because it is to so great an extent founded on and addressed to the consideration of principles. It was a happy thought of the authors to make the broad wisdom

and culture of the former treatise a little more practical and practicable by putting it into this solution. As it now stands it is unique and entirely unrivaled, and while it does not essay to put aside books like Judge Thompson's and Mr. Austin Abbott's, it has a certain grace and wisdom of its own which will warrantably induce many to add it to those works which are more intensely and exclusively practical. It would seem absurd to suppose that any lawyer could ever be tempted to sit down and deliberately read through a treatise on Practice, but many a lawyer will find himself wishing for time to do so in this instance. Another field of usefulness which this work should speedily occupy is the law schools; we know of nothing comparable with it for the instruction of legal students.

DICKENS AND DOCTORS' COMMONS. — Dickens is and will long continue to be the most interesting of novelists to lawyers. Not only was the "purpose" of one of his greatest novels, "Bleak House," to expose the abuses of the Court of Chancery, but in many of his other novels the professional reader is delighted with most original, vigorous and graphic portraits of lawyers, law-clerks and suitors, and accounts of legal proceedings. We are all familiar with, and have just been very pleasantly reminded by Mr. Frank Lockwood of the law and lawyers in "Pickwick Papers," and hardly any one of us has forgotten Sampson Brass and his sister, Sally, in "Old Curiosity Shop," and now in "Notes from London," in the "Scottish Law Magazine" — which "Notes" by the way, are the best of this kind of thing ever published in any law journal — we find a history of Doctors' Commons, with many references to "David Copperfield," and David's preceptor, Mr. Spenlow, and his "inexorable partner," Mr. Jorkins, who was never seen, but who would not abate anything from the price of articles, in spite of Mr. Spenlow's willingness. The writer says: —

"Of all the various books I have examined I find no description of the appearance of the common hall in which the courts were held so good as that given by Dickens in 'David Copperfield,' and one can hardly have a better guide.... It may be remembered that the firm of Spenlow & Jorkins, or Mr. Jorkins, according to Mr. Spenlow, rather thought the premium of £1000 upon articles too moderate on the whole, and at any rate declined to accept less. But it was a good investment, no doubt. As Steerforth told David, both parties got very comfortable fees; they made a mighty snug little party, and plumed themselves greatly on their gentility; and one cannot have these advantages without paying for them. Dickens wrote the account I have above given in the year 1850; and though the movement for reform began in 1830, there cannot be a doubt that his genius gave the finishing blow to this legal monster, as it did to its twin brother, the Chancery. He refers to the report upon ecclesiastical abuses made in 1830, and states that he found Mr. Spenlow was right when he thought the prerogative office would last his time, which was quite sufficient for him, for nothing had then been done.... When Dickens wrote of Doctors' Commons the touts and messengers who then hung about its precincts were a notable feature of the locality; but they apparently have all disappeared too by this time."

Postscriptively we may add that in our judgment there is not in all fiction a scene displaying greater power and knowledge of human nature than that in "Our Mutual Friend," where Rogue Riderhood "wants to be took down" by barrister Wrayburn, and to make his "Alfred David." It is a fact not much dwelt upon by critics that whereas most novelists grow weaker the more they write — witness Scott, Thackeray, George Elliott — Dickens' last completed novel was one of his strongest, and this is true of another of his later works, "A Tale of Two Cities." There was enough genius in Dickens to set up about a score of the novelists now writing.

PARTIES AS WITNESSES. — Our very young contemporary, "The West Virginia Bar," under the title, "How much is it worth?" makes the remarkable and startling statement: "It is by no means certain that a step in advance was taken when witnesses interested in the controversy were permitted to testify in civil causes." To us this seems much as if an anatomist should say that it is by no means certain that the spine is of much use in the human body. It might safely be wagered that the sentence quoted above was written by a young practitioner. The innovation on which he frowns is one of the few and commendable reforms in evidence in modern times. It admits as witnesses the only two persons who know all about the transaction in issue, and frequently the only two who know anything about it. It is highly probable that if the question of retaining the present practice should be put to a vote of the Bar, at least in the State of New York, not five per cent would vote against it. The West Virginian says: "With regard, however, to the real questions at issue, it is too often the case that there is a direct conflict between the statements of the opposing parties. These two generally balance each other and leave the court and jury where they would be if neither party testified." It may be admitted that the parties frequently disagree, but the cases in which they "balance each other" are not general, but extremely rare. There is almost always in the demeanor or character of the witnesses or in their narration of the facts as they respectively claim them

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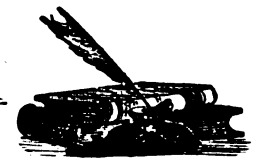

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It really cannot be said that Mr. Towns' taste soars very high. But he may retort, if he has read "Trilby," that Little Billee's taste was even lower. He says that he has summed up other cases in rhyme, for his eccentric friend, and that he has won them all. Mr. Towns' latest achievement in this kind was his poetical argument, as a member of the late New York Constitutional Convention, in behalf of woman suffrage. In spite, or perhaps on account of his rhymes the measure was defeated. This was not his only offense of that character in the convention. No account is given of the character of the property which Mr. Broone has conferred on Mr. Towns. It is stated that he conveyed him his interest in one hundred and eleven acres of salt-meadows on Newtown creek. If all the property is of that description one may be pardoned the suspicion that Macænas is "unloading" on Horace some undesirable posses-

sions to get rid of the taxes. We feel no individual malevolence nor envy toward Mr. Towns, but really his example ought not to be emulated. Perhaps he is not indictable in law; perhaps his flights are not technically contempt of court, although they are plainly in contempt of the muses; but the courts ought somehow to discourage him, say by limiting his time for argument. When the writer of these lines was a boy, his father laid down the rule that he must not read more than one page of poetry to ten of prose. Let the court give Mirabeau Lamartine Towns, Esq., one-tenth of the ordinary time for prosaic summing-up, say six minutes instead of sixty. Justice should be tempered with mercy, not only for those accused of crime, but for the jury.

LEGAL BIOGRAPHY. — In some recent remarks in this Easy Chair on legal biography a little gentle fun was made at the propensity of writers on lawyers and judges in this country to spread the color thick, to make the geese all swans, to pat our legal men on the back to that extent that it is apt to hump them up, so to speak. Now the goose is a much more useful bird, dead or alive, than the swan, and it would be ill to turn all the plain but useful geese into useless although ornamental swans. We alluded in no unkind spirit, and with no intention of being offensive, to the propensity of some writers to overwork the laudatory adjectives in such biography. That we are not peculiar in this view is evidenced by the following extract from the London "Saturday Review" in respect to Lord Russell's recent biographical sketch of Lord Coleridge, in the "North American Review": —

"The temptation to indulgence in vague and indiscriminate laudation of persons alike, but not equally, worthy of praise is not far from any one of us, and it has seized the American public — whom Lord Russell primarily addresses — with an almost demoniacal possession. It is, perhaps, in the region of legal memoirs that the ravages of this disease have been worst. To an insatiable desire to read the lives of the members of their numerous and ever-changing judiciary, our American neighbours appear to unite a determination that the lives of those worthies shall be written in a manner adequately reflecting the greatness of their institutions. Neither in quantity nor in quality has the supply fallen short of the demand. Every month there is a fresh and full consignment of judicial sketches to meet the popular taste. Short delivery is unknown. Nor is any portion of the cargo ever vitiated by want of conformity to order. The producers of this perennial literature are oblivious to all varieties of mental calibre or differences of level. Each member of the American Bench, National or State, is either 'the brightest and most enduring light in the legal constellation,' or 'intellectually the peer of any jurist in the world,' or 'one of the most learned and scholarly men who ever administered justice in any tribunal.' On these few notes the changes are unceasingly rung. How a sensible and imaginative people, with the names of John Marshall and Kent and Story on their judicial roll-call, can tolerate fustian of this kind we do not stay to inquire. But our friends on the other side of the Atlantic have long passed out of that stage in their constitutional development when they were disposed to deem every criticism an affront. They have absolved the memory of Charles Dickens for the wrong that he did them in 'Martin Chuzzlewit.' They forgave Lord Coleridge his gentle irony at the expense of their national self-consciousness. They have taken in good part Mr. Bryce's attacks upon Bossdom. And they will certainly profit by the object-lesson — none the less forcible because it is indirect and unavowed — which Lord Russell's article is fitted to give them on the spirit in which legal biography should be written."

ELLIOTT'S "GENERAL PRACTICE." — Many of our readers will remember with pleasure Judge Byron K. Elliott's treatise entitled "The Work of the Advocate," a pleasing and profitable law-book which had, or at least needed, no citations of authorities. That learned lawyer and scholar, with the assistance of his son, William F. Elliott, has now taken that work as a basis, and enlarged it to a more technical and practical form, in two portly and comely volumes, from the house of the Bowen-Merrill Company, of Indianapolis, so that it fully answers its description of "a thorough and practical treatise on the preparation and trial of causes, containing rules and suggestions for the work of the advocate in the preparation for trial, conduct of the trial, and preparation for appeal," and is really "new in conception and in execution in the literature of the law." The wisdom, wide reading and scholarly charm of the elder book are retained. The chapter on Theories is alone of sufficient value to justify its publication as a monograph. Never before have we found references in a law book to such authorities as Tennyson, Bunyan, Donovan, Montaigne, Holmes, Hobbes, Locke, Mill, Jane Austen, Dickens, Dr. Watts, Southey, De Quincey, Goethe, Hooker, and Boyd, the "Country Parson." These have been fortified by, but not buried under references to law cases forming a table of two hundred and fifty-six pages, which we probably owe to the industry of the younger author. Whatever is in the book is made conveniently accessible by tables of contents covering forty-six pages, and an index extending to two hundred and six. There is nothing simply local in these pages, nor ephemeral. One might almost say that it is a practice book "not of an age but for all time," because it is to so great an extent founded on and addressed to the consideration of principles. It was a happy thought of the authors to make the broad wisdom

and culture of the former treatise a little more practical and practicable by putting it into this solution. As it now stands it is unique and entirely unrivaled, and while it does not essay to put aside books like Judge Thompson's and Mr. Austin Abbott's, it has a certain grace and wisdom of its own which will warrantably induce many to add it to those works which are more intensely and exclusively practical. It would seem absurd to suppose that any lawyer could ever be tempted to sit down and deliberately read through a treatise on Practice, but many a lawyer will find himself wishing for time to do so in this instance. Another field of usefulness which this work should speedily occupy is the law schools; we know of nothing comparable with it for the instruction of legal students.

DICKENS AND DOCTORS' COMMONS. — Dickens is and will long continue to be the most interesting of novelists to lawyers. Not only was the "purpose" of one of his greatest novels, "Bleak House," to expose the abuses of the Court of Chancery, but in many of his other novels the professional reader is delighted with most original, vigorous and graphic portraits of lawyers, law-clerks and suitors, and accounts of legal proceedings. We are all familiar with, and have just been very pleasantly reminded by Mr. Frank Lockwood of the law and lawyers in "Pickwick Papers," and hardly any one of us has forgotten Sampson Brass and his sister, Sally, in "Old Curiosity Shop," and now in "Notes from London," in the "Scottish Law Magazine" — which "Notes" by the way, are the best of this kind of thing ever published in any law journal — we find a history of Doctors' Commons, with many references to "David Copperfield," and David's preceptor, Mr. Spenlow, and his "inexorable partner," Mr. Jorkins, who was never seen, but who would not abate anything from the price of articles, in spite of Mr. Spenlow's willingness. The writer says: —

"Of all the various books I have examined I find no description of the appearance of the common hall in which the courts were held so good as that given by Dickens in 'David Copperfield,' and one can hardly have a better guide.... It may be remembered that the firm of Spenlow & Jorkins, or Mr. Jorkins, according to Mr. Spenlow, rather thought the premium of £1000 upon articles too moderate on the whole, and at any rate declined to accept less. But it was a good investment, no doubt. As Steerforth told David, both parties got very comfortable fees; they made a mighty snug little party, and plumed themselves greatly on their gentility; and one cannot have these advantages without paying for them. Dickens wrote the account I have above given in the year 1850; and though the movement for reform began in 1830, there cannot be a doubt that his genius gave the finishing blow to this legal monster, as it did to its twin brother, the Chancery. He refers to the report upon ecclesiastical abuses made in 1830, and states that he found Mr. Spenlow was right when he thought the prerogative office would last his time, which was quite sufficient for him, for nothing had then been done.... When Dickens wrote of Doctors' Commons the touts and messengers who then hung about its precincts were a notable feature of the locality; but they apparently have all disappeared too by this time."

Postscriptively we may add that in our judgment there is not in all fiction a scene displaying greater power and knowledge of human nature than that in "Our Mutual Friend," where Rogue Riderhood "wants to be took down" by barrister Wrayburn, and to make his "Alfred David." It is a fact not much dwelt upon by critics that whereas most novelists grow weaker the more they write — witness Scott, Thackeray, George Elliott — Dickens' last completed novel was one of his strongest, and this is true of another of his later works, "A Tale of Two Cities." There was enough genius in Dickens to set up about a score of the novelists now writing.

PARTIES AS WITNESSES. — Our very young contemporary, "The West Virginia Bar," under the title, "How much is it worth?" makes the remarkable and startling statement: "It is by no means certain that a step in advance was taken when witnesses interested in the controversy were permitted to testify in civil causes." To us this seems much as if an anatomist should say that it is by no means certain that the spine is of much use in the human body. It might safely be wagered that the sentence quoted above was written by a young practitioner. The innovation on which he frowns is one of the few and commendable reforms in evidence in modern times. It admits as witnesses the only two persons who know all about the transaction in issue, and frequently the only two who know anything about it. It is highly probable that if the question of retaining the present practice should be put to a vote of the Bar, at least in the State of New York, not five per cent would vote against it. The West Virginian says: "With regard, however, to the real questions at issue, it is too often the case that there is a direct conflict between the statements of the opposing parties. These two generally balance each other and leave the court and jury where they would be if neither party testified." It may be admitted that the parties frequently disagree, but the cases in which they "balance each other" are not general, but extremely rare. There is almost always in the demeanor or character of the witnesses or in their narration of the facts as they respectively claim them

to be, something which helps the jury to a conclusion as to where the truth lies. The West Virginian is terribly afraid of "perjury," and talks about the increase of it. In our humble opinion this is all theoretical nonsense. But grant it, and still the ancient declaration of the law that no party should have the privilege of telling his own story under oath for fear of perjury was unjust in the extreme. The law might as well say that a man of notoriously bad character, or one whose reputation for truth and veracity had once been impeached, should not be admitted to testify in a suit between others, because his testimony would probably not help to the elucidation of the truth. Our West Virginia friends need to rid themselves of all this old Calvinistic cant about the danger and the increase of perjury. We have no doubt that the change in the rule is extremely beneficial everywhere, but if it were not, and if it did leave the case where it would have been under the old rule, it is only the simplest justice to admit the parties. If we should allow, for illustration, that the common asseverations of each lawyer in every cause that he believes that his client is right and that his witnesses have told the truth, and that all the other side have lied, do not help elucidate the truth, still it would be absurd enough to prohibit attorneys from doing that thing.

NOTES OF CASES.

INNKEEPER'S LIABILITY.— A novel point was decided in McHugh *v.* Schlosser, 159 Pa. St. 480, 23 L. R. A. 574, namely, that an innkeeper is liable for the death of a person who while sick is driven out into the storm without adequate covering, and left for about half an hour in a stream of melting ice and snow where he falls from inability to stand on his feet, if it was reasonable to suppose that death might follow such sudden exposure in his condition. The Court said: —

"The learned judge was asked to instruct the jury, in substance, that if the deceased was troublesome to the defendants, and annoying to their guests, they might rightfully put him out of their house, if they used no unnecessary force or violence. This point was refused as framed, but the learned judge proceeded to state the rule thus: 'If the annoying acts were willful, the defendants could remove decedent in the manner stated in point. If however they were the result of sickness, although they might, under certain circumstances, remove him, such removal must be in a manner suited to his condition.' This was saying that if McHugh was intoxicated, and the disturbances made by him were due to his intoxication, he might be treated as a drunken man; but if he was sick, and the disturbances caused by him were due to his sickness, he must be treated with the consideration due to a sick man. This is a correct statement of the rule. In the delirium of a fever a sick man may become very troublesome to a hotel keeper, and his groans and cries may be annoying to the occupants of rooms near him; but this would not justify turning him forcibly from his bed into the street during a winter storm. What the condition of the decedent really was went properly to the jury for determination. If they found the fact to be that he was suffering from sickness, then the learned judge properly said that, if his removal was to be undertaken, it should be conducted in a manner suited to one in his condition. The question which the defendants were bound to consider before putting the decedent out in the storm was not whether such exposure 'would' surely cause death, but what was it reasonable to suppose might follow such a sudden exposure of the decedent in the condition in which he then was. What were the probable consequences of pushing a sick man, in the condition the decedent was in, out into the storm, without adequate covering, and, when he fell, from inability to stand on his feet, leaving him to lie in the stream of melting ice and snow that ran over the pavement of the alley, for about a half hour in all, in the condition in which Officer White found him?"

LIFE INSURANCE — INTEREST. — In Carpenter *v.* United States Life Insurance Co., 161 Pa. St. 9, 23 L. R. A. 571, it was held that the assumption of parental relations, although without any legal obligation, by a man who sends a girl to school and pays her expenses, is sufficient to give her an insurable interest in his life so as to sustain a policy which he procures and assigns to her. The Court said: —

"It does not matter that this interest was without legal obligation on the part of the insured. It was a relation in every other respect parental." In the "cases cited by the appellee," "the holder of the policy was interested in the death rather than in the life of the insured, and the policy was speculative. In the case before us the plaintiff's interest was wholly in the life of the insured."

"There may be an insurable interest not accompanied by kinship. Such interest implies a pecuniary interest, present or prospective. Cooke, Life Ins., sec. 59. A moral obligation is sufficient to support it. Ferguson *v.* Massachusetts Mut. L. Ins. Co., 32 Hun, 306. A creditor has an insurable interest in the life of his debtor, who has been discharged in bankruptcy. Says May on Insurance (sec. 170): 'The relationship seems to be of but little importance, except as tending to give rise to the circumstances which justify the expectation. Indeed, the doctrine of the latest of the Massachusetts cases before cited is broad enough to cover a case where there is no relationship at all, save one, perhaps, of mere friendship, if the circumstances are such as to show that the loss of the insured life will probably result in pecuniary disadvantage to the person procuring the insurance.' Here the plaintiff had nothing whatever to do with the procurement of the policy, or its assignment; paid no part of the premium, and, so far as appears, never expected to pay any, for she was ignorant of its existence during the lifetime of the insured. She had substantial grounds for expecting decided pecuniary advantage from his life. Why, then, should the con-

tract be termed speculative? Her expectancy, except in the one feature, — the absence of legal obligation to enforce it, — was as well founded as that of a wife or creditor. If a voluntary co-partnership gives to each partner an insurable interest in the lives of the others; if the relation of superintendent or manager of a business concern gives to his employers an insurable interest in the life of the superintendent or manager, as is well settled, — then the voluntary relation here gave to this plaintiff an insurable interest in the life of one who, in all pecuniary respects, occupied towards her the place of a parent, and the Court below ought not to have held otherwise."

Consult note, 52 Am. Rep. 135. Under the New York doctrine the policy would have been valid even if the assignee had had no interest in the life insured. Valton *v.* Association, 20 N. Y. 32, and this is the general doctrine, and so in Pennsylvania, Hill *v.* United L. Ins. Assoc. 154 Pa. S. C. 29; 45 Am. St. Rep. 807.

A DISTINCTION WITHOUT A DIFFERENCE.— The slavery of the law to artificial and trifling distinctions is painfully illustrated by a comparison of Hay *v.* Cohoes Company, 2 N. Y. 159; 51 Am. Dec. 179, Booth *v.* Rome etc. R. Co., 140 N. Y. 267; 37 Am. St. Rep. 552. In the former it was held that the defendant was liable for injury to the plaintiff's land by rocks thrown thereon by blasting lawfully and carefully conducted on the defendant's land. This was put on the ground of a technical trespass and invasion of the plaintiff's soil. In the latter it was held that the defendant was not liable for an injury to the plaintiff's house by cracking its foundations, rending its walls and loosening its frame, by blasting similarly conducted. This seems a very unreasonable distinction. The injury to a man is just as serious, whether his house is destroyed by being shaken to pieces by the concussion of a blast, or by rocks thrown upon it by the blast, and it is difficult to see why the defendant is any more to blame in the latter than in the former case.

NEGLIGENCE — GLASS DOORS. — A very fanciful action was that of Graeff *v.* Phila. etc. R. Co. 161 Pa. St. 230; 13 L. R. A. 606, in which it was held that the defendant was not liable for the act of a stranger, who, in rushing through a door at the station to take a train, struck the plaintiff with the door, and that the defendant was not bound to have the door of glass above the middle, nor careless in having a screw eye in it to fasten it back. This curious action was somewhat anticipated in Kies *v.* Erie, 135 Pa. St. 144, and Eisenbrey *v.* Penn. Co., 141 ibid, 566. In Hayman *v.* Penn. R. Co., 118 Pa. St. 508, the complaint was that the upper part of a similar door *was* of glass, whereby the passenger was injured by thrusting his hand through it. Too much glass in that case, too little in this. In Western Md. R. Co. *v.* Stanley, 61 Md. 266; 48 Am. Rep. 96, the passenger attempted to shut the car door, there being no employee present to do it, and thrust his hand through the glass, cutting it badly, and he was held entitled to recover.

CONTRIBUTORY NEGLIGENCE. — A novel question of contributory negligence was raised in O'Toole *v.* Pittsburgh & Lake Erie R. Co., 158 Pa. St. 99; 22 Lawyers' Rep. Annotated, 606, where it was held that a passenger upon a street-car approaching a railroad crossing, which has stopped seventy-five feet away from the crossing and again started, is under no duty to be on the lookout to learn if the railroad track can be safely crossed and to jump off, if he discovers an approaching locomotive, especially where he is crippled. It seems to us that this is a case in which no opinion should have been written. If the passenger *had* jumped off, counsel would have contended with just as much earnestness and just as little reason, that *that* was contributory negligence! One other criticism — having deigned to write an opinion, the court should have put no stress whatever on the circumstance that the plaintiff was crippled. Some Philadelphia lawyer will arise by-and-bye, and endeavor to limit this doctrine to cripples! The Court observes: "To impose such a duty upon a passenger, under these circumstances, is going much further than any court has yet gone. All experience has demonstrated that to get off a moving-car is highly dangerous. Therefore it is held that such an act is negligence *per se*, and the passenger, if thereby injured, except in very rare cases, is guilty of contributory negligence, and cannot recover. Hence here, if the plaintiff had been on the lookout, and had seen the approaching locomotive, ordinary care did not require he should make a dangerous jump to escape a problematical collision. Admit he had some reason to apprehend danger if he remained in the car. At the worst, this was only, to him, a possible danger. A careful man ignorant of the power of control of the engineer over the locomotive, or of the motorman over the electric car, and knowing nothing of the rules governing them in approaching the crossing, might very well think one or the other would stop before reaching it. He had no right or power to control or direct those in charge of either. He was warranted in assuming that they knew their business better than a shoemaker, and would, by proper care, avert the possible collision. Therefore holding him rigidly to the rule of ordinary care, at

best, he had a choice of perils: a choice to be exercised on the instant by a man crippled in both feet, and consequently a not very agile jumper. He had been put in this position by no act of his own, but by the negligence of one or other, or both, of the railroad companies. We fail to see any evidence of absence of ordinary care here, under these circumstances. The instruction, in substance that ordinary care required plaintiff to perform the duties of conductor and motorman; that, practically, he was to exercise the same care as if he had been driving his own horse,— 'stop, look, and listen,' — was erroneous, and calculated to mislead the jury. It would have been but a step further, and a short step at that, to have directed the jury to inquire whether plaintiff had not been guilty of contributory negligence in taking passage on a street-car, which he knew, in its route, would cross a steam railroad at grade. The law imposes no such duty upon the traveler by public conveyances laid down in this charge." The reason of this decision is very adroitly put in the last sentence but one.

A valuable note in 23 L. R. A. 200, cites many other cases, for example, Richmond *v.* Long, 17 Gratt. 375, 94 Am. Dec. 461, in which the city was held not liable for the negligence of its agents at a city hospital, resulting in the death of a slave, who was being treated in a hospital. This is the doctrine also of McDonald *v.* Mass. General Hospital, 120 Mass. 432; 21 Am. Rep. 529. On the other hand it was held in Rhode Island, in respect to a hospital, that it was liable to a patient for negligent treatment, although the hospital was administered largely as a charity, with income derived mainly from endowments and voluntary contributions, and its physicians gave gratuitous services, and the patient paid nothing except a small amount for board and attendance. Glavin *v.* Rhode Island Hospital, 12 R. I. 411, 34 Am. Rep. 675, citing Mersey Docks Trustees *v.* Gibbs, L. R. 1 H. L. 93; 11 H. L. Cas. 686.

DOWER AND DIVORCE. — An important point, and one probably not generally understood by the profession, is thus commented on by the New Jersey Law Journal, vol. 19, p. 130.:

"The Chief Justice in giving the opinion of the Court of Errors, in Calame *v.* Calame, 25 N. J. Eq. (10 C. E. G.) 548, suggested a doubt whether a decree for divorce from the bonds of matrimony would have the effect in this state, of barring the wife's dower, saying that 'the point was settled the other way in a case receiving great consideration from the Court of Appeals of New York, the statute of that state being perhaps not substantially variant from our own. Wait *v.* Wait, 4 N.Y. 95.' The Chancellor in a recent case (Pullen *v.* Pullen, 28 Atl. Rep. 719), decides that the wife's dower is barred in such a case. He says he does not think the Chief Justice intended to pronounce against the correctness of the conclusion, and that his use of the word 'perhaps' shows that he did not pretend to have made a careful examination of the question. The Chancellor says he finds that Mr. Justice Gray, of the United States Supreme Court, in commenting upon the case of Wait *v.* Wait, in Barrett *v.* Failing, 111 U. S. 523, states that the ground of that decision was a provision in the statute of New York, which is not found in our statute, and the conclusion in Barrett *v.* Failing was that a valid divorce from the bond of matrimony, for the fault of either party, bars the wife's dower, unless the dower right be expressly or impliedly reserved by statute. This was the doctrine declared by Vice-Chancellor Dodd, in Calame *v.* Calame, 24 N. J. Eq. (9 C. E. G.) 440, and his decision on this point was not overruled by the Court of Errors and Appeals. So also Vice-Chancellor Van Fleet, in American Legion of Honor *v.* Smith, 45 N. J. Eq. (18 Stew.) 466–469, said 'a divorce from the bond of matrimony affects property rights of both parties. A divorce of that kind puts an end to any right which has been acquired in the property of the other by the marriage, unless its effect in that regard is restrained by statute,' citing Barrett *v.* Failing, 111 U. S. 523; Tyler *v.* Odd Fellows' Relief Association, 145 Mass. 134. Vice-Chancellor Dodd went further, and held that since under our law divorce was absolute and the wife is no longer the wife, and no longer holds her dower or other interest in the property of the husband, the Court of Chancery might go further than the ecclesiastical courts of England, and might give the wife a portion of the husband's estate, and not merely of the income. It was this decision that was disapproved of by the Court of Errors, which held that the meaning of the word alimony was not changed, and that it must be confined to payments in the way of annuity, and could not be extended so as to include a portion of the estate, although (if the divorce did have the effect of depriving the wife of dower, 'her loss in this respect might have the effect of increasing the amount of her alimony.'"

We infer that the question is confined to cases where the divorce is granted on account of the husband's fault, and that the wife universally loses her dower by absolute divorce for her own fault. The doctrine of New York seems to be based upon the language of the statute, "in case of divorce dissolving the marriage contract, or the misconduct of the wife, she shall not be endowed," and its apparent restrictive intent, because the statute "has nowhere said that when the husband is the offender, she shall forfeit her dower as a condition of her divorce." It should be noted that even in New York divorce for the fault of either destroys the wife's right to administer on or share in his estate. Ensign's Estate, 103 N. Y., 284; 57 Am. Rep. 717. The general doctrine is probably based on the theory that the wife elects to give up her dower for the sake of the divorce, or the court makes up the loss by an allowance of alimony.

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.

A GREAT OFFER TO OUR SUBSCRIBERS FOR 1895.

THE SUPREME COURT OF THE UNITED STATES.

WE have had prepared for presentation to our subscribers for 1895, a remarkably fine group picture of the Supreme Court of the United States. The photographic work has been done for us by the NOTMAN PHOTOGRAPHIC CO., and the picture represents the Justices in the Supreme Court-room, at Washington. The picture itself (a fine photogravure) is 20 *in.* × 16 *in.*, on heavy paper 28 *in.* x 22 *in.* We have spared no expense to make it worthy the subject, and our subscribers will find it a truly valuable acquisition to their portrait galleries. IT WILL BE PRESENTED FREE to every subscriber for 1895, who remits promptly the amount of subscription ($4.00).

THE GREEN BAG FOR 1895.

ANOTHER volume is brought to a close with this number, and THE GREEN BAG prepares to enter upon its seventh year with a feeling of eminent satisfaction at its past success and a determination to be, if possible, more attractive and "entertaining" to its readers in the future.

A short resumé of some of the features of the magazine for 1895 may be of interest to our subscribers.

Among the ILLUSTRATED ARTICLES will be found a continuation of Mr. Hampton L. Carson's interesting papers, "CONTRASTS IN ENGLISH CRIMINAL LAW"; a series of articles on the "ENGLISH LAW COURTS," including "THE PRIVY COUNCIL," "THE HOUSE OF LORDS," "THE COURT OF APPEAL," "THE COURT OF CHANCERY," etc. These articles are written by a well known English barrister and are of unusual interest. The series of articles on the SUPREME COURTS of the several States will be continued, and will include those of MAINE, OHIO, IOWA, and WISCONSIN, with perhaps others.

The BIOGRAPHICAL SKETCHES (with full-page portraits) will include a number of distinguished jurists, among them CHANCELLOR JAMES KENT, AARON BURR, JOHN VAN BUREN, NICHOLAS HILL, SERGEANT S. PRENTISS, SIR JOHN BYLES, etc.

SHORT ARTICLES will be furnished by able and well known members of the Bench and Bar, among whom will be a number of distinguished writers who have not heretofore been numbered among our contributors. Hon. L. E. Chittenden will continue his delightful "REMINISCENCES," and Mr. Wm. Arch. McClean will still further enlighten our readers on "THE LAW OF THE LAND." Mr. R. Vashon Rogers has also promised one or more of his unique articles.

"The Lawyer's Easy Chair" will continue to be under the able editorship of Irving Browne. This department has proved one of most interesting and valuable features of THE GREEN BAG."

There will be no lack of legal "Facetiæ" and "Anecdotes."

In view of these facts, we can safely promise our readers a very full return for the amount of their subscription.

LEGAL ANTIQUITIES.

IN modern deeds it is not usual to describe the personal appearance of seller and purchaser. But in Egypt, in Cleopatra's time, B. C. 107, a conveyance describes both, minutely. Thus, "There was sold by Pamouthes, aged about forty-five, of middle size, dark complexion and handsome figure, bald, round-faced, and straight nosed, and by Semmuthes, aged about twenty-two, of middle size, sallow complexion, round-faced, flat-nosed and of quiet demeanor, children of, etc." (Then the situation of ground is described.) "It was bought by Nechutes the Less,

the son of Asos, aged about forty, of middle size, sallow complexion, cheerful countenance, long face, straight nose, with a scar upon the middle of his forehead, for 601 pieces of brass, etc."

FACETIÆ.

MR. JURYDODGER: "Your Honor, I feel that I am not fit to be a juryman."

JUDGE: "You appear to me to be unusually intelligent, sir."

JURYDODGER: "But, your Honor, I can't make head or tail out of what those lawyers say."

JUDGE: "Neither can I; take your seat in the jury-box."

THE question of wills has its humorous side, as witness the following instance. The members of a certain family, upon the death of their father, had gathered together to listen to the reading of his will. Several legacies were read out, and each recipient, as he was made aware of his good fortune, burst into tears and expressed a filial wish that his father might have lived to enjoy his fortune himself. Finally, there came this bequest: "I give to my eldest son Tom a shilling to buy him a rope to hang himself." Tom, not to be outdone in filial feeling by his brothers, sobbed out, "God grant that my poor father had lived to enjoy it himself."

A LAWYER of L. had among his clients a German farmer, a hard-working, plain, blunt man. Hearing he had lost his wife, the lawyer sought him out to express his sympathy. To his amazement the German replied, "But I am married again."

"Is it possible, and only three weeks since you buried your wife."

"Dat is so, mine friend, but she is as dead as she ever will be." — *Life.*

A LEARNED counsel was pleading before Sir John Byles, the author of the work from which a quotation was made, and the book was held up. "Does the learned author give any authority for that statement?" inquired the Judge. "No, my Lord; I cannot find that he does." "Ah!" replied Sir John, "Then do not trust him, I know him well."

WILLIAM SYMMES was a distinguished lawyer of Portland (Me.) some hundred years ago. The following amusing story is told of a scene between him and Judge Thacher. Mr. Symmes had made a motion to the court, which he was zealously arguing, notwithstanding frequent interruptions by the judge. Thacher at last became impatient, and said: "Mr. Symmes, you need not persist in arguing the point, for I am not a court of errors, and cannot give final judgment." "I know," replied Symmes, "that you can't give final judgment, but as to your not being a *court of errors*, I will not say."

MR. C., a very learned lawyer, was trying a little action before a justice in S—— County, and had the advantage (?) of being the only lawyer in the case. The opposite side was wholly without any employed counsel. Mr. C. had a good case, evidently, and his version of the law was fortified by a decision of the Supreme Court of Arkansas "directly in point." The cause was progressing as usual, but the justice did not very readily accept Mr. C.'s idea of the law. To make the matter absolutely convincing to the justice, Mr. C. with great assurance read the opinion of the Supreme Court by Judge S., and concluded his argument with an abiding faith in his case. The justice, however, did not entertain quite as high a regard for the opinion of the Supreme Court as inferior courts usually should, and was not to be taken down in his idea of the law, in which he seemed to have as great faith as Mr. C. did in his, and with a defiant air stated to Mr. C., *arguendo*, that the decision just read did not amount to anything; that it was merely the *opinion* of the judge announcing it, and was no more than *his* opinion or that of any one else, and the result was disastrous to Mr. C.'s case, and he was driven to the necessity of an appeal. The justice assured Mr. C. that if he could produce any *law* to sustain his contention, he would gladly hear him, otherwise the case would have to be decided according to the view the justice had of the law, and it was so decided.

When the court on an extremely western circuit was convened and the business was about to begin, it was discovered that there were neither pens, ink nor paper for the use of the Bench or the Bar.

"How is this, Mr. Clerk?" inquired the judge.

"There is no money allowed for it by the county, sir, and we can't get the articles without money."

The judge made several remarks not at all complimentary to the county.

"I've been in a good many courts," put in a pompous and pedantic lawyer from the East, temporarily present to try a case, "but this is the worst I ever saw."

The judge jumped him on the spot.

"You are fined $10 for contempt, sir," he thundered. "Hand the fine to the clerk, sir."

Mr. Lawyer kicked, but he had to hand over the money or go to jail, and the judge wouldn't have it any other way.

"Mr. Clerk," said the judge, when the fine had been handed him, "go out and get all the pens, ink and paper necessary for the use of this court, and give the gentleman back his change"; and the clerk did as he was ordered and the visiting attorney maintained a discreet silence.

NOTES.

Mr. Webster said, one of the heartiest compliments ever paid him was by a Maine farmer, for whom, when a young man, he had gone into Maine and tried a case. As they left the court room, — it is to be presumed flushed with victory, — the client with flat hand struck him a blow on the back that made the dust fly, saying, "Dan, you're a hoss."

In a very musty old book which contains the life of Doctor Navarrus, who, besides being a friend of Gregory XIII., was a celebrated professor of law, there is an incident in his life that goes to show the dangers that may beset a member of the legal fraternity should he be too much given to benevolence. Doctor Navarrus became very rich, and his latter days were given to alleviating the troubles of the poor. As he grew old he purchased a mule and used to ride about the country, and when he met a poor man he used to stop his mule and give the poor man a small piece of money. After a while the mule became so accustomed to the doctor's peculiarity that whenever he saw a poor man, he would stop of himself, and would not go on until the poor had received a gift. When the doctor finally died no one could be found to ride the mule.

Apropos of our item on the length of service of judges in this country (in Green Bag, Aug., 1894), our readers will be interested to learn the fact that there are in Philadelphia two judges who are now in the forty-fifth year of continuous service, having been sworn in on the first Monday of December, 1850. We refer to Hon. Joseph Allison, President Judge of Court of Common Pleas No. 1, and Hon. J. I. Clark Hare, President Judge of Court of Common Pleas No. 2. We doubt if this record can be beaten anywhere in the United States. These judges were re-elected by the people five times to terms of ten years each.

The Bertillon system has hitherto been regarded mainly as a good method of identifying criminals. The *Pall Mall Gazette* recently reported an incident showing that it could sometimes be used also as a means, better than the ordinary evidence in support of an *alibi*, of clearing an innocent person. Our contemporary states that a man wearing the Eton cap and gown, and professing to be a master from the college, called upon a Windsor tradesman to select a watch for presentation on behalf of his colleagues to some functionary of the college. Thrown off his guard by a bold stratagem, the jeweler allowed the stranger and some watches to get out of his sight upon some plausible pretext. The swindle was a success, and the thief got clear. Eventually a man was arrested, was identified as the thief, was convicted at the Berks Assizes, and was sent to penal servitude. He protested his innocence, and declared that he was in a French gaol at the time of the robbery. Bertillonage then came into the English air, and the man was met with the retort that if he had been in a French prison his measurements would have been left behind to prove his assertion. The prisoner agreed to that proposition. He

was then measured in Reading Gaol, the measurements attached to the name under which he was convicted in France were secured, and a comparison of the two sets of measurements proved incontrovertibly that they related to one and the same person, and that therefore he actually was in prison in France at the time the Windsor jeweler was being swindled. The Home Secretary at once ordered his release.

LITERARY NOTES.

THE REVIEW OF REVIEWS for November, in its editorial department ("The Progress of the World") has some suggestive paragraphs bearing on the present attempts at "municipal housecleaning" in the great cities of New York, Chicago and San Francisco, and takes the occasion to emphasize certain lessons to be learned from European municipal experience. In speaking of Glasgow's system of street-cars, owned and operated by the municipality, the editor points out that this responsibility was not undertaken by the city until the municipal government had been tested with many large enterprises which it had shown its fitness to control and operate successfully; it is now managing its street-car service, says the REVIEW, as successfully as the best of our American cities manage their fire departments.

THE ever pressing problem, How can reforms be effected in the government of American cities? is ably considered by Mr. H. C. Merwin in the November ATLANTIC MONTHLY, in a paper entitled "Tammany Points the Way," wherein he urges that the same agencies — efficient organization and leadership — which have assisted Tammany to do evil, might be equally helpful in a good cause. Mr. George Birkbeck Hill, the editor of the "Life of Johnson," reviews, in a very readable fashion, some of "Boswell's Proof-Sheets," which are now in the unrivaled collection of Johnsoniana, belonging to Mr. R. B. Adam, of Buffalo. The other contents of this number are full of interest.

THE CENTURY for November signalizes the opening of its twenty-fifth year by the beginning of one of its most important enterprises, "The Life of Napoleon," by William M. Sloane, Professor of History at Princeton College. The first chapters deal with Napoleon's childhood and youth, including the Corsican period and his school-days in France, and in this period the history has the value of a unique fullness. Much care has been bestowed in the selection of illustrations from the large amount of accessible material, and the installment is rich in portraits, in pictures of places, and in carefully drawn views of typical scenes in Napoleon's life. Among the illustrations are a hitherto unpublished portrait of Napoleon at sixteen, drawn by a school-fellow, and a facsimile of the last page of his exercise-book at school, containing a curious reference to St. Helena.

THE complete novel in the November issue of LIPPINCOTT'S is "Dora's Defiance," by Lady Lindsay, an author who has made her mark in England, though little known as yet in this country. It is a brightly told story of a very peculiar young lady who could find no interest in life till it came too late to be taken in the conventional way. The other contents of this number are of unusual interest.

MCCLURE'S MAGAZINE for November opens the promised Napoleon series with fifteen portraits of Napoleon in early manhood, most of them reproductions of famous paintings, and portraits of his father and mother, and other persons closely related to or intimately associated with him, accompanying an interesting account, by Miss Ida M. Tarbell, of his career down to the time he assumed command of the army in Italy. The portraits are from a very large and carefully chosen collection made by the Hon. Gardiner G. Hubbard, and Mr. Hubbard himself introduces them with a valuable letter describing the classification and varying merits of the existing portraits of Napoleon. If the succeeding parts of the series maintain the high level of this one — and there is every reason to believe that they will, for the editors announce that they have a hundred and fifty notable Napoleon pictures yet to present — the series must make, as a whole, one of the most attractive products thus far of the recent Napoleon revival.

A PAPER of very great interest and value in the November ARENA is Martha Louise Clark's "The Relation of Imbecility to Pauperism and Crime." She takes the position that we cannot hope for any appreciable abatement of the evils of pauperism and crime so long as society turns the morally weak and diseased loose into the world, for whose struggle they are quite unfit, to fall into the ranks of the helpless pauper or criminal classes, and to multiply their kind.

HENRY LOOMIS NELSON contributes to the November HARPER'S a delightful article, entitled "At the Capital of the Young Republic," in which he offers glimpses of official life at Washington at the begin-

ning of the century, investing with all the charm of witty and vivid narration a period of real interest. The initial article in the same number has also an American theme, and treats of by-gone days — the days when sea-robbers of New York carried on what they termed the Red Sea Trade, regarding it as a business rather than as a crime; and "agreeable and companionable pirates" (in a town that may still, unfortunately, count among its officials "agreeable and companionable" persons who regard robbery as a business rather than as a crime), are described by Thomas A. Janvier.

BOOK NOTICES.

Law.

COMMENTARIES ON THE LAW OF PERSONS AND PERSONAL PROPERTY. Being an introduction to the Study of Contracts. By THEODORE W. DWIGHT, late Professor of Law at Columbia College, New York. Edited by EDWARD F. DWIGHT, of the New York Bar. Little, Brown & Co., Boston, 1894. Law sheep. $6.00 *net.*

No one of our law teachers was better known to the profession at large than the late Professor Theodore W. Dwight, and to him, more than to any other, the Law School of Columbia College owes its great success and reputation. The "Dwight Method" has given rise to much discussion, but, judged by its fruits, it is pre-eminently well adapted for the making of good lawyers. The present volume covers subjects embraced in the author's lectures on "Municipal Law," immediately preceding the Course on Contracts, and affords an excellent opportunity, to those who are not already familiar with it, to study the methods of this remarkable teacher.

The lectures form the basis of the Division of Subjects as to the Law of Persons (Book I.), and of Personal Property (Book II.). The Law of Persons is divided into Absolute Rights, viz. Personal Security and Personal Liberty, and Relative Rights, under which are considered what is commonly called Domestic Relations. Under the first head, the Rights and Privileges of Citizens of the United States under the Constitution and its Amendments, and in connection with early English statutes, are discussed at length. Provision in restraint of the General Government on one side, and of the States on the other, are treated in detail. Habeas Corpus in the State and Federal courts, and also in relation to extradition, is examined at length.

The second half of the work is devoted to the right of Private Property in Things Personal.

All the various subjects are discussed in detail, and with that careful particularity which the great teacher deemed necessary when presenting them to the students whom he was training.

To support the positions of the text, the author selected and cited such authorities as he deemed best, keeping in view their weight and force rather than their number.

THE LAW OF THE APOTHECARY. A compendium of both the common and statutory law governing druggists and chemists in Massachusetts, Maine, New Hampshire, Vermont, Rhode Island and Connecticut. By GEORGE HOWARD FALL, LL.B., Ph.D. Irving P. Fox, Boston, 1894.

While this book is not written for lawyers, but is prepared especially for druggists and chemists, the legal practitioner will find much useful and valuable information contained therein. The author in a clear and concise manner states the principles of law applicable to the apothecary and chemist, giving the Statute law relating thereto in the six New England states, and for purposes of illustration analyzing decided cases.

PRINCIPLES OF THE LAW OF REAL PROPERTY, intended as a first book, for the use of students in conveyancing. By the late JOSHUA WILLIAMS. The seventeenth edition re-arranged and partly re-written by his son, T. CYPRIAN WILLIAMS, with American notes by HARRY B. HUTCHINS, Professor of Law in Cornell University. The Boston Book Co., Boston, 1894. Law sheep. $4.00 *net.*

Of the many excellent treatises on Real Property which have appeared during recent years, none has for its special object excelled the late Mr. Williams's book. Accurate and concise in expression, and clear and masterly in enunciation of principles, it gives to students an admirable knowledge of real property law, while the practising lawyer will find it almost invaluable to him as a book of reference. The present edition has been largely recast and remodeled by the author's son, in view of the modern changes in law, but he has endeavored to carry out his father's ideas, and has presented just such a clear and practical work as would have been written by the late Mr. Williams, if now alive. The American notes have been prepared by Prof. H. B. Hutchins, who has had a varied experience in lecturing on real property, first at Michigan University, and afterwards at Cornell. Long familiarity with the needs and perplexities of the students has enabled him to prepare such practical notes as will smooth away the difficulties of the text, and fix the principles of the law in the student's mind. His plan of placing these

notes at the end of each chapter, thus presenting the American law in a compact form, will commend itself to every reader.

Although a book of about 900 pages, the publishers have placed the price at a very low figure, thus bringing the treatise within the means of every lawyer and student.

THE AMERICAN DIGEST. (Annual, 1894.) A digest of all the decisions of all the United States Courts, the courts of last resort of all the States and Territories, and the intermediate courts of New York State, Pennsylvania, Ohio, Illinois, Indiana, Missouri, Texas and Colorado, U. S. Court of Appeals and Supreme Court of the District of Columbia, etc., with notes of English and Canadian cases, etc. West Publishing Co., St. Paul, Minn., 1894. Law sheep. $8.00.

Another huge volume bears witness to the vast amount of litigation indulged in during a single year. Over 2700 pages are required for a digest of the decisions covering the period from Sept. 1, 1893, to Aug. 31, 1894. Notwithstanding the enormity of the task of collecting and arranging such an immense mass of matter, the West Publishing Co. have performed the work in a most satisfactory manner. The Digest is especially to be commended for its admirable system of cross-references and the minute subdivision of subjects.

THE LAW OF EMINENT DOMAIN IN THE UNITED STATES. By CARMAN F. RANDOLPH. Little, Brown & Co., Boston, 1894. Law sheep. $5.50 *net.*

In this volume Mr. Randolph gives a clear and concise statement of the law of Eminent Domain as it exists to-day in the United States, with such references to English and other foreign law as are necessary to illustrate the peculiarities of our law or the principles common to both. The treatise is the result of many years' study and research, and all the decisions of the courts upon the subject have been carefully scrutinized and weighed by the author. That the work will prove a valuable addition to our legal text-books there can be no doubt.

CHAPTERS ON THE PRINCIPLES OF INTERNATIONAL LAW. By JOHN WESTLAKE, Q.C., LL.D., Whewell Professor of International Law in the University of Cambridge. Macmillan & Co., New York, 1894. Cloth. $2.60.

The book does not pretend to be a treatise on international law, but is rather an attempt to stimulate and assist reflection on its principles. It is interesting reading for the layman as well as the lawyer, and deserves a places in the library of every citizen who is interested in and hopes, even in his small way, to influence the action of his country. The author first considers international law in general, then follows it down from Greece and Rome to the present day. Among the subjects specially considered are: The Equality and Independence of States; International Rights of Self-Preservation; Territorial Sovereignty; and War.

COMMENTARIES ON AMERICAN LAW. By JAMES KENT, LL.D. Edited by WM. HARDCASTLE BROWN, of the Philadelphia Bar. West Publishing Co., St. Paul, 1894. Law sheep. $5.00.

This new edition of Kent's Commentaries is arranged with prefatory catch-words to each paragraph, enabling the reader to see at a glance the subject-matter of each sentence. The editor has greatly condensed the original text, and has confined his table of cases to the decisions of American tribunals as cited by Kent himself. The work should commend itself especially to professors and students of law.

A MANUAL RELATING TO THE CONSTITUTION, the interpretation of Statutes, Audita Querela, Certiorari, Mandamus, Quo Warranto, Prohibition, and motions for new trials. A BOOK OF MASSACHUSETTS LAW. By GEORGE F. TUCKER. George B. Reed, Boston, 1894. Law sheep. $2.00.

Massachusetts lawyers will find a vast amount of valuable information in this little volume of Mr. Tucker's. The work covers an interesting field, and Mr. Tucker's notes are very full and exhaustive. A feature of the work is the Index, which is unusually complete and satisfactory.

A TREATISE ON THE LAW OF EVIDENCE, with a discussion of the principles and rules which govern its presentation, reception, and exclusion, and the examination of witnesses in court. By H. C. UNDERHILL, LL.B. T. H. Flood & Co., Chicago, 1894. Law sheep. $6.00, *net.*

In this work the author presents in clear and concise form, a comprehensive statement of the rules and principles of the existing law of evidence. Though designed primarily for the use of students of law, Mr. Underhill has, by a very full citation of the most recent and important cases bearing upon the subject, and also by a carefully prepared topical and analytical index, made the work one which will

prove very useful to the practising lawyer. Among the subjects which are treated with considerable fullness are: Accomplices as Witnesses; Admissions and Estoppels; Affidavits, their Nature and Use; Comparison of Writings; Competency of Witnesses; Depositions; Diagrams, Maps, etc., as Evidence; Expert and Opinion Evidence; Res Gestae; Impeachment of Witnesses; Evidence to Prove Insanity; Experiments in Court; Taking the View; Pleadings as Admissions; Stipulations; The Presentation, Rejection and Acceptance of Testimony in Court; The Necessity for and Character of Objections and Exceptions; Confidential Communications to Attorneys and Physicians; Presumptions of Law and of Fact; Judicial Notice, etc., etc. The book is attractively made up, good paper and clear, distinct type being distinguishing features.

OUTLINE STUDY OF LAW. By ISAAC FRANKLIN RUSSELL, D.C.L., LL.D., Professor in the University of the City of New York. L. K. Strouse & Co. New York.

This volume is made up of a series of lectures delivered by Professor Russell before the law students of the University of the City of New York. They are in every way admirable as giving a clear outline of the principles governing almost every conceivable subject in law. No better book could be placed in the student's hands at the beginning of his legal studies, and it should be widely used in our law schools.

MISCELLANEOUS.

DANVIS FOLKS. By ROWLAND E. ROBINSON. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.25.

A series of connected sketches, portraying homely life in Vermont as it was "in the good old times," make up the contents of this volume. The characters are the same as those introduced in Mr. Robinson's earlier works, "Uncle Lisha's Shop" and "Sam Lovel's Camps," and the descriptions of the quaintness of speech, the old-fashioned pastimes, and the simplicity of dress and manners of these kindly country people, are simply inimitable. "Danvis Folks" are most interesting acquaintances, and the reader will feel loath to part with them as he reaches the end of their humble history.

THREE BOYS ON AN ELECTRICAL BOAT. By JOHN TROWBRIDGE. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.00.

Mr. Trowbridge has the happy faculty of combining an interesting narrative with a great deal of practical information. The adventures of the three heroes of this story will delight every boy, and at the same time will impart a fund of valuable knowledge to the juvenile mind. It is a capital book for a Christmas gift.

THE STORY OF A BAD BOY. By THOMAS BAILEY ALDRICH. Illustrated by A. B. FROST. Houghton, Mifflin & Co., Boston and New York, 1895. Cloth $2.00.

Mr. Aldrich's "bad boy" needs no introduction to the reading public to whom he has been well known for twenty years. He appears now, however, thanks to the publishers' art, in a most attractive holiday garb, which will draw to him a host of new friends and make old ones eager to renew his acquaintance. This new edition is a delight to the eye. The illustrations are finely executed, and the typographical work is most excellent.

THEIR WEDDING JOURNEY. By WILLIAM DEAN HOWELLS, with illustrations by CLIFFORD CARLETON. Houghton, Mifflin & Co., Boston and New York, 1895. Cloth. $3.00.

To our mind, Mr. Howells has never written anything better than "Their Wedding Journey," and to it, perhaps, more than any other of his works, is he indebted for the firm hold he has established on his host of readers. This new edition is superbly gotten up, illustrations, typography and binding, all combining to make it an exquisite holiday gift.

THREE HEROINES OF NEW ENGLAND ROMANCE. Their true stories herein set forth by Mrs. Harriet Prescott Spofford, Miss Louise Imogen Guiney, and Miss Alice Brown, with many little picturings, authentic and fanciful, by EDMUND H. GARRETT. Little, Brown & Co., Boston, 1894. Cloth, gilt top, $2.00; full morocco, gilt edges, $4.50.

The seeker for a suitable holiday gift will find all his fancy could desire in this dainty little volume. The stories of Priscilla, Agnes Surriage and Martha Hilton are charmingly told by the several authors, and Mr. Garrett's exquisite picturings form a fitting accompanient to the text. Valuable historical notes are added by Mr. Garrett, which are interestingly illustrated.

A MONK OF THE AVENTINE. By ERNEST ECKSTEIN. Translated from the German by HELEN HUNT JOHNSON. Roberts Brothers, Boston. 1894.

This powerful and dramatic story purports to be the autobiography of Bernardus, monk in the monas-

tery of St. Stephen on Mount Aventine in Rome. Imprisoned in the monastery for past misdeeds, the monk tells the story of his life with rare fervor and impressiveness. The reader's sympathy is enlisted from the opening chapter, and is held to the very end. The translation is exceedingly well done.

THE BELL RINGER OF ANGELS. By BRET HARTE. Houghton, Mifflin & Co., Boston and New York, 1894. Cloth. $1.25.

The title story of this last volume of Bret Harte's is a graphic picture of early mining life in California, depicted as this gifted author alone can portray it. Tragedy and pathos are skillfully mingled in its recital. The other stories are all in the author's best vein, and are equal if not superior to any he has yet written. The book will add to the countless numbers of his admirers.

NOT QUITE EIGHTEEN. By SARAH COOLIDGE. Roberts Brothers, Boston, 1894. Cloth. $1.25.

There is no more popular writer for juvenile readers than Susan Coolidge, and the sixteen stories in this volume will meet a hearty welcome from a host of youthful admirers. A pure, healthy tone pervades them all, while there is no lack of incident and humor. No better book could be placed in a child's hands on Christmas morning. It will serve to make the day a truly "merry" one.

ANOTHER GIRL'S EXPERIENCE. By LEIGH WEBSTER. Roberts Brothers, Boston, 1894. Cloth. $1.25.

This is an interesting story of the experience of a young girl, who, weary of her life of household drudgery in the country, accepts the position of companion to a wealthy lady in New York. There she unwittingly becomes a prominent actor in a robbery of jewels from the lady by whom she is employed, and finally returns to her humble home fully satisfied to take up her old duties again. The book is well written, its moral being that riches do not always bring happiness.

CENTURIES APART. By EDWARD T. BOUVÉ. With full-page illustrations by W. ST. JOHN HARPER. Little, Brown & Co., 1894. Cloth. $1.50.

Mr. Bouvé cannot be accused of any lack of originality in this, we believe, his first essay as a novelist. The idea of bringing together the laws, names, and customs and dress of England during the period of the reign of Henry VII., and of America during the Civil War, is certainly unique. The scene is laid in a hitherto unknown land called "South England," and the characters thus strangely brought together are in almost everything "Centuries Apart," but the author has nevertheless skillfully worked out a very interesting, well written story, one which will hold the reader's attention to the very end.

LILLIAN MORRIS AND OTHER STORIES. By HENRY K. SIENKIEWIÇZ. Translated from the Polish by JEREMIAH CURTIN. Little, Brown & Co., 1894. Cloth. $1.25.

The readers of this famous author's previous works will hail with delight another volume of stories from his pen. For wonderful power of vivid, realistic description, Sienkiewicz stands without a peer among modern writers. Four stories make up the contents of this book. The scene of two of them is laid in the far west of America. One gives a powerful description of "The Bull Fight," while the fourth is a pathetic story of Polish life. Mr. Curtin's translation is admirably done, and the author is fortunate in having his work so effectively presented to the American public. The book is tastefully bound in white and gold.

THE KINGDOM OF COINS and the queer people who lived there. By BRADLEY GILMAN. Illustrated by FRANK T. MERRILL. Roberts Brothers, Boston, 1894. 60 cents.

This little story aims at imparting to children and young people certain quaint fancies regarding money, — gold and silver coins — which shall pleasantly hint at the hard facts of earning and spending. The author has made a number of old sayings, "All that glitters is not gold," "A penny saved is a penny earned," "Money makes the mare go," "A bad penny always turns up," etc., the basis of a delightful tale which cannot fail to please and interest all youthful readers. It is just the thing for a Christmas gift.

BOOKS RECEIVED.

A CENTURY OF CHARADES. By WILLIAM BELLAMY. Houghton, Mifflin & Co. Cloth. $1.00.

PHILIP AND HIS WIFE. By MARGARET DELAND. Houghton, Mifflin & Co. Cloth. $1.25.

GEORGE WILLIAM CURTIS. By EDWARD CARY. Houghton, Mifflin & Co. Cloth. $1.25.

THE STORY OF LAWRENCE GARTHE. By ELLEN OLNEY KIRK. Houghton, Mifflin & Co. Cloth. $1.25.

CATHERINE DE MEDICI. By HONORÉ DE BALZAC. Translated by KATHERINE PRESCOTT WORMLEY. Roberts Brothers. Half Russia. $1.50.