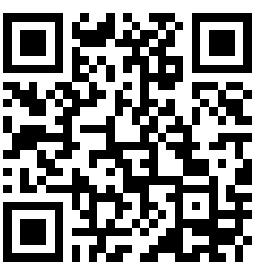

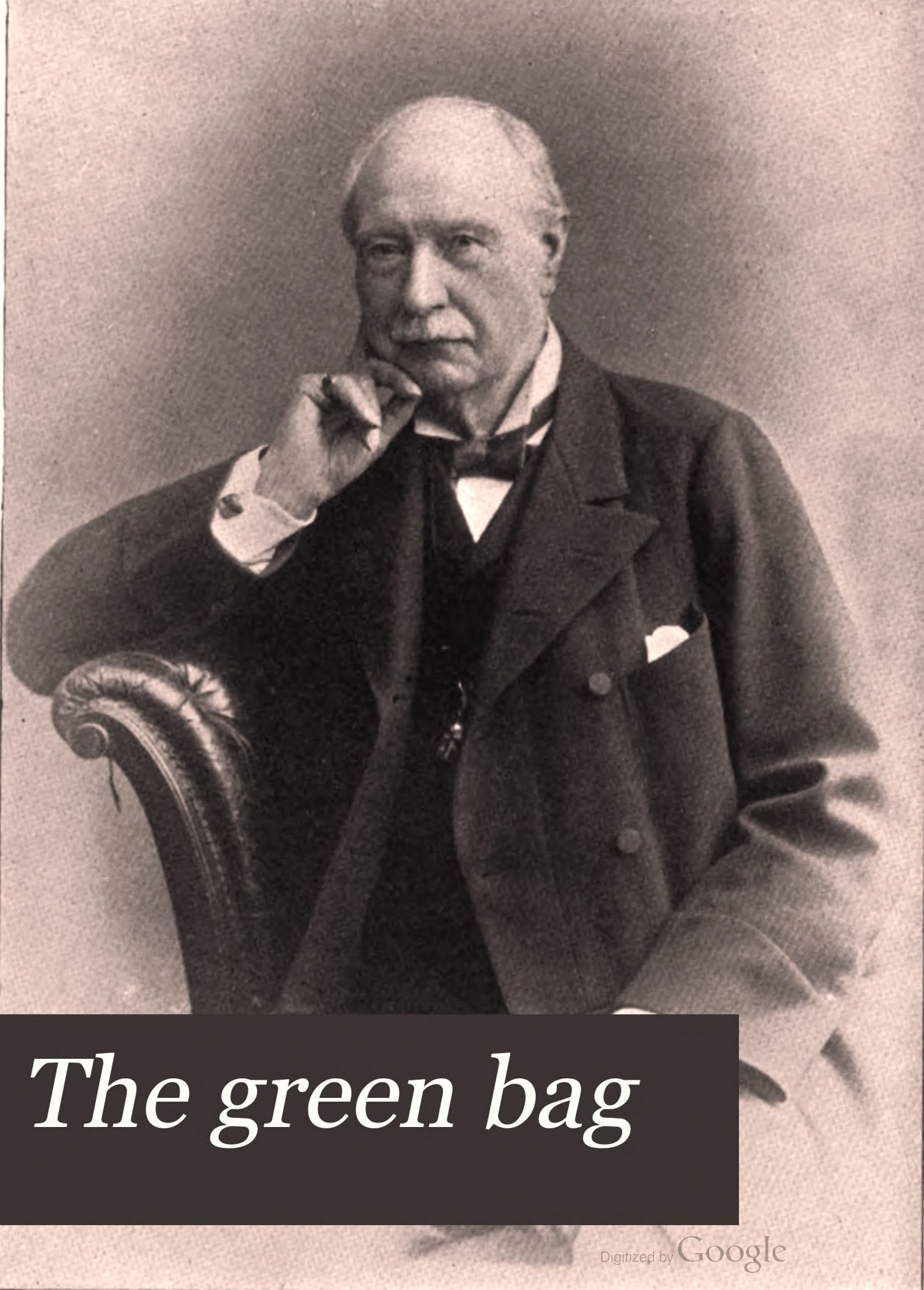

The green bag

THE

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A Useless but Entertaining Magazine for Lawyers

EDITED BY HORACE W. FULLER

VOLUME III

COVERING THE YEAR

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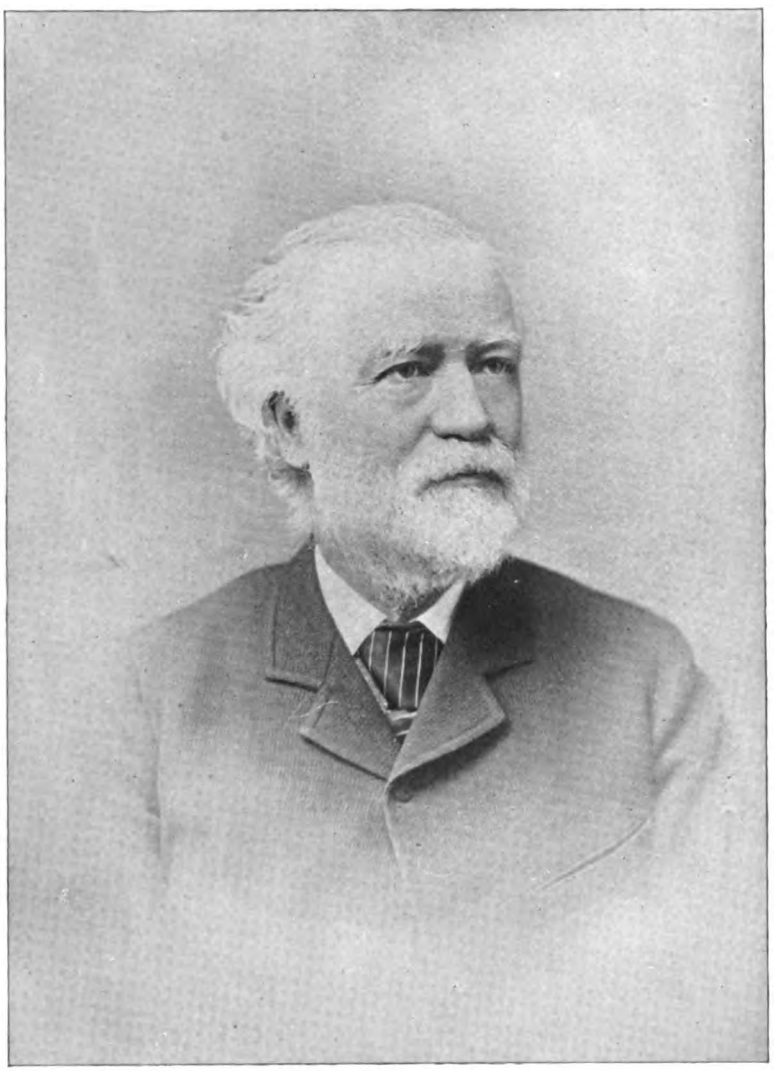


Yours truly

Benj. Vaughan Abbott

The Green Bag.

VOL. III. No. 1. BOSTON. JANUARY, 1891.

BENJAMIN VAUGHAN ABBOTT.

FEW names, perhaps, have been more widely known to the present generation of the profession throughout this country than that of Benjamin Vaughan Abbott, one of the authors of the modern style of digest, and one of the commissioners by whom the revised statutes of the United States were prepared.

He was born in Boston, June 4, 1830. His father, Jacob Abbott, the author of the Rollo Books, "The Young Christian," "The Franconia Stories," and a series of volumes known as Abbott's Histories, was then engaged in founding the Mount Vernon School in that city. Mr. Abbott's early studies were at home, under the direction of his father. In 1846 he entered the University of the City of New York, where he enjoyed the instruction and personal intercourse of Chancellor Frelinghuysen, Elias Loomis, John William Draper, Taylor Lewis, and others of that brilliant faculty. After graduation, in 1850, his disposition for thorough research led him to seek the advantages of a year at the Harvard Law School, returning thence to perfect his studies in New York, where he was admitted to the bar in 1852, at the time when the then new code of procedure was going into full operation. He formed a law partnership with his younger brother Austin, and spent some years in active practice, the third brother, Lyman, now pastor of Plymouth Church, joining them, as a student in their office, on his graduation from college; and the three soon became widely known in active practice. The late John S. Voorhies, whose law-book store at 20 Nassau Street was so long a sort of rendezvous for New York lawyers, proposed to the brothers to prepare for him reports of cases of practice under the New Procedure. The success of this series being immediately assured, he subsequently proposed to them the preparation of a New York Digest. From this starting-point Mr. Abbott devoted himself to legal writing, dealing chiefly with the Reports and Digests of State and National law; and his additions to legal literature have been welcomed as accurate and valuable. The New York Digest gained attention at once throughout the country by reason of some novel features which facilitated its use as a repository of the law of the State which has been for many younger States the leader in jurisprudence. Previous New York Digests had usually been made by copying the head-notes from the Reports, and reduplicating each head-note under as many subjects as were embraced within it, in order to make sure that it should be found by the reader of each subject. It was necessary, on account of the greatly increased number of Reports, to avoid such reduplication, and the more so because it was desired by an original examination of every reported case to include in the new digest many points of law and practice which had escaped attention in the head-notes. For this purpose Mr. Abbott and his brother, having taken their home together in Brooklyn, spent the leisure of two years in a careful analysis of the best treatises on every branch of the law, and drawing up a concise and sharply defined outline of what each title in the Digest should contain, and

what it should exclude because included under other titles; and concise statements of the result were prefixed in the form of scope notes to each principal title in the projected work. All the cases in the Reports were then examined; and the cases having been collected, those on each subject were re-examined in chronological order, and arranged in a manner to show as far as possible not only the separate rulings, but the history of the law as developed by them. The statutes of the State were also for the first time introduced in a Digest to complete the view of the law, and to show the modifications which legislation had introduced into judicial principles; and in order to make the character of each decision the more clear, the method was adopted as a general rule, and followed as far as the limits of space would permit to give not only the point decided, but the reason assigned by the court; and if the case was decided upon authority, to interject a citation of that authority in brackets, and if upon authority of a statute, to interject a concise statement of the material clause. These features, with the close analytic arrangement of the points which naturally resulted, and the catchwords introduced to aid in reference, gave the Digest a wide circulation in all the other States as well as in New York, and have been largely approved by the labors of subsequent compilers of Digests, particularly in reference to methods of analysis and classification.

Mr. Abbott's National Digest, presenting in the same general method the Acts of Congress and the decisions of the Federal courts, followed several years afterward.

In June, 1870, he was appointed by President Grant one of three commissioners to revise the statutes of the United States, — a work that occupied three years, and resulted in the consolidation of sixteen volumes of United States laws into one large octavo. In this work he was assisted by Charles P. James and Victor C. Barringer, who were also appointed commissioners for this purpose. The energy and system with which Mr. Abbott entered upon the complex and laborious compilation involved in this work were characteristic of the man.

In connection with his brother Austin, he prepared also a Digest of the law of Corporations (noticed in the last edition of the Encyclopedia Britannica as the leading work on that subject).

Among his other works are "A Treatise on the Courts of the United States and their Practice" (2 vols., New York, 1877); Dictionary of Terms in American and English Jurisprudence (2 vols., Boston, 1879); Reports of Decisions of the Circuit and District Courts of the United States (2 vols., New York, 1870–1871).

For the general reader he prepared a volume entitled "Judge and Jury" (New York, 1880), and another for more juvenile readers, entitled "Travelling Law School, and Famous Trials" (Boston, 1880).

In the early years of his practice he was appointed Secretary of the New York Code Commissioners, and personally drafted, under direction of the Board, the Report of a Penal Code which was submitted to the Legislature in 1865, and which afterward became the basis for the present New York Penal Code. He was also a contributor on legal topics to the editorial columns of a number of the daily journals at different times and on a variety of religious and social topics in the weekly press. He had a taste and aptitude for music, which was almost his only recreation, and a vein of dry humor, which gave a certain sparkle to his demeanor and conversation. He was thoroughly absorbed in his work, which was congenial to his tastes, and lived quietly without taking active part in public life. In 1853 he married Elizabeth Titcomb, daughter of John Titcomb, of Farmington, Maine, a pioneer in the early anti-slavery and temperance movements in that State. At the time of his marriage he became a resident of Brooklyn, where most of his life after that time was spent. He died in Brooklyn, Feb. 17, 1890.

SOME EARLY BREACH OF PROMISE CASES.

THERE are among the Early Chancery Proceedings, formerly in the Tower of London, a considerable number of Bills of Complaint, grounded on an alleged breach of promise, or rather breach of *contract*, of marriage, some of which date back as far as the middle of the fifteenth century. At that period, and indeed till the passing of the Marriage Act of 26 George II., the solemnization of matrimony, according to the laws of Holy Church, appears to have been altogether subsidiary to the civil contracts, or espousals, which often preceded the actual marriage by a considerable period. A precontract of this kind was, till the 32d year of Henry VIII., and again after 2 and 3 Edward VI., considered an impediment to marriage with any other person ; and until the statute of 26 George II., above referred to, a suit might be brought in the Ecclesiastical Courts to compel a marriage in consequence of such contract.

If a formal betrothal of this kind, to be duly committed to writing and attested, were at the present time declared to be the only legal basis on which an action for breach of promise could rest, a great saving of time to the judicial bench would ensue, and the public would be spared the recital of much of the amorous nonsense with which more or less facetious counsel endeavor to influence a sympathetic jury in assessing the amount of damage, from a pecuniary point of view, done to the outraged feelings of many a too seductive or too enterprising damsel. The law reports would, however, then be deprived of one of their most amusing features, and one on which the ordinary newspaper reader seizes with avidity.

That the courts of the fifteenth and sixteenth centuries were not altogether without their sensational trials of a somewhat similar kind, appears from curious records now under review. I have before me copies of four documents, all apparently bearing date between the years 1452 and 1515, which are peculiarly interesting as illustrative of the social life of that period. They show, in fact, that then, as now, amongst a certain class of persons, marriage was regarded principally in the light of a commercial speculation, the bargains made in some of the cases being specified with a minuteness of detail as amusing as it is unromantic. The first of these is a complaint preferred to the Cardinal Archbishop of Canterbury, Chancellor of England, between the years 1452 and 1454, by Margaret Gardyner and Alice Gardyner (presumably her daughter), against one "John Keche, of Yppeswych," who appears to have been in considerable demand amongst the fair sex, as, according to their own statement, the said Margaret and Alice agreed to pay him the sum of twenty-two marks on condition of his taking the said Alice to wife; but the faithless "Keche," after receiving ten marks from the said Margaret and twelve marks from the said Alice, "meyning but craft and disceyt," went and took to wife one Joan, the daughter of Thomas Bloys, *to whom he had been previously assured*, "to the gret disceyt of the said suppliants and ageyne all good reason and conscience;" and although at divers times required by the said suppliants to refund the twenty-two marks, he persistently refuses so to do ; whereupon they pray for a writ directing him to appear before the King in his Chancery, to answer to the premises, which is granted to them accordingly.

The plaintiffs in this suit appear to have regarded the matter purely from a business point of view, for they seek only to recover the money fraudulently obtained from them by the defaulting "Keche," without making any claim for compensation to the lady whose affections had been so cruelly and wantonly disappointed.

In the next instance before us it is the

gentleman who is the victim of a too implicit confidence.

In this case, the complainant, John Auger, states that he, "of the grett confydence and trust that he bare to one Anne Kent, synglewoman, entendyng by the mediacion of her friends to have married the said Anne," and upon a full communication and agreement between himself and the friends of the said Anne that a marriage should take place between them, "sufferid the same Anne *to come and resort and abide in his house;*" after remaining in which for the space of a month and more, she departed therefrom without the knowledge of the plaintiff, taking with her "dyvers evydences, mynyments, and chartres concernyng the seid house, and also dyvers juells of the value of *iiijli,*" of which, "although oftyntymes requyred" by the plaintiff, she refuses to make restitution; wherefore he prays a writ commanding her to appear on a certain day before the King in his Chancery, etc. Here the parties to the suit appear to have discounted the actual marriage by setting up an experimental household immediately after the conclusion of the marriage contract. Apparently some "incompatibility of temper," or perhaps the innate fickleness of the "said Anne," induced her to bring the experiment to an abrupt conclusion; in carrying her resolution into effect, however, she committed the mistake of endeavoring to indemnify herself for the error into which she had fallen, or perhaps to vent her displeasure on her quasi-husband, by carrying off with her all the valuables she could lay her hands on. This the quasi-husband appears to have strongly objected to, although he does not make any sentimental grievance of her desertion, and, so long as he recovered his property, was evidently prepared to consider himself well rid of his bargain.

The complaint of "Maister Walter Leinster, Doctour of Phisik," which follows, discloses a very curious story, and affords a striking example of pertinacity in following up an absconding suitor. The primary motive, however, in this as in the preceding instances, seems to have been merely the recovery of moneys actually expended, although the lady's distress of mind and the consequent injury to her health form a moderate item in the schedule of expenses incurred by the unlucky doctor.

In his bill of complaint, addressed to "The right reverend fader in God the Archbussop of York and Chancellor of England," the worthy doctor alleges that "one Maister Richard Narborough, Doctor of Law Sivile, in the moneth of May in the IX. yere of the reigne of the Kyng oure Soveraigne Lord (Edward IV.), att Cambrigge in the countie of Cambrigge, in the presens of your said oratour" affianced one Lucy Brampton, the daughter-in-lawe of the said plaintiff, to have her to wife, and the said Lucy affianced the said Richard to have him to her husband; immediately after which affiance, the said Richard informed the plaintiff and the said Lucy that he would "depart over the see unto Padowe, there to applie his stodye for the space of *ij* yeres," at the end of which time he promised to return to England, and to "espouse the said Lucy according to the law of Holy Chirche," at the same time especially desiring the plaintiff *to maintain the said Lucy and a maid-servant to attend upon her*, providing them with meat, drink, clothing, and all things necessary, until his return from beyond the sea, when he promised faithfully to repay to the plaintiff all the costs and charges which he had incurred in that behalf; to which the plaintiff agreed, "giffying full trust and confidence to the promises of the said Maister Richard." The latter, however, departed to "Padowe," and there and in other places absented himself from England for the space of ten years, "to the full grete hurt and hevynes" both of the plaintiff and the said Lucy, who, together with her maid, was provided by the plaintiff during the whole of that time with meat, drink, clothing, and all other necessaries. After the expiration of the ten years, "Maister Richard" returned

to England, and being required by the plaintiff to fulfil the contract of marriage between himself and the said Lucy, and also to reimburse him for the maintenance of her and her maid during his protracted absence, with other "grevous hurtez, costez, and charges" incurred by him, utterly refused to do either, "which is not only to the greate hurte and hevynes of your said besecher, but also to the *greate perell and iopardy of soule of the same Maister Richard;*" which sums of money, with other "reasonable considerations," which ought to be paid to the said plaintiff, are set out in a schedule annexed to the plaintiff's bill.

In the foregoing proceedings it is worthy of remark that the plaintiff, having affianced his daughter-in-law to an eligible suitor, considers himself thereby relieved from the duty of maintaining her to the same extent as if she were already the wife of the defaulting law-student, which in effect she was. Unjustifiable as the defendant's conduct seems to have been, the claim for damages to the unfortunate Lucy, as appears by an item in the schedule, represents only "the sum actually expended on her in consequence of "hir sore and gret sekenes" caused by his "onkyndnes and chaungeablenes," and makes no pretence to compensation for her shattered hopes and wounded feelings, which in a modern suit of this kind would have been assessed at no inconsiderable figure.

In the fourth of these curious actions, the date of which appears to have been between the years 1504 and 1515, the gentleman is again the plaintiff, and seems, according to his own statement, like the defaulting swain first referred to, to have been considerably sought after; both the lady's father and her uncle having used "gret instaunce and labor" to induce him to take her to his affections, although they seem, for some unexplained reason, to have afterward changed their minds; not, however, before the plaintiff had bestowed on the chosen lady many tokens of affection, which, matter-of-fact man that he is, he now seeks to recover, *together with his expenses in going to visit her.*

The plaintiff in this case, one John James, who appears, curiously enough, to have also been a "law-student," alleges that one Thomas Morgan, of Northampton, scribe there to the Commissary of the Bishop of Lincoln, and Robert Morgan, his brother, "instantly labored your said besecher to take to wyfe one Elizabeth Morgan, daughter to the said Robert Morgan, with whom your said besecher *suld have in hand by ther promes* 100 *marks in redy money*," upon which "*promes, gret instaunce and labor*," made to him by the defendants, the plaintiff "resorted to the said Elizabeth to his gret costs and charges." And "thorow the desaveabull comforde as well of the said Thomas and Robert Morgan as of the said Elizabeth," delivered to her many tokens, — namely, "a ryng of gold set with certen stones lyke to a dragone's hede;" "a ryng of gold called a serjeaunt's ryng;" "a crosse of gold with a crucyfyx;" "a ryall in gold;" "a nobull in gold;" "thre pomaunders;" "a rebon of sylke;" "a pyncase of cloth of gold;" with other many small tokens to the value of ten marks and more; "and also was at *gret costs and charges thorow his manyfold journeys taken in that behalf;*" which he estimates at other ten marks. But now the said Thomas and Robert have "by ther crafty and falce meane" caused the said Elizabeth to take to husband one John Maurice, since which time the plaintiff hath many times demanded his said tokens, *with his costs and charges*, as well of the said Robert and Thomas, as of the said Elizabeth, which "they and every of them at all times hath denayed and yit doth denay, contrary to right and good conscience," and therefore he prays a writ, etc.

From the documents above quoted, which are fair specimens of a tolerably numerous class, the action for breach of promise of marriage as we understand it at the present day, — that is to say, an action

seeking substantial damages as the result of a favorable verdict, appears to have been almost unknown to our ancestors. The specific fulfilment of the contract, formally entered into at the betrothal, might, however, as has been stated, be compelled in certain cases by an appeal to the Ecclesiastical Courts. — *The Antiquary.*

THE YOUNG HORTENSIUS.

By George F. Tucker.

YOUNG William Heffinger gave great promise when he was admitted to the bar. In the first enthusiasm he declared his purpose of making a great name by strict attention to business and by the faithful conduct of causes. The estimate placed on his powers by the fond companions at the table and fireside ministered to his conceit, begat high hopes, and inspired a kind of temporary courage. His mother predicted, in subdued but gratified accents, great successes and renown; his father declared, in a sonorous tone, that achievements were possible, but that diligence and fidelity were prerequisite; while his puritanical grandmother expressed her sole doubt on a matter of ethics.

"Willie," she said solemnly, "can you conscientiously defend a man whom you know to be guilty of the crime with which he is charged?"

"Well, grandmother," he replied, "to tell the truth, that does n't trouble me much. They taught me at the law school that criminal matters constitute only about one per cent of the entire subject of law, and that, too, the most inferior part of it. The truth is, I 'm high-toned and ambitious. I 'm going for the other ninety-nine per cent."

"What wonderful sagacity!" said the father, in an undertone. "He must cultivate his great gifts."

The tyro soon became known among his friends as the young Hortensius. His experiences were varied, but not dissimilar to those of the average lawyer in the incipient period. He opened an office, and was made by his Excellency the Governor a justice of the peace, — a title in Massachusetts which confers no dignity and very limited authority. He took his commission home to show to his mother; and that amiable woman, in announcing her son's good fortune to a lady caller on the following day, observed, —

"It is only a step now, you know, to the *ermine*."

"Indeed!" said the visitor; "what rapid advancement! How sorry I am that my Johnnie did n't study law! It is not only a noble profession, but it confers splendid rewards. Lawyers always get rich." All the time, however, she was thinking of her recent ineffectual attempt to prevail upon her solicitor to take off ten dollars from the rather meagre bill rendered for drawing her will.

Despite the encomiums of his mother and a few partial friends, young Heffinger did not grow rich. He used to suffer from fatigue, — not the fatigue springing from incessant application, but induced by watching, waiting, musing, and hoping. Finally, clients came; but such clients! They wanted work done for nothing. There are some people who regard a lawyer as made for the purpose of being imposed upon, and there are a few lawyers who tamely submit to indignity and imposition. In after life Heffinger referred to this period as that in which he had more clients than business. Like many a prede-

cessor, he reached successively, in his professional career, three stages, which may, perhaps, be best illustrated by anecdotes. At the first stage he was very diffident. He had been a lawyer less than a year, when a case of some importance was brought to him. His first purpose was to try it alone; then he concluded to take and did take a senior. When the day set for the trial arrived, he abandoned his last purpose of opening the case to the jury, and contented himself with reading a deposition. And yet his mother observed, soon after the trial, to a neighbor, that William conducted the case very well.

At the second stage he was bolder, but very frank and innocent. He had learned to try most of his cases himself; but he made curious mistakes, and indulged occasionally in amusing observations. His first divorce case came to him at this stage. When the judge asked him what his charge was, — meaning, of course, his complaint, — he replied promptly and innocently, "Fifty dollars."

At the third stage his deportment was characterized by boldness, largely assumed, and unfortunately not sufficiently tempered by common-sense. As attorney in a case involving about thirty dollars, he filed interrogatories which the judge severely criticised.

"I consider these interrogatories very poorly drawn," said that gentleman.

"Does your honor know upon what forms these interrogatories were modelled?" inquired the young Hortensius, with a pompous air, as his eyes snapped and the color rushed into his cheeks.

"I do not."

Drawing himself up to his full height, young Heffinger rejoined, in a dignified tone: "These interrogatories, your honor, were copied almost verbatim from those drawn by one of England's greatest statesmen, and used in that historic trial known as the 'Impeachment of Warren Hastings.'"

Industrious investigation coupled with experience slowly developed the young man's character, and proved indispensable auxiliaries as business increased. In the plenitude of success he was wont to smile as he recalled his early wailings against fortune. One day he happened to read a novel which was attracting considerable attention. It contained an exaggerated allusion to the professional success of a young attorney. The statement seemed so unreal (and withal so amusing) that he thought he would modify it so as to make it consistent with the truth. This summary of his youthful experiences may fittingly close with the statements, both original and modified, in parallel columns:—

As the Novel gives it.	*As it should be.*
During the latter part of the month of June, 187-, a young lawyer, ——— by name, was sitting in his office, in Boston, reading a letter. . . . He was a graduate of Harvard University; he had studied law in an office in Boston, but had been admitted to the bar after studying considerably less than the prescribed time. During the six years previous to the opening of our story he had been steadily gaining ground in the practice of his profession; so that when the reader makes his acquaintance he was considered one of the most promising of the younger lawyers . . . He turned to his other letters. He had been engaged in reading and answering these a half hour or more, when an elderly gentleman entered the office, and asked for Mr. ———."	In June, 187-, a young lawyer, named ———, was sitting in his office reading the only business letter he had received for a week. He laid it down despondently, wondering if he should ever earn six per cent interest per annum upon the large sum expended by his father on his education. A graduate of Harvard, he had studied law in Boston, and had been admitted to the bar after studying exactly the prescribed period. He had few clients, and just as he was contemplating closing the office, and placing on the door a notice, "Return to-morrow morning," an old friend of his father's entered, and asked him to take his acknowledgment to a deed. The visitor's motive was a double one: he wanted to patronize the son of his old friend, and also to avoid paying the ordinary fee of twenty-five cents for the service.

LEGAL INCIDENTS.

VI.

JUSTICE EASILY MISTAKEN.

"YEARS ago," said one of the well-known members of the Louisville Bar, "I was called on to defend a man of nearly middle age, who was accused of having stabbed a man in a quarrel on the street. Imagine my astonishment when at the first consultation he told me these facts: 'Yesterday afternoon,' said he, 'about dusk, my brother, who resembles me somewhat, was crossing the street, when he met a stranger coming the other way. The crossing was muddy, the stranger jostled him, and a quarrel ensued that developed into a fight, in which my brother, who had his penknife in his hand, stabbed his opponent several times, and then ran away as a policeman and several citizens came up. After we were all in bed last night, the officers came to the house after the assailant; and much to my surprise the warrant was made out against me. My brother is a man of dissipated habits, who has several times been in trouble; and if this case is pressed against him I am afraid he will be sent to the penitentiary. On the other hand, I am a law-abiding citizen, and can prove an excellent character. Now, what I propose to do is to stand trial on this charge, plead not guilty, prove an alibi, — as I can, — prove my character, and take the consequences. If I am convicted, I may get off with a fine, and I am willing to pay that to keep my brother out of prison.'

"I tried to persuade my client out of such a romantic proceeding," continued the lawyer; "but he was determined, and in order to do him justice in the defence, I obtained the assistance of another lawyer, who did not know the facts, and would act in the defence as if our client were guilty. Well, the case came up. My client was identified by the man who had been stabbed and by the policeman and other disinterested parties who had witnessed the fight in the semi-darkness and were sure of their man, as they thought. My client swore that he did not commit the assault, but that he was at home at the time when it occurred; and his family swore to that fact. Then several leading members of the church testified as to his good character. But the jury found him guilty and fined him fifty dollars. He paid it without a murmur, and the record of his conviction stands in the orders of the court. All through the trial my client's guilty brother sat by his side in the court and heard the testimony without flinching. I asked him what he would have done if his self-sacrificing brother had been sentenced to the penitentiary. 'I intended in that event,' said he, 'to get up in court and acknowledge my own guilt.' The other lawyer was thunderstruck after the trial, when I told him the facts. He refused to believe it, and said the evidence was sufficient to convict any man who lived. Only the proof of good character saved the accused from a severe sentence to the state prison." — *Louisville Courier Journal.*

THE SUPREME COURT OF PENNSYLVANIA.

By Owen Wister.

I.

COLONIAL PERIOD.

THIS tribunal was created in 1684, some time after it had become needed. There had been courts in the Province for eleven years by this time, but none of appeals. The judges in these other courts had not been lawyers. They were laymen, with as much native judiciousness and as little ignorance as could be procured in a community somewhat shifting and adventurous, and numbering no lawyers as yet. Nor did the dearth of these stop in 1684. By 1739, scarcity and prejudice had caused ten laymen, doctors and merchants, to be at different times commissioned as Chief-Justices of Pennsylvania.

Before there were any courts on the Delaware at all, — and that was a long day, lasting from 1624, when Cornelis Jacobsen May was Director of New Netherlands, until 1673, the time of Peter Alricks, Deputy-Governor on the west side of the Delaware, — New York was headquarters for the Province. Any differences that the pioneer colonists might pause to settle by litigation were of necessity carried to that place. But differences between gentlemen of nomadic bent are likely to be of a too personal rapidity for cure by law, and it is probable that Manhattan was not perceptibly occupied with their cases till Directors on the Delaware began to be frequent, — or after 1655, the time of Dirck Smidt. Did the limits of the present paper permit our dwelling upon that part of the legal history of Pennsylvania when to "deny the true God and his Attributes" was punishable by death, and to tell a lie in conversation, or to "Smoak tobacco in the Streets either by day or by night," or to countenance by one's presence "such rude and riotous sports and practices as Prizes, Stage-plays, Masques, Revels, Bull baitings, Cock-fightings with such like," incurred penalties not unsevere, a portrait of Justice attired in her colonial quaintness might be accurately drawn. Such, with more of the kind, were the checks put upon the habits and diversions of citizens under the provincial government of James, Duke of York, and the Proprietary that followed in 1682. We read at the same time that "Every Person Licensed to keep an Ordinary shall always be provided of strong and wholsome Beer," — an ordinance that goes a little toward tempering the wind of the preceding mandates. But starting with the year 1673, when the County Courts came into being, we must travel with reluctant haste over the picturesque chaos out of which the Supreme Court finally grew into shape, else that later period will not be reached.

These primitive tribunals decided "all matters under twenty pounds without appeal." In the graver criminal cases of "Life, Limbo, and Banishment," there was an appeal to the Court of Assizes in New York. Under the Quakers, no man was allowed to "plead in any Civill Causes of another" for a fee past, present, or to come, and was fined five pounds if he did so. As has been said, none of the judges were professional lawyers, and juries were limited to half-a-dozen men with a majority verdict, save in capital cases. Under the Proprietary Government the highly irregular procedure of these courts acquired a modicum of formality. Acts were passed (1683, 1690, and 1693) confirming their jurisdiction, in Debt, Account, Slander, Trespass, possessory actions, and others relating to title. The province of their power spread in sundry directions; among which may be instanced

the laying out of roads, the punishing of runaway servants by stripe or in the pillory, and "causing the Cryer to go to the extent of each street when hee has anything to cry, and to put a check to Horse racing." Equity powers were also conferred. It is to be presumed that such miscellaneous offices did not tend to foster among the laity any considerable respect for the tribunals which held them. Tobacco smoking, blasphemy, and loud singing in the court's presence required vigilant suppression. And when in 1686, sitting first as a law court and next in Equity, one of these bodies reversed itself, steps were taken to unravel the skeins of jurisprudence: "Ordered y^t^ a Conference be proposed to the Presid^t^ & Prov^ll^ Councill, wherein some Laws w^ch^ are Lyable to Divers Interpritations . . . may . . . be Explained. . . .

"2. The Law Concerning Quarter Sessions; how far y^e^ County Quarter Sessions may be Judges of Equity as well as Law, and if after a Judgment in Law, whether the same Court hath power to Resolve itselfe into a Court of Equity, and Either Mitigate, alter, or Revers y^e^ said Judgment."

This was at a meeting of the Council held the 12th day of the 3d month, 1687. The prejudice against litigation in general and Equity in particular was conspicuous in Pennsylvania in these times. To "get into Chancery" had grown an operation so damaging to the comfort of English subjects, that the phrase became applied to a well known and awkward predicament which occurs in the prize ring, — at least there seems no likelier origin of "getting your head in Chancery." That court had discouraged the Quakers in their old home by its endless intricacy; the Quakers determined to discourage it in the new country. In the Charter of Pennsylvania granted to William Penn by Charles the Second, among the other powers given the Proprietary is "to appoint and establish any Judges . . . and Officers whatsoever, for what Causes soever, . . . and with what power soever . . . and to doe all . . . which vnto the compleate establishment of Justice vnto Courts and Tribunals . . . doe belong." But Penn did not retain this broad power. In his "Frame of the Government," he relinquishes it expressly: "Seventeenth. That the Governor and the Provincial Council shall erect, from time to time, standing courts of justice." This was in April, 1682. Accordingly, the next oldest court to the County Courts appears to be the Orphans' Court, established by an Act of March 10, 1683, for the "Care of the Estates, usage, and Employment of Orphans." The name still survives, and, it may be said with sufficient accuracy, the nature of this court's jurisdiction; though widely extended, of course. There was also established a Vice-Admiralty Court in 1693, when Penn fell into disfavor, and Col. Benjamin Fletcher was made Governor-in-Chief of Pennsylvania, with power to "Erect one or more Court or Courts admirall." There was also the Provincial Council, a body that had many duties both important and incongruous. As a fair example of the latter sort, the following is found in the Colonial Records, July 11, 1693. Upon request, the Council confirmed an order of the Quarter Sessions "ag^t^ the tumultuous gatherings of the negroes . . . on the first dayes of the weeke, ordering . . . anie . . . person . . . to take up negroes, male or female, whom they should find gadding abroad on the said first dayes of the week, without a tickett from their M^r^ or Mris, . . . to carry them to goale, there to remain that night & that without meat or drink, & to Cause them to be publickly whipt next morning, with 39 Lashes, well Laid on, on their bare backs, for which their sd M^r^, or Mris. should pay 15^d^ to the whipper att his deliverie of ym to yr M^r^ or Mris."

The jurisdiction and procedure of all these bodies was of a haphazard and capricious stripe, as what has been instanced sufficiently shows. And what one chiefly feels when it is remembered that we have not reached a single lawyer yet on the bench, is astonishment that they had any system

whatever. But more peculiar to Pennsylvania than all of these courts was the tribunal of "Peacemakers." Laws of Pennsylvania, 1683, Chap. LXV.: "*And be it &c.* That in every precinct three persons shall be yearly chosen, as Common peacemakers in that precinct, And their Arbitrations may be as Valid as the judgements of the Courts of Justice. . . . And such Conclusion to be registered in the County Courts as other Judgments are." This body lived ten years. The following specimen of a Peacemakers' Arbitration is quoted by Mr. Lewis in his account of the courts of the seventeenth century. The case was of assault and battery: "Samuel Rowland shall pay the lawful charges of the writ, and give the said Samuel Baker a Hatt, and so Discharge each other of all manner of Difference from the Beginning of the World to this Present day."

WILLIAM PENN.

So much for the nature and times of the courts when the regular Court of Appeal was in its infancy, or had not even got so far as that. The little that has been presented of the temperament of this colony must serve to indicate the causes of those traits which characterize the early life of the Supreme Court.

Concerning appeals from the various tribunals, the following provision is found. Laws of Pennsylvania, 1683, Chap. LXX.: "And if any person shall think himself aggrieved with the Judgement of the County Court, That then, such person may Appeal to have the same tryed before the Governour and Council, *Provided always*, that the same be above twelve lbs." But not till the year following was there any formulated appellate Court. Laws of Pennsylvania, 1684, Chap. CLVIII.: "That there shall be five Provinciall Judges appointed by the Governour under the great seal of this Province, which Judges or anie three of them, shall be a Provincial Court and sitt twice every year in the town of Philadelphia; And any two of them att least shall every Fall and Spring yearly goe their Circuits into everie respective county of this Province and territories. . . . Which Court whether fixt or circular shall have the hearing . . . of all Appealls from inferior Courts." Land titles and all causes not in the jurisdiction of the County Courts were also to be tried by their body, which was remodelled three times by 1693. Out of the five, a Chief or prior justice was commissioned, and from the year 1684 on, Pennsylvania has had a Chief-Justice. From this dynasty brevity compels a narrow selection of individuals.

Dr. Nicholas Moore (or More), the founder of the dynasty, first Chief-Justice of Pennsylvania, was commissioned on the 4th day of the 6th month, 1684. Another person had been intended by William Penn, who writes from London to the Deputy-Governor:

"COSEN MARKAM: My sincere love salutes thee. . . . I have sent my Cosen, William Crispin. . . . It is my will and pleasure that he be as Chief-Justice. . . . Pray be very respectfull to my Cosen Crispin."

It is probable that the death of the "cosen" prevented this.

As to Nicholas More, Mr. Lewis has collected indications of a tempestuous career, but of a strong and honorable man. He does not seem to have had legal training, being a physician. He had arrived in America with Penn, and soon became a trusted public servant, filling numerous offices. His temper in the Council, however, tinctured his English till it became continually too strong for the ears of his colleagues; and by the enemies that his pungent vocabulary made for him, he was at length impeached. "Either myself or some of you will be hanged," he remarked at this crisis. Plainly too contemptuous and high-handed, he was dismissed from his office and disappeared from public life, dying in 1689. One cannot read his brief chronicle without a certain sympathy. He was followed by four that were laymen like himself; but this court's character, if untrained, was rugged and not unadmirable. Indeed, lawyers though they were not, men of stout sense and integrity these early Moores, Harrisons, and succeeding Logans, and Langhornes certainly were. And if the reactionary prejudice which Quakers held against all barristers, attorneys, and gunpowder — the other unpeaceful thing — retained the vehicle of Justice in amateur hands, still those individuals who trusted their cases inside it usually reached the journey's end quickly and in safety. The absence of technical skill did not hinder them and their fortunes from touching the proper goal. Mr. Lewis states that not one man who sat upon the bench prior to 1700 had received a regular legal education; and this, with the single exception of Samuel Jenings, Chief-Justice in 1691, is correct, — indeed, for seventy-five years later many a layman attained the position. Benjamin Franklin saw himself a judge in 1750; but "finding that more knowledge of the common law than he possessed was necessary to act in that station with credit," he relinquished this responsible post, — an example which, it is held by some, might have been profitably imitated by others who have flourished since that day. The slim number of the profession as late as 1708 is revealed by a petition of the distinguished Pastorius, quoted by the Hon. James T. Mitchell in an address before the District Court of the City and County of Philadelphia, which sets forth that one Sprogel had "fee'd or retain'd the four known lawyers of this Province in order to deprive your Petitioner of all advice in Law."

John Guest, commissioned in 1701, was the second trained lawyer in seven Chief-Justices. He declined, for reasons not known; but four years later he accepted the position, perhaps disappointed that his practice, under the Quaker restrictions as to receiving fees, had turned out less lucrative than ownership of well-nigh a monopoly in the profession might have tempted him to hope.

To sketch by legal means a picture of his era, though not of him, the following indictments are sufficiently appropriate: —

PHILADELPHIA, the 26th day of the 7th Month, 1702.

We, the Grand Inquest for this corporation, do present George Robinson, butcher, for being a parson of evill fame as a common swarer, and a common drunker, and particularly upon the twenty-third day of this instant, for swearing three oths in the market-place, and also for utering two very bad curses the twenty-sixth day of this instant. Signed in behalf of self and fellows, by

JNO. PONS, *ferman.*

Submits, and puts himself in mercy of the Court.

George Robinson, fined xxx s. for the oaths and curses.

A masked ball was given at this time, there being citizens in Quaker Pennsylvania who evidently shared in the proclivities of Morton of the Merry Mount of earlier notoriety in Massachusetts. This gayety met with the following among several rebukes: —

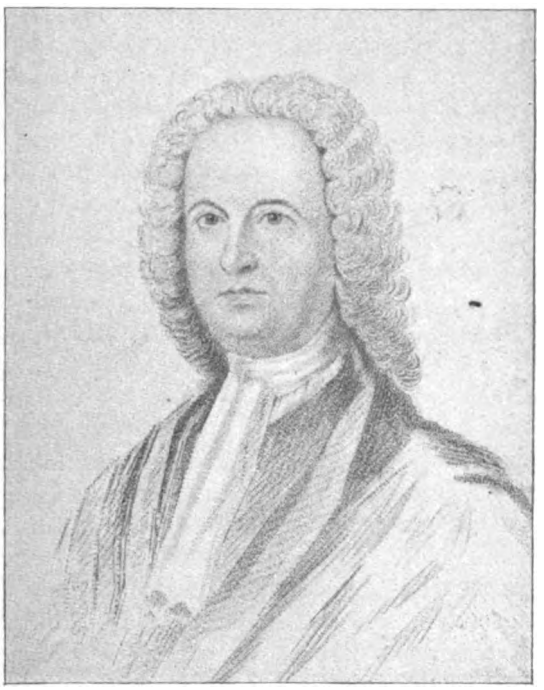
The 4 of ye 12 Month, 1702.

We, ye Grand Jury of ye City of Philadelphia, present Sarah Stivee, wife of John Stivee, of this city, for being dressed in man's cloathes, contrary to the nature of her sects, and in such disguises walked through the streets . . . to the grate disturbance of well minded persons. . . .

Signed in behalf of the rest,

ABRAHAM HOOPER, *foreman.*

Perhaps the allusion to Morton of the Merry Mount is misleading in this connection The fancy ball in question was given by a Mr. William Till, and was a perfectly respectable affair in all probability. A History of Pennsylvania, written but a few years earlier than this time by Gabriel Thomas, contains the following interesting comment (page 32): "Of Lawyers and Physicians I shall say nothing, because this Countrey is very Peaceable and Healty; long may it continue so and never have occasion for the Tongue of the one, nor the Pen of the other, both equally destructive to Mens Estates and Lives; besides forsooth, they, Hang Man like, have a License to Murder and make Mischief."



JAMES LOGAN.

If this estimate of attorneys and doctors was a universal one at this time, Dr. More and Lawyer Guest might well have been discouraged by the outlook, and hailed the small salary paid the Chief-Justice as at least a sure thing.

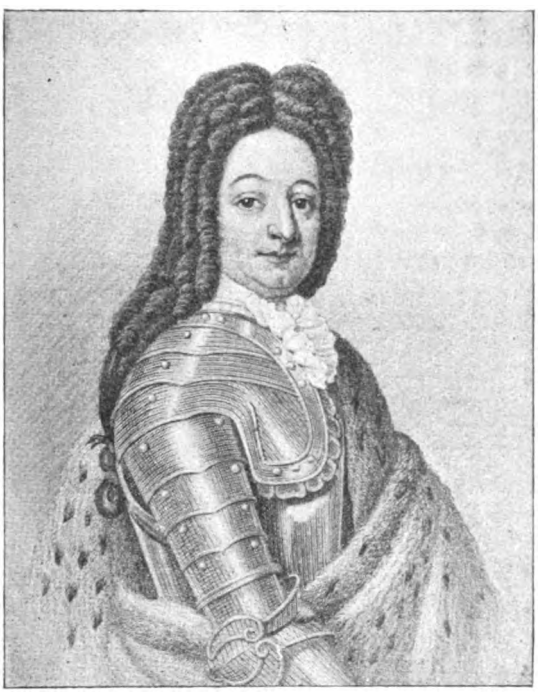
The first highly prominent man who filled this office was David Lloyd. Perhaps he is better remembered for his politics than for his law. But that should not be; and as far as is consistent with the untechnical purposes of the present paper, some of his legal history shall be recorded.

He was Welsh by birth, and came in 1686 to the Province as Attorney-General, being a lawyer by education and talented by nature. In the same year we find him given the office of clerk of the County Court of Philadelphia. "Upon y^e^ Judg's Complaint to this board of y^e^ Ill behaviour of Patrick Robsinson. . . it is ordered . . . y^e^ Records . . . be . . . Delivered to David Lloyd, who is Ordered to succeed him in his office." This, and the following quotations below, are from the first and second volumes of the Colonial Records. In 1688, "One of the Members of The Councill was desired to go to David Lloyd, y^e^ Clark of y^e^ Provll Court . . . to Require him fforwith to attend y^e^ Councill and to bring with him y^e^ Original Records. . . . He refused it, saying you may command the Judges, and y^e^ Judges might Order him, & other Slight and Scornfull Expressions he used." The minutes of the ensuing meetings now disclose a lively state of things over this very proper refusal to depart from regular rules of court. But on the 5th day of the 1st month, 1689, the clerk succumbs, and the Record was handed in. In the same year he became Clerk of the Assembly, and in four he was elected to this body, also serving as a member of the Provincial Council with Samuel Carpenter, Edward Shippen, and others. In 1701

he was (probably) the author of an act to remodel the courts, by which they were permitted to sit in Equity. The pleadings were provided for specifically, and power given the courts to enforce their decrees by imprisonment. At about this time a case in the New Vice-Admiralty Court for Pennsylvania — in which the unpopular Colonel Quarry, Judge of that Court and suspected of being a spy, was brought into collision with Lloyd, — shows something of David Lloyd's character. Taking advantage of certain unperformed technicalities, the King's collector had seized a ship's cargo. Its owner, quickly complying with the technicalities, vainly petitioned Quarry for his now wrongfully detained goods. Quarry, the English-appointed judge, could afford to be deaf. Nor could Governor Markham therefore dare to be less so. It would never do to offend an officer of the king. The merchant as a last resort went to the law courts, and they gave him a writ of replevin. This outraged the feelings of Quarry, whose powerful position and backing chilled that craving for impartial justice which the Governor and Council (officially) cherished. But David Lloyd encouraged the merchant to assert his rights. The Quarry side paraded into the court, with the resplendent royal commission bearing the portrait of the King. This was their vindication. From the commission hung the Admiralty seal, inside a tin case. Said Lloyd, who was the plaintiff, "What 's this? Do you think to scare us with a great box and a little Babie?" But Quarry with his King was too much for Justice, and the merchant lost his case. Nor would Penn, fearing to tempt Providence, allow Lloyd to carry the case to England for an appeal. A little later he became vigorously hostile to Penn; and after he was Chief-Justice, we find Penn's widow writing to James Logan, 5th of November, 1719: "And I wonder that no person can be found better fitted to be your Chief Judge than David Lloyd, one who has always showed himself to be a troublesome, ill-tempered man, and an inveterate enemy of my poor husband." But we may conclude that the lady was prejudiced. James Logan wrote to her son, young Penn, of Lloyd: "He is a man very stiff in all his undertakings, of a sound judgment, and a good lawyer, but extremely pertinacious and somewhat revengeful."

The Penn, or aristocratic faction, which was represented for many stormy years by James Logan, had no cause to like David Lloyd, who both opposed and exposed them with virulence, but by no means without reason. We find him in 1704 Speaker of the Assembly, active in politics. On the 30th of April, 1706, letters from England to him, which he showed to Logan, cause Logan to decline any future responsibility in paying the Judge his salary of £100 a year. Logan was Receiver for Penn; and though he declines to state why he can no longer pay the salary, one may suspect the cause very well to be the financial troubles into which the Penns had fallen. In this same year, 23d September, a new attempt is made to establish equity. In fact, the minutes of the Council report almost nothing else about this period. For instance, 14th of November, "The Govr. laid before the Board a long & tedious Bill . . . for Establishing Courts of Judicature." This document is evidently the result of David Lloyd's efforts. His name among others appears shortly before as being ordered to draw up a bill of which the fifth head is, "That the Governor and Council shall be a Court of Equity for all matters whatever." Evidently Lloyd had itemized this somewhat too general proposition. In a remonstrance to the Governor in 1710, his hand is again plain: "But we complain not of the indecencys we meet with, merely as they respect ourselves, 'Tis the poor Province, & the people . . . who are left without law, to be racked by officers . . . whilst their lives and estates are Subject to be Tryed by Courts set up without Law . . . and what danger the people here are in, for thy not passing amongst others the bill about the

manner of Giving evidence." Quakers, be it remembered, would not make an oath; hence could not be called as witnesses till affirmation was provided for by legislation. David Lloyd was Speaker of the Assembly at this time. In 1710 was passed another long act empowering the Supreme Court to sit in Equity. In this year also, "if the House cant at this time Encourage the Judges by an annual stipend or salary, they 'll be of opinion that 40 shills. per Diem for the Chief Justice, & 20 sh. for the other two will be little enough, unless it can be thought that private Gentlemen will still continue to serve ye Publick at their own expense of time and money." This is a message of the Governor wherein he "can't but still be of opinion, that four Judges in the Supream Court will be too many, and that for no other reason but that men of Capacity and ability are so scarce in the Countrey."



SIR WILLIAM KEITH.

In 1715 there was another Act concerning Equity Courts; and it may be reasonably supposed that the untiring Lloyd was at the bottom of all these steadily repeated efforts toward shaping the Province's courts into a defined and permanent system. He was appointed to be Chief-Justice on the 15th of February, 1717; and in spite of Hannah Penn, we may be allowed to think that he deserved the honor as well, if not better, than any other in his community. His opposition to the Penns and hence to all who served that interest, may have been nourished by prejudice; but an inspection of the abuses that heaped up under their administration will plainly show that it was founded upon reason.

James Logan, commissioned August 20, 1731, is the first distinguished figure among Pennsylvania Chief-Justices; but it was not legal distinction which put him on the bench. Like so many of his predecessors, he was not a lawyer; and this office was given him because of the reliance in his judgment and character that a career of prominent usefulness and responsibility had gained for him.

He was born in Ireland in 1674, and got a decent education. This brought early out in him a bent for letters. He was put apprentice to a trade somewhat remote from literary walks, being sent to a linen-draper; and when twenty-four he began trading on the Bristol wharves. In the next year, 1699, at William Penn's invitation he sailed with him to be his secretary in the Province. Their ship fell among pirates on its way. The peaceful Penn retired below, compelled to this by his conscience; while Logan remained upon the deck, heretically wielding the sword. The peaceful Penn — though not until the alarm was come to a fortunate end — called his young secretary's attention to this impropriety in a Quaker. But the secretary called Penn's attention to their status as master and servant, observing that it would have been a simple matter for Penn to bid his servant put up his sword, if this

warlike conduct had been so painful to his principles. Penn's reply to this has not been chronicled; but to the day of his death he placed unswerving reliance upon James Logan, and by his will made him trustee of his entire American property. Young Logan entered a region of turbulence almost upon his disembarking. As the most confidential friend and agent of the Proprietary, all opposition came full against him in his capacities of Secretary to the Council, and Receiver-General of rents and all other dues, and payer of salaries, and so forth. The Governors quarrelled with the Council, and David Lloyd quarrelled with the Governors; and between them all one is not surprised to find the confidential agent impeached. The second volume of Colonial Records becomes lively reading at about this time, 1706–7; and the quaint spelling and diction add a relish to the venom they record. "Gentlemen," says the Hon. John Evans, Esq., Lieutenant-Governor, in a message to the Assembly shortly before Logan was impeached, "you have now given me, and the rest of the world, very great reason to believe that your concern for the Common good is not so real as has been pretended, since you prefer an obstinate humour in Defence of an irregular & affrontive behaviour to all other considerations relating to the Publick. . . . But notwithstanding . . . I shall once more give my Result upon the Bill . . . but shall first observe that your particular manner . . . very clearly Evinces how great an authority you bestow upon your own opinions. . . . I cannot agree, that when a Judge is once appointed it shall be out of the Govrs. power to remove him. . . . You have pleaded a Statute of England for the President [precedent]. . . . The first part which makes the Tenour of their Commissions to be *Dum se bene gesserint*, were our circumstances the same in y^e^ point with the Judges of England, might the more easily be granted here." This message, more of which shall be given, is abbreviated with reluctance; for it serves to show the temper that Governor and Assembly were evidently in, and also the interesting fact that there existed a discontent with the dependence of the Judges' commission upon the governor's pleasure, and that an office during good behaviour was looked for, — something not attained until many years later. Concerning the courts, this message of Governor Evans continues: "There is such a Train laid in the said Bill, that when once the Assembly" . . . has got the means of having a Chief Justice to their own mind . . . "by their power of removing and withholding a Salary . . . the whole power and proceedings of the Court will not only be absolutely independent of the Govmt., but in all probability be levell'd as far as Possibly in direct opposition to it; Especially since the present Speaker [that is David Lloyd again], who being the only person in that House professing the Law has been the Chief Compiler of that Bill, has presumptuously taken upon him to write to some private men in England . . . to send over some fit person hither to be our Chief Justice, proposing the Encouragement of some hundred per annum, and further objecting against that Worthy Gentlemen as well as able Lawyer Judge Mompesson [commissioned 1706, April 17, but probably never sat] as unfitt, because in the Interest of the Proprietr. y^e^ Chief Govr. of the Place."

Shortly after the above message appear the articles of James Logan's impeachment, containing fourteen complaints against him, and signed by David Lloyd. They cannot be given in full here, nor can Logan's fourteen answers; but a few extracts from the latter help the picture of prevailing storm.

"1st. I suppose this article hath only reference to y^e^ following, otherwise I understand nothing of it.

"2dly. This is ridiculous. . . .

"3dly. This is answered in the next preceding. . . .

"4thly. D. Lld. is against patents, and would have all grants . . . to be drawn by such as the

grantees would employ, I suppose only for his own Benefit. . . .

"6thly. . . . 'T is positively false. . . .

"7thly. This is also false. . . . D. Llds. malice putting me on my Guard, I have wholly avoided it."

And so on. It must suffice here to state that Logan, impeached by the Assembly and arrested on making ready to cross to England to vindicate himself, was able still to sail on the Governor's issuing a supersedeas upon the warrant, and returned to the Province in 1712, vindicated. On the 8th of September, 1713, he writes: "Great numbers of people are crowded in upon us from Europe, but they are mostly servants, and very few of estates." His many letters show an aristocratic temperament and considerable discretion. In answer to Hannah Penn's invitation for him to go to England on diplomatic errands, he says, "I formerly mentioned my unfitness to solicit the great; nor can I believe but others are generally much more proper for it than those of our profession." His handwriting is clear, cultivated, and obviously the product of serene nerves; his portrait shows similar traits. A placid and somewhat colorless wisdom pervades much of his correspondence and other writings. "Sally," he writes of his daughter, "besides her needle, has been learning French . . . but is . . . reading the 34th Psalm in Hebrew . . . though I never design to give her that or any other learned language, unless the French be accounted such." He translated "De Senectute," — the first classic translation in this Western World, says Franklin.

ISAAC NORRIS.

In 1722 he opposed paper currency, and was also sent to quiet the rage of some Indians whose kin had been drunkenly butchered by whites. Logan's speech should be given; but there is no space for it. His discreet words and discreeter offering of wampum "to wipe away tears" were effectual. Next to Penn, the Indians loved Logan; and in 1742 addressed the Governor and Council, saying, "Brethren, we called at our old friend James Logan in our way to this city, and to our grief we found him hid in the bushes." This was their metaphor, Logan's health being ailing. In 1736, April 13, he told the Grand Jury he hoped this charge would be his last. "To mount a bench on crutches, which I have now done for these five years past, and to pass sentence of death, gives me a real uneasiness, which neither the present salary of £100 a year . . . nor a much greater could compensate to satisfaction." The charge is a eulogy, first of creation, and last of the English Constitution. Logan was an ingenious botanist; he also left his library of three thousand books to the City. Besides being Mayor, he was the Governor's secretary for forty years. His justiceship lasted eight. He was President of the Provincial Council, and declined to be Lieutenant-Governor. In fact, he was called to perform so many and such various public duties, —

to receive rents, to pacify Indians, to record proceedings of Council, and finally to be Chief-Justice, — that it is difficult to see where he found the time to manage a farm, make translations from the Greek and Latin, and write scientific pamphlets upon astronomical phenomena and the generation of plants. Had his public work been negligently performed, this gregariousness of interest and activity would seem less surprising. But the complaints which led to his impeachment arose from what in the eyes of the opposition was a too thorough performance of his official duties. It becomes evident that behind James Logan's serene expression and through his placid nerves there must have been a very vigorous energy simmering continually.

ANDREW HAMILTON.

At the time he was made Chief-Justice, he was the unanimous but second choice, Isaac Norris having declined the position.

Isaac Norris, though he never sat on the bench, should be mentioned here as leader of the party of strenuous Quakers that opposed sharing in any military expenses of the Province. This step was taken in 1739, the year of Logan's retirement, and it very naturally set a bitter contest going. Norris wrote his party's reply to the Governor's remonstrance. In this is set forth the Quaker doctrine against all war, and a refusal to help support soldiers or build forts. It was a pretty strong and singular attitude for any people, Quaker or otherwise, to adopt, who were receiving the benefit of military protection against the Indians, and expecting a wide war with France, and possibly Spain as her ally. The party strife lasted for some time, and was the only public event that called old Mr. James Logan out once more from his private existence in the country. The episode is full of interest as a piece of history and a piece of Logan's character.

And here, lest any one unfamiliar with the colonial history of Pennsylvania suppose that every Quaker was set against the use of force as a weapon of public defence, let it be said that there were many prominent Friends whose private opinion entirely acknowledged the necessity of force. But none of them except Logan had what may be curtly termed the "sand" to say so. They were too much afraid of losing caste among their more fanatically peaceable brethren. Logan was not afraid, however, and did not lose caste, either. His position and character were too well established to be really shaken, in spite of the following letter which he addressed to his sect, and which contains somewhat corrosive innuendoes as to Quaker sincerity.

To Robert Jordan, and others the Friends of the Yearly Meeting for Business, now conven'd in Philadelphia.

My Friends, — It is with no small Uneasiness that I find myself concerned to apply thus to this Meeting: But as I have been longer and more deeply engaged in Affairs of Government, and I

believe I may safely say, have considered the Nature of it more closely than any Man besides in this Province; as I have also from my Infancy been educated in the Way that I have ever since walked in, and I hope without Blemish to the Profession; I conceive and hope you will think I have a Right to lay before you, the heavy Pressure of Mind that some late Transactions in this small Government of ours have given me, through an Apprehension, that not only the Reputation of Friends, as a People, but our Liberties and Privileges in general may be deeply affected by them.

But on this Head I think fit to mention, in the first Place, That when, above *Forty two* Years since, our late Proprietor proposed to me at *Bristol*, to come over with him as his Secretary; after I had, agreeably to his Advice, taken Time to consider of it . . . I had no Scruple to accept of that, or of any other Post I have since held: Being sensible, that as Government is absolutely necessary amongst Mankind, so, tho' all Government . . . is founded on Force, there must be some proper Persons to administer it; I was therefore the more surprised, when I found my Master, on a particular Occasion in our Voyage hither, tho' coming over to exercise the Powers of it here in his own Person, shew'd his Sentiments were otherwise. [Forty-two years gone, and he had never got over the pirates and Penn's retiring below!] But as I have ever endeavoured to think and act consistently myself, observing Friends had laid it down as their Principle, That Bearing of Arms, even for Self-Defence, is unlawful; being of a different Opinion in this Respect, tho' I ever condemned offensive War, I therefore, in a great Measure, declined that due Attendance on their Meetings of Business, which I might otherwise have given. [Now he begins his argument, which no Quaker has as yet answered in Meeting or out of it.] I must nevertheless add further, that I propose, not in offering this, to advance Arguments in Support of the Lawfulness of Self-Defence; which, amongst those, who, for Conscience Sake, continue in a Condition to put strictly in Practice the Precepts of our Saviour, would be altogether needless; but wherever there is private Property, and Measures taken to increase it, by amassing Wealth, according to our Practice, to a Degree that may tempt others to invade it, it has always appeared to me, to be full as justifiable to use Means to defend it when got, as to acquire it. Notwithstanding which . . . I shall consider this . . . to be their . . . Principle [that is, non-resistance] and only offer to your Consideration, what I conceive to be a clear Demonstration, that all Civil Government, as well as Military, is founded on Force; and therefore, that Friends . . . in the Strictness of their Principles, ought in no manner to engage in it."

WILLIAM ALLEN.

This letter ought to be given at length, for the sake of its great ability and admirable power of statement. But it is too long, and a brief analysis of what next follows is given here instead.

This Province (says Logan) is subordinate to a superior government, which therefore expects it to do its share in defence against a foreign enemy. It is evident that all government is founded on force, because by the law, when peace is commanded even by a constable, all obedience to that command manifestly arises from a sense in the person who is commanded that his resistance would be punished. And in civil cases the sheriff executes the judgments of the courts,

and is obliged by the law to find a sufficient force to compel compliance. Criminals are put to death and riots suppressed by persons legally vested with power to use necessary force in each case. And for this latter end the sheriff has the right to summon all persons in his district to aid him; and if need be, freely to use fire-arms, nor be held accountable for lives lost, and to be punishable if they refuse to assist the sheriff.

"From whence it is evident, there is no Difference, in the last Resort, between Civil and Military Government. . . . And from these Premises it certainly follows, that whoever can . . . join in Assembly in making Laws, as particularly for holding Courts, is so far concerned in Self-Defence; and makes himself . . . as obnoxious to Censure as those who directly vote for it. [Notice how tightly James Logan's logic is winding the Quakers up; for the Legislature was full of them, though their principles did not allow them to spend money for soldiers or forts.] . . . It is further alledged, by our Friends, that no other was expected than that this should be a Colony of *Quakers*; . . . that they are willing themselves to rely on the sole Protection of divine Providence, and others who would not do the same should have kept out, for nobody called or invited them. [Then Logan refutes this allegation by recalling the terms of the original charter, and also Penn's general invitation to all of any country or Profession, "provided they own'd a God." Now he tightens his noose a trifle further.] . . . Although they alledge they cannot for Conscience sake bear Arms, as being contrary to the peaceable Doctrine of Jesus . . . yet, without Regard to others of Christ's Precepts, full as express, against laying up Treasures in this World, and not caring for to-morrow, they are as intent as any others whatever in amassing Riches, the great Bait . . . to our Enemies to come and plunder the Place."

Then follows a warning of the defenceless condition of Philadelphia, and the ease with which Indians and French could raid it. It is pointed out that if the Quakers decline to help defend it, England will divest them of their privileges. And thus Logan leads to the natural conclusion that those Quakers whose consciences compelled them to vote against paying money for defence had better be consistent and decline standing as candidates "at the ensuing election for Representatives." Then follows a hint that perhaps parsimony and not conscience may have had something to do with this high moral tone; and the letter concludes with a recommendation to the Friends to consider what has been said from the "sincerest Zeal for the Public Good . . . and the most solid Interest of Friends as a People."

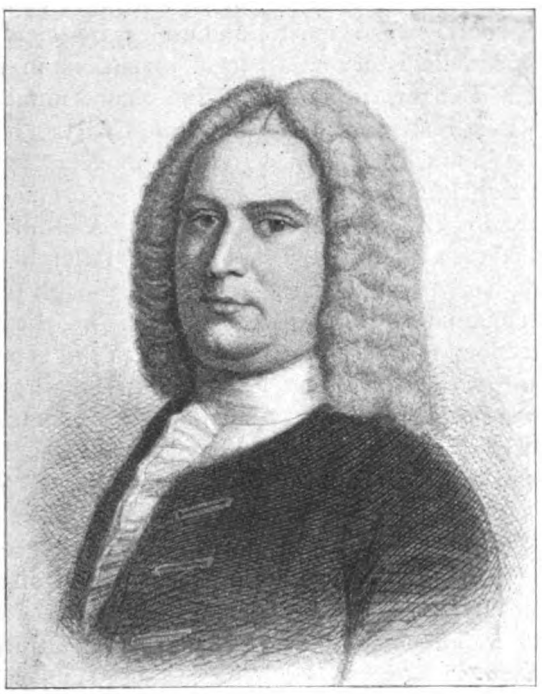
This was in 1741. The following extract from a letter to John Penn, from a Friend, reveals how James Logan's letter pleased the Quakers: —

"The Yearly Meeting being held the week before the general Election, M^r^ Logan . . . sent them a Letter. . . . Robert Jordan [and others] were appointed to inspect the Epistle. . . . They reported it was by no means proper to be read to the general Meeting. . . . Robert Strethil . . . was apprehensive should this Letter be refused a reading . . . such a procedure would . . . disgust . . . the Body of Friends in England . . . as it might . . . contain several Things . . . intended for the Good of the Society. . . . But John Bringhouse pluck'd him by the Coat and told him with a sharp Tone of Voce, Sit Thee down Robert, thou art single in that opinion."

So the "Epistle" was not read aloud in Meeting. But it raised a considerable dust; and its author would have probably been turned out of the Society for his unpalatable observations, had he not been a little too big a man for Quaker spite to tackle.

Besides the excellent analysis of Government presented by this letter of Logan's, it is to be noticed that he was wise enough not to rest his argument upon abstract principle alone, which is a motive that has proved at times vacant of persuasion. He also appealed to the commercial prudence of the canny Quaker merchants whose nature he knew; and the following entertaining extract from Franklin's autobiography tends to show that such latter argument at length had its practical result upon their conduct: —

"My being many years in the Assembly, the majority of which were constantly Quakers, gave me frequent opportunities of seeing the embarrassment given them by their principle against war, whenever application was made to them . . . to grant aids for military purposes. . . . Hence a variety of evasions to avoid complying, and modes of disguising the compliance when it was unavoidable. . . . As, when powder was wanting (I think it was for the garrison at Louisburg), and the government of New England solicited a grant of some from Pennsylvania . . . they could not grant money to buy powder, because that was an ingredient of war; but they voted an aid to New England of three thousand pounds, to be put into the hands of the governor, and appropriated it for the purchasing of bread, flour, wheat, or *other grain*. Some of the council . . . advis'd the governor not to accept provision, as not being the thing he had demanded; but he reply'd, 'I shall take the money, for I understand very well their meaning; other grain is gunpowder,' which he accordingly bought, and they never objected to it."



TENCH FRANCIS.

The letter of James Logan upon this question was the last public act of his life, the remainder of which he passed at Stenton, his country-seat, dying on the 31st of December, 1751. Among his posthumous papers was found one, "Precepts to myself." These cannot be given here; but they could not have been written by any but a true and simple man.

Eulogies in our American market are something of a drug; and since persons with a flow of words are commonly found to tell us at the tomb of each rich merchant, successful newspaper editor, or dishonest politician newest dead, that the departed combined a virtue sterner than Cato's with a genius much like Shakspeare's, praise loses its force a little, and perhaps comes to be discredited by some. But of Logan it will not be immoderate to say, that through the pale, plain speech and dress with which Quakerdom veils the distant colonist, the man's sterling nature shines nevertheless, not entirely dimmed. From the boy of twenty-five, ready for pirates notwithstanding his creed, through the years of stanch fidelity to those he served, — winning the respect and affection of the Indians, pioneer scholar in Greek and Latin, cool-headed judge, with the posthumous "Precepts to myself," full of wise and sober thought, — the figure of Logan is certainly an admirable one. He was not a genius. There was nothing great about him except his integrity. But each thing that he did, whether political or literary, seems to have been done well, bearing in its execution no professional wholesale taint, but that secure, easy touch of the gentleman and the scholar who respects his undertakings, and yet perpetually stands indifferent and superior to them, as he is indifferent and superior to life itself.

During these days a stream of learned law began to trickle into Pennsylvania, and that reputation of Philadelphia lawyers arose which has since crystallized into a saying.

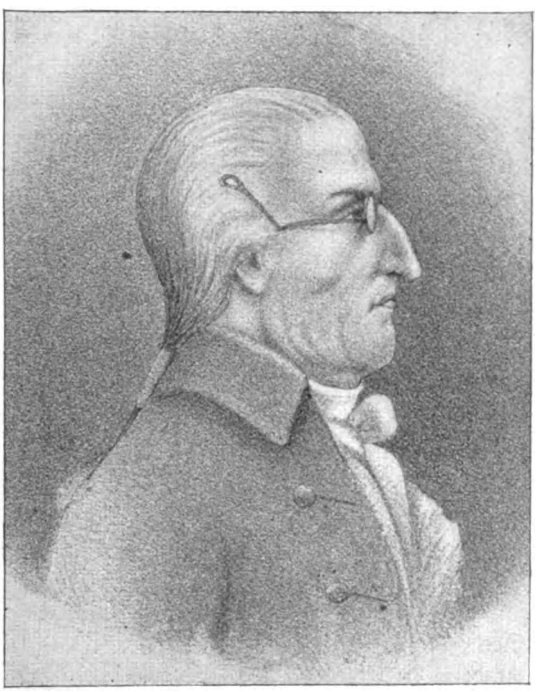
The names of Tench Francis and Andrew Hamilton must be mentioned, both Attorneys-General, and most astute and able men. Tench Francis gave Edward Shippen, Chief-Justice afterward, his first legal teaching; and he was one of the roots of a family tree that bore numerous distinguished lawyers, -- such as the Tilghmans, and to-day the Hon. Thomas Francis Bayard. Andrew Hamilton is known most widely through his voluntary services in a case in a neighboring court. The most celebrated case in the colonial history was the trial of John Peter Zenger, printer, for Libel, before the Chief-Justice of the Supreme Court of New York, the Hon. James Delancey. Andrew Hamilton came from Philadelphia to defend Zenger, and triumphed in so signal a manner that the Corporation of New York demonstrated their gratitude for his unpaid championing of Liberty's cause and the freedom of the press by presenting Hamilton with the freedom of the city. That day has probably gone.

There being no Courts of Equity in Pennsylvania (that were allowed to stay), the skill of the early lawyers was greatly devoted to "getting round" many things. Hence came what has been called the *fusion* of Law and Equity in Pennsylvania. By this is meant not only the allowing of fraud, mistake, or duress, etc., to be pleaded in actions, but much more besides that is Pennsylvania's original invention and served its end very well in many cases. Naturally, men in those days also, made contracts to convey land at a set future date, and became subsequently desirous to shirk their bargains. There was no means for getting a decree for specific performance. But the lawyers were sensible as well as ingenious. They saw that business necessity compelled some check upon such evasions. They therefore concocted a device for bringing ejectment on an *equitable* title, and they invented a machine that worked just as effectively as any decree for specific performance. The scholarly attorney who learns this for the first time may feel it a violent piece of news, and be tempted to call such shifts no fusion of Law and Equity, but merely confusion. When certain English statutes were mentioned to Caleb Cushing as tending toward a similar fusion, he scouted the idea, remarking, "Nobody 'd be such a damned fool as that!". And certainly a very natural curiosity is aroused to know how you are going to stir up *rem* and *personam* simultaneously in the same vessel of jurisdiction without exploding it into grotesque and useless fragments. A discussion of these legal inventions in Pennsylvania is reserved for the second number of this account of the Supreme Court.

In John Kinsey, commissioned April 5, 1743, the court acquired the fifth professional lawyer in fifteen commissioned Chief-Justices! After him, no layman ever sat in that place, though plenty of them sat as associates and in the other courts. Perhaps one layman did come after, — his successor, William Allen, who was undoubtedly a merchant in this country. But there is a statement that he was admitted before 1730 in London. This is founded on his father's will, which left him immediately £500 sterling for his expenses there, — an unusually large sum; and also upon his being once mentioned as "a distinguished barrister in London." An examination of the records in the Middle Temple would settle this question. But at the Middle Temple they 'll do nothing for you unless you give them five guineas; and when any man comes whose anxiety to know if William Allen was a lawyer or not equals five guineas, the doubt will end.

Connected with John Kinsey is an anecdote, here given for its value as a piece of local color. Sir William Keith, the Governor, determined to have a proper Equity Court, all Quakerdom notwithstanding. In 1720 he instituted his short-lived Court of Chancery, which John Kinsey one day in 1725 was obliged to attend in the course of his business. Appearing with his hat on, like the good Quaker that he was, it

was taken off his head for him at the Governor's order. This elicited from the Society of Friends a somewhat massive petition explaining their dogma concerning hats. Sir William said: "On consideration of the humble address presented . . . it is ordered . . . that any practitioner of the law . . . professing himself to be one of the people called Quakers, may . . . speak . . . unto the said Court without being obliged to observe the usual ceremony of uncovering their heads. . . ." Such is the law in Philadelphia to this hour; although some years ago, an honorable Judge whose appreciation of the dignity of the bench was more profound than his historical acquirements, learned it one day for the first time when he ordered a Friend to unbonnet. Upon that whimsical occasion an old Quaker (not the mild victim), puffing with rage at this slight to the Society's venerable privilege, exclaimed, "If he 'd t-told me to t–take off my hat, I–I 'd have swelled my head."



BENJAMIN CHEW.

William Allen was Chief-Justice from 1751 until 1774. Whether he was a member of the bar or not, he is the first Chief-Justice whose name appears in the Pennsylvania Reports. In the meagre collection of cases before the Revolution that was able to be gleaned by Mr. Dallas (there are just thirty-seven in all that survive in print to represent ninety-two years of litigation), William Allen begins the list, presiding over the first case. Anonymous. 1 Dallas 1. Decided in 1754. "Adjudged by the Court, that the statute of frauds and perjuries does not extend to this province, though made before Mr. Penn's charter: the Governor of New York having exercised a jurisdiction here, before the making that statute, by virtue of the word territories, in the grant to the Duke of York, of New York and New Jersey."

This patent was granted to "his Royall Highness James Duke of Yorke and Albany; Bearing Date the 12th Day of March in the Sixteenth year of the Raigne of our Soveraigne Lord Kinge Charles the Second," — that is, in the year 1664. On May 5 a commission was issued to Col. Richard Nicolls and others, — or on April 25, Old Style, — under which the Duke of York's laws were established at a meeting on Long Island. But owing to a variety of obstacles, the Dutch among others, these laws were not established in Pennsylvania until Governor Andross on Sept. 15 (Old Style), 1676, gave instructions respecting the Delaware River: "1st. That the books of laws established by his royal highness, and practised in New York and Long Island, be likewise in force and practice in this river and precincts." Now, the Statute of Frauds was also passed in 1676; and were it not for the provision it contains putting it in force "from and after the four-and-twentieth Day of June which shall be in the Year of our Lord 1677," the ground of this first decision would be very narrow indeed. As it stands, the real reason for excluding the statute from

operation in Pennsylvania was probably not this delicate balancing of months, but, as the note in Dallas suggests, because to manipulate its various provisions "required greater expertness than the practitioners of those days generally possessed." The chronology in this same note, by the way, is incorrect, or at least inconsistent with the caption of the Duke of York's Laws.

Another curious case, decided during William Allen's time, turns on questions of a similar nature: The Lessee of Albertson *v.* Robeson, 1 Dal. 11. The defendant supported his title under a decree of the Court of Chancery, established by Act of Assembly. The royal assent was refused to this law in England, and it so happened that the repeal preceded the decree of the court above two months; but the repeal was not known here when the decree was made. The Court determined, upon full argument, that the unknown repeal could not affect the right of the defendant under the decree, and the jury found accordingly. Judge Yeates, who was a young law student at the time, gives the above account of this case, and adds that he remembers the decision's giving general satisfaction to the profession.

To us the case is mainly of interest as evidence of the effects produced by the repeated and invariably baffled attempts of the Colonial Legislature to establish a Court of Equity.

Whatever William Allen's occupation may have been in 1720–25 in London, he engaged in trade upon his return to America, his birthplace. In the language of a contemporary writing of him, he was "a considerable merchant, and a very worthy honest Gentleman in Philadelphia." The family of Allens were well-to-do, and the place Allentown, in the anthracite coal region, was named from them. They owned large estates in that part of Pennsylvania. Before he was Chief-Justice, William Allen had become very prominent in public life, holding several important public offices. In 1735 he was mayor of Philadelphia. He, too, was largely mixed in the politics that have been already mentioned in connection with Isaac Norris and James Logan. He opposed the Quakers. He seems to have been a cultivated person; patron of Benjamin West the painter; interested in the search for the Northwest Passage; and being able, also willing, to give the salary of his office to charities. What chief remembrance he deserves is for buying with his own money, on October 15, 1730, the site of Independence Hall "for a State House," where, in 1736, he gave a house-warming in the banquet-hall, — "the most grand, the most elegant entertainment that has been made in these parts of America."

The Allens supported the Crown, and thought highly of their social position; and the Justice's son resigned his command in the army, "not because he was totally unfit for it, but because the Continental Congress presumed to declare the American States free and independent without first asking the consent and obtaining the approbation of himself and wise family," — which reveals that the Allens had their enemies. They returned to England, and the Chief-Justice died in London in 1780.

Benjamin Chew was commissioned April 9, 1774. He was the last Chief-Justice before the Revolution, and so he ends the history of the Provincial Court, — a body which existed for ninety-two years, as has been said, and over which seventeen Chief-Justices had been commissioned to preside.

It has been seen that more than half of these were laymen; and yet that they should, for the most part, have found themselves able to give general satisfaction, — and they undoubtedly did, — is not so surprising as it seems on first sight. For the raw quality of life in a young colony at the edge of a wilderness cannot often start up questions to stagger a man of native firmness and judgment. While forests are to be cleared and Indians watched against, the testator will not find time to bedevil his codicils very much; and the "Peacemakers" will be

needed to order "Samuel Rowland to give the said Samuel Baker a Hatt" for having assaulted him, rather than to discuss the effect of a *lis pendens* upon an oscillating and vagrant title. Of course, at the present day, to be plainly unseasoned in technical law is hardly the thing for a judge, even in Pennsylvania.

But a certain sort of technical ignorance in men otherwise educated and able, had its good side one hundred and fifty years ago. Mr. Peter McCall points out, in an address delivered in 1838, that the educated common-sense of these early amateur jurists led them empirically to reach a system of pleading and procedure which specifically anticipated by more than a hundred years many of the improvements made in England by the Westminster Rules, 3 and 4 William IV. Had this assertion been made by any but such a scholar as Mr. McCall, it would not deserve much attention. Statements of a kindred nature are often made in this country when American novelties are contrasted with English traditions; and they are usually the blossom of a fresh and complacent ignorance. But coming from such a source, they may be believed.

Mention has been made of David Lloyd's effort to have the judge's commission *dum bene se gesserint*. Fifty years later, in 1759, this very great step in advance was taken, and the judges were rendered independent of shifting politics, and commissioned during good behavior. This was again limited during the troubled times of 1776; but in 1789 the term was restored.

After James Logan, Benjamin Chew is undoubtedly the most prominent figure. Much of the legal blood in Pennsylvania seems to have come originally from Maryland, where Mr. Chew was born. This was in 1722, when his family had been in America for a hundred years. He learned his first law under Andrew Hamilton in Philadelphia. But like a good many of his contemporaries, what book learning the attorney could then get in America he felt was not sufficiently thorough. Mr. Chew therefore went on with his studies at the Middle Temple. On his return to this country he left Philadelphia for a while and practised in New Castle, and did not reappear at this bar for several years. Almost immediately upon his doing so, the office of Attorney-General fell vacant, and he was chosen for the place. As he was a comparative stranger in the town and only thirty-three years old, this is a good evidence of the respect for his gifts that the community felt. He held the position for seventeen years; but it was by no means the only one given him. And although he seems to have filled important offices in the Lower Counties as well as in Philadelphia, they were not neglected, in spite of the somewhat wide geography they involved. A little later he appears as a leader at the bar. The same volume of reports in which William Allen's decisions are found shows Benjamin Chew as counsel in many of the cases, — in fact, in all but one where counsel's name is given at all. The first case he is reported as presiding in is Hurst *v.* Dippo, 1 Dall. 25, where a list of the first purchasers under William Penn was admitted in evidence to prove the plaintiff's title to certain land, the deeds being lost. This list, Chief-Justice Tilghman said later, has "often since been received without opposition."

The Declaration of Independence stripped the Chief-Justice of all his positions.

After the Revolution, with which he did not sympathize, so high a value was nevertheless put upon him that he was, in 1791, called from private life at his county-place, "Cliveden," to preside over the new High Court of Errors and Appeals during its existence, which ended in 1807, only three years before the Justice's death. This body, be it said in passing, was the tribunal of last resort in Pennsylvania; but such radical change worked by the Revolution lived only sixteen years, and then left the jurisdictions of the various courts much as they had been since the days of David Lloyd.

Benjamin Chew's handwriting is the best and clearest of all the Chief-Justices since James Logan, and is that of a man who had sufficient control of his hours to form his letters, and was educated to form them decently. His house that he built in the country, like James Logan's, still stands; and besides being a relic of colonial elegance and ease very comfortable to see, it is of historic interest from the shelter it gave certain British soldiers at the battle of Germantown, whom Washington's men were unable to batter out of its solid walls, leaving the bullet-holes to record their attempt. We may gather something of the unofficial side of Mr. Chew from the following extract quoted by Mr. Keith from the diary of John Adams, who dined at the Chief-Justice's with Washington and others on the 22d September, 1774, —

"We were shown into a grand entry and staircase, and into an elegant and magnificent chamber until dinner. . . . Turtle and every other thing . . . sweetmeats of 20 sorts . . . whipped syllabubs . . . and then a dessert of fruits. . . . Wines most excellent and admirable. I drank Madeira at a great rate, and found no inconvenience in it."

It is pleasant to note at what an early period in our history distinguished Yankees began to be struck with the excellence of the Philadelphia *cuisine;* and equally pleasant to observe that their heads were so well trained before coming down here as to find no inconvenience in drinking Madeira "at a great rate." Benjamin Franklin has a few lines in his Autobiography which seem to confirm as a principle what Mr. Chew's dinner was only a single instance of: —

"My activity . . . was agreeable to the governor and council . . . and I was consulted by them in every measure. . . . Calling in the aid of religion, I propos'd to them the proclaiming a fast, to promote reformation, and implore the blessing of Heaven on our undertaking. They embrac'd the motion; but as it was the first fast ever thought of in the province, the secretary had no precedent from which to draw the proclamation. . . . My education in New England . . . was here of some advantage."

NOTE. — The author wishes to thank the Hon. James T. Mitchell and the Librarian of the Historical Society for their great courtesy in furnishing the portraits for this article, and for much useful information. He is also indebted to the writings of Mr. Lewis and Mr. Keith, whose valuable work has much assisted him.

THE MARTYRED MULE.

By Irving Browne.

Dedicated by permission to the Shade of the late Henry Bergh.

FISHER *v.* PENNA. RAILROAD CO., 126 Penn. St. 293.

[*Where a mule, on his way home from work, unattended, is on a railway track at a highway crossing, the railroad company is under no obligation to sound the whistle to warn him of an approaching train.*]

IN Texas, where the potent twelve
  Pronounce the penalty of crime,
I find, when in the books I delve,
  That rather more than half the time
The jury, with a disregard
  Of custom, by some novel rule,
Pronounce the sentence somewhat hard,
  That man is worth much less than mule;
But then in Pennsylvania
  This stupid quadruped of late,
By some judicial mania,
  Is much less favored in estate.

From off a dusty, hot highway,
  Entranced as in a pleasing dream,
A tired mule doth careless stray
  Where coaches are propelled by steam,—
A sober and industrious beast,
  Released at close of day from load,
Perchance the sight of grassy feast,
  Where lands of railway cross his road,
Upon the tracks attracted him
  Away from customary beat;
Perchance an expectation dim
  Some donkey-engine there to meet.
And there he crops the juicy herb,
  Oblivious of the deadly car,
While spasms of delight disturb
  Appendages auricular,

The while assiduous tail doth twitch
To fend mosquitoes from his back; —
Alas! it had no power to switch
Approaching train from off the track!
Poor silly wretch! he strays along
Unthinking, heedless, void of fear;
And though his ears are very long,
Alas! he has no engineer.
And so a locomotive rude,
Upon that deadly iron rail,
Doth very wantonly intrude
'Twixt ample ears and meagre tail.

Now, when to suit the matter grew,
The engineman had naught to say,
Save that though he no whistle blew,
He thought the mule would step away.
He knew the measure of his care
Toward men appearing on the road;
To mules he never was aware
A similar vigilance was owed.
'T was strange if sorry quadruped
Could stay the progress of the mails,
Because from rightful precincts led
To loiter on forbidden rails.
His ears were thrice as long as men's,
So should his sense of hearing be;
He 'd twice as many legs, and hence
The abler accidents to flee.
He had no claim to bell nor whistle;
He had no right that men respect:
If too intent on meal of thistle,
He met the fate he might expect.

This heartless but ingenious plea
Seduced that hasty magistrate,
And this illogical decree
Sustained the corporation's prate:
"If engineers were held to sound
The whistle or to ring the bell,

The mule conclusively was bound
To listen, stop, and look as well."
This judgment was pronounced *per cur.*;
No wonder that his honor should
Anonynimity prefer
Where justice was misunderstood.

Such was the court's idea of wit
And law to animals applied;
Humaner lawyers, hearing it,
Its relevancy have denied.
When men are walking on the track,
The law presumes that they will heed
The present danger, and step back,
And so to stop the train no need.
Mules have not men's intelligence,
Are not forewarned by human fears;
And so presumptive evidence
Is not proportioned to their ears.
The whistle might arouse a mule,
And scare him out of danger's way,
As well as any two-legged fool
Who should in such dilemma stray.
As well might engineer neglect
A man of danger to apprize,
By signals which he might suspect
He was too deaf to recognize.

If mules could read this bitter tale,
They 'd wave a sympathetic ear;
With dismal bray the air assail,
And drop a heavy muleteer.

In some horse-heaven, his rest well earned,
This mule with Davies' donkey[1] treads;
Their shoes laid off, and collars turned
To glorious halos round their heads.

[1] See Davies *v.* Man, 10 Mees. & Wels. 546.

CAUSES CÉLÈBRES.

XXII.

FAUNTLEROY.

[1824.]

IN these degenerate days, when the crimes of forgery and embezzlement have become almost epidemic, one may be excused for wondering if a return to the heroic treatment for such offences practised by our forefathers might not be productive of beneficial results. A cynical writer once observed that we, in these later days, have materially gone back in civilization. We now only imprison bankers who turn thieves; formerly we used to hang them.

Any day toward the close of the London season of 1824, persons turning into Berners Street out of the din and jostle of Oxford Street would have seen on the door of No. 6 an oblong brass plate, and engraved upon it, in free cursive letters, "Marsh, Stacey, Fauntleroy, & Graham," — names great on 'Change, potent in the bank parlor, and influential in Lombard Street.

A rapid glance through the thin veil of a dark wire blind, bordered with white, would have shown well dressed, taciturn young men busy at ledgers, ruffling silvery bundles of bank-notes, or shovelling sovereigns in golden showers from drawer to counter, from counter to drawer. Had a glass door at the back of the room at that moment opened, it might have disclosed a thin-faced, elderly man, with neat powdered hair and a dress of black cut in the most perfect but quiet fashion. It might have been that the very moment the door opened that grave, intensely respectable, and appreciated person, that delight of society, had just, with a sigh, completed the writing of a certain memorable document and enclosed it in a tin box, sighing as he turned the key quickly and suspiciously in the lock, and then, carefully depositing it in a desk, locked the desk with another key which hung among his costly bunch of watch-seals.

Persons living in that street struggling in small businesses and just turning their money must have often looked up at the sumptuous apartments on the first floor at No. 6, and have envied that pale, grave man, whose anxious face they could sometimes see looking through the windows. Hackney-coachmen on the rank in Berners Street, as they screwed down the tobacco in their oily pipes and discussed the world over the tops of their coaches, must have often pointed with the butt end of their whips surreptitiously to the glittering windows at No. 6, when Mr. Fauntleroy was conspicuously "at home." "Rich as Crœsus!" may have been said more than once on such occasions.

Punctual as the Horse Guard's clock Mr. Fauntleroy came in from his Brighton villa, turned the corner from Regent Circus, and solemnly pushed open the bank doors, hushing at once all chatter of clerks, their snatches of songs, and their theatrical and sporting reminiscences.

To have impugned that house upon 'Change would have been to incur the penalty of being pumped on, and afterward of being beaten dry with a horsewhip; an action for libel with swinging damages would have then, without doubt, taken all the remainder of your breath out of you, and embittered the rest of your life with the disgrace of bankruptcy. The British Constitution was not more stable than Fauntleroy's house; Magna Charta not more venerated.

Yet, remarkable to state, on the afternoon of that bright and pleasant autumn-day, September 10, Samuel Plank, a hard-faced police-officer from Marlborough Street suddenly entered

the neat bank-parlor, laid his large brawny hands on Mr. Fauntleroy's shoulder, and apprehended him on a charge of forging powers of attorney by which he had disposed of three hundred and sixty thousand pounds' worth of other people's Bank of England stock. The old clerks almost fainted; the young clerks derided the charge in a tremulous way; the partners sympathized; stray persons in the bank on business were horrified, and almost thought the end of the world had come. On those thin, white, perhaps rather mischievous hands the grim, bright steel handcuffs, as bracelets, must have looked sadly unfitting. It was remarkable, however, that, considering the worthy and most respectable banker's perfect and palpable innocency, Mr. Fauntleroy seemed to expect the unpleasant visit, and locked the desk at which he sat with considerable care just as the police-officer entered the sacred room. The key was taken from the banker's watch-chain at the Marlborough Street office, and was found to lead to most important discoveries, affecting, indeed, half the commercial interest of London.

A palsy of horror and fear seized the tenants of bank parlors the next morning, when, throwing carelessly open the wet and flowing sheet of the "Times," their eyes fell on a paragraph in large type, headed in thrilling capitals: —

"Arrest of Mr. Fauntleroy, the eminent banker, on a charge of Forgery!!!"

What pallor must have fallen on respectable, grave faces! How many gold spectacles must have been taken off, as if to get more air! What stimulants of snuff must have been inhaled! How many gray heads must have met with ominous looks over ledgers!

Before Mr. Fauntleroy's trial took place endless ledgers had been conned, bank-books footed up, tin boxes ransacked, and stupendous discoveries made. When the day of the trial arrived, the court was full of bankers, merchants, literary men, and West-End men, who had either been robbed by Fauntleroy or had shared his hospitality at his pleasant dinner-parties. The prisoner, with his powdered hair and dress as immaculate as ever, stood pale, nervous, and humble at the bar. Fauntleroy had really embezzled about four hundred thousand pounds; but the Bank of England prosecuted for only one hundred and seventy thousand pounds, which he had obtained by forged powers of attorney in the years 1814, 1815.

The grand jury of the city of London found true bills against Mr. Fauntleroy on several charges of forgery, and the trial was appointed to take place on Oct. 30, 1824. The sheriffs determined to obviate the inconveniences of a crowded court by preventing any persons entering it as mere spectators who were not provided with tickets signed by themselves. Nevertheless, the galleries, which were claimed as private property under control of particular officers of the corporation, were farmed out with great zeal at a guinea a seat.

Long before eight o'clock a throng began to assemble at the Old Bailey doors, and a tremendous crush was expected; but, as often happens in these cases, so many people feared the crowd, that, after all, no very great crowd came. The price of the gallery-seats had deterred the public, and there were not more than twenty persons in them.

Mr. ex-Sheriff Parkins made himself rather conspicuous by his remarkable eagerness for the commencement of the trial, and his great apprehension lest some unforeseen circumstance should produce delay.

At ten o'clock Mr. Justice Park and Mr. Baron Garrow entered the court, accompanied by the Lord Mayor. The prisoner was dressed in a full suit of black, and his gray hair was, as usual, powdered. His previous firmness seemed to desert him now when placed at the bar. His step was tremulous, his face pale and thinner than on his first examination at Marlborough Street. He never raised his head, even for a mo-

ment, but placed his hands for support on the front of the dock, and stood in the most dejected way while the Deputy Clerk of the Arraigns repeated the seven different indictments for forgery. The reading of these occupied twenty minutes.

The first indictment charged Henry Fauntleroy (no respect now to the great rich man) with forging a deed with intent to defraud Frances Young of five thousand pounds' stock, and also with forging a power of attorney with intent to defraud the Bank of England.

The Attorney-General then, gathering up his heap of notes, and tossing his silk gown higher over his shoulders, set to work to fit the noose securely and legally round the neck of the unhappy banker. Fauntleroy's father, he stated, had been a partner in the bank from its very first establishment, and continued so until his death in 1807, at which period the prisoner became a partner, and soon rose to be the most active and working member of the firm. In 1815 Frances Young, of Chichester, a customer of the house, lodged in the hands of the firm a power of attorney to receive the dividends on five thousand four hundred and fifty pounds three per cent consols. These dividends were regularly received; but soon afterward another power of attorney was presented to the bank, authorizing the prisoner to sell that stock, and he sold it. It was afterward found that he had forged the name of Frances Young, and the names of the two attesting witnesses. Since the discovery, a paper of singular importance had been found proving this. (What this paper was it will be better for us to state further on.)

Without going into the evidence in detail, it will be sufficient to state that the forgery of Miss Young's name to the power, as well as the names of the attesting witnesses, was proved beyond all doubt. The evidence on this point was overwhelming in its nature; the principal witnesses being Miss Young herself, and a Mr. James Tyson, who had been connected with the banking-house for seventeen years, — in fact, ever since Mr. Fauntleroy had been admitted as a partner.

Mr. Plank, a police-officer, deposed to finding two boxes at Mr. Fauntleroy's house. One of them had the prisoner's name upon it. Both were opened with keys found in Mr. Fauntleroy's desk. Among the contents of one of these boxes was found the extraordinary document referred to by the Attorney-General.

Crushing as the evidence already presented had been, this document had DEATH written all over it. It was sufficient to have hanged twenty bankers.

It was, in fact, a confession, in the prisoner's own handwriting, and rendered further evidence almost unnecessary. It contained the following items: De la Place, eleven thousand one hundred and fifty pounds three per cent consols; E. W. Young, five thousand pounds consols; General Young, six thousand pounds consols; Frances Young, five thousand pounds consols; H. Kelley, six thousand pounds consols; Lady Nelson, eleven thousand nine hundred and ninety-five pounds consols; Earl of Ossory, seven thousand pounds four per cents; W. Bowen, nine thousand four hundred pounds four per cents; Parkins, four thousand pounds consols. Sums were also placed to the names of Mrs. Pelham, Lady Aboyne, W. R. and H. Fauntleroy, and Elizabeth Fauntleroy. The Attorney-General observed that the sum total, one hundred and twenty thousand pounds, appeared at the foot of this list in the prisoner's handwriting. The statement was followed by this declaration: "In order to keep up the credit of our house, I have forged powers of the attorney for the above sums and parties, and sold out to the amount here stated, and without the knowledge of my partners. I kept up the payment of the dividends, but made no entries of such payments in our books. The Bank began first to refuse to discount our acceptances, and to destroy the credit of our house; the Bank shall smart for it."

The prisoner, on being asked what he had to say in his defence, read a paper stating that, on his joining the firm, in 1807, he found the concern deeply involved in consequence of building speculations. The house remained in embarrassment until 1810, and then experienced an overwhelming loss from the failure of Brickwood & Co., for which concern it had accepted and discounted bills to the amount of one hundred and seventy thousand pounds. In 1814, 1815, 1816, the firm was called upon, in consequence of speculations in building, to produce one hundred thousand pounds. In 1819 the most responsible of the partners died, and the embarrassments of the house were again increased by being called upon to refund his capital. During all this time the house was without resources, except those for which he was now responsible. He had received no relief from his partners. He kept two establishments on a very moderate scale. He had never embezzled one shilling.

Having finished reading the paper, Fauntleroy sat down and wept, and manifested much agitation.

Never had there been such witnesses to character. Sir Charles Forbes and fifteen other witnesses, who had known Mr. Fauntleroy for from ten to twenty years each, attested their high opinion of the prisoner's honor, integrity, and goodness of disposition. They were all his sincere friends, and were all in the same tune. No doubt of his honor and integrity had ever crossed their minds. They all revealed the serene mountain peak of respectability from which the banker had fallen headlong.

"Kind, honorable," said one. "Just, fair, and kind-hearted," cried another." "A most benevolent man, with a stainless character for integrity," declared a third.

There is no moment in a trial which involves death, so solemn as the moment when the jury rise and retire to consider their verdict. Even the barristers' worn faces glow with excitement. The judge has an air of grave abstraction, and seems pondering over the few still unsolvable mysteries of the case. A cold dew has broken out on the forehead of the prisoner, and he clutches at the dock as if that hold only retained him in life. In that short interval of time there is crowded upon him the agony of years. The horrors of death have already come. There is a dead silence; then a distant sound of feet; it grows nearer; the crowd surge back. The jury is returning. They enter flushed and grave. The judge gives them one searching look, and the foreman rises to answer the solemn question to be asked him. The prisoner's whole soul is absorbed in the answer. In Fauntleroy's case the jury retired for twenty minutes. The prisoner seemed deeply agitated during their absence, and rose when the mob poured in announcing their return.

The verdict was, "Guilty of uttering the forged instrument, knowing it to be forged."

Judge Park, after bending down and exchanging a few remarks with the counsel in a low voice, suddenly and with extreme abruptness raised his head, and exclaimed, "Henry Fauntleroy!"

The prisoner started, and rose as if in expectation that sentence was about to be pronounced on him. The learned judge proceeded:—

"Henry Fauntleroy, the Attorney-General does not feel it necessary, in the discharge of his duty, to proceed further with the other indictments which have been preferred against you. It is no part of my painful duty to pronounce the awful sentence of the law, which will follow the verdict which has just been recorded. That unpleasing task will devolve on the learned Recorder at the termination of the sessions; but it is part of my duty as a Christian magistrate to implore you now that you bethink yourself seriously of your latter end."

A convulsive sob from the wretched prisoner was audible through the court. When the judge had concluded, Fauntleroy was quite overpowered, being barely able to raise his hands as if in the attitude of prayer,

which was the only answer he was capable of making. He was then removed from the bar, supported on the arms of Mr. Wouter and one of his friends, to the prison.

There remains a certain mystery still shrouding the great Fauntleroy swindle. It is impossible to conjecture for what purpose the dishonest banker preserved in a private box so careful and suicidal a statement of his own misdoings. It might have been that he was contemplating immediate flight even at the very moment of his arrest, and wished to leave behind him a clear and logical schedule that might explain matters to and absolve his partners. It might be that Fauntleroy (with that strange confusion of feeling and aberration of judgment that raises some thieves almost to the dignity of monomaniacs) wished to leave ample and clear testimony of the revenge his mistaken honor had taken on the Bank of England for having refused credit to his firm.

Hardly since the Perreaus, the wine-merchants, who were hanged in 1776, or since Dr. Dodd, the popular preacher, paid the penalty at Tyburn, for forgery, in 1777, had the contemplated execution of a gentleman moved more pity, or excited such deep and universal interest. One does not see a great London banker hanged every day. The sight drew together half the city. At daybreak a vast crowd began to roll on toward the great, gloomy, blind stone house on the hill, to scan its hard, repulsive profile against the unpropitious and sunless sky, and to gape up at the coffin-like door, emblazoned with the murderer's escutcheon of iron fetters. The sordid and greasy thousands not only extended in a close-packed mass from Ludgate Hill to the entrance of the then loathsome and penned-up Smithfield, but surged away all down Skinner Street and along Newgate Street, around that black mountain range of stone which is called St. Paul's, — far indeed beyond any point where any line of perspective or alley could afford the faintest glimpse of the scaffold.

The sight was evidently considered so grand that it was something to be even half a mile away from it. There was a ground-swell of swearing and howling and a host of ruffians, half maddened by not being able to see the gentleman banker "turned off." A cruel envy and hatred and a still more horrible heartlessness filled the minds of those wretches. Every window and house-roof near Newgate was crowded with amateurs of executions, — well-bred men whose manners had furnished subjects for shilling-books on etiquette. Unsexed women shouted and sang below the windows let out at such profitable sums. Men, drinking to keep out the cold, declared the crowd was equal to that which had witnessed Thistlewood and his gang swung out of the world for their crimes.

At a quarter before eight the sheriffs had entered the prisoner's room. Fauntleroy — it is a mockery to say Mr. now — lifted his eyes sadly, and seeing them, bowed, but said nothing. The instincts of the gentleman were still there. Besides the Newgate — the Rev. Mr. Cotton, whose name thieves used to pun on — Mr. Baker was with the prisoner, and the Rev. Mr. Springett had borne with him the agony of the previous night's bitter sorrow and repentance.

Fauntleroy, still true to the traditions of respectability, was dressed in a black coat and trousers, with silk stockings and evening-dress shoes. He was perfectly composed. His face showed no change since the trial. His eyes were closed. Even this hour was perhaps preferable to the long torture of those nine years of self-accusation.

The moment came. The silent but unmistakable gesture called him. There was no delay. Nothing could stop those preparations but the sudden death of one man. The sheriffs moved forward with serious faces. The ordinary passed on, after set form. No one required teaching as to his place in the ghastly procession. Mr. Baker and Mr. Springett, true friends even now, took each an arm of Fauntleroy, and followed the sheriffs and Mr. Cotton. The wretched man never turned his head right or

left till he reached the foot of the steps leading to the scaffold, — no longer the velvet-carpeted stairs, but rough deal planks fresh from the saw. He passed up to the scaffold, where the hard, grim man stood to welcome him and arrange him for death.

The moment he appeared a strange thrill went through thousands of hearts. The black, dim mob turned white; every hat went off in the twinkling of an eye. In less than two minutes the body of Fauntleroy the banker swayed in the murky November air.

Fauntleroy's doom was so thoroughly recognized as well merited that although in 1832 every other kind of forger was exempted by law from the gallows, the hands of the hangman still hovered over the forger of wills and of powers of attorney to transfer stock. Meanwhile, only two other executions for forgery took place. Joseph Hunton, a Quaker linen-draper, having forged and uttered several bills of exchange, was arrested in the cabin of the ship in which he had tried to escape to America; and although the jury recommended him strongly to mercy, he was hanged in December, 1828. The last execution for forgery was that of Thomas Maynard in the following year, for forging a custom-house warrant. In 1837 the capital punishment for that crime was abolished.

VIDOCQ AND THE SANSONS.

IN the Criminal Annals of France no two names are better known than those of Vidocq and Sanson, — the one a noted criminal himself, and afterward the most famous of all French detectives; the other, the public executioner during the stormy days of the French Revolution and for many years afterward.

A writer in the "Cornhill Magazine," some years since, gave an interesting account of his meeting with these celebrated characters; and his description of the interview is as follows: —

"Among my Parisian acquaintances was M. Appert. He was the almoner to the Queen of the French. In the discharge of his duties he was brought into contact with all the vagabondism and profligacy of Paris; he was familiar with the haunts of rascaldom when out of the hands of Justice, and with the most distinguished of the representatives of rascaldom when Justice had seized them for its prey. In his company I visited and associated with some of the fiercest ruffians and most daring burglars of the French capital. Through him I was brought into personal contact with Sanson the Executioner and Vidocq the Spy. I will record a few reminiscences connected with his name and history. I dined with him on one occasion when among the invited guests were Vidocq and the two Sansons, — father and son, the headsman's office being an inheritance. Several gentlemen known in the literary world were present. In no other place than Paris could there have been such a *service de table.* And the meeting was more remarkable, as it was the first time that Sanson had ever seen the man who had furnished him with so much food for the guillotine; and it gave Vidocq the opportunity for making many inquiries as to the deportment of illustrious victims in the *moment suprême* of violent death.

"Sanson the father was a man of huge size, — of stature more than six feet, — of a placid and serious expression of countenance. He might have passed for a country gentleman 'at ease in his possessions.' He answered every question with the greatest serenity and gravity. He called the instrument of death 'la mécanique,' and in my intercourse with him I never heard the word 'guillotine' or 'knife' fall from his lips. He was disposed to be taciturn; but less so than his son, who appeared to look upon his father with a considerable amount of reverence, and took no part

in the conversation, except when specially addressed. The son was a man of ordinary appearance, of the common height, of a sallowy look. No one would have noticed him in a crowd. Vidocq was a short man, — vivacious, vain, and talkative. He seemed to consider the interest he excited as the recognition of a claim which everybody must allow. He liked to be the narrator of his own great deeds, of which he was ostentatiously proud; and on the stage where he played his part, whether tragic or comic, he would always be the prime actor.

"Many of the tales which Vidocq related may be found in the memoirs which he afterwards published; but no printed narrative could convey an idea of the hilarity, the enthusiasm, I might say the eloquence, with which he spoke of some of his successful feats. 'Do you remember the great burglary at the Batignolles? That was a scheme of robbery and murder on a grand scale. It was soon after I gained the public service, — long before it was known that I had anything to do with the authorities. But I was a party consulted as to all the preparations for breaking into the house, for securing the property, and for disposing of any person who should resist. It was determined, *coûte que coûte*, that the work should be done. The spoil was considerable; and I was named the leader of the expedition. We were all well armed; the arrangements were directed by me, and they were perfect. But I had settled with the police that a certain number of them should be planted in a neighboring house, and that they were to rush forward and capture us all when I fired a pistol from a window that was pointed out. *L'effraction fut faite*, and I was as busy as the rest in gathering up the spoils. I made my way to the room from whence it had been agreed the pistol should be fired. The police rushed to the doors at the signal; and the whole band was captured, I among the number. Not one of them had the slightest idea that I had been a party to their betrayal; but murder had been committed before the arrest took place, and two of the robbers were ordered for execution. I saw them on their way to the Place de Grêve, as the cart was conveying them to be executed. They recognized me in the crowd. I fancy I saw on their faces the knowledge that I had "fait leur affaire." My depositions were not necessary to their conviction. Tell me, Monsieur Sanson, do you recollect the circumstance? How did they die?' *Sanson.* — 'They died cursing their betrayers.'

"Vidocq gave us an account of the manner in which, while in gaol, he carried on the courtship with his wife. She was a felon, like himself, and inhabited a separate and remote prison. Much correspondence passed between them by the collusion and co-operation of keepers and convicts, who fancied they owed a sort of fealty to so distinguished a member of the profession. Each had been well acquainted with the other while carrying on their schemes of fraud; and each came to the conclusion that it would be wiser and better to be the helpers and the instruments, rather than the foes and the victims, of the law. When both were released and the nuptials celebrated, it was their amusement to recount to each other their hair-breadth escapes and strange adventures, and to moralize on the sweetness of adversity. Vidocq talked of the heroic character of his fiancée, and of the risks she had run and the dangers she had encountered *dans l'intérêt de nos amours*. But he pronounced her a most faithful and a most useful wife; and when Vidocq established himself in Paris as a discoverer and restorer of lost and stolen property, — a profession he exercised on his own account, after his connection with the public had terminated, — his wife became to him a valuable auxiliary. They were both well acquainted with the mysterious hierarchy of crime.

"There was then no criminal under sentence of death. 'Only,' said Sanson, 'as you, gentlemen, are interested in such proceedings, you shall, if you like, have an opportunity of seeing all the details. I will have an *homme de paille* got ready; and if you do me the honor of visiting me at my domicile, where the *mécanique* is kept, I will have my assistants ready, and everything shall be done that would be done at the Place de Grève, so that you may have the means of seeing how efficiently the work is executed.' Such an invitation was not to be rejected, — to witness a bloodless execution performed by so distinguished a functionary. Sanson lived in one of the suburbs of Paris. We went to it along the Canal de l'Ourcq. We reached a very pretty cottage, standing alone in a garden kept in good order, full of flowers. The house and windows were painted in gay colors, principally of a bright green; and we were introduced into a well furnished, nicely adorned apart-

ment, where the host came to welcome us. He told us that his emoluments, once large, had, from the diminished number of capital punishments, been much reduced; and though he had *de quoi vivre* ('withal to live'), his *état* was very different now from what it had been in other days. This may have been an apology for our finding no repast prepared in return for M. Appert's hospitality. He repeated to us that the office had been for generations hereditary to his race. Marriages had been generally confined to families connected with the same profession, of which there were several in the provinces.

"Sanson gave many particulars of what had happened on memorable occasions between the moment when he had received the *condamné* from the prison authorities and that in which the task was completed by him as the *exécuteur des hautes œuvres*. He stated — and we had afterwards an opportunity of verifying the fact — that the *procès verbaux* of every public execution were kept with the utmost accuracy. He asserted that it had never been otherwise in the worst time of the French Revolution; which most assuredly would prove that the number of sufferers, as ordinarily reported and believed, must have been enormously exaggerated. He repeated again and again that the amount of physical suffering from the fall of the axe and the separation of the head from the body was exceedingly small, — that death was instantaneous; that in the whole of his experience he had never seen a voluntary motion of the muscles after decapitation; that the stories of the opening and closing of the eyelids after execution were inventions contradicted by the whole of his observations, without a single example to the contrary; that the extinction of feeling and of life followed the fatal event immediately, and without a single exceptional case.

"We asked whether it were possible to see the records — the *procès verbaux* of executions — of which he had spoken. He produced some volumes, handsomely bound, beautifully written, in whose pages were officialized the details, signed by persons present, of what had taken place at every execution from the time the *condamné* was handed over to the *exécuteur* up to the moment on which the body was transferred to those who were commissioned to receive it.

"He desired us to accompany him to an outhouse. It was a sort of stable, in the centre of which the *mécanique* raised its awful head. It was painted *blood-red*, — a tall, erect frame, much narrower, much higher, than that of a common gallows. A massive, sloping knife was suspended at the top; a cord hung down by the side of the frame. The assistants stood on a platform below. Just above them was a plank, with a round hole for the reception of the head, at the base of which was an opening through which the axe was to pass in severing the head from the body. The plank moved backwards and forwards in a groove; it was raised by an axle at the two sides perpendicularly. In an instant the sufferer was attached to it by cords; it was then thrown down flat and moved horizontally forward; at the same moment the cord was pulled, the heavy axe fell down through the iron frame, and a basket was seen to receive the head of the victim, almost as soon as the click was heard announcing that the axe had been detached from the beam to which it had been fastened. Then the plank was drawn back, the headless body untied, and Sanson asked us to feel how sharp was the edge and remark how ponderous the weight of the instrument. The edge was certainly as sharp as that of a razor, and the momentum was increased by a mass of lead attached to the upper side of the decapitator. Torture or mishap seemed impossible."

THE PHILOSOPHY OF ADVOCACY.

By J. W. McLoud.

THE common opinion that cases are won by tricks of advocacy, is erroneous. Juries are usually composed of reasonable men, anxious to do right. Our judges, with scarcely an exception, are learned in the law, and sincere lovers of truth and justice.

Newspaper articles denouncing verdicts and reflecting upon courts and the profession are generally written by men who are unacquainted with the facts about which they write, and who have no correct conception of legal methods and principles. In nine cases out of ten, if those same editors had been in the jury-box and heard the evidence, the arguments of counsel, the instructions of the court, and watched the conduct and appearance of the witnesses, they would have rendered the same verdict which they criticise and denounce in their papers. As editors, they are writing to please the public, pandering to popular clamor; as jurymen, they would be under oath to act impartially, "and a true verdict render, according to the evidence."

A man may be in fact guilty; but if he is not proven guilty by competent evidence, it is the duty of a court and jury to acquit him. The law is based on general principles, applicable to all cases and all times. The experience of men has demonstrated that the best and safest rule is that a man charged with a crime must be presumed to be innocent until proven guilty, and that he must be proven guilty beyond a reasonable doubt, or be acquitted. It would be a dangerous precedent to say that a man could be convicted on popular clamor, on a general belief that he was guilty. It might do justice in one case, and be the means of punishing a guilty man; but once established, it becomes a precedent, and would be invoked in every trial, and be used to convict the innocent as well as the guilty.

Remember that legal principles must be universal in their application, and that every precedent and principle established in any one case is authority, and can be invoked in every other case. The object of the law is to administer justice so as to punish the guilty and protect the innocent.

Law and the administration of justice must be governed by general and not special principles.

Law is a collection of rules, precedents, statutes, and principles, which the wisdom and experience of mankind have demonstrated to be the best under all circumstances for the greatest number of people. The rules of law are not based upon arbitrary enactments, but are the results of the accumulated wisdom of the ages. Take for instance the manner and order of introducing testimony. There might be cases where it would further the ends of justice to let the plaintiff introduce part of his witnesses and then after the defendant has rested, let him bring in more witnesses of the same kind, on the same subject matter, in rebuttal. But the wisdom and experience of mankind has demonstrated that for all kinds of cases and at all times the truth can be elicited, with more fairness and justice to both parties, by requiring the plaintiff to introduce all his testimony and then rest, and the defendant introduce all his testimony and rest, and then the plaintiff be confined in rebuttal to denying any new matter, brought out by the defence. This rule of practice is founded in justice; if it were varied in any one case, it would establish a precedent that would work injustice, and in many cases would be nothing less than legalized robbery. If that rule were otherwise, the plaintiff could introduce one or two witnesses, and the defendant only having to meet the case made by the plaintiff, would introduce three or four witnesses and then

rest, and then the plaintiff could introduce a dozen witnesses on the subject matter of his case in chief. This would be trifling with courts and justice, and would be an outrage upon the defendant. The law aims to do equal justice to both parties.

The rules and principles of law are all founded upon the deepest bed-rock of human nature and human justice. In the words of Burke, "Law is the perfection of human reason, the collected wisdom of ages; combining the principles of original justice with the boundless variety of human concerns."

When juries are permitted to render verdicts contrary to the strict rules and letter of the law, it is because society is benefited more by the exception than it would be by changing the rule or changing the law. Suppose a young girl is seduced or betrayed; she, her father, or her brother meets the villain, and shoots him dead; now, by all the rules of law he would be guilty of murder, yet none such were ever convicted by any jury. The law says the defendant is guilty; but the jury say he is innocent, and the jury is right. The law was made for the protection of life and society in general, the jury are dealing out justice in that particular case; their decision is grounded upon the deepest principles of human nature.

The common belief is that in such cases the party is cleared by the tricks of the advocate, or by his skill and ingenuity in planning the defence or in making an eloquent or passionate appeal to the jury. But the reason is deeper than the advocate, deeper than shrewdness or oratory; it lies imbedded in the breasts of the human jury, implanted there by the Hand that made them.

It is asked, "Why not change the law so as to make such a defence legal?" The experience and wisdom of mankind answer that it is better for human society, and the protection of life and property, that the law should remain as it is, and that juries and courts be allowed to make the exception in each particular case, after hearing the evidence and learning all the facts and circumstances. It is no "trick of advocacy" that clears the defenders of home, property, and honor; it is simply human nature giving voice to the promptings of justice and the promptings of the human heart. The great advocate is not he who plays the "tricks of the trade," but he who is able to read the sources and springs of motive and action, and lay bare the human heart with its impulses and weaknesses, its affections and aspirations. Such a man dominated by reason and conscience is always great; such an advocate and lawyer was Lincoln.

LEGAL GLEANINGS.

WHEN a man makes a formal contract he should be sure it is one which the law will recognize. A would-be Benedict of Hancock, Ohio, offered fifty dollars' reward to any one who would procure him a wife. Sam Wickham introduced a bewitching widow, and the wedding soon came off. Then Wickham wanted the dollars; but the happy man would not pay. His plea was that he had got a widow, and not a wife. Sam brought an action for the money, and lost it; and as he paid his lawyer's bill, solemnly abjured the wife-procuring business henceforth forevermore.

A few years ago, one Thomas Clegg sued Charles Derrick in the Rochdale County Court upon the following bill of particulars: "For finding a husband valued at fifty pounds: commission, five per cent per annum, — two pounds ten shillings." The

plaintiff deposed that the wife of the defendant, when a single woman, contracted with him to get her a husband, saying she was twenty-six, not married yet, and feared she never would be; and if he would get Derrick to marry her, she would pay him five per cent upon fifty pounds a year. He brought the pair together, and considered that the husband was bound to fulfil the wife's agreement.

As regards matrimonial contracts, the sexes are assuredly not on an equality. When Miss Roxalana Hoonan sued Mr. Earle, in a Brooklyn court, for breach of promise, she admitted the gentleman had never promised marriage by his hand or tongue, but he had kissed her in company; and Judge Neilson told the jury that no exchange of words was necessary, — "the gleam of the eye and the conjunction of the lips being overtures when frequent and protracted;" and thus instructed, they made the defendant pay fifteen thousand dollars for heedlessly indulging in eye-gleams and lip-conjunctions.

In 1870 a lady purchased about a thousand dollars' worth of jewelry in Paris, the jeweller giving her a written promise to exchange the articles if not approved. She wore them for half-a-dozen years, and then intimated to the astonished man her desire to change them for others of a newer style. He naturally demurred, arguing, as his advocate urged before the civil tribunal, that it was unreasonable that he should be called upon to accept, at the price originally paid for them, trinkets that had been constantly used for six years. The court, nevertheless, decided that the agreement did not define the period during which the exchange might be made, and he must do his customer's bidding. A similar case was decided in London against a well-known jeweller, who, having promised to take back a diamond ring if not approved of, was obliged to do so, though his customer had retained it for three years.

Sharp practice is not always so successful. A gentleman took railway tickets for himself and his servants. After the passengers were seated, it was found expedient to divide the train, — the gentleman being in the first part. When the servants, who were in the second part, were asked for tickets, they had none, and were thereupon turned out of their places and left behind. The gentleman sued the company. The latter brought forward their by-law, setting forth that no passenger would be allowed to enter a carriage without having first obtained a ticket, to be produced upon demand. The court very properly overruled the plea; deciding that by delivering the tickets to the master and not to the servants severally, the company had contracted with him personally, and could not justify their failure to carry out the contract they had made.

A young man, losing his wits through parental thwarting of his matrimonial aspirations, was placed in an asylum. Having occasion to leave his charge for a few minutes, the attendant forgot to lock the door upon him. The lunatic, taking advantage of the oversight, slipped out of the room, made his way to an upper gallery, smashed the window and leaped out, falling some thirty feet. The shock restored his reason, but he was crippled for life; and his father brought an action against the superintendent of the asylum for compensation. The judge ruled that the superintendent could not be held guilty of neglect because his subordinate failed in his duty, and so saved the jury the trouble of assessing damages, which, supposing they set the benefit done to the patient's mind against the injury done to his limbs, would have been a difficult matter for calculation.

The Green Bag.

PUBLISHED MONTHLY, AT $3.00 PER ANNUM. SINGLE NUMBERS, 35 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 15½ Beacon Street, Boston, Mass.

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

THE GREEN BAG.

IT is indeed cheering to the editorial heart to find that at the commencement of a new year his old subscribers, almost without an exception, testify their appreciation of his efforts to "entertain" them, by sending in their renewals for the coming year. It is still more gratifying when these renewals are accompanied by words of praise and commendation. A subscriber in Mississippi writes: —

"I began at the beginning with the 'Green Bag,' and have been so well entertained by it (not uselessly) that I am unwilling to miss a single number. I am now surprised that the place you fill was so long unoccupied. If it is your purpose to maintain your record and give the tired lawyer as much rest and pleasure in the future as you have done in Volumes I. and II., you may consider me a life subscriber."

From an Ohio subscriber comes the following: —

"I take great pleasure in sending my renewal of the 'Green Bag' for 1891. Your magazine is certainly an inspiration to the young men of the profession."

Another subscriber writes: —

"I take pleasure in renewing my subscription for the 'Green Bag.' I enjoy it much. The selections are good, and the historical sketches interesting and valuable."

And another: —

"I enclose check for subscription to the 'Green Bag.' I find it a bright sparkling publication, always 'entertaining,' and frequently far from 'useless' in character."

The above are merely given as samples of the pleasant words which have accompanied very many of the orders received for the coming year. Such kindly expressions will act as a powerful incentive to us to make the "Green Bag" brighter, better, and more "entertaining" than ever. We can assure our Mississippi friend that we intend to maintain our record of the past, and trust to be able to consider not only him but all our readers as life subscribers.

MR. MURRAY EDWARD POOLE, of Ithaca, N. Y., kindly sends us the following list of distinguished alumni of the Harvard Law School: —

Cabinet Officers. Elihu B. Washburne, State; William A. Richardson, Treasury; Ebenezer R. Hoar, Attorney-General; Charles Devens, Attorney-General; William C. Endicott, War.

Foreign Ministers. James Russell Lowell, England and Spain; Elihu B. Washburne, France during the Franco-Prussian War; Anson Burlingame, China, and afterwards from China to the United States and the European Courts; William Preston, Spain; James R. Partridge, Brazil and Portugal; Nicholas Fish, Belgium; Alexander T. Lawton, Austria; John D. Washburn, Switzerland; Arthur G. Sedgwick, Mexico; Richard B. Hubbard, Japan.

Governors. Daniel H. Chamberlain, South Carolina; Joseph H. Williams, Maine; Richard B. Hubbard, Texas.

Historian. George S. Hillard, author of a History of the United States.

Judges U. S. Supreme Court. Benjamin R. Curtis, Horace Gray.

Judges U. S. District Court. John Lowell, Massachusetts; William G. Choate, Southern New York; Ogden Hoffman, California; John P. Knowles, Rhode Island; Edward Fox, Maine.

Judges State Supreme Court. Otis Phillips Lord, William C. Endicott, Marcus Morton, Oliver Wendell Holmes, Jr., Charles Devens, Massachusetts; Edward Lander, Washington; Hiram Knowles, Montana.

Judge State District Court. Alfred Russell, Michigan.

Judges Supreme Court, Sandwich Islands. Alfred S. Hartwell, John W. Austin.

Orators. Wendell Phillips, Charles Sumner, Joseph H. Choate.

President. Rutherford B. Hayes.

U. S. Senators. Rufus Choate, Massachusetts; William P. Sheffield, Samuel G. Arnold, Rhode

Island; William A. Richardson, Illinois; George F. Hoar, Charles Sumner, Massachusetts; James B. Eustis, Louisiana.

We trust that Mr. Poole will favor us with lists of the distinguished alumni of our other law schools.

A Philadelphia correspondent sends us the following: —

To the Editor of the "Green Bag":

DEAR SIR, — Although not strictly "a good new or old *legal* story," the enclosed "record" (Heydon, Yorkshire) is certainly "enlivening," and may suggest to the student of "descent" the awful possibility of "two hundred and fifty-one" lineal descendants inheriting the prolificness of the original *stirpes*.

Here lyeth the body of
WILLIAM STRATTON of Padrington:
Buried the 18th May, 1734,
Aged 97,
Who had by his first wife, twenty-eight children,
And by a second, seventeen;
Own Father of forty-five,
Grand-Father to eighty-six,
Great-Grand-Father to ninety-seven,
And great-great-grand-father to twenty-three:
In all, two hundred and fifty-one.
— *Collection of Epitaphs, etc., London*, 1806.

ON and after Jan 1, 1891, the price of single numbers of the "Green Bag," both for the current year and past years (so far as they can be supplied), will be 50 cents. The subscription price remains unchanged; viz., $3.00 per annum.

LEGAL ANTIQUITIES.

IN one of the northern counties of England it used to be the custom at the quarter sessions, when the chairman had summed up, for him to conclude his address to the jury with the advice "to lay their heads together." No sooner were the words uttered from the Bench, "Now, gentlemen, lay your heads together and consider your verdict," than down went every head in the box, and an official approached armed with a long wand. If any unlucky juror inadvertently raised his head, down came the stick upon his pate; and so they continued till the truth was *struck out*, in their *veredictum*, — an excellent plan for expediting business.

AT Henley-upon-Thames, in 1646, a woman speaking against the taxation imposed by Parliament, was by the committee then ordered "to have her tongue fastened by a nail to the body of a tree by the highway side, on a market-day;" which was accordingly done, and a paper in great letters, setting forth the heinousness of her fault, was fixed to her back.

SOME of the old laws once in force in Salem, Mass., sound just a bit singular at the present time. For instance, in 1631 it was ordered "that all persons that have cards, dice, or tables in their howses, shall make away with them before the nexte court, under pain of punishment." It was also ordered, "that Philip Ratliffe shall be whipped, have his eares cut off, fined 40£ and banished out of the lymitts of this jurisdiction for uttering mallitious and scandalous speeches against the government and the church of Salem."

IN 1541 the Corporation of Chester ordered, under penalty of a fine of 3*s.* 4*d.*, that no unmarried woman should wear white or colored caps, and that none but sick or aged women should wear a hat unless riding or going abroad into the country.

FACETIÆ.

VISITOR (to prisoner). How long are you in for, my poor man?

PRISONER. Dunno, ma'am.

VISITOR. How can that be?

PRISONER. It 's a life-sentence. — *Puck.*

A JURY of six men heard the evidence in the Williamsburgh, Ky., police court against a citizen charged with keeping a nuisance, and retired to make up a verdict. After being absent quite a while, they came back into the court-room and reported they could not agree upon a verdict.

"But you must agree," said the judge. "Go back to your room and make a verdict."

Thereupon a tall six-footer stepped forward and said, "Judge, five of us have already agreed. There 's no use of sending any of us back except that fellow over there, who won't agree."

SOME lady visitors, going through a penitentiary under the escort of the superintendent, came to a room in which three women were sewing.

"Dear me!" whispered one of the visitors, "what vicious-looking creatures! Pray, what are they here for?"

"Because they have no other home. This is our sitting-room, and they are my wife and two daughters," blandly replied the superintendent.

A JURYMAN in one of the western counties in New York State, at the close of a case in which damages were claimed in consequence of the defendants' swine making an inroad upon a potato-patch, rose and intimated to the Court that there was a point upon which he wished for a little information.

"I'd like to ask that ar witness jest one question, and that's a question right unto the p'int. Was them ar potatoes rooted up afore they was planted, or arterwards?"

A JUDGE and a lawyer were conversing about the doctrine of transmigration of souls of men into animals.

"Now," said the judge, "suppose you and I could be turned into a horse or an ass, which would you prefer to be?"

"The ass, to be sure," replied the lawyer.

"Why?" rejoined the judge.

"Because," was the reply, "I have heard of an ass being a judge, but of a horse — never!"

AN attorney said to an Irishman, his client: "Why don't you pay me that six-and-eightpence?"

"Why, faith, because I do not owe it to you."

"Not owe it to me? Yes, you do; it's for the opinion you had of me."

"That's good, indeed," rejoined Pat; "when I never had any opinion of you in all my life."

"TALKING about justices of the peace," said a well known lawyer, "I heard the other day of a justice, a German with an unpronounceable name, up in Franklin County somewhere, who presided in a case brought by himself for divorce from his wife. After testifying in the case himself and hearing all the evidence, I'll be hanged if he did n't throw himself — or I mean his case — out of court on the ground of insufficiency of evidence."

"Well, that's pretty good," responded another eminent member of the bar; "but what do you think of a justice who acted in the dual capacity of judge and jury? It was up in the country somewhere, in a case of horse-stealing, I think. The lawyers on both sides agreed to dispense with the 'twelve good men,' and requested the judge to act as jury. He took the request literally. Mounting the bench, he considered for a long time, and finally consented. He then began the proceedings. Leaving the bench, he filed himself into the jury-box, had himself sworn by the clerk, and heard the evidence. When an objection was made or a law point raised by the lawyers, the 'jury' left the box, mounted the bench, and passed on it as judge, returning to the jury-box in time to hear the testimony. After the evidence was all in, he wrote out his instructions as judge, and handing it to one of the attorneys, requested him to read it to the jury. After listening to the instructions in his capacity of jury, he had himself conducted from the room by the sheriff and locked up in the jury-room to consider the case and prepare a verdict."

"How long did he stay out?"

"Six hours."

"What was the verdict?"

"He reported that the jury could n't agree, and as judge he discharged himself."

EASTERN MAN. So they caught the murderer?

WESTERNER. Yaas.

EASTERN MAN. Have they tried him yet?

WESTERNER. Not yet. Ain't had time; they've only just got through the lynching. — *Harper's Bazar.*

LAWYER SCRIPTUM is dead.
Poor profession the law is!
He has left few effects,
For he had but few causes.

— *Judge.*

NOTES.

IN the Romish procedure relating to the canonization of saints, one prominent official who takes part in the business is called the Devil's advocate. When the canonization is proposed, it lies on the

part of the Church to set forth all the virtues of the saint, the miracles his bones have wrought, and all the merits that can be ascribed to the deceased. And, on the other hand, the function of the Devil's advocate is to find flaws in all this evidence, to slight the good deeds, to doubt the miracles, and to rake up all the evil that can be said or thought against the deceased, so as to show that there is no good ground for the canonization. Hence, a "devil's advocate" is often an apt description of any one who makes unscrupulous accusations and abuses worthy characters.

In 108 Mass. 324, where Dora F. Hook mulcted in $3708.33 the false Wash[ington] George, who had won her young affections and then married another girl, the letters of a sympathizing female friend were in evidence: —

"Dora, this world is cruel, this world is untrue; our foes are many, our friends are few. . . . Dora, it is hard and cruel to bear, and God knows I pity you. . . . Hear me talk . . . I wish I could have power over the men, and influence them as I like. What misery they cause! . . . That Friday she [the hated rival] was here Wash. got a horse and carried her home, and asked me if I wanted to go down with them. So I went; *and she showed me her wedding things.* Oh, Dora, is n't it surprising, the change! At times it goes through me like an arrow. *But I must say her dress and each suit was splendid. She is tall, and her dress trails considerably; it is fifty-eight inches long, the skirt.* They will be married next week, I expect. He said he wanted me to come. I shall feel very bad to go, knowing you and all your misery; but shall, I suppose. I'll bet I shall cry almost through the ceremony. Now, Dora, don't kill yourself mourning; but strike out and see what you will do in the line of matrimony."

Apparently Dora thought damages a still better line.

In Howson's case, Hetley 104, 4 Car. I., a prohibition was prayed for against Howson, a "viccar," who preached too loud; also spit freely over a parishioner and his wife against whom he had a grudge; also made jests in his sermon, pointed at an inn-keeper with whom he was at odds, saying Christ was laid in a manger because Joseph and Mary had not money enough for a chamber at the inn, but that that was the knavery of the inn-keeper.

"Sir," said Dr. Johnson to Sir William Forbes, "a lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly; the justice or injustice of the cause is to be decided by the judge. Consider, sir, what is the purpose of the courts of justice, — it is that every man may have his cause fairly tried by men appointed to try causes. A lawyer is not to tell what he knows to be a lie, he is not to produce what he knows to be a false deed; but he is not to usurp the province of the jury and of the judge, and determine what shall be the effect of evidence, what shall be the result of legal argument. If, by a superiority of attention, of knowledge, of skill, and a better method of communication, a lawyer hath the advantage of his adversary, it is an advantage to which he is entitled. There must always be some advantage on one side or the other, and it is better that that advantage should be by talents than by chance." — *Boswell's Johnson.*

Rev. Samuel W. Dike, in the "Century," gives the following interesting statistics: —

"Out of the total of 328,716 divorces granted in the United States in the twenty years from 1867 to 1886, inclusive, 289,546 were granted to couples who had been married in this country, and only 7,739 were from marriages celebrated in foreign countries. The place of the marriage of 31,389 is unknown. One fourth of these latter are reported from Connecticut, as that State does not require a disclosure of the place of marriage in its libels for divorce. Now, the report shows that out of the 289,546 divorces whose place of marriage was in this country and was ascertained, 231,867, or 80.1 per cent, took place in the same State where the persons divorced had been married, and 57,679 couples, or 19.9 per cent, obtained divorce in some other State. The migration from State to State to obtain divorce must therefore be included within this 19.9 per cent. But it cannot be even anything like the whole of it. For in 1870 there were 23.2 per cent, and in 1880 22.1 per cent, of the native-born population of this country living in States where they were not born. Of course this last class comprises persons of all ages, while that under special consideration is made up of those who migrated between the date of marriage and that of divorce. The length of married life before divorce in the United States averages 9.17 years, which, I think, is from one third to one half the average continuation of a marriage in those instances where divorce does not occur. Careful study may lead to a

reasonably correct approximation to the proper reduction from the 19.9 per cent, and thus give the probable percentage of cases of migration to obtain divorce; but at present I would not venture an opinion on the point. It certainly is a very small part of all the divorces of the country, though varying in different States. But the necessity of such investigation is the point it illustrates. The discovery of these facts alone justifies the cost of the invaluable report of the Department of Labor. It can hardly fail to compel the study of the problem of uniformity from almost entirely new points of view as to its real nature and place in the general question."

In an address before the law department of the University of Pennsylvania by the late Justice Miller, of the Supreme Court of the United States, the following observations as to the relative value of the decisions of different courts as authorities are found: —

"I have already stated that there is a great difference in the relative value as precedents of the decisions of different courts. In this country, where the delivery and reporting of opinions of courts and judges has multiplied almost indefinitely, and where opinions are cited and published from referees, commissioners, registrars in bankruptcy, and from city courts, and those of all manner of inferior grade up to the highest appellate courts of the States and of the United States, it is obviously impossible in this short address to distinguish between them as to their value, or to make any specific statement of the weight to be attached to each of these classes of decisions. It has often been my fortune to listen to able counsel citing the decision of some inferior judge or judicial officer, as if it were entitled to control the action of the court which he addressed; and the observation has been forced from me, 'Tell me what *you* think about this, for I esteem your opinion of much more value than that of the authority cited.' But it may be stated that the opinions of all courts of appeal, although they may be subject to revision in some higher court, as in Missouri and Illinois, and the opinions of the Circuit Courts of the United States — which are often beyond writ of error or appeal — and perhaps those of others not readily brought to mind, are, if pertinent to the point in issue, worthy of consideration. One of the difficulties which the judicial mind most frequently encounters in determining the weight to be given to conflicting authorities, is to be found in cases decided in the highest courts of the States. It is obvious that in such courts of States where, by reason of great cities, the commerce is extensive and the moneyed transactions of great value, the commercial law is of supreme importance and the decisions are of commanding weight. So also there are States in which the purity of the separate jurisdiction in equity has been preserved far beyond that of others, and this adds to the authority of their decisions in such cases. There also may be, and there probably are, courts in which the land laws have attained a uniformity of administration, rendering their decisions in regard to land titles of superior value. Then there are courts of the States which have long preserved their character for ability, care, and labor, and in regard to whom it is sufficient to say at once that this is a case decided by the Supreme Court of Massachusetts, of New York, of Pennsylvania, or of South Carolina in her best days, to demand for it at once the consideration of the court."

The lash has never been abolished as a means of discipline in penal institutions in Germany. Generally they use a thong twenty inches long, fastened to a handle a yard long. The lash is thickest at the end. The thickness varies according to the provinces, but the smallest lashes are two inches thick. Only in Saxony are the dimensions fixed by law, the handle there being thirty inches long and the lash thirty-six inches. The maximum number of blows is left to the judgment of the prison directors; but it must not exceed twenty-five in Mecklenburg and Oldenburg, thirty in Saxony, and sixty in Prussia.

At one time admission to the English Bar was exceedingly difficult and dangerous, though but one qualification was necessary. "Practically all that was required as a qualification for the English Bar was that the applicant had eaten sixty dinners at certain intervals" (Sharwood's Memoir of Blackstone, ix.).

"I was requested," says Mr. Stanley, in his interesting book, "to adjudicate a case relating to marriage custom, between Kavalli on the one hand, owner of a slave girl, and Katonza, a Mhuma Chief. The latter had sought Kavalli's girl in marriage, and had paid two cows for her out of three that had been fixed as the price. Kavalli therefore detained the bride of Katonza, and this detention was the cause of his grievance. The price was not denied, and Katonza offered a plea that he feared the girl might not be surrendered by Kavalli if he paid the third cow. He was requested to put the cow into court, and in this manner the bride was forthcoming.

"Kavalli brought another case to me for consideration. He was already five times married, and he desired a sixth wife. He had purchased her from the tribe of Bugombi; and her parents, having heard something to his prejudice, wished to compel a double payment, and would not deliver her to him. Whereupon I suggested to Kavalli that by giving another cow and a calf the matter might be arranged.

"The next case that I had to judge was somewhat difficult. Chief Mpigwa having appeared at the Barza (Durbar), a man stepped up to complain of him, because he withheld two cows that belonged to his tribe. Mpigwa explained that a man had married a girl belonging to his tribe and had paid two cows for her, that she had gone to his house, and in course of time had become a mother, and had borne three children to her husband. The man died, whereupon his tribe accused the woman of having contrived his death by witchcraft, and drove her home to her parents. Mpigwa received her into the tribe with her children; and now the object of complaint was the restoration of the two cows to the husband's tribe. 'Was it fair,' asked Mpigwa, 'after a woman had become the mother of three children in the tribe to demand the cattle back again after the husband's death, when they had sent the woman and her infants away of their own accord?' The decision upheld Mpigwa in his views, as such conduct was not only heartless and mean, but tended to bring the honored custom of marriage contracts into contempt." — *Irish Law Times.*

REVIEWS.

THE HARVARD LAW REVIEW for December contains an ably written paper on "The Right to Privacy," by Samuel D. Warren and Louis D. Brandeis. "The Police Power and Interstate Commerce" is the subject of an exhaustive article, by William R. Howland.

THE JURIDICAL REVIEW, for October, 1890, has just come to hand; and this number completes the Second Volume of this admirable magazine. The frontispiece is an excellent portrait of Lord Moncrieff, late Lord Justice, Clerk of Scotland; Mr. Mackay continues his interesting paper on "The Science of Politics, its Methods and its Use;" J. Walter Craig contributes an article "Land Registry in Ireland," and Thomas Raleigh one on "The English Courts in relation to Scotland." The other contents are "How to Abolish Contraband," by Andrew Wishart; and "The Work of the West Indian Commissioners," by A. Wood Renton.

THE contents of the "Political Science Quarterly" for December are unusually interesting. Prof. C. H. Levermore contributes a paper on "Henry C. Carey and his Social System," and the others are "Evolution of Copyright," by Brander Matthews; "Political Economy in France," by Prof. Charles Gide; "The Taxation of Corporations" (Part III.), by Prof. E. R. A. Seligman; and "Hermann von Holst," by Prof.

THE December CENTURY is more "Christmasy" than is usual with that magazine, there being a Christmas story by Joel Chandler Harris, and a Christmas poem by President Henry Morton, of Stevens Institute. The frontispiece is a striking head, "Daphne," by George W. Maynard, in "The Century Series of American Pictures;" and the opening paper is General Bidwell's account of "Life in California before the Gold Discovery." Here is also published "Ranch and Mission Days in Alta California:" these two articles showing with what thoroughness the CENTURY's new and important series is being carried out. The hundredth anniversary of the death of Franklin is marked by Mr. Charles Henry Hart's paper on "Franklin in Allegory," with a full-page engraving of Franklin after a portrait by Peale, and reproductions of French prints. The fiction of this number includes stories by Joel Chandler Harris, Elizabeth Stuart Phelps — "Fourteen to One" (a true story); Richard Harding Davis, and Maurice Thompson — "A Pair of Old Boys;" F. Hopkinson Smith's "Colonel Carter of Cartersville" is continued; and "Sister Dolorosa," a three-part story, by James Lane Allen, is begun. This is a companion story to Mr. Allen's tragic story of "The White Cowl." After the Autobiography of Jefferson, the famous comedian, it is interesting to read in this number the views on acting by Tommaso Salvini, the greatest of living tragedians. Other illustrated papers are Mr. Maclay's "Laurels of the American

Tar in 1812;" and the second of Mr. Rockhill's series on Tibet, this one being called "The Border-Land of China."

SCRIBNER'S MAGAZINE for December is a holiday number (with a special bronze cover), containing seven illustrated articles, in which a remarkable list of artists is represented, including Robert Blum, Domenico Morelli, Harry Furniss, Howard Pyle, A. F. Jacassy, C. D. Gibson, W. L. Taylor, and W. L. Metcalf. Among the contributions are Sir Edwin Arnold's first paper on Japan; Humphry Ward's description of the famous London picture salesroom, known as "Christie's;" W. H. Rideing's picturesque account of Amy Robsart's country; A. F. Jacassy's article on a great contemporary artist, — Domenico Morelli; and three short stories, which in feeling and motive are especially suited to the Christmas season. Their authors — Octave Thanet, Richard Harding Davis, and George A. Hibbard — are well known to the readers of SCRIBNER'S, in which for the most part their work appears. The poems of the issue include Helen Leah Reed's Sargent prize translation of Horace, Book III., Ode XXIX. (won by her over sixteen male competitors in Harvard University); and contributions by Richard Henry Stoddard, Duncan Campbell Scott, and James Herbert Morse. A unique feature in magazine illustration is "A Pastoral without Words," twelve drawings by Howard Pyle, which tell their own story without the aid of text. They have been delicately engraved.

To the December number of LIPPINCOTT'S MAGAZINE Captain Charles King, U. S. A., contributes a complete novel, entitled "An Army Portia," which is characterized by that dash and breezy style which make all of Captain King's stories such entertaining reading. Mr. Joel Cook, of the "Philadelphia Ledger," has a timely paper, entitled "A Glance at the Tariff." The writer is evidently a firm believer in the McKinley bill. "The Bermuda Islands" form the subject of an article by H. C. Walsh; and his descriptions of scenery and climate make one long for a winter vacation in those delightful regions. Mr. W. W. Crane gives a few pertinent hits at authors in his paper on "Types in Fiction;" and Mr. Bird, in his "Book Talk," takes Mr. Howells to task for some *ex-cathedra* utterances in a preface to Signor Verga's "House by the Medlar Tree." Walt Whitman contributes a characteristic poem, entitled "To the Sunset Breeze." Other poems are contributed by Daniel L. Dawson, S. D. S., Jr., and Minna Irving.

MR. STOCKTON'S serial, "The House of Martha," goes on merrily in the ATLANTIC for December; and certainly the author is at his best in his description of the hero's new amanuensis, — a nun, separated from him by a wire grating, who, after days of irritating silence, is finally induced to speak to him by the appearance of an enraged wasp. Mr. Birge Harrison gives an account of the new rival of the French salon, the National Society of Fine Arts, in a paper entitled "The New Departure in Parisian Art." Margaret Christine Whiting writes about "The Wife of Mr. Secretary Pepys," a delightful, gossiping article, with amusing quotations from the immortal Diary. Mr. A. T. Mahan, in "The United States Looking Outward," shows the isolation of the country, not only in respect to position, but in regard to trade; and prophesies a change in public opinion, which will free us from our indifference to foreign nations, and open our eyes to the necessity of the defence of our own coasts, and a more active policy of trade with other countries. Dr. Oliver Wendell Holmes contributes a two-page poem, called "But One Talent;" and a well-known priest of the Episcopal Church reviews Hutton's "Cardinal Newman."

HARPER'S MAGAZINE for December is a superb Christmas number. It opens with "As You Like It," the third of the series of articles on the comedies of Shakspeare. The comments on the play, written by Andrew Lang, are accompanied by eleven beautiful illustrations (including the frontispiece, printed in tints) from drawings by Edwin A. Abbey. Charles Dudley Warner, in an article entitled "The Winter of our Content," relates many interesting facts regarding the climatic influences of southern California. The article is accompanied by numerous illustrations from photographs and from drawings by the foremost artists. Theodore Child writes concerning "A Pre-Raphaelite Mansion," — the famous Leyland residence in London, — and describes the art treasures which it contains. His article is illustrated from paintings by the distinguished English artists Rossetti, Burne-Jones, and G. F. Watts. Pierre Loti contributes an article about "Japanese Women," which is very fully

illustrated from paintings by H. Humphrey Moore. The fiction is appropriate to the holiday season. It includes "A Christmas Present," by Paul Heyse, illustrated by C. S. Reinhart; "Flute and Violin," a story of Old Kentucky, by James Lane Allen, with twenty-one illustrations by Howard Pyle; "P'laski's Tuaments," by Thomas Nelson Page, illustrated from a painting by J. W. Alexander; "Mr. Gibble Colt's Ducks," by Richard Malcolm Johnston, with an illustration by A. B. Frost; "A Speakin' Ghost," a dialect story by Annie Trumbull Slosson; and "Jim's Little Woman," by Sarah Orne Jewett.

BOOK NOTICES.

THE AMERICAN STATE REPORTS. Containing the cases of general value and authority (subsequent to those contained in the "American Decisions" and the "American Reports") decided in the Courts of Last Resort of the several States. Selected, reported, and annotated by A. C. FREEMAN. Vol. XIV. Bancroft-Whitney Co.: San Francisco, 1890. $4.00 net.

The present volume of this admirable series of Reports seems to be up to the usual standard of Mr. Freeman's work, and in saying this, we are bestowing all the praise that could be asked. Selections and annotations leave nothing to be desired. Cases are taken from the Reports of the following States: Arkansas, Connecticut, Georgia, Iowa, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, North Carolina, Pennsylvania, South Carolina.

CONSOLIDATED INDEX of Subjects treated upon in the LAW TEXT-BOOK SERIES. Thirty-six (36) volumes. Blackstone Publishing Co.: Philadelphia, 1890. Law sheep. $2.00. Leatherette. $1.50.

Not only to the possessor of the Law Text-Book Series, but to every practising lawyer, will this Index prove of great assistance. The subjects are fully indexed, and are alphabetically arranged. Under each head the names of all the books (with the numbers of the pages) treating upon the same are given. As the field of law covered by the series embraces almost every subject likely to arise in ordinary practice, the lawyer will find in this Index a means of ready reference to any desired point. A blank page is bound in between every page of printed matter for "Manuscript Notes," thus enabling such additions as may be useful to be made to the citations given.

THE LAW OF BUSINESS CORPORATIONS. By JAMES M. KERR of the New York Bar. Banks & Brothers: New York and Albany, 1890. Law sheep. $5.50.

While this work is founded upon New York Statute Law, its scope has been so enlarged as to make it fitted to meet the wants of the general profession. It is in fact a general treatise on the Law of Business Corporations, and Mr. Kerr has collected much valuable material not contained in other works on the same subject. The author is well known as an able and conscientious writer, and this volume will, we think, add to his reputation. One feature of the book is the admirable arrangement of the footnotes. The authorities are given alphabetically by States, and to aid the searcher in determining the relative value of any particular case, as compared with others, the year in which each case was decided is given. An appendix of forms is added, which will be found of much practical value.

ESSENTIALS OF LEGAL MEDICINE, TOXICOLOGY, AND HYGIENE. By C. E. ARMAND SEMPLE. W. B. Saunders: Philadelphia, 1890. Cloth. $1.00.

This little work will undoubtedly prove of service to the profession in cases involving the discussion of medico-legal subjects. A great deal of valuable information is condensed into its two hundred pages; and while it will not supersede the larger and more complete manuals on the subject, it will furnish a means of ready reference upon all important points.

THE SUPREME COURT OF THE UNITED STATES. Its History and Influence in our Constitutional System. By WESTEL W. WILLOUGHBY. The Johns Hopkins Press: Baltimore, 1890.

This book will be read with great interest by every lawyer, containing as it does a history of the inception and growth of the supreme tribunal of our country. The Supreme Court is one hundred years old; and during this time (says the author) but one change in the field of its jurisdiction, and none in the nature of its powers, has been found necessary. Its very form has remained without substantial change since its creation by the Judiciary Act of 1789. Since its inception, it has been a firm supporter of that instrument which created it. Scarcely ever has it been out of touch with the people.

We heartily commend this book to the profession as one in which they will find a fund of valuable information and much matter of exceeding interest.

David Dudley Field

The Green Bag.

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DAVID DUDLEY FIELD.

BY IRVING BROWNE.

THE family of which the subject of this sketch is the oldest member, trace their descent — with better warrant, it would seem, than many American families — back to the time of the Conqueror William. But they really stand in no more need of ancestors than the first Napoleon, who was "his own ancestor;" for they are the most notable American family of the present time, and have no parallel in our history except the Adams family. By their own unaided talents they have raised themselves to the first rank in eminence and wealth, and have adorned all the learned professions and the pursuit of commerce in its largest sense. The father of this eminent branch was the Rev. David Dudley Field, of Haddam, Conn., and Stockbridge, Mass., — a clergyman of acknowledged learning, piety, and strength of character. In addition to his namesake and son there are still living, of his children, Stephen J. Field, Associate Justice of the Supreme Court of the United States; Cyrus W. Field, the great merchant and projector of the Atlantic telegraph cable system; and Henry M. Field, the distinguished clergyman, author, and editor of the New York "Evangelist." Emilia Ann, a deceased daughter, married the Rev. Josiah Brewer, the well known early foreign missionary; and their son, David J., is an Associate Justice on the Federal Supreme Court Bench. Another son, Timothy B., was a brilliant naval officer, and was lost at sea at the age of twenty-five. Another deceased son, Matthew D., was one of the most celebrated of the civil engineers of this country; and his son, Matthew D., is an excellent physician in the city of New York. Another deceased son, Jonathan E., was a lawyer, early settled in Michigan, and was thrice President of the Massachusetts Senate. His son, Stephen D., is a very eminent electrical expert and inventor.

The subject of this sketch was born at Haddam, Conn., in 1805. When he was nine years old his father taught him Latin, Greek, and Mathematics. He entered Williams College in 1821, and graduated in 1825. He studied law a few months with Harmanus Bleecker, in Albany, and finished his studies in the city of New York with Henry and Robert Sedgwick, who were from Stockbridge. He was admitted an attorney and solicitor in 1828, and counsellor in 1830, and immediately formed a partnership with Robert Sedgwick. He continued in active practice in that city for more than half a century. It took him much longer to get out of practice than to get in, and he always conducted a great and lucrative business, dealing in concerns of vast monetary importance and representing the interests of the largest merchants and corporations in the metropolis. It is understood that he accumulated a large property in the legitimate pursuit of his profession. As a practitioner he united the powers of a sagacious adviser and learned lawyer with those of a powerful advocate in a very remarkable and unusual degree. While at no time celebrated as a mere orator, his voice was potent in the courts, and

the greatest interests were intrusted to his management and advocacy. It is probable that in the busiest days of his practice, more millions in litigation depended on him than on any of his contemporaries. All that profound learning, exhaustless research, indomitable will, undaunted courage, broad sagacity, and unequalled foresight, combined with tact, energy, power, fertility, and originality, could accomplish for a cause, was always at the service of his clients. Other men — his contemporaries, his predecessors, or his successors — may have equalled him in some one or more of these qualities; but I think it is not too much to say that in this combination he had no peer at the New York Bar. He was not an O'Connor, he was not a Brady, he was not a Noyes, he was not an Evarts; but he had something of all, and enough more of his own to render him a unique and formidable power in the courts, and an almost unequalled manager of a general law business of the largest kind. In one particular, at least, I should infer, from what I have heard and know of him, he was superior to any man with whom he came in contact; and that was his foresight, comprehensive and unerring, which looked through the tangled maze of the most intricate business, and provided for every contingency.

By his independence and fearlessness at the bar, Mr. Field made many enemies among lawyers, and encountered bitter blame from the public This was especially marked in the so-called "Erie Litigations," in which he was accused of having developed the resources of the writ of injunction to an extent theretofore unpractised. But he simply availed himself, for the benefit of his clients, of the existing remedies, with unshrinking boldness, and not to a greater extent than had been before and has since been done in some important instances. It is quite probable that if any of his professional maligners had stood in his place and had possessed his brains, they would have done the same things. It is a noteworthy fact that in his subsequent capacity of codifier, and in his public utterances on the subject, while always justifying his course as a practitioner, he has deprecated the facility with which injunctions can be and are granted, and recommended a statutory restriction in this regard, which has uniformly been defeated by the lawyers.

Among the most prominent of the celebrated causes which Mr. Field has argued, may be mentioned, in the Court of Appeals, the Tweed case, involving the validity of "cumulative sentences" for misdemeanors; and in the Supreme Court of the United States, the Milligan case in 1867, respecting the constitutionality of military commissions for the trial of civilians in loyal States, where the courts were open, and in the undisturbed exercise of their jurisdiction; the McArdle case in 1868, respecting the constitutionality of the reconstruction acts; the Cruikshank case in 1875; and the Cummings and Garland cases, respecting the constitutionality of the test oath.

But Mr. Field's practice has been but an episode in his great and lengthened career. More than half a century ago he set himself seriously at the task of reforming the laws of his State and of the English world. His first utterance on the subject was a letter to Gulian C. Verplanck. Defeated in his attempt at election to the Assembly in 1841, his first opportunity was the Constitutional Convention of 1846. He did not even succeed in becoming a member of that convention, but he made himself so effectually heard in it that the convention adopted the novel scheme of abolishing the distinction between courts of law and of equity, and common-law practice and pleading, and directed the appointment of commissioners to prepare codes. Then and there the embattled codifiers stood and fired the shot heard round the world. It was David Dudley Field who had the audacity and the wisdom to pull the first trigger. He was known to be so radical that at first he could not even get a place on the commission; but he was appointed be-

fore it set at work, and from then until now he has been the leading spirit in codification, to whom has been conceded most of its merit, and upon whom has been charged all its blame. The great reform began timidly and proceeded slowly. It encountered the most determined and venomous hostility from the bar and the bench. Even Charles O'Connor, who was one of the signers of a memorial to the Legislature in 1847, praying them to instruct the commissioners "to provide for the abolition of the present forms of actions and pleadings in cases at common law for a uniform course of proceeding in all cases, whether of legal or equitable cognizance, and for the abandonment of every form or proceeding not necessary to ascertain or preserve the rights of the parties," was afterwards bitter in derision of and hostility to the code scheme of pleading. Some judges threw every obstacle in the way of enforcing the first code, the Code of Procedure in Civil Cases. The code however held its own, and made way; and the reformed practice is firmly fixed in the State and in many other States, and in England. Mr. Field's code of practice was subjected to revision and amendment for many years, until it had overcome all opposition and criticism, when a serious misfortune befell it. A commission was appointed to "revise and simplify the Statutes" of the States; and the first act of that commission was to revise and add to the code, enormously increasing its bulk, changing its phraseology, and in many instances altering its provisions. Its clearness was obscured, its conciseness was rendered diffuse, its simplicity was made intricate, and its authority, well settled by thirty years of judicial construction, was destroyed, and the task of reconstruction was again necessitated. The commissioners had the art and persistence to persuade the Legislature to adopt this monstrous growth; and to-day the Code of Civil Procedure, instead of one volume of moderate dimensions, forms, in the latest edition, with its decisions, three volumes each as big as a family Bible. If I were an opponent of general codification, I would point to this injudicious work as an example of the evils to which codification may subject a community through the carelessness or indifference of the Legislature. Undoubtedly it has proved the most serious blow to the cause of general codification in the State of New York.

In 1865 Mr. Field submitted three other codes to the Legislature, — the Penal Code (stating the substantive principles of criminal law), the Code of Criminal Procedure, and the Civil Code, or code of the general principles of the common and statutory law in civil cases. The Penal Code was adopted in 1882, and the Code of Criminal Procedure in 1881; and both have given almost universal satisfaction, even to opponents of general codification.

The Civil Code has not been adopted in New York, and after slumbering for ten years, for the last fifteen years has been the object of constant, violent, and bitter discussion, and of varying success and defeat. The measure has repeatedly passed one house or the other of the Legislature; twice it has passed both houses; once it has been vetoed by the Governor; once it was allowed to die a natural death; several times it has been defeated in one or the other house. During all these years it has been subjected to the most intense scrutiny and criticism of bench and bar, and has been repeatedly amended by Mr. Field, in deference to such suggestions; and although it was adopted in California in 1872, and has been successfully in practice there ever since, and has also been adopted in Dakota, yet the prophet is up to this time without honor in respect thereof in his own country. This result is entirely due to the apathy or hostility of the legal profession, two thirds of whom are probably opposed to it, and particularly to the well organized and able opposition of the Bar Association of the City of New York, a working majority of which have managed so far to dictate its policy, and defeat the mandate of the Constitution of 1846. Probably a hundred lawyers

in the city of New York have thus far formed the barrier against general codification; and although a good deal of their hostility is due to personal dislike of Mr. Field and his code, yet radically they are opposed to the principle of general codification of the common law.

Meantime the prophet is honored abroad. In addition to the action of California and Dakota above mentioned, the Code of Civil Procedure has been adopted to a greater or less extent in Missouri, Ohio, Kentucky, Indiana, Wisconsin, Iowa, Minnesota, Kansas, Nebraska, Nevada, California, Oregon, Mississippi, North Carolina, South Carolina, Arkansas, Connecticut, Washington, Arizona, Utah, Idaho, Montana, Wyoming, and Dakota; the Code of Criminal Procedure by Indiana, Wisconsin, Iowa, Minnesota, Kansas, Nebraska, Nevada, California, Oregon, Kentucky, Arkansas, Washington, Arizona, Utah, Idaho, Montana, Wyoming, and Dakota; and his system of practice is prevailing in England, in India, at Hong Kong, and at Singapore. That was a daring and magnificent boast which I heard Mr. Field once make in a public discussion at Albany, but it was true: "The laws which this brain conceived, and this hand wrote, are the rule of most of the English-speaking communities of the world."

Mr. Field has substantially rewritten the Civil Code eight times, some parts of it as many as eighteen times. This enormous labor he has accomplished in the intervals of his vast practice, while the opponent members of the City Bar Association — those who were then born and of age — were sleeping, or eating, or travelling, or enjoying themselves. And for all his labors as a codifier, he has never had nor asked a penny from the State, except that during the first two years he received a salary at the rate of $2,000 a year. He has spent thousands of dollars of his own money in endeavoring to promote his favorite object.

Mr. Field had able associates and assistants in this work, but he himself wrought and produced more upon it than all of them together; and his associates having been long dead, and their work having been so much changed, it has become substantially his own, and is so regarded by the public.

Mr. Field's efforts at legal reform have not been confined to his own country, but he has been an ardent and leading worker in the cause of international law reform; and his labors in this cause and for the promotion of international arbitration and the disarmament of nations and the abolition of war have rendered his name celebrated and honored in every European country and all over the civilized world. In the year 1890, at the age of eighty-five, he presided at a great Peace Convention in London, and uttered a noble and trenchant appeal for the promotion of international peace. His voice has been listened to with deference by the greatest and wisest of the lawyers and statesmen of England; and his addresses, essays, and projects are regarded with admiration by the learned and famous jurists of the Continent. His proposed International Code has met with great acceptance, and has been translated into French and Italian.

At a meeting of the Liberty and Property Defence League, in London, on the 10th of November, 1890, Mr. Field was president, and made an address, for which the Earl of Wemyss moved a vote of thanks, remarking that "in the course of its work the League had been called upon to resist, not only State interference, but municipal interference, and they had been called, for so doing, the enemies of liberty. It was therefore a great thing for the League to have had as president at an annual meeting so eminent a lawyer and so distinguished a man as Mr. Dudley Field. Mr. Field was the commissioner appointed by the State to codify the laws of New York; he was one of the commissioners appointed to endeavor to avert the great American civil war; he had been for many years a leader of the United States bar; and he was a recognized authority on international law;" and Lord Bramwell, in second-

ing the vote of thanks, said that "thirty years ago he heard what he then thought to be the best speech he had ever listened to. He had that day heard another just as good; and on both occasions the speaker was Mr. Dudley Field. Mr. Field was the author of codes in his own State of New York, which had been adopted *en bloc* in several colonies, and which were represented in English law by the recent Judicature Act. It was very refreshing to hear Mr. Field, an American, speak as he had done, regarding the pestilent doctrines preached by Henry George. He heartily concurred in everything Mr. Field had said, and had much pleasure in seconding the vote of thanks."

Mr. Field has never been a politician nor an office-seeker. He has held but one office besides that of codifier, — that of member of Congress, and that only for a part of one term. But he has always been a patriot, and unalterably opposed to human bondage and to oppression of the citizen by the Government. He was a Democrat, but an original "Free Soiler;" and at the Syracuse Democratic Convention, in 1847, he introduced the famous resolution known as the "Corner-Stone," announcing "uncompromising hostility to the extension of slavery into territory now free, or which may be thereafter acquired." In 1856 and 1860 he acted with the Republicans. His patriotic labors during the civil war and during the draft riots led Mayor Opdyke to say of him, —

"To many eminent private citizens my acknowledgments are due for most valuable services; and to none more than to David Dudley Field, Esq., whose courage, energy, and vigilance were unsurpassed, and without abatement from the beginning to the end."

His later political course has been characterized by an independence born of conviction, and regardless of mere party ties and of criticism.

Mr. Field has this year published the third and concluding volume of his collected works, including addresses, essays, arguments, and various papers. He has always commanded an admirable style, clear, vigorous, and unconventional, and at the same time marked by peculiar elegance and culture, and evincing a keen eye to the beautiful, a correct ear for harmony, and a sharp sense of the humorous. These interesting volumes breathe of constitutional rights, of love of freedom, of promotion of peace and the amelioration of war, of patriotism, of law reform in States and between nations, of individual and public humanity, of judicial honor and integrity, of purity in politics and government, of a love of Nature and of literature, of a detestation of tobacco, of a contempt for our State, national, and town nomenclature, of reminiscence of men, places, and scenes.

Judged by the foregoing recital of his achievements, his most bitter opponents must concede that Mr. Field is the most famous and influential of living lawyers. It is not too much to say, in my judgment, that measured by what he has actually accomplished, he is the greatest law reformer of modern times, — greater than Brougham or Romilly, — and measured by what he has proposed, he is the boldest and most original of theorists after Bentham. I have good backing in this opinion, for a Lord Chancellor once said that "Mr. Field had done more for the reform of the law than any other man living;" and Robert Lowe, Lord Sherbrooke, Chancellor of the Exchequer, at a dinner given to Mr. Field, in London, by the members of the Law Amendment Society, as far back as 1851, paid to him the following unique tribute: —

"He trusted that his honorable friend, Mr. Field, would go down to posterity with this glory, — that he had not only essentially served one of the greatest countries in the States of America, but that he had also provided a cheap and satisfactory code of law for every colony that bore the English name. Mr. Field, indeed, had not squared the circle; he had not found out any solid which answered to more than three denominations; he had not discovered any power more subtle than electricity,

nor one that would bow with more docility to the service of man than steam. But he had done greater things; he had laid the foundations of peace, happiness, and tranquillity, in the establishment of a system which would make law a blessing instead of a scourge to mankind. He believed that no acquisition of modern times, — if he rightly understood what had been done in the State of New York, — he believed that no achievement of the intellect was to be compared to that by which Mr. Field had removed the absurdities and the technicalities under which New York, in common with this country and the colonies, had so long groaned."

And again: —

"As to the colonies, he could only repeat that he trusted the example of New York would not be lost upon them. While England was debating upon the propriety of some small and paltry reforms in the administration of law, a great master in the art of administrative reform had risen there in the person of his distinguished friend Mr. Field, and had solved the problem which they in England were timidly debating. America had a great future before her, in the establishment and diffusion of the arts of peace. Let them leave to others — to absolute governments — to have their subjects shot down in the street, rather than wait even for the headlong injustice of a court-martial; but let it be the lot of England, hand in hand with America, to lead the way in the arts of Jurisprudence, as well as in other arts, — let them aim at being the legislators and the pacificators of the world."

Where so much has been accomplished it may seem ungracious to wish for more; but candor compels me to say that I believe Mr. Field might long ago have procured the enactment of his proposed civil code, if he had possessed more pliancy, tolerance, and conciliatoriness. Goaded by despicable personal attacks, and irritated by unfounded assertions and puerile predictions, his arguments have sometimes too closely resembled the famous Napoleonic "Bah!" which, however richly deserved, does not make converts nor gain suffrages. There has always been in him perhaps too much contempt for the "half-loaf" concession. Like the great Napoleon, he has sometimes, I think, wrecked his campaign by grasping at too much and running too great risks. But this is the common fault of strong men, conscious of their powers and confident in the justice of their cause; they take not sufficiently into account the stupidity of small intellects, the apathy and conservatism of timid minds, and the natural combativeness and envy of even clever comprehensions.

Mr. Field unites the creative and the executive faculties in a remarkable degree. He is not a mere theorist, sitting in a closet and spinning ideal and Utopian theories, but is eminently a man of affairs and a publicist, knowing the practical wants of mankind, and possessing the art to make provision for them in practicable projects expressed in apt language. Whatever else may be said of him, I think even his bitterest opponents will concede that this combination has seldom if ever been seen before, and is not apt to occur again.

Mr. Field has been a great traveller. He has been once around the world, three times up the Nile (the last at the age of eighty-three), and has visited Europe many times.

In person he is a noticeable man, six feet two inches in height, broad-chested and powerfully built, but with a studious stoop, and at the age of eighty-six he preserves his physical powers in a remarkable degree. He has a buoyant, cheerful, and philosophical nature, and a good and even temper; is alert, vivacious, humorous, companionable, fond of society; and his manners are at once courteous, dignified, and hearty. He is and always has been one of the most witty and charming of after-dinner speakers, as witness his speech last year at the reception of the Connecticut judges in New York. When he chooses he can exhibit the most exquisite tact, patience, and self-restraint, even in circumstances of great provocation; but the lion's paw does not always deal in caresses. It is astonishing to view the elasticity and youthfulness of this venerable man, and to contemplate his projects of writing

on themes of vital public interest, such as the race question at the South, the elective franchise, the tariff, the question of female suffrage, the problem of corporate growth, and that of municipal government, with which he busies his old age, — an age to which few attain, and at which, when attained, most men sit by the fire, regretting the past, lamenting the present, and dreading the future, hoarding their wealth, abusing their relatives, and calling for the doctor. He once jocosely declared to me that he intended to live to be a hundred years old. I said, "Don't, for then all that history will have to say of you will be that you lived to one hundred." "Yes," he replied; "something like old Parr. I dare say he was much more of a man than is recorded. Well, I will compromise for ninety-five." His State owes him much, but he still owes one thing to his State, and that is a volume of his reminiscences. Such a work would be full of charm, and of permanent historical value. "The Legal World, as I have found it, by David Dudley Field," would be a much more popular book than the drivel recently uttered by the idiot-caterer of New York society; and does he not owe society as much?

It has been said that Mr. Field is ambitious; that his great object in life is to go down in history as the author of the laws of his State. He has been sneered at as a would-be Lycurgus, Solon, or Justinian. Granting that his aim is so narrowly personal, and giving him no credit for patriotism or humanity, it seems to me a not unworthy ambition. If a man endows a college or a hospital, he is not to be derided because he affixes his name to the gift. But what nobler ambition can there be than the desire to be known as the law-giver of one's State? How much loftier and more unselfish than to spend one's years in heaping up wealth, or in running a party machine, or in trying to be president, or in cheating the senses of common men by sounding phrases at the bar, or in leading them to death in wicked national quarrels! Mr. Stillwell's fame has been sweet for half a century, because he wrote one humane law for his State. Lord Campbell and other great lawyers have given their names to acts of Parliament. Mr. Field has spent more than half a century in devising better laws for his State and the world. Let him have all honor for what he has effected and what he has devised. One of the meanest acts ever done by his State was to deprive him of his due appellation of Codifier of his State, and substitute the name of one who as a law-maker is not worthy to loose the latchet of his shoe.

Mr. Field has in a sense lived to an age which "knows not Joseph." But legal history will do justice to his potent, useful, and noble career. The Moses of the Western hemisphere, he has led his State and country out of the Egyptian darkness of chancery and of common-law pleading and procedure; and although he has not been permitted to enter upon, yet he has been accorded a glimpse of, the fair Canaan of written laws and the prompt, certain, and cheap administration of justice.

CURIOSITIES OF BRACTON.

By W. W. Edwards.

THE ancient law writings are a strange mixture of law, theology, and morals. Bracton is no exception to this rule. In giving his reasons for writing his celebrated work, he writes as follows of those who administered the laws and customs of the realm: —

"But since it often happens that the laws and customs of this kind, are drawn into an abuse by foolish and ignorant persons who mount the judgment seat, before they have learned the laws, and who stand in doubts and are many times perverted in their opinions, and who decide causes rather according to their own arbitrary opinion, than by the authority of the laws, therefore for the instruction at least, of the younger, I Henry de Bracton have directed my mind to a careful scrutiny of the ancient judgments of just judges, not without vigils and labor, and I have compiled their acts, counsels, and responses, and whatever I have found worthy of note, in one summary, in the order of titles and paragraphs, without prejudice to a better opinion, commending those writings to perpetual memory, and asking of the reader that if he should find anything superfluous or amiss in this work he will correct and amend that error, or with conniving eyes pass it by, since to hold everything in perpetual remembrance and to sin in nothing, is more divine than human."

To those about to assume judicial honors he gives the following charge: —

"When it becomes the duty of any one to render judgments and become a judge, let him take heed to himself, lest by judging perversely and contrary to the laws, either through importunity, or reward, or some advantage of temporal gain, he should thereby prepare himself for the pains of eternal sorrow, and lest he shall find himself taking vengeance in the day of the wrath of that God, who has said, 'vengeance is mine and I will repay it;' and when the kings and princes of the earth weep and wail, when they see the son of man, by reason of the fear of his torments, where gold and silver are of no avail to liberate them. But if any one fears not that trial, in which the Lord shall be accuser, advocate, and judge, but from whose decrees no appeal may be taken, because the father has given all judgment to his son, who closes and none can open, and who opens and none can close. O! that rigid scrutiny, in which not only the actions, but even every hateful word which men have injustly spoken, shall be rendered an account of. Who therefore shall be able to flee the wrath to come? For the son of man shall send his angels, who shall collect all that gives offense, and all those who do eniquity, and shall bind them up into bundles for burning, and shall cast them into a furnace of fire, where there shall be weeping and gnashing of teeth, groans and howls, wailing, grief, and torment, noise, clamor, fear and trembling, sorrow and labor, heat and stench, darkness and anxiety, cruelty and harshness, calamity and distress, poverty and mourning, oblivion and confusion, twistings and prickings, bitterness and terrors, hunger and thirst, cold and a furnace like heat, sulphur and burning fire forever and ever. Therefore let each one beware that judgment, where the judge is terribly scrutinizing, intolerably severe, greatly offended, vehemently angry, whose sentence is immutable, whose prison is one from which there is no return, whose torments are without end, without interval and without relaxation, horrible torturers who never weary, never pity, fear of everything throws into confusion, the conscience condemns, the thoughts reprove, and escape is impossible, wherefore saint Augustine exclaims 'O how very great are my sins.' Wherefore, when any one shall have God the just for judge and his conscience for a witness he need not fear anything unless it be his own case."

The disjointed and interjective style of the above is to be noted.

He also gives the following admonitions to incompetent persons who made haste to occupy judicial stations; namely, —

"But let no foolish and unlearned person, presume to ascend the judgment seat, which is as it were, the throne of God, lest he mistake light for

darkness, and darkness for light, and lest with the sword of justice in his unskillful hand, like a madman, he smite the innocent, and set free the guilty, and lest he fall from his high position as from the throne of God, like one who attempts to fly before he assumes wings."

In the title "De Corona" he says that the punishment for the crime of rape among the Romans, Franks, and English was this:—

"If he (the criminal) was a knight, his horse for his disgrace, was skinned on the upper lip and had his tail cut off as close as possible, in like manner his dog, if he had one with him, whether a hunting or other kind of dog, was disgraced in the same manner. If he had a falcon, he lost his beak, claws and tail. His land and all the money, which the ravisher himself lost for his distress, was given to the woman, the king guaranteeing (*warrantizante*) all to her. As to this mode of punishment certain dispensations were made as when the ravishers took the violated women in marriage, but this was not a right given by law, but by permission of holy church, and the king, and that permission is from the king alone in his kingdom. This practice first arose in France, in the case of a certain Count (comte) who had entertained a certain jester (joculator) and his wife who was quite beautiful, the jester having died (in what way we do not care to explain) the Count held her against her will, but she on a certain night, made her escape from the Castle, and fleeing, came to Paris, where she found king Robert, and falling at his feet narrated the circumstances to him. When the king had heard her, he sent for the Bishops and Barons who were then at his court, and commanded the woman to narrate to them everything as she had done to him, which she did. Then the king, by the advice of the Bishops and Barons, sent orders to the Count that on a day fixed, he should come to Court, and deraign and defend himself, if he could. But the Count when he heard the words of the king, fearing the kings wrath on account of his misdeeds, answered that at that time he was not able to go to court, but by advice of his friends, he sent word to the king that to pacify his anger he would give him two hundred pounds of Belgian money and ten horses of as great a value and to the jesters wife he would give one hundred pounds and give her in marriage to a rich burger (citizen) or to a soldier who should keep her faithfully all the days of her life, but the king refused all these things saying that he would not be a just vicar of God if he allowed so great iniquity to go unavenged for money, and with great anger, gave orders to summon his army, intending to go against the Count; but the Barons having besought the king, that he would give to them a delay of eight days, in order that they might bring him (the Count) to beg the king's pardon, which he reluctantly granted. And so the Count by the advice of the Barons came to Court, and when the king perceived that he wished to fall at his feet, he turned himself away saying, that he should either suffer justice to be done, or else depart from the Court. What more would you have? exclaimed all the Barons, and they all combined against the king, that the king, himself should grant his mercy to him, for which purpose they had sent for him; at length the king very reluctantly granted his pardon. The Bishops, Counts and Barons, having spoken with the Count, decreed that the Count, should take her for his wife, since she was beautiful and witty, and that he should grant freely many charities (eleemosinas) to the churches, and the poor; and (as she was a jewess) to her father and mother and all her relatives."

This dispensation, made in this manner, has grown so much and been practised so often that it is now held in many places as a custom.

THE SUPREME COURT OF PENNSYLVANIA.

By Owen Wister.

II.

FROM THE PERIOD OF INDEPENDENCE.

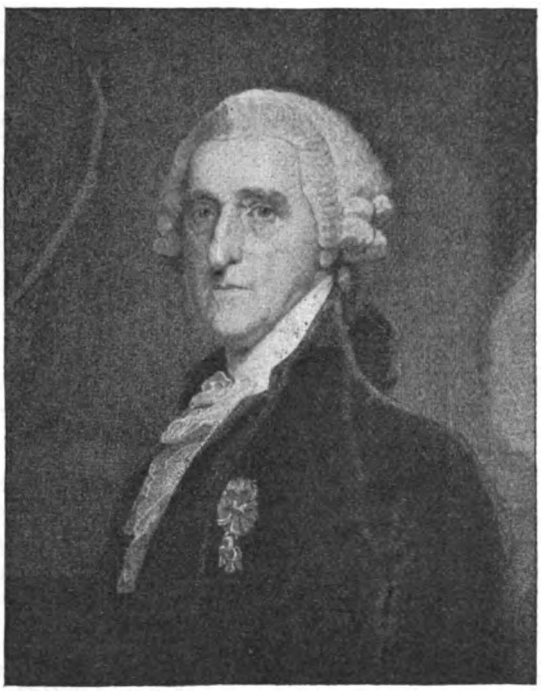
CHIEF-JUSTICE THOMAS McKEAN received his commission on the 28th of July, 1777. In the March preceding, this position had been offered to Joseph Read. This gentleman was then with General Washington and the army, and saw fit to decline; and so Mr. McKean became the first Chief-Justice of the new sovereign State created by the Declaration of Independence, which he himself signed as one of the delegates from Delaware.

Mr. McKean sat as Chief-Justice of the State of Pennsylvania from 1777 until 1799. He was twice recommissioned, — on July 29, 1784, and on July 29, 1791. These dates show that the term of *dum bene se gesserint*, desired so long before it had been attained, was supplanted by a time limit when only two Chief-Justices had held their title subject to its condition. These, it will be remembered, were William Allen and Benjamin Chew. There is no evidence that the system gave dissatisfaction, or in any manner interfered with the proper administration of justice. On the contrary, William Allen's decisions went unquestioned in that day, as those of them that are still applicable do in this; and if Benjamin Chew, in spite of his failure to sympathize with the War of the Revolution, could be appointed Judge and President of the High Court of Errors and Appeals (October, 1791), after that war had come to a successful end, it is next to certain that the conduct of these two men had nothing to do with the change. Most probably it may be laid to the reactionary temper of the times, through which ran a hasty and inordinate democratic sentiment that led men indiscriminately to distrust whatever of importance had been sanctioned under England's discarded sway. The notion of any man's holding any office possibly for life, was to the popular taste unpalatable; not because senility might at the last render him inefficient, but because everybody should have his turn, — a right vested alike in the experienced and the inexperienced by reason of their having been born equal.

It has been said that Thomas McKean was the first real Chief-Justice of Pennsylvania. This statement certainly has a political meaning, because he came first after the Revolution. But in the domain of the Common Law it carries no significance, unless the Declaration of Independence worked some magical change upon the Common Law. Such a change is not apparent in the books. The rights of the citizen to his life, his property, and so forth, were not altered because a certain colony became an independent State. And as the Common Law was understood and administered before the Revolution well enough to cause the decisions of that day still to stand as precedents for modern cases, Thomas McKean is not the beginning of any chain, but only a link in one that reaches from the Pennsylvania of the present across the sea to the Year Books, and back beyond them to unknown men whose minds and customs invisibly survive in every new volume of Reports.

But Thomas McKean lived at an era in the country's history that afforded any man of native force and distinction continual chances to make himself remembered. Hence his work survives visibly; and as patriot and judge of equal ability and determination, he stands one of the chief figures in the chronicles of his Commonwealth. Through the years preceding and during the Revolution, his activity and usefulness are something extraordinary; and when the

new State settled down to develop itself, he was its Chief-Justice three times, and three times its Governor, — elected in 1799 as the anti-Federalist candidate, and in 1805 by a united following from both parties, or (to use his own pithy synopsis of the matter, which tradition has preserved) elected "at first by the blackguards and at last by the gentlemen." The phrase "settled down," that was just now employed with reference to Pennsylvania, does not indicate the condition of the Commonwealth at this period, but its aim only. The good old days of David Lloyd would seem comparatively untroubled beside the violent times that followed immediately upon the Revolution; and no settling down could occur until the community had passed through the disturbed process inevitable when acids and alkalies encounter each other in solution. Through the lengthy and searching ordeal of those years, Thomas McKean passed with perpetually assailed and never tarnished honor; riding roughshod over every one who opposed him, haughty and uncompromising, hated by many, respected by most, and feared by all. But whatever high-handed act he did was invariably done above-board, and as invariably plainly prompted by his sincere and ferocious belief in himself, — a belief, be it said, more often justified than not. And when we read of hostile manifestoes in 1805, setting forth his "austerity and aristocratic habits," his "years of professional contention and dominion in courts," and that "under McKean the legislature was bullied and abused; under Snyder it was caucussed and corrupted," it is plain that the charges his enemies could bring against him were remote from anything in the nature of dishonor. The gravest accusation to be found (and there does seem some ground for it) is of nepotism, — a practice that this nation began by thinking an abuse of trust in a public office-holder, and a few private persons think so still. His biographer, Mr. Buchanan, quotes a diverting extract from a journal of the time, in which under the title of "The Royal Family," a list of such appointments is given as follows: —



THOMAS McKEAN.

"Thomas McKean, — Governor.

Joseph B. McKean, son, — Attorney-General.

Thomas McKean, Jr., son, — Private Secretary.

Thomas McKean Thompson, nephew, — Secretary of Commonwealth.

Andrew Pettit, son-in-law, — Flour-inspector.

Andrew Bayard, brother-in-law to Pettit, — Auctioneer.

Dr. George Buchanan, son-in-law, — Lazaretto Physician. (This last appointment was pretty well open to criticism, as the appointee had been living in Baltimore for seventeen years, and was preferred immediately upon his arrival in Philadelphia.)

William McKennan, brother-in-law of T. McKean Thompson, — Prothonotary of Washington County."

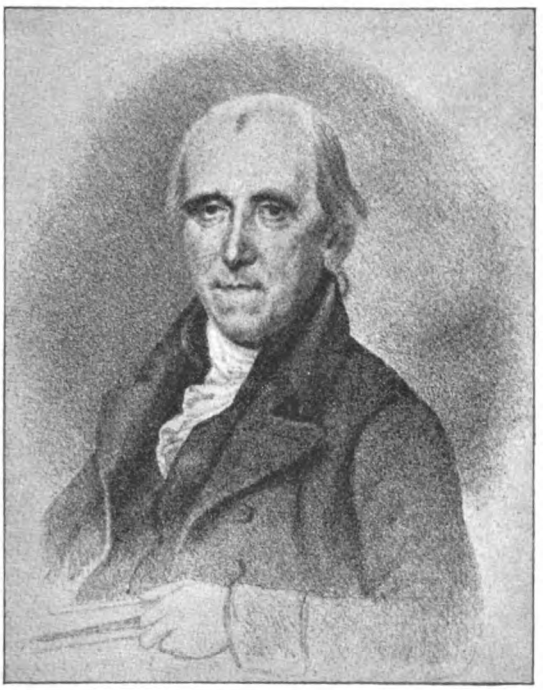
There are several more on this list; and it certainly looks a little as if the Governor had been of the opinion that blood was thicker than water. If he was one of the

pioneers of the spoils system, there are those in this country who should be grateful to the memory of their benefactor, even if they do not envy him the distinction. On the other hand, it is but just to inquire if the people who received such appointments were unfit for them; and that does not seem to have been the case, whereas, as will be seen in the course of this article, Pennsylvania owes her greatest Chief-Justice not only to Mr. McKean's wisdom of choice, but also to his sticking to his opinion when the popular voice objected to the man he had chosen. And in the famous impeachment of Chief-Justice Shippen, Mr. McKean's upholding Judge Brackinridge against the noisy demagogues of that day is another signal instance of his stanch rectitude and independence.

The character of Thomas McKean is so marked, among the leading men in Pennsylvania history, that the preceding general allusions to his times seemed worth making before coming to a particular account of the man himself. He was born in Chester County, March 19, 1734. He studied law in Newcastle, Delaware, and was clerk to the Prothonotary of the Court of Common Pleas. When twenty, he was admitted to the bar of Chester County. Among the many well known names from all parts of the country of those who subscribed to the first American edition of Blackstone, printed in 1771, appears that of "Thomas McKean, Attorney at Law, Newcastle, Delaware." Adamses, Cabots, Livingstons, DeLanceys, Pringles, Middletons, and many more are in that interesting list. Mr. McKean was admitted to practice in the Supreme Court in 1758. During these days he joined what was known as "Richard Williams' Company of foot." A month after his admission to the Supreme Court, he went to London. It is plain that in spite of the practical sort of training which his legal experience thus far must have given him, he felt the need of a quality of education that could not be had on this side of the water. Until 1877 his sojourn at the Middle Temple was not known; but in that year the curious accident of an old law-book's turning up, in which was written "Tho. McKean, of the Middle Temple," led to the discovery of his name in the records of that place, entered on May 9, 1758. This lengthy schooling equipped him in the law as none of his predecessors had been, and enabled our State reports to start off after the Revolution with such admirable decisions, that no less a person than Lord Mansfield wrote to Chief-Justice McKean after reading the first volume of Dallas: "They do credit to the court, the bar, and the reporter. They show readiness in practice, liberality in principle, strong reason, and legal learning." Another contemporary wrote: "I had a high esteem for him, believing him to be a very honest man, although a very violent one, who had no command of his temper, but spoke whatever he thought upon all occasions."

An incident that occurred when McKean was forty years old will give a notion of his keen and aggressive personality. He was counsel in a slander suit for the defendant, who bore the happily apt name of Buncom, and the plaintiff's case was so clear that McKean made no attempt to dispute the facts. Instead, he brought out an army of witnesses, who testified that his client was such a notorious liar that no man in Chester County (his dwelling-place) believed anything that he said. This led to the conclusion that the plaintiff's good name could not possibly be damaged by a word that came from the defendant's mouth, and the verdict was accordingly for the defendant! By this time, 1774, Mr. McKean had held nine public offices, many of them of great responsibility; and national politics now called him to further and more important duties. He had already, in 1765, been a marked figure in connection with the Stamp Act Congress, together with Cæsar Rodney (his right-hand man), from Delaware, James Otis, Timothy Ruggles (who was its President), and others. The upshot of this is characteristic of McKean and discreditable to Ruggles. Both

were on the committee appointed to prepare an address to the Commons. On the last day, after suspicions of defection had been for some time in the air, several refused to sign the proceedings, Ruggles among them. McKean demanded his reasons, which he refused to state, — an anomalous attitude for the presiding officer. Pushed hard, he explained at length that "it was against his conscience." Then in the meeting Mr. McKean rose to his tall length, and fixing a cold, hard eye on his victim, made such a number of embarrassing plays on the word "conscience," that the sickened Ruggles challenged him, and he accepted promptly, — to find by morning's light that his conscientious adversary had decamped from New York.



JARED INGERSOLL.

Rodney and McKean again appeared together as delegates from Delaware to the Continental Congress of 1775; and soon McKean was on the Secret Committee, active in procuring money and arms. He was enrolled as a private in "John Little's Company;" and the year following, "Colonel Thomas McKean" appears with the Fourth Battalion among the Associators, — a military body, the members of which volunteered their services at the first, but whose code was soon made compulsory by the Assembly. During the following weeks Mr. McKean took an energetic and unswerving part in every public act that led to the Declaration of Independence; and when on the 2d of July, in the vote on the Resolution in the Committee of the Whole that the Colonies were free, Delaware came near counting as a zero, it was thanks to him that she gave her voice in favor of liberty. Read, Rodney, and McKean were the three delegates. Read voted 'no,' McKean 'aye;' but Rodney was absent. Upon this, his friend McKean despatched an express to him down in Delaware, and Rodney started instantly for town. On the great 4th he marched into the State House in his boots and spurs, and splashed with mud, just in time to cast Delaware's vote for Independence. And then, as we know, on "a warm sunshiny morning," at eleven o'clock, John Nixon came out on a balcony at the Hall, and read the Declaration to the cheering crowd, while the old bell clanged away in the tower above.

About this bell it is curious to remember that the Quaker opponent of war, Isaac Norris, was responsible for its famous motto. He was far from dreaming of the battle-thrill that was destined to pervade its words. The following letter, dated Nov. 1, 1851, explains itself: —

RESPECTED FRIEND, ROBERT CHARLES, — The Assembly having ordered us (the Superintendents of the State House) to procure a bell from England . . . we take the liberty to apply ourselves to thee to get us a good bell. . . . Let the bell be cast by the best workmen . . . with the following words well shaped in large letters round it, viz.:

By order of the Assembly of the Province of Pennsylvania, for the State House in the City of Philadelphia, 1752.

And underneath,

Proclaim Liberty through all the land to all the inhabitants thereof. — Levit. xxv. 10.

This is signed by Isaac Norris and the Committee. Then, after all their pains over the weights, casting, cost, and shipment of the bell, on the 10th of March, 1753, Mr. Norris "had the mortification" to hear "that it was cracked by a stroke of the clapper without any other violence, as it was hung up to try the sound. . . . Upon which two ingenious workmen undertook to cast it here, and I am just now informed they have this day opened the mould and have got a good bell."

Here is the bill for the hanging of this good bell: —

PHILADELPHIA, April 17, 1753.

THE PROVINCE,

To EDMUND WOOLEY, Dr.

For sundrys advanced for raising the Bell Frame and putting up the Bell.

	£	s	d
A peck of Potatoes, 2*s.* 9*d.*, 14 lbs. Beef at 4*s.* 8*d.*, 4 Gammons, 36 lb. at 6*d.*–18*s.*	1	6	5
Mustard, Pepper, Salt, Butter . . .	0	2	0
A Cheese, 13 lb. at 6*d.*-6*s.* 6*d.*; Beef 30 lb. at 4*d.*–10*s.*; a peck Potatoes, 2*s.* 7*d.*	0	19	1
300 Limes, 14*s.*; 3 Gallons Rum, of John Jones, 14*s.*	1	8	0
36 Loaves of Bread, of Lacey, ye Baker	0	9	0
Cooking and Wood, 8*s.*; Earthenware and candles of Duchee, 13*s.* 4*d.*	0	11	4
A barrel of Beer, of Anthony Morris .	0	18	0
	£5	13	10

Errors excepted, ED. WOOLEY.

From the bountiful commissariat that this bill of the masons and carpenters reveals, it is plain that not Chief-Justice Chew only, but humbler citizens as well, fed richly, according to their station, in the town of Philadelphia. This aroma of flesh-pots hanging over the city has more than once offended the chilly nostrils of those who hail from Massachusetts Bay, and has drawn from that quarter trenchant reference to a well known observation about plain living and high thinking. The Yankees have reproached the Quaker town for being in Bœotia, while they allot their Puritan city a territory in Parnassus. The cause of this may be that Philadelphians do not write about themselves, or that New-Englanders do not read about anything but New-Englanders. But a fair look at Revolutionary times will show that high thinking went on in Pennsylvania full as actively as it did in Boston; and that when it was over for the day, they sat down and dined well enough to draw the slightly contemptuous note from John Adams about Benjamin Chew's "turtle and every other thing, flummery, jellies, sweetmeats, of twenty sorts." Mr. Adams would seem to have entertained the lean notion that thinkers must not enjoy life. But, on the other hand, let it be confessed that plain thinking and high living are what the present century chiefly records for Philadelphia, to contrast with the stately achievements of Emerson and Webster and Hawthorne; and when it is recollected that among many other early progressive steps, the honor of starting the first medical school and the first hospital in the country belongs to Philadelphia, one is at a loss to account for that bovine spirit of unenterprise which later took possession of the community, caused solemn opposition to the introduction of gas in the streets, led citizens complacently to believe those who told them that one railroad in a town was better than two, and in general has made Philadelphia municipally and commercially the laughing-stock of East and West.

In the autumn of 1776 Sir William Howe's threatening approaches, and the continual obstructions placed by the Quakers in the road of war, heartened the Tories up; and they took to loud singing of "God save the King," in taverns. The hand of Thomas McKean fell heavy upon these minstrels, and fourteen arrests of reputable citizens quickly followed. But the Quaker mind became duly skilful to reconcile defence and peace doctrines. A member of the sect in after years found himself upon a vessel attacked by an enemy. Peering casually over

the ship's side, he observed a foe hanging and climbing up by a rope that dangled over the ocean. With his knife he immediately cut the rope short off, saying amicably to the man, "Friend, thee may have that."

Mr. McKean's whole-souled and efficient services in the cause of liberty very naturally produced for him a bitter antagonism which vented itself in many lampoons. Major André is the author of one, a "Dream," the hits of which in regard to "Jackey Jay, Paddy McKean, and other rebellious * * * were excellent," according to a sympathetic contemporary. McKean, in Hades, was likened to Jeffries, and in the shape of a blood-hound flogged forever by Roberts and Carlisle. It seems the proper moment to say that Mr. McKean imagined he resembled Lord Mansfield more than any other English judge. No two temperaments probably were ever more unlike. But it may be doubted if even Lord Mansfield could have steered a surer, firmer course through the riotous and unsettled waste that followed the Revolution. Another satire of the time contains the following: —

JOHN SERGEANT.

"Why are you banished from your comrades, tell?
Will none endure your company in hell?
That all the fiends avoid your sight is plain,
Infamous Reed, more infamous McKean."

The most amazing piece of ability that is recorded of Mr. McKean is the circumstance of his writing the Constitution of Delaware. In a letter to Governor Rodney, August 22, 1813, he says: —

"When the associators were discharged I returned to Philadelphia, took my seat in Congress, and signed the Declaration on parchment. Two days after I went to Newcastle, joined the Convention for forming a Constitution for the future government of the State of Delaware (having been elected a member for Newcastle County), which I wrote in a tavern without a book or any assistance."

There is almost conclusive evidence that he took a single night to do this. This Constitution was unanimously adopted the next morning.

In the following year he was appointed Chief-Justice, with William Augustus Atlee, of Lancaster, and John Evans, of Chester, as his associates. A law had been passed a few months earlier (Jan. 28, 1777) declaring that all laws in force preceding the sundering of allegiance should remain in force, both common and statute law, except such as were inconsistent with independence. Three years later the High Court of Errors and Appeals was constituted. To this appeals could be made from the Supreme Court, but not unless the subject-matter exceeded the value of four hundred bushels of wheat. The judges here were the president of the Supreme Executive Council, the judges of the Supreme Court, the judge of the Court of Admiralty, and three Commissioners who were thereafter commonly called judges. At this time also the distinction between the judges of Common Pleas, Quarter Sessions, and Orphans' Court was abolished, and the same judges sat for all, each exer-

cising the jurisdiction of the separate courts. This must have proved a bad economy, for such an arrangement holds no longer. The governor was to appoint in each county not fewer than three, nor more than four judges. The State was to be divided into circuits of not more than six, nor fewer than three counties. A President Judge was to be appointed for each circuit, who acted also as President Judge of each court in his district. The President and Judges were necessary for holding Common Pleas, Oyer and Terminer, and general jail delivery. Any two of the judges of the Court of Common Pleas — not necessarily including the President Judge — might hold a court of Quarter Sessions, Orphans' Court, or Registers' Court. Existing commissions were to remain in force until the expiration of the terms. After that the judges were to be appointed for good behavior.

When the utter dislocation of all things at that time is remembered, Lord Mansfield's finding that Chief-Justice McKean's decisions showed "liberality . . . strong reason . . . and legal learning" becomes a very high commendation. These cases are of some historic interest.

Respublica *v.* Abraham Carlisle, 1 Dallas, 39. Indictment for treason. The defendant took a commission, under the King of Great Britain, to watch and guard the gates of the city of Philadelphia. This and the following belong to the year 1778. Respublica *v.* John Roberts, 1 Dallas, 42. Indictment for high treason.

By the Court: "There is proof of an overt act, that the prisoner did enlist, and evidence is now offered to shew that he also endeavored to persuade others to enlist, in the armies of the enemy. But we are of opinion that the word *persuading*, used by the legislature, means *to succeed*, and that there must be an actual enlistment of the person persuaded, in order to bring the defendant within the intention of the clause. 2 Lord Ray. 889.

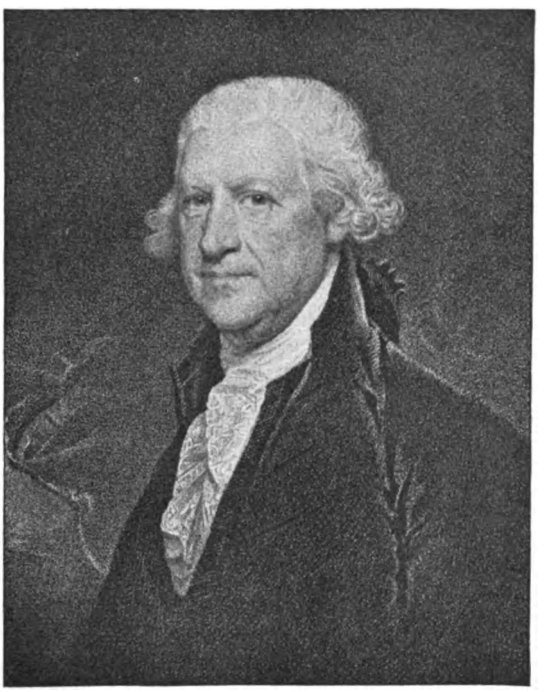
"The evidence offered, however, is proper to shew *quo animo* the prisoner himself joined the British forces."

The execution of both these men called forth, among many others, the above quoted comments of Major André. The case of Wharton *et al. v.* Morris *et al.* 1 Dallas, 133, 1785, is interesting for many reasons. It brings up equitable jurisdiction; involves among the parties and their counsel the well-known names already mentioned, and also those of Willing, Wilcocks, Sergeant, Lewis, Gouverneur Morris, and Ingersoll; and raises the question of what is "current money."

Other cases of a technical interest should be briefly referred to. The Chief-Justice's language is given in each. "I recollect one case in the books upon this point; and that is that an acknowledgment of a debt after suit takes it out of the Statute of Limitations." "It is the opinion of the court . . . that the common law of England has always been in force in Pennsylvania; that all statutes made in Great Britain before the settlement of Pennsylvania have no force here unless they are convenient and adapted to the circumstances of the country." What would he have said about Quia Emptores? "An alien enemy has no right of action whatever during the war; but by the law of nations, confirmed by universal usage, at the end of the war all the rights and credits, which the subjects of either power had against the other, are revived; for during the war they are not extinguished, but merely suspended. If, also, a conquered country is ceded, the old possessors are entitled to their estates; and when any country is conquered, the possessors are not deprived of their estates, but only change their masters. This is clearly the case between two independent powers, but how will the case be between this country and Great Britain at the close of the war? Why, had we been conquered, our lives and all our property would have been the forfeit; but even as the business now stands (1782), the subjects of Great Britain may, perhaps, claim a revival of the debts due to them from the citizens of Amer-

ica, whilst we, by their acts of parliament, are debarred of the like privilege. It is hard that the people of America should during the war receive continental money for specie, and at the end of it be deprived of the debts due from them from abroad, whilst they are obliged to pay the debts due from them to *British* subjects. Unless some care is taken, this may be the case. I would hope, therefore, that the assemblies of the different States will think seriously of it; and with a view it may be attended to, I have given this hint upon the present public occasion."

This sort of utterance was distasteful to one whose views differed politically; and upon this or another similar occasion a man in the court-room made an offensive remark about the Chief-Justice, whose expression remained as if he had not heard it. He presently adjourned the court, however, and striding down to the man, said, "Sir, on that bench up there I am the Chief-Justice of Pennsylvania, and unable to take notice of merely personal impudence; but on this floor I'll have you know I'm Thomas McKean, and ready to break your neck or give you any other satisfaction of the sort you please."



EDWARD SHIPPEN.

In the case of Oswald he said: "Some doubts were suggested whether even a contempt of the court was punishable by attachment. Not only my brethren and myself, but likewise all the judges of England, think that without this power no court could possibly exist; nay, that no *contempt* could indeed be committed against us, we should be *so truly contemptible*. The law upon this subject is of immemorial antiquity, and there is not any period when it can be said to have ceased or discontinued."

He had issued a warrant against Col. Robert L. Hooper, deputy quartermaster, charging him with having libelled the magistrates in a letter to Gouverneur Morris; and directing the Sheriff of Northampton County to bring the said Hooper before him at Yorktown. General Green wrote the Judge that he could not consent to Hooper's absence. McKean replied:—

"I do not think, sir, that the absence, sickness, or even death of Mr. Hooper could be attended with such consequences that *no other person* could be found, who could give the necessary aid upon this occasion; but what attracts my attention the most, is your observation that *you* cannot, without great necessity, *consent to his being absent*. As to that, sir, I shall not ask *your consent*, nor that of any other person, in or out of the army, whether my precept shall be obeyed or not, in Pennsylvania."

Mr. McKean wore, when presiding, a scarlet gown and cocked hat. His height, his grim lip, and cold steady eye, with his formidable nose, give him an appearance much like that of Washington, and more like that of a veteran bird of prey. The offices of Chief-Justice and of Governor did not lose dignity through his holding of them; to his conception of the respect that should hedge the man

that represents in his person a sovereign State, Pennsylvania owes more than to that interpretation of dignity that led a chosen governor to walk up from the railroad to his inauguration with his grip-sack in his hand. To wear a scarlet coat in these late plain days would have been scarcely more ridiculous than such a burlesque of "simplicity."

Thomas McKean's acts, language, appearance, and handwriting are all of a consistent and vigorous individuality. He could hardly have been a conciliatory person. But it is recorded of him that on being addressed in a petition as "The Right Honorable the Lord Chief Justice," he corrected the surplusage more mildly than most mistakes he dealt with, saying, "These are, perhaps, more titles than I can fairly lay claim to, but the petitioner has erred on the right side."

Gouverneur Morris, one day speaking before him in some fashion displeasing to "The Right Honorable," was suddenly commanded to take his seat. "I will cease speaking," said Mr. Morris; "but whether I shall sit or stand depends upon my own convenience, and I prefer to stand."

A leading attorney began a motion by explaining that the novelty of its subject was such that he was uncertain of the appropriate form for it. "If you don't understand how to make a motion, you had better consult your books and learn," said the Judge.

One day at Harrisburg, a mob outside the court disturbed him, and he ordered the sheriff to disperse them.

"I cannot do it," stammered the sheriff.

"Why do you not summon your posse?" pursued his honor, raising his voice to a roar.

"I h–have summoned them, but they are ineffectual," the miserable man replied.

"Then, sir, why do you not summon me?"

The officer braced his tottering faculties, and finished, "I do summon you, sir."

And upon this, up reared the scarlet McKean, and descending, suddenly loomed tremendous on the rioters, and seized a couple by their throats. The horrified remainder evaporated, and Justice remounted her pedestal.

When Mr. McKean became governor in 1799, his fulfilment of those new duties was equally robust. Having vetoed a bill, the Legislature waited upon him and diffidently urged his reconsideration. The Governor took out his watch. "Will you please to put her to rights?" he remarked to the chairman, who protested he was a carpenter and unfitted for the task. The others of the committee each declined, for similar reasons. The Governor affected surprise, observing that any watchmaker's apprentice could do it. Then he informed the committee that he had spent a quarter of a century on the law. "Yet you, who can't wind this little watch, become lawyers all at once and presume to instruct me in my duty." Mr. McKean declined to pay toll one day, driving through a turnpike bar. "I am the Governor," he said to the gate-keeper. This custom was repeated till the man complained to the company, and received instructions to make no exceptions in the matter of toll-paying. The next time Mr. McKean came, he found the bar closed. "I've told you before I'm Governor McKean," he shouted to the keeper. "Well, you may be Tom McKean or Tom the devil, but you're not going through that gate till ye pay." The potentate at this took out a dollar and flung it on the ground. The toll-man went to his till, returned with the proper change, accurately set it down on the spot whence he had picked up the dollar, and then opened the bar. It is not reported whether the Governor descended to glean his small silver, or whether he waived this exactness and drove on.

Naturally, such a person had bitter opponents. But he triumphed even signally when impeached, and his three elections are sufficient evidence of the esteem he commanded. To him, as has been said, Pennsylvania owes the appointment of the most deeply learned and widely cited Chief-Justice she has produced. When Governor McKean

nominated William Tilghman, a number of citizens waited on him, and informed him they came as representatives of the Democratic party. His honor made a profound bow, and asked what the great democracy desired. The appointment of a man more in accordance with their wishes, they said. "Indeed," said Mr. McKean, "inform your constituents that I bow with submission to the will of the great democracy of Philadelphia, but, by God! William Tilghman shall be Chief-Justice of Pennsylvania."

Before leaving this firm friend of independence, a more genial glimpse of his character will be seen in the following document: —

By desire of
GOVERNOR M'KEAN,
Who means to honor the Theatre with his presence,
THIS EVENING, January 2, 1800,
At the House of Mr. Lenegan, in East King street, Lancaster. At the Sign of the White Horse.

Ladies & Gentlemen of Lancaster are respectfully informed, that this evening will be presented the greatest variety of amusements that had ever been exhibited in this town, consisting of Pantomime, Singing, Hornpipe-Dancing, Tumbling, SPEAKING, &c. &c.

And in particular an Indian WAR and SCALP Dance, by Mr. Durang and Mr. F. Ricketts.

Doors to be opened at six and the performance to begin at 7 o'clock.

Tickets to be had at Mr. Lenegan's and at Hamilton's Printing-Office.

Ladies and Gentlemen who wish to engage seats may have them on calling upon Mr. Rowson at the Theatre.

ROWSON & Co.

Thomas McKean died on the 24th of June, 1817, eighty-three years old; an arrogant, patriotic, and indomitable man.

Edward Shippen, "utter barrister of the Society of the Middle Temple," was commissioned Chief-Justice Dec. 18, 1799, to succeed Thomas McKean, who had been elected governor. At this time Mr. Shippen was seventy years old, and had had fifty-three years of legal study and experience. He had been a leader of his bar; and Judge of the Vice-Admiralty Court, President Judge of the Common Pleas, and Judge of the High Court of Errors and Appeals, before he came to preside over the Supreme Court. His political opinions, and also undoubtedly his widely different nature, prevent any comparison of his public services with those of Thomas McKean, outside of the law. His life was spent in a quiet attention to his professional duties; and the great number of these, and the manner in which he performed them, gave him the security of knowledge and judgment as Chief-Justice that caused Mr. McCall to count his good influence upon the law of his State more lasting than any save that of McKean and Tilghman. He exercised a timely and sagacious conservatism at a time when the Common Law, with all other things English, was in danger of falling into disrepute; and his learning and common-sense helped to preserve it as an organic structure and at the same time fit it to the special needs of the Commonwealth. It is interesting to read this statement in his opinion in Lessee of Morris *v.* Smith, 1 Yeates, p. 244. "There was a time within my remembrance, when lawyers held that common recoveries for docking estates tail could not be legally suffered in Pennsylvania; and the first that was suffered will be found among the records of the Common Pleas, in my handwriting, when a young student."

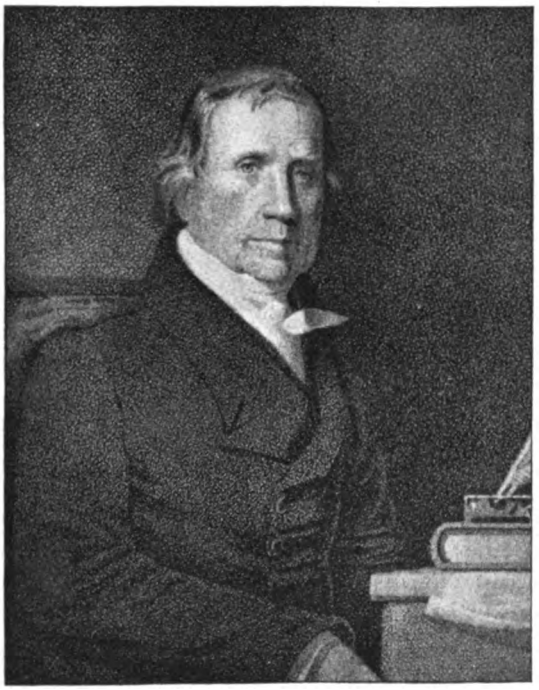
The following letter was addressed to his father by Mr. Shippen when he was twenty-one years of age: —

PHILADELPHIA, June 8, 1750.

HON'D SIR, — My mind has been much employed for about a Twelvemonth past about an affair, which, though often mentioned to you by others, has never been revealed by myself. . . . Miss Peggy Francis has for a long time appeared to me the most amiable of her sex, and tho' I might have paid my addresses, possibly with success, where it would have been more agreeable to you, yet as Our Affections are not always in our Power to command, ever since my acquaintance with this young Lady I have been utterly incapable

of entertaining a thought of any other. . . . If I had obtained a Girl with a considerable fortune, no doubt this world would have pronounced me happier . . . but . . . I must beg here to say I am a better Judge for myself. . . . Be pleased, sir, to let me know your sentiments of this affair. . . . I am anxious to know my Fate.

The impeachment of Chief-Justice Shippen, along with his associates Yeates and Smith, JJ., is the most interesting event of his history. The report of their trial and acquittal fills 491 pages. The direct cause of the proceedings was the court's committing a man for contempt. Chief-Justice McKean's view of this power in a court to enforce its dignity has been seen. It was a power peculiarly necessary in the early independence of the nation.



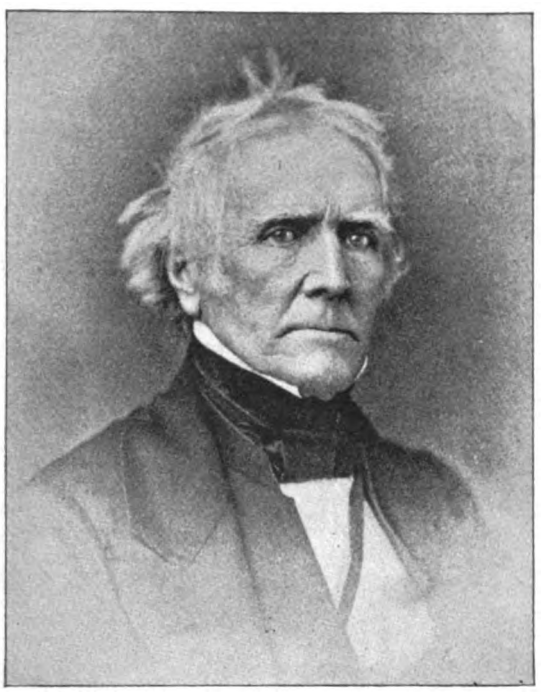
WILLIAM TILGHMAN.

An ignorant and aggressive spirit in the Assembly produced in the mind of that body the hallucination that its enactments could not be weighed by the judges and found wanting on the score of constitutionality. These legislators were slow in learning their place; and were continually galled at feeling the judicial check put upon their raw measures. There were members of the Assembly in those days who knew their constituents would like them all the better for taking a fling at decency. Hence, on the 28th of February, 1803, these saloon patriots presented a case "pregnant with so many alarming consequences to the rights and liberties of the people," that it took some two thousand words to say what it was. A certain Thomas Passmore, smarting under some exceptions taken in a case he had against one Bayard and another, wrote up a notice on a coffee-house in which his opponent was characterized as a liar, etc., and an implication made that by the court's help he was resorting to every "device" to keep him three months more without his money. He was committed for contempt for thirty days; upon this there was a clamor about the "odious doctrine of contempt," the "hated and exploded" English common law, and much else. Several of the reputable lawyers declined to touch the people's case. The justices were defended by Mr. Dallas and Mr. Ingersoll. During the proceedings, which lasted into 1805, Judge Brackenridge was appointed to the bench. He had not been included in the impeachment, but signified his opinion that the law justified the court's action, and requested to share the fate of his brethren, if they were guilty. The Legislature instantly asked Governor Thomas McKean to remove one so offensive to the people. Promptly getting a refusal to this monstrous demand, they called his attention to the phrase in the Constitution "may remove," informing him that in such cases it meant "must remove." "I'll have you know," said Thomas McKean, that "may" sometimes means "won't." On Monday, Jan. 28, 1805, the justices were acquitted.

Few anecdotes are told of the Chief-Justice; but Mr. Lewis records that Molly Cobb, an ancient housekeeper of the Shippens,

was of opinion that "it ought to be wrote upon his tombstone that he was a good purwider for his family." Late in 1805 he resigned from the bench, and within a year he died. At a meeting of the bar, over which Mr. Ingersoll presided, it was unanimously resolved that the gentlemen of the bar attend the Chief-Justice's funeral, and wear "crape on the left arm for thirty days, as a testimony of the respect they bear to his memory. Hor. Binney, Sec'ry."

On Feb. 28, 1806, William Tilghman was commissioned Chief-Justice of Pennsylvania; and it is to be counted the highest piece of good fortune which has fallen to our Supreme Court that such a man should have presided over it. He not only carried on the line of sound and well considered decisions begun by McKean and Shippen, but outstripped them both in the lucid permanence of his legal utterances. He was undoubtedly the ideal Chief-Justice. Widely different from McKean's lusty discourtesy is the patient and attentive manner for which Tilghman was conspicuous during arguments. His way was to hear every man to the end, nor to lose a word that either side had to say. And it may be presumed this method of care and just balancing has carried Tilghman's authority into foreign jurisdictions as safely as the learning with which his fine-reasoned opinions are equipped. It is certainly a more dignified tradition for a judge to leave behind him than Gibson's humorous but flippant assertion that he had acquired the faculty of looking a man in the eye and appearing to listen without hearing a word he said.



HORACE BINNEY.

Very little need be related of William Tilghman's life; the flower of it — his contribution to the welfare of mankind — is "the contents of twenty volumes of reports, and upwards of two thousand judgments, most of them elaborate, all of them sufficiently reasoned, very few upon matters of practice or on points of fugitive interest." This is what Mr. Binney records of the Chief-Justice, of whom he also says, "The force of his intellect resided in his judgment." He was born August 12, 1756; received, like Shippen, a classical schooling; studied his first law under Benjamin Chew; was a great reader, and during this early time educated a younger brother, coming in 1783 to the Maryland bar.

In the case of Hollingsworth *et al. v.* Virginia, 3 Dall. 378, 1798, the first point raised by William Tilghman (with him, Rawle) is singular enough to be noted here. The decision of the Court in the case of Chisolm, Ex'r, *v.* Georgia, produced the following amendment to the Constitution of the United States: "The judicial power of the United States shall not be construed to extend to any suit in law and equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State." Lee, Attorney-General, submitted this question to the United States Supreme

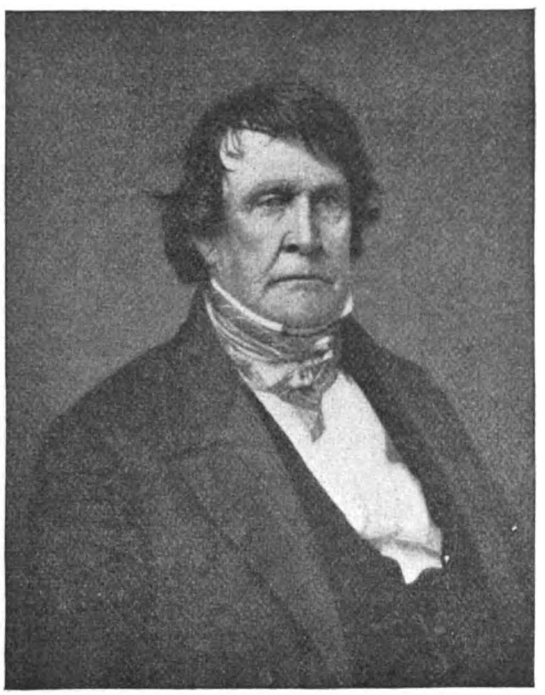
Court, — whether the amendment did or did not supersede all suits depending, as well as prevent the institution of new suits against any one of the United States by citizens of another State?

Tilghman, arguing the negative, said: "The amendment is void. Upon an inspection of the original roll it appears to have never been submitted to the President for his approbation. The Constitution declares that 'every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives.' Now, the Constitution likewise declares that the concurrence of both Houses shall be necessary to a proposition for amendments. The concurrence of the President is required in matters of infinitely less importance; and whether on subjects of ordinary legislation or of constitutional amendments, the expression is the same, and equally applies to the act of both Houses of Congress."

There seems to be no escape from the above argument, except through the construction of the words "resolution, or vote." Of course it is improbable that there was any intention that the President could veto an amendment, but Justice Chase dismissed Tilghman's objection too briefly in not allowing any discussion upon it. See the note on page 381.

Mr. Tilghman became a judge first in John Adams's United States Circuit Court, and then President of the Common Pleas, July 1, 1805. Within a year from that, Governor McKean selected him to be Chief-Justice. It is said that for more than ten years he delivered an opinion in every case but five, illness preventing his hearing four of these, and a death in the family the remaining one. He was not a vigorous man; being of delicate make, the voice and eye somewhat mild, and with much gentleness of bearing. In the opinions of McKean and of Gibson is found a strong flavor of the individuals that wrote them. The infused personality overbears the abstract qualities, till often through the law that is undoubtedly there you see the man plainer than the principle he is announcing. But Tilghman's writing is of that highly impersonal, clear, and colorless sort apt to come from an organism more intellectual than animal. His sentences seem like the inevitable spinning of a well ordered machine. Such an absence of the personal equation will give results more secure, if less picturesque, than if they bore the taint of paradox that has been found by some in Gibson's work. As these cases are of technical rather than of historic interest, instances shall be no more than referred to in this place. The following may all be found in 3 Binney, and some are good illustrations of peculiar Pennsylvania law, and all of the Chief-Justice's simple and yet thorough manner of demonstrating the pertinent legal propositions of a case. Murray *v.* Williamson, 135. The equitable owner of a chose in action, though unable to sue in his own name, may set it off against the obligor who brings covenant upon an indenture of lease to recover rent in arrear. Lessee of Findlay *v.* Riddle. The rule in Shelley's Case does not apply where a devise was "to my son A . . . during his natural life . . . and after his decease, if he shall die leaving lawful issue . . . to his heirs as tenants in common, and their respective heirs . . . forever. But in case A shall die without leaving lawful issue . . . to my son B. . . . his heirs . . . forever." Judge Tilghman takes less than a single page to make this clear; Judge Yeates occupies from pages 148 to 161 to explain the same thing in an appeal from the Chief-Justice's decision. Lessee of German *v.* Babbald, 304. Parol evidence may be given to establish a trust which arises by implication of law. Wells *v.* Tucker, 366. A *donatio mortis causa* to the wife for another's use is good.

Mr. Binney sums up the Chief-Justice's more important services: his interpretation of the Statute of Limitation in Assumpsit; his placing in the Commonwealth the property of the beds of navigable rivers; his shaping of the Land Office system; and his establishing the administration of Equity through Common Law forms. He also wrote the report of the judges upon which of the English statutes were to be held as already in force in Pennsylvania, and what others were to be incorporated in the law of the State. As might be supposed in a man whose refinement bred diffidence and distaste for the conspicuous, Tilghman disliked the scenic effects with which McKean had invested the office of Chief-Justice. It had been McKean's wont not to walk to the court-room, but to proceed there. Each morning the sheriff with his rod of office, and other officials, would assemble outside the Chief-Justice's lodgings, who thereupon descending in his scarlet gown and great cocked hat, went to the court-house escorted with much circumstance. Tilghman swept all this away, and walked like any other man. But Mr. McKean was the nearer right of the two. To be sure, such pomp tickled his personal relish for power, but it also marked his office with pictorial dignity; and pictorial dignity is not to be underrated. Mr. McCall, whom it was impossible to meet even once without gaining a respect for him which subsequent acquaintance could only heighten, has said: "I am one of those who believe that the externals of justice have something to do with its efficient administration; and that the barriers of outward form cannot be entirely thrown down without begetting a familiarity between the bar and the bench alike injurious to both; and endangering that feeling of deep reverence for the Judiciary which belongs to the morals of the citizen, as it does to the creed of the lawyer." Deep reverence for anything is supposed by many Americans to be an invasion of their liberty and self-respect. But whoever thinks that you can reconcile with republican simplicity a decent outward manner of conducting what is in itself solemn, must have been glad to see the Pennsylvania Supreme Court lately return a little to robes of state, and adopt a dignified and simple, but distinguishing costume. The result is all that could be desired, both as to simplicity and fitness. It is to be regretted that the new and very comfortable rooms in the Public Buildings, of which the Court was lately put in possession, should be decorated in a way at once so inappropriate and so vulgar. The expensive and staring slabs, the trivial statuettes, the intricate and fulsome chandeliers and ceiling, and the pitiful light gray-green hangings make the place seem the performance of some milliner, and not a first-rate one. The occasion of putting the Court in possession of these rooms will be remembered by those who had the privilege to witness it. It is not often that a basket of roses is offered to a Chief-Justice as he



JOHN BANNISTER GIBSON.

sits. This might be termed a modern instance of what the unlettered sometimes call *fragrant delight.*

A brief anecdote of Mr. Tilghman shows that he too had his notion of decorum. One day the Court broke up without formally adjourning, the other judges scattering in a haphazard and miscellaneous manner. "Gentlemen," said the Chief-Justice, mildly, from his chair, "shall we adjourn, run away, or resign?" It should also be recorded to Judge Tilghman's honor, that he devised a scheme by which his slaves were gradually freed. He died on Monday, April 30, 1827.

Since his work ended, sixty-four years are gone, and in that time has gone also all recollection of him that was contemporary. No one to-day goes down the street to court who can declare from a living experience of his excellence that "it will be long, very long, before we open our eyes" upon his like. So Tilghman's voice and his way and his unwritten words, and what of a man will survive him for the little while those who kept his company are still here to exchange memories in the comfortable evenings, are all passed into silence. But quietly the books preserve and proclaim his unshaken and perpetual worth; and of him there is but a single verdict, — that he was the ideal Chief-Justice, the soundest that Pennsylvania has had, the one whose light shines steadily on after the more brilliant blaze of reputations less remote has waxed and waned. Of him there is a single verdict; of his picturesque successor there are two.

John Bannister Gibson was commissioned May 18, 1827. After him the system changed, and the office was made elective, — "the heaviest curse," observes Judge Porter, "which in my judgment ever fell upon the people." A short sketch of Gibson, by Colonel Roberts, has lately been published, and from it are taken the account of his early life and certain anecdotes. But most anecdotes here to be given come straight from those who talked with Gibson once, and to whom many thanks are due for their friendly interest in providing new personal touches that reveal the judge as a man.

This country boy was born, Nov. 18, 1780, in a steep, empty region among the mountains of Cumberland, where civilization had not begun to infest and destroy the healthy wilderness. Of this existence, shut away from towns and trade, he writes that "fox-hunting, fishing, gunning, rifle-shooting, swimming, wrestling and boxing with the natives of my age, were my exercises and my amusements." Let it be said, shortly, that he had a grandfather six feet eight inches high, and that his military father when in town "would be invited to four parties of an evening, and wherever he went, the men would follow, so much was he admired." So young Gibson came rightly by his stature and his vivid personal attraction. It is plain that these days in the playground of the woods set that common ancestor of man, whom Mr. Stephenson has so well named "Probably Arboreal," stirring in the veins of the fox-hunter and fisherman. He never could have forgotten them wholly. The luxurious charm of their irresponsibility lurked and tingled somewhere in him, and long afterwards bubbled out into his solitary attempt at verse-making. Seeing his birthplace once again was the direct cause of this; and when we find him speaking of "the shade of the wildwood" and a "fawn-footed urchin," we surprise the man of hot court-rooms inwardly turning from their daily stench to the time when he was less useful to his fellows, but breathed a cleaner air. When he was about seventeen, he entered Jefferson College, Washington County, and there was singled out by the discerning eye of Judge Brackenridge, of whom mention has been made in connection with Chief-Justice Shippen's impeachment. Brackenridge befriended him in a manner he never forgot. A few years later, while still a law student at Carlisle, he performed the surprisingly irrelevant feat of painting a very tolerable portrait of himself. A rainy holiday at home with his mother had kept him from his plans

of deer-hunting, and he accordingly substituted the highly dissimilar occupation of making his own miniature in profile. As a likeness it was found by his friends to be not a bad one, and it has been said to show a pronounced talent for the art, though, naturally, a talent somewhat in the raw. This unschooled tendency never died out in him; and the consulting augurs who afterwards sat with Gibson were from time to time regaled by his improvised cartoons of the advocates who craved their attention in the court-room; and the man who cleaned his drawer out after he had been sitting at Nisi Prius used to find numerous drawings which he had made on slips of paper during the trial of causes.

WILLIAM M. MEREDITH.

In 1803 Mr. Gibson, on motion of his preceptor Mr. Duncan (afterwards Judge), was admitted to the bar of Cumberland County. He went for a time to practise in the town of Beaver, which he approached for the first time astride a diminutive horse, his long legs nearly aground. He was encountered by a rustic upon a large white horse. The rustic was of a size appropriate to Gibson's pony, and pointed out how mutually fitting an exchange would be. Gibson hearkened to the argument, paid a bonus, let his pony go, and rode on his new white horse to the tavern, whose landlord expressed surprise at the rider's willingness to trust himself to an animal that was stone blind. He told a friend in later life that when he went from Carlisle to Beaver to settle and practise law, his hours had been spent in "reading East's Reports and shooting black squirrels." Of Gibson's practice in country towns there seems little to relate, but that he filled the frequent leisure it brought him with another surprisingly irrelevant pursuit, that of playing the violin. Judge Porter suggests an imaginary sketch of the huge young barrister bending over his music in his solitary office while the rare client knocked at the door unheard. Music, like drawing, never deserted Gibson; but with his violin he accomplished more serious and experienced execution than he ever got from his paint-brush. By blood he was kin to Benjamin West, and to this his bent towards art may be possibly traced. When thirty, he was sent to the Assembly by the Democrats. Judge Porter records that he then was "considerably over six feet, with a muscular, well proportioned frame, and a countenance expressing strong character and manly beauty." From this time his contemporaries gave him an increasing attention, and it was not long before he found himself appointed President Judge of the eleventh judicial district. It was remarked that he showed much energy in performing his duties, but a somewhat hasty judgment. Haste was a temptation that years never wholly removed from him. Some three years later he was called to fill the place of his old friend Brackenridge as Associate Justice of the Supreme Court. He was now thirty-six; and Judge Porter, of whose essay be it respectfully said that

nothing so agreeable, temperate, and complete seems to have been written about Gibson, observes that not before this (1816) does the Judge's intellect seem to have been seriously roused. There was now, it may be supposed, less of the violin, less pleasant gossiping at taverns, and much more solitary confinement with Coke, whose influence upon him Judge Porter notices with emphasis. In Algeo *v.* Algeo, 10 S. & R. 235, decided in 1823, we find an opinion of Gibson, delivered in the absence of Tilghman, C. J. It is an early specimen of that power of condensed statement which the Chief-Justice brought at last to such chiselled perfection. Algeo *v.* Algeo raises one of the most interesting discussions that can occur in the law of contracts. A hires B to work during a specified period for an agreed total sum. Before the time is up, B "quits" voluntarily it may be, or so compelled by A, against whom he now declares in the common counts, and A pleads the general issue. Comparisons, whatever else they may be, are interesting; and it is worth while here to speak of another Chief-Justice's opinion in a similar and famous case, — Britton *v.* Turner, 6 N. H. 481. Judge Parker was so proud of what he wrote in that case, that he had his portrait painted with his finger in Volume 6 at its proper page. Both judges find previous decisions irreconcilable.

From Gibson's Opinion (one page).

"Here the plaintiff below claimed to recover for the whole time for which he had been employed, on the ground that an act the performance of which has been prevented by the person for whose benefit it was to be performed, shall as to him be taken to have been actually performed. This holds so far as to give an action on the contract where actual performance would otherwise have been a condition precedent; but not to create an implied promise to compensate the party as if the act were actually performed. . . . There is never such a thing, in fact, as the promise laid in a general count: it is the consideration for which the promise is supposed to be made, that is the substantial groundwork of this action. But the consideration is not the execution of a contract, but services rendered or work and labor done, and this is the reason that this precedent contract, where there is one, must have been executed, the law implying a promise only from the acts of the plaintiff and never from acts of prevention by the defendant. . . . In the case before us, however, it is clear the plaintiff could recover a compensation proportionate to the time during which he was actually in the defendant's service."

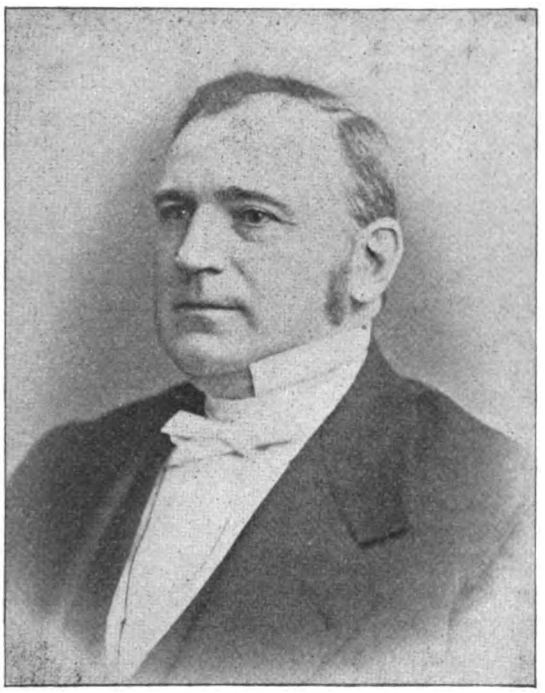
From Parker's Opinion (ten pages.)

"It may be assumed that the labor performed by the plaintiff, and for which he seeks to recover a compensation in this action, was commenced under a special contract to labor for the defendant the term of one year, for the sum of one hundred and twenty dollars, and that the plaintiff has labored but a portion of that time, and has voluntarily failed to complete the entire contract. It is clear, then, that he is not entitled to recover upon the contract itself, because the service which was to entitle him to the sum agreed upon, has never been performed. . . . We hold, then, that where a party undertakes to pay upon a special contract for the performance of labor, or the furnishing of materials, he is not to be charged upon such special agreement until the money is earned according to the terms of it, and where the parties have made an express contract the law will not imply and raise a contract different from that which the parties have entered into, except upon some farther transaction between the parties. . . . But if, where a contract is made of such a character a party actually received labor or materials, and thereby derives a benefit and advantages, over and above the damage which has resulted from the breach of the contract by the other party, the labor actually done, and the value received furnish a new consideration, and the law thereupon raises a promise to pay to the extent of the reasonable worth of such excesses. . . . In fact, we think the technical reasoning, that the performance of the whole labor is a condition precedent, and the right to recover anything dependent upon it, — that the contract being entire there can be no apportionment, — and that there being an express contract, no other can be implied, even upon the subsequent performance of service, — is not properly applicable to this species of contract, where a beneficial service has been actually performed."

These parallel extracts, it is believed, are as nearly as possible identical in what they express; and it is also believed that if both opinions be examined it will be clearer than it is from the portions of them here cited,

that Gibson said in one page all that Parker said in ten, and that it has never been better said by any judge.

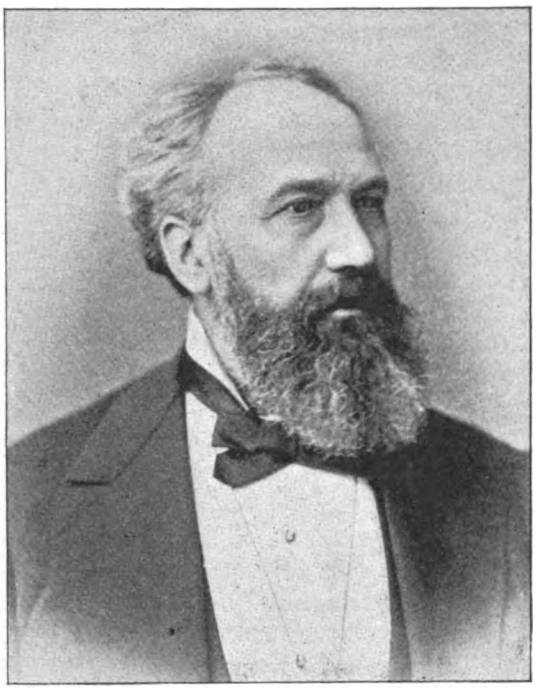
It was becoming gradually evident that the growth of the State made too much work for three judges, and in 1826 the Supreme Court was increased to five. The year following Gibson succeeded Tilghman, and became Chief-Justice of Pennsylvania. He was then not quite forty-seven. His style had been growing steadily more brilliant and characteristic, and certain of his own remarks reveal his estimation of it. He frequently said he was sorry that he had never made a habit of writing down the interesting characters and incidents that he had seen, but did not believe he had the gift of expressing what he had thought worthy of note. And he named a friend of his, a Western lawyer, whom he deemed the man for it,— the man to bring out in delicate touches and shades of thought the things that had struck himself as deserving to be recorded. Many a pen less artful than Gibson's has ventured to set down striking incidents, and has succeeded fairly well. But the Judge evidently had set for himself a severe standard. A friend asked him, "Is that very concise style of yours perfectly natural to you, or did you acquire it?" "It is the result of studious effort," he replied. And as evidence of the value he must have set upon each word, a curious note written in the margin of his manuscript opinion in Overton *v.* Tyler, 3 Barr, 346, may be made public. The sentence against which the note is written has become current legal coin: "A negotiable bill or note is a courier without luggage." This is the Judge's marginal note: "The printer will please print this *luggage*, and not *baggage* according to a barbarous American usage." Yet it is known that Judge Gibson had a horror of the pen; that he never wrote if he could escape doing so, and that when necessity compelled he went about cooking the forthcoming sentences in his head, and not until they were done did he sit down, then writing without erasure. "Such vigor, clearness, and precision of thought were never before united with the same felicity of diction. . . . He made others understand him because he understood himself. . . . He never sacrificed sense to sound, or preferred ornament to substance. . . . He had one faculty of a great poet, that of expressing a thought in language which could never afterwards be paraphrased." These sentences are from the fine eulogy pronounced upon him by his successor, Chief-Justice Black; and for a eulogy there is probably more justness in it than in most compositions of the sort. For instance: "Yet he committed errors. . . . A few were caused by inattention, a few by want of time, a few by preconceived notions which led him astray." It has been thought that Judge Black had a turn of mind very like Gibson's, and that there was much intellectual sympathy between them. Certainly a kinship is to be discerned in their writings. That Gibson was physically lazy from his young days up,



EDWARD M. PAXSON.

seems universally acknowledged; and this inertness gave way only under a strong desire or necessity, such as fox-hunting at one period, and getting through with an opinion at another. Men of such enormous bulk as he can hardly escape a growing disinclination to exertion. Something has now been said of his various tastes and accomplishments, but they have not all been mentioned yet. Any one who has read many of his opinions will know that he must have been saturated with Shakspeare, from whom he occasionally takes a pertinent phrase or sentence. And he was much devoted to the stage and to actors. The fact that the monument of the elder Jefferson is due to him, whose friend he was, and whose art he greatly admired, is generally well known; also that the epitaph on this monument came from Gibson's pen, its conclusion revealing what the Judge's feelings about Jefferson were: "I knew him well, Horatio, a fellow of infinite jest, and most excellent fancy." The whole history of this monument, the unobtrusive manner in which it was raised, and the conduct of all most nearly concerned, is a touching and excellent instance of how well the kindness of Gibson's nature was linked with disinterestedness. It is also generally well known about him that he had a sound knowledge of medicine, read French and Italian, and was something of a geologist; but these statements on cold paper are as easily made by the writer as they are discredited by readers who learn them for the first time. As Gibson's accomplishments are now under review, this is the place to speak of a feat which seems the most amazing ever recorded of a Chief-Justice. Besides painting, music, languages, and science, mechanics was also one of his gifts. This does not mean that he occasionally mended a picture-frame, or was able to make a door close that July heat had warped. He carried his handicraft into fields seldom ventured into by the amateur; he tuned a piano perfectly, and he was a successful dentist when the notion took him! When seventy, he still had all his teeth, which were very handsome. But now they began to loosen in obedience to the miserable law of the flesh. When the first one grew unstable, he manufactured a fine wire clamp for it, and so buttressed the shaky member against a firm neighbor. But next the neighbor weakened, and a further wire clamp was the result. Briefly, there came a day when the whole edifice trembled, and the Chief-Justice sought a dentist. He was minded to avail himself somehow of his still perfect, if tottering teeth. This, the dentist said, was quite impossible. Neither science nor art had devised such a shift, and false teeth were the only thing. Hearing this, the Judge, not at all convinced, set to work in the dentist's office, borrowing his tools and occasionally his assistance. The result of this in a few days was a plate adapted to Gibson's own teeth, which he wore comfortably to his life's end. After this, it became his custom during hours of relaxation to tinker at the teeth of animals and of human patients also. Was there ever in any man such a combination of qualities? A story told of him towards the middle of his Chief-Justiceship reveals incidentally that Equity Courts had at last become established in Pennsylvania. A lawyer applied to him for a mandamus to compel a Catholic priest to admit a woman to the privilege of the Eucharist. The Chief-Justice told him to take out a God-damn-us. It seems hardly worth while to attempt a demonstration that his very large vocabulary did not include strong language. Consider the average man, and consider the vigorous, many-experienced Gibson,—that he should not have sworn when it was appropriate to swear, seems scientifically unlikely. Few will believe you if you say he did not; still fewer will care if he did. Once, when on circuit, he was stopping at a tavern over night (it is supposed that he understood games of chance), and retiring somewhat late, was mindful of the near morning with its intellectual duties, hence ordered a cup of black coffee brought to his room when he should be called. The diffident youth knocked at the hour appointed,

and asked how the Judge liked his coffee. "Hot as hell and strong as the wrath of God," replied the Chief-Justice. There are two other circuit stories not commonly known. He was leaving Pike County to sit as Associate Justice in Wayne County. It was the heart of winter in the backwoods, with a dull sky and the wind chilly, and after a little while a wilderness of falling snow. Garrick C. Mallery was riding with him as guide and pioneer. Coming along the trail towards them, they met a man with a sled dragging a barrel of whiskey and a tin cup. Both riders dismounted into the snow, and the Judge took a good cupful down, and rode on. His pioneer followed his example, and then came on behind the Judge, who presently turned round to him from where he was riding on ahead, and called through the descending flakes, "Mallery, it's getting warmer." Upon another occasion the Chief-Justice came to the house of friends, where it was his custom to stop on circuit and spend the night. He found they had just lost a little child. In a moment of characteristic impulse he offered to sit up with the body. Night came, and his hosts went to bed; and in the silence of the house Gibson sat up on a chair, huge and weary, thinking of his early start on horseback at morning, and his day in the stuffy court-room, while the little baby lay on the bed. The Judge suddenly decided that it was too much, got his clothes off, gently placed the baby elsewhere in the room, lay down and slept. Next morning he left the house as usual, very early. Not far along the road, his host came galloping after him to inquire if he knew what had happened to the baby. Gibson clapped his hand to his forehead. "My God!" he said, "it's in the top bureau drawer." Many instances of absence of mind and preoccupation are told of him. He was very fond of his associate Judge Burnside. One day, after Burnside's death, he fell into a reverie, from which waking up he looked around and said, "Where's Burnie?" There was in Wayne County an associate judge familiarly called Sam Preston,—a very large, heavy man. Once at the opening of court he stood up and said that he had a bone to pick with the sheriff, who was in court now. "Shall I give him the opinion of the Court on his conduct?" he inquired of Gibson, who presided. "Hardly," replied Gibson. "Then I'll sit down softly," said Judge Preston.



JAMES P. STERRETT.

As Judge Porter remarks, any memoir of Judge Gibson would be incomplete without a reference to his agency in settling the law of Pennsylvania on the subject of riots. It cannot be told as amply here as in Judge Porter's essay, to which the reader is referred. It must be enough to say that riots became an epidemic pestilence between 1836 and 1846. Churches, schoolhouses, private houses, all burnable property was burned,—often by the members of fire-companies. Gibson's charge in Donoghue *v.* The County, 2 Barr, 230, held that a man's house is his castle, and that he has a right to defend it

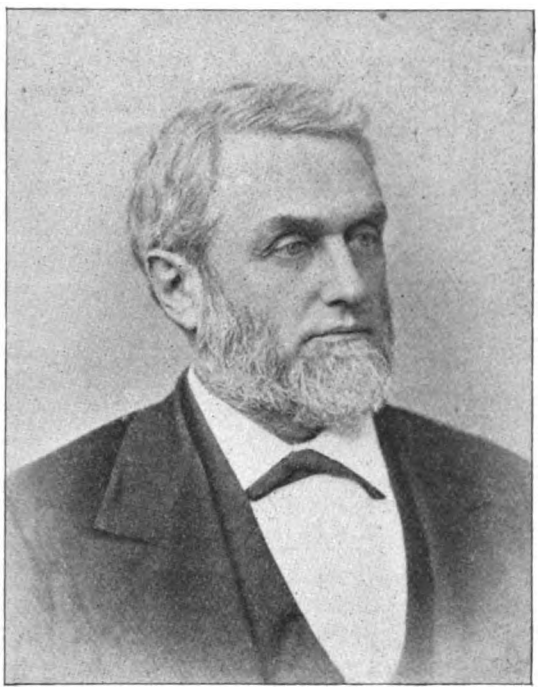
when attacked. The plaintiff got a verdict for the whole amount of the property destroyed. From that time there were no riots for more than thirty years, for the Saturnalia of blackguardism became discouraged at having to pay its bills.

A memoir of Judge Gibson would also be incomplete without a mention of Ingersoll *v.* Sergeant, 1 Wharton, 336. In March term 1836 the opinion was delivered, but not by the Chief-Justice, who would have written something much superior and shorter, one may be sure. This pompous harangue announces, during fifteen pages of so-called reasoning, that the Statute of Quia Emptores was never in force in Pennsylvania. In Pennsylvania the young student-at-law is often ushered into the presence of Ingersoll *v.* Sergeant with such a ritual of salaams that throughout his days he fails to react from the early impression that the ceremony made upon him. The reputation of Ingersoll *v.* Sergeant ends at the State line; and it may be suspected that even in Pennsylvania its fame travels by echo rather than by direct contact. It is the fashion for lawyers to speak well of it, to take its impregnability for granted; but honest ones have been heard to confess that they never read it through. And no wonder. The pages bristle with second-hand knowledge, — not the sort that comes from having anything in your head, but only books at your elbow. Ill-assimilated and sometimes superfluous quotations abound on every page without fertilizing the sterility of the native soil, fatiguing the attention without convincing the reason. A sort of argument is certainly patched together, but what may its weight be when put against the facts in the other scale; namely, that when statutes are intended to be repealed, it is done with very precise and express language; that the words in Charles the Second's charter allow land in the new province "to be held of the said William Penn . . . the statute . . . commonly called the Statute Quia Emptores . . . *in any wise notwithstanding*"? Does it not seem that stronger language than this should be required to repeal a law that had been part of the blood and bone of English tenure for four hundred years? And does it not also seem perfectly reasonable that Quia Emptores was intended to be merely suspended so far as the Proprietary Government was concerned, and that when this government ceased, a law which was not at war with colonial interests in the least, should resume its force if it had any? Moreover, "rents-charge" had been spoken of as unquestionably existing many times by both Bench and Legislature. These remarks would not have been ventured, were it not known to the writer that Judge Cadwalader, whose scholarship it would be presumptuous to praise here, derived nothing from the opinion in Ingersoll *v.* Sergeant but mirth, and that one of the oldest members of the Philadelphia Bar unhesitatingly calls it "an absurd piece of imaginary learning." One ludicrous historical blunder that occurs on page 349 has, it is believed, never been exposed. "The two last of these rights [marriage and wardship], however, were taken away by 12 Car. 2, c. 34, some six years before the granting of the province to William Penn." Charles the First was beheaded on the 30th of January, 1649. Charles the Second's reign, as we know, is counted from the end of his father's. The twelfth year of it, therefore, would be 1660 or 1661. The Province was granted to William Penn in 1682; that is, twenty-one years after 12 Car. 2, and not six, as the learned Judge has announced. Or, had he counted from the Restoration, — a still worse mistake, — the twelfth year would then be 1672, some ten and not some six years before the Charter.

But more diverting than Ingersoll *v.* Sergeant is Wallace *v.* Harmstead, 8 Wright, 492. A small piece from this hotch-pot of ignorance may prove interesting: "But the statute of Quia Emptores was never in force in Pennsylvania . . . and therefore this rent service is not converted into a rent charge.

Can it [the right of distress] exist there independently of the deed? It certainly can . . . if our titles be feudal; it as certainly cannot if our titles be allodial. . . . What Pennsylvanian ever obtained his lands by 'openly and humbly kneeling before his lord, being ungirt, uncovered, and holding up his hands both together between those of the lord, who sat before him, and there professing that he did become his man from that day forth, for life and limb and earthly honour, and then receiving a kiss from his lord?' This was the oath of fealty. . . . I conclude, therefore, that the state is lord paramount as to no man's land."

So, besides having homage described to us as fealty, we find that land is allodial in Pennsylvania, although sub-infeudation still exists. Of course this later case virtually overrules Ingersoll *v.* Sergeant. But in spite of the inefficient self-importance of the earlier case, it is an established rule of property in Pennsylvania; and were the questions ever again to be raised, it is probable that Wallace *v.* Harmstead would be repudiated.



HENRY GREEN.

Through Chief-Justice Gibson's mind there ran an unaccountable vein of credulity which the two following anecdotes illustrate.

An old man in Pike (or Wayne County) believed himself the Dauphin of France, and wrote a book to prove it. Of course such a thing created among the intelligently ignorant and the well-read unintelligent much the same sort of discussion that has furnished amusement for those who have really opened their Shakspeare and Bacon. It was nothing extraordinary that many citizens excitedly inquired, "Have we a Bourbon among us?" Now, what is extraordinary is that Gibson was asked by a friend — a brother on the bench — what he thought of the book, and answered seriously, "I believe it's true." It is nearly needless to add that the man afterward proved a self-deceived impostor, — an Indian half-breed. The next thing is still more singular. He was dining with a friend in town, and one of the several people present mentioned that there was a rat in China whose scent was so strong that if it ran over a bottle of wine it would flavor the wine. The next time the Chief-Justice came to town he asked his host's son, "Where 's L——?" "At Wilmington." "Tell him I forbid him to come within the confines of the Commonwealth until he furnishes me with proof of the truth of that rat story. I have been telling that story through the Commonwealth, and my friends all think I am crazy." Some years afterward the same fact about the rat was mentioned in one of the English reviews, which Mr. L—— accordingly sent to the gentleman to whom Gibson had complained, with a letter, begging him to show it to the Judge, and hoping that his wrath would be appeased, and that he would recall the sentence of banishment. The next motion-day this gentleman — afterward Attorney-General for Penn-

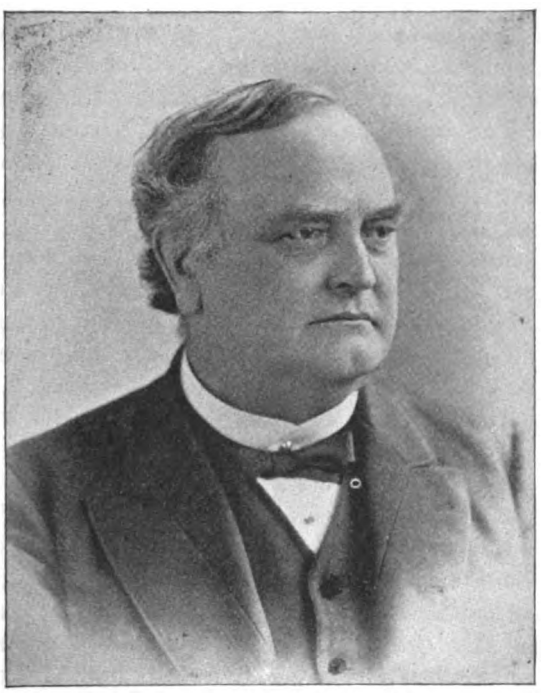
sylvania — took the letter and the review to court; and after the other motions were concluded he rose with great gravity and said: "There is an unfortunate man who has incurred your Honor's displeasure, and has received a severe sentence; but I hope these papers which I hand up will cause the sentence to be reconsidered." The Chief-Justice looked at the papers, and when he saw what they were he roared out laughing — his laugh was loud — and wrote on the back of the letter in Latin, "Let him return," and handed it back. The other lawyers standing round did not know what to make of it. One day some time after this, Gibson had been bothered all the morning by some lawyer and had got into a thoroughly bad humor. The same gentleman who had once handed him the papers, and who had now to reply, saw that he would do nothing with the Judge unless he put him in a good humor, — which he did by alluding to a "certain rat in China;" and Gibson laughed.

During these years the Philadelphia Bar helped not a little to increase the brilliancy with which Gibson and Black filled the courts of law. Of Hamilton and Francis in the last century, mention has been made; and as their worthy successors, the names of John Sergeant, Jared Ingersoll, and Horace Binney have incidentally appeared in this present narrative; and of a slightly later date comes William M. Meredith, made Attorney-General of the State June 3, 1861. He appears as council on the famous Donoghue riot case alluded to above. Brief mention must be made of these men who were not Chief-Justices; and of Mr. Meredith perhaps the most fitting thing to record is the circumstance of his consenting to be Attorney-General. It was in war-time, and owing to too many dark reasons to print here, a disastrous crash of ruin was imminent. No bank would take up the State loan. During a memorable evening, known to few, this danger was what persuaded Mr. Meredith to leave his practice and accept the position; and when in the morning it became known that he had consented to be Attorney-General, every bank took up the State loan.

Chief-Justice Gibson's will contains a striking sentence at its beginning: "I, John Bannister Gibson, the last of the Chief-Justices under the Constitution of 1790." This means that in 1848-1850 the old method of appointing the judges was relinquished, and the people became the electors of their judges. Gibson had been consistently frank in expressing his low value of popular judgment, and from this well-known attitude of distrust it is easy to see how he came to begin his will in such a way. The words sound ominous; and when one may be sure that "there is not a political party in this country which would not hesitate for a moment to drop the name of such a man as Gibson from its ticket if in a contest characterized by partisan zeal and clap-trap he did not seem to have the shallow qualification of availability," — those words become prophetic. His nomination in 1851 was not due to any popular appreciation of his brilliant services, but the hair-breadth result of the work of two personal friends. Upon the other hand, were it at any time to befall Pennsylvania to have for her Governor a thief, or other jail-bird at large, — and even this unlikely misfortune should be taken into account in such a discussion, — then the power that was Governor McKean's when he made Tilghman Chief-Justice in the people's face might be even worse than the election system. But it is futile to weigh these matters. Pennsylvania has taken this step, concerning which a brother judge said to Gibson, "Probably the people will get tired of the new system and return to the old." "No," said the Chief-Justice; "the people are like the grave, — what they get they never give up." From this incisive truth it is quite plain what Gibson thought of the change. His old age must have been in many ways full of sad retrospect. His health was going, and he saw by his near failure to be elected

what pitiful value was attached to his services by the parvenus who manipulated politics. He could not help them to their illicit cakes and ale, and was therefore what is now called a "back number." Judge Porter says that on assuming his seat "he seemed like a noble bird that had been by some unexpected event thrown into a strange flock." One more anecdote, and with Gibson as a man we have done.

At the United States Hotel in Philadelphia some one had an air-gun, and after midnight, when the people were in bed, he and a certain judge used to shoot at a mark thirty feet range. One night the ancient shooter of black squirrels emerged from his bedroom, took the gun, and beat them both. He died here on Tuesday, May 3, 1853. His successor wrote his epitaph.



SILAS M. CLARK.

The following paragraphs about Chief-Justice Gibson have been written expressly for this article by one of the elder members of the bar, to whom the author desires to record his thanks.

The late Chief-Justice (Gibson), the last of the persons selected for the position, has been quite conspicuous. Since then, the community has preferred a pale uniformity, and deprived itself of the capacity to tempt the best fitted to take the exalted office at the expense of the surrender of mere emolument.

Gibson was a man of enormous frame, brilliant as a writer, and concealing thereby the very remarkable defects of a powerful mind for the position he held. An epigrammatic sentence or an amazing paradox was an attraction he could not resist. Kind-hearted and amiable, it was almost impossible not to be attracted to him; and it may be censorious to point out any of his defects, though they have had a lasting effect for evil upon the Commonwealth. It is well known (at least the tradition is as well authenticated as anything of the kind can be) that when on the death of C. J. Tilghman the number of the Supreme Bench was increased to five, there was an arrangement or understanding between the Executive and the Legislature that the two new members would be Mr. Binney and Mr. Baldwin (afterwards an Associate Justice of the Supreme Court of the United States). The former was to be Chief-Justice. In place of this, Mr. Binney was offered a commission as Associate, and Mr. Rogers was appointed. The loss of these men to our jurisprudence can scarcely be appreciated.

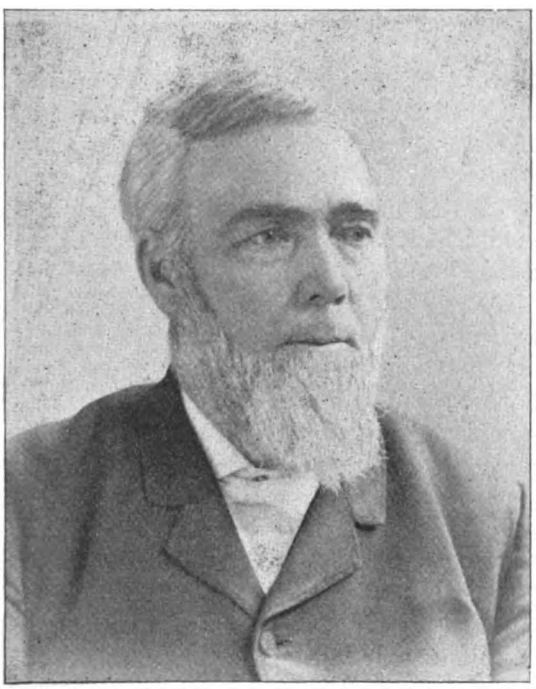
A familiar story told by Gibson of himself, which, alas! was literally true, illustrates his character as a judge; but the astonishing thing is that one hears it repeated as if it were a mere piece of pleasantry. He claimed to have arrived at the perfection of judicial conduct by being able to appear to give profound attention and not hear a word. What would be thought of a juryman who after verdict of guilty of murder made this boast? And is there a distinction in the judge's favor? It is little less astonishing that the

moral sense is so low that the wit can hide the crime. As a specimen of the species of the logical faculty that was the pride and boast of his numerous admirers, there probably can be cited no better one than Doner *v.* Stauffer, 1 Penna. (P. & Watts) 198. The actual thing decided was that the sale of the title of one who had no property in the chattel passed the perfect title as against the real owners. That out of nothing something could and did arise by the legerdemain of legal proceedings. The case was this. Two men, being partners and insolvent, owned the property; and while it was admitted that the sale of the partnership effects under an execution against one passed no property, it was held that a sale under similar executions against them both passed the whole property, and yet that the proceeds could not be applied to the joint debts. The particular point decided was that while an execution against one would sell nothing, the executions against both sold the whole, and the proceeds belonged to the separate creditors. If the two partners had elected to apply the partnership funds to pay their separate debts, it would have been a fraud; the magic of an execution sanctified the transaction. The reasoning (and ratiocination it certainly is) is on page 205. The fact that the sale of the right of one partner passed nothing being admitted, because of his interest's being validly pledged for the joint debts, it was overlooked that the same result followed when the sale of the other partner's interest was effected. The purchaser took subject to the pledge, just as he does when one partner's interest is sold. Catching hold of the rule that the creditors have no rights in the property, it was overlooked that the property was pledged by each partner to the other, to secure the joint liabilities. Neither (the firm being insolvent) could release this pledge without consideration, nor use the thing pledged for one class of debts (the joint) to pay another (the separate). To apply joint assets to a separate debt where there is insolvency, is to apply the property of A to pay the debts of B while A is insolvent, which is just as objectionable as for A to settle it on a wife or child. The Chief-Justice says: The first [execution] in order of time would have passed the interest subject to the equity of his copartner, but the second would have passed that equity and the interest of the other. He forgot that the so-called equity of the partner included a duty to the other partner to relieve him so far as the assets went. Even the analogy of a surviving partner did not occur to him. But the point of all this is, not that he made a blunder, but that a result so absurd and so dishonest as that joint property should be applied exclusively to separate debts in case of insolvency raised no doubt as to the soundness of a string of mere logical deductions. The problem was solved and the absurdity exposed by Cadwalader, J., in Winter *v.* Ludlow, unfortunately not to be found in any book of reports, but only in pamphlet.

Cavett's Appeal, 8 W. & S. 21, is, I think, another. It is that a signature by a marksman is no signature to a will. The clause of the statute authorizing the signature of another, upon the Judge's construction, prohibits any man not able to write his name in letters from making a will under any circumstances, except where he is so reduced by illness as to be unable to do what on the hypothesis he never could have done at any time. The logic that reaches such a conclusion is most amusing. He says the license to employ another depends on his incapacity to do it himself, caused by the extremity of his last sickness. If the statute meant this, plainly it forbids the making of a will by one who cannot write. Apply this to contracts under the Statute of Frauds, to Bills and Notes, and a few years ago half the community would have been excluded from the ordinary transactions of life. Such consequences had no weight to his mind, when balanced against a string of smooth sentences. It is hardly necessary to say the Legislature removed this folly. It was well said by Lewis, C. J., that we cannot assume that such a construc-

tion would be given by any other court in Christendom to such a statutory provision, and we could not assume that a statute of California was there read with such a gloss.

His confirmation in Presbyterian Church *v.* Wallace, of Willard *v.* Norris, the most disastrous decision ever rendered, that is, that any and all judicial sales extinguish mortgages, is another instance. It is the more remarkable because he places the question in the very best possible position and on the soundest foundations, and then immediately deduces the wrong conclusion. It is stated, 3 Rawle, p. 128, that a mortgage as between the parties is a conveyance so far as is necessary to enforce it as a security. As regards third persons the mortgagor is the owner of the legal estate. Unless the object of the conveyance was confined to enforcing, and did not extend to giving or creating or securing the rights to be secured, such reasoning ought to have led to the conclusion that the estate which vested as against the owner could not be divested by any one subsequently claiming under the owner who had granted an estate in order to secure the right.



HENRY W. WILLIAMS.

Still more astounding is it, if one recollects that it required a statute to make it possible for a creditor to reach a chattel on which there was a mere lien, because that would have disturbed the lien. And when this power was granted, the lien was continued on the property when in the hands of the purchaser, Act 1836, s. 23 ; so that while a horse could not be sold clear of the charge for its keep or for its shoeing, even with notice to the creditor, the highest security known to any law was made liable to be divested without notice by such a sale. Is it not a paradoxical mind and of the worst stamp that can see nothing in such results to weigh against abstract reasoning, or rather to suggest a hidden fallacy in the process?

Look also at the reasoning on the word *incumbrance*, that because the usual incumbrances (*judgments*) are discharged and a mortgage is an incumbrance, therefore, etc. Are leases, or annuities, or dower, or curtesy discharged ; are they not all incumbrances and nothing else? No doubt the substantial ownership of the mortgagee is the debt. Extinguish that and his estate ceases. But the real point of the case was, as Gibson himself states, that the title in form and for every purpose that could advantage the creditor did pass, leaving the debtor every right that did not disturb his grant.

There is a passage in the judgment of Judge Burnside in Grant *v.* Levan, 4 Barr, 423, beginning with the words, "This is the material point of the case," which there are good grounds for believing was written by Gibson. On a draft of lands found among the papers of the person through whom the plaintiff claimed by descent, were written these words : "These lands sold to Robert Morris, Esq., of Phila. Deeds poll to him, purchase money paid me. (Signed) Robert

Martin." Was this evidence against the heirs of Martin in an ejectment brought by them against persons claiming under Morris? It is not, Gibson says, because it was not *delivered*. It is like a bond or note found in the possession of the obligor. Hence (for this would be equally correct) the debit for a deposit on the Receiving Teller's scratcher, to be evidence in favor of the depositor, must have been delivered to him. Happily this stimulated search, and the deeds poll were found where the memorandum said they were, and the nefarious scheme was squelched. But was ever such a postulate selected? And what must have been the condition of a mind that was content to go to the public on such premises for such a conclusion? There is another case in which his dissenting opinion has been the accepted doctrine, and is likely to continue such. The consequences of this for evil cannot be exaggerated. Borrekins *v.* Beavan, 3 Rawle, 23. It was accepted in Jennings *v.* Gratz, 3 Rawle, 168. The real question was, What is evidence of a warranty of quality, etc.? Because a description — or as lawyers call it, a representation — does not of necessity constitute a warranty, or a contract, that the thing sold has a particular quality or character, therefore it is not evidence from which an intention to contract that the thing has that quality can possibly be inferred from a statement. This is the deduction. The absolute dishonesty of permitting a dealer to make statements of facts on the faith of which a thing is bought, and of refusing even to consider whether he meant the purchaser to believe him, and whether the purchaser did and was thereby induced to believe him, does not seem to have weighed as the small dust in the balance as against a neat string of words, culminating in the sneer at the decision that the written description of an article by a tradesman can be any evidence that this is what he agreed to sell, and the purchaser agreed to buy, or that words descriptive of qualities of an article have any meaning or force and effect in a contract of sale!

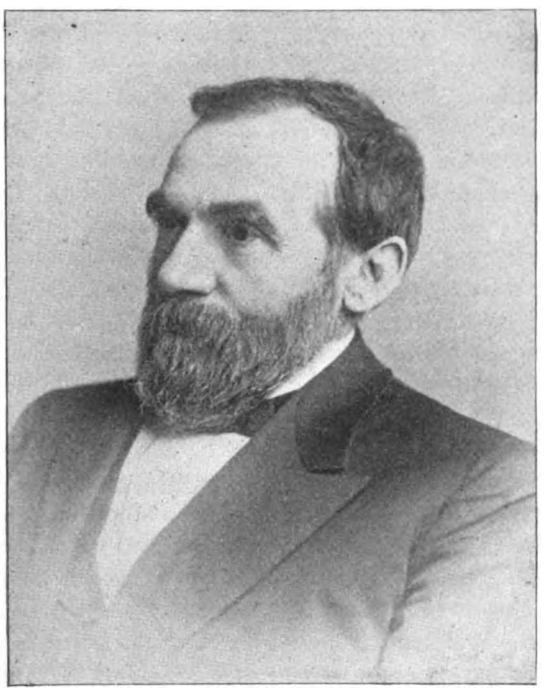
The astonishing thing, however, is that this eminent jurist did not know that the language of pleading and the language of evidence differ; and he actually supposed that because an averment of a representation was not an averment of a warranty, therefore a representation could not be evidence of a warranty, and imagined that all the English decisions to the contrary were wrong. This outrage on common sense and common honesty may be said to have culminated in the ruling in Frailey *v.* Bispham that the article described as superior sweet-scented Kentucky leaf tobacco was deliverable and should be accepted if it was tobacco, though it was not superior, nor sweet-scented, nor Kentucky, nor leaf, but stinking, and the worst tobacco ever seen in the Liverpool market. It is a curious fact that a Chief-Justice of Massachusetts made the same mistake as to what had been decided in Chandler *v.* Lopes, but declined accepting as law what led to such a dishonest result.

The apparent absence of all thought as to what things and words mean in actual life among men having any self-respect, or of realizing that the object of the law is to compel men to do what they have agreed to do and what men have a right to understand them to mean, and the substitution of elegant English phrases in place of this, is one of the characteristics, in my judgment, of the labors of this the most conspicuous of our Chief-Justices.

There is but one more instance that shall be mentioned. It is impossible to give a better illustration of the absence of the sense of right and wrong as applied to human affairs, than occurs in the reasoning in the case I am about to cite.

A general power to appoint, it is obvious, is the very reverse of a trust. A trust *ex vi termini* excludes all personal interest or benefit to be derived by the trustee. A power to appoint, if general, authorizes the application of the property to any persons whatever: the appointor may take it to the

faro bank or the stock-market, as he pleases. It is, therefore, merely the form that prevents such property from being property of the appointor, before appointment, because at his mere caprice he can make it his own. The English chancellors, therefore, have always held that provided an appointment is made such property has all the attributes of private property. They cannot compel an appointment; but if it is made, they recognize that there is no more right to deal with such property and leave debts unpaid than there is in the case of any other species of property. In other words, they recognize that the first duty of ownership is to pay debts. How was this dealt with by our Chief-Justice? The men who evolved this rule are said to have put their hand into the fund, — that is, steal. The principle is called a shallow equity; the motive is said to be *bred by the temper of the bankrupt laws*. The Master of the Rolls (Sir William Grant) had forgotten the distinction between property and power. Gibson's appeal to Lord Eldon may possibly prove that that great lawyer saw something in his side of the question. I think it is nothing but his general disposition to permit nothing to pass without suggesting all possible grounds for disputing, and probably a suggestion that the rule should extend further. It could scarcely be possible for one who pronounced the decision in Brandon *v.* Robinson, 18 Ves. 492, to have sanctioned the use of property at the pleasure of an insolvent bidding defiance to his creditors; for we should remember that Eldon, unlike some others, always remembered what he had decided. It is rather surprising that the recognition of this (supposed modern) mode of reasoning which is to be found in the Statute of 13th Eliz. did not occur to Gibson from his long experience. For what is the provision that the reservation of a power of revocation is evidence of fraud, but a recognition that a right to make the property one's own at pleasure is *itself* property, and that an instrument that does this and at the same time protects it from creditors is a fraudulent use of forms? Gibson's misapprehension of the rules of property that have their foundation in the same principles that are held up to scorn and the authors charged with gross dishonesty in Commonwealth *v.* Duffield, 12 Barr, 277, is shown when he finds in the rule that the incidents of ownership imposed by law cannot be taken away at the will of a giver (Brandon *v.* Robinson), the foundation for a rule as to gifts to the separate use of a woman who is not married. The rule and the decision he relies on to support the rule in Pennsylvania as to separate uses are so utterly wrong that they are actually forgotten to have ever existed by the English Bar; the two things having far less real connection than the rules in Shelley's and the rule in Taltrum's case. It would be difficult to find a confusion of ideas and a mistake of doctrine so complete as is exhibited in the commentary on page 128, of 4 Whar-



J. BREWSTER McCOLLUM.

ton, that attempts to justify the right to exclude all incidents of ownership, such as liability for debt, assignability, etc., in the case of a man, and a refusal to recognize the capacity of withholding from a gift to a woman the right of a future husband to possess himself of the property. The impossibility of doing this thing consistently is plain enough; but this fact was no obstacle to an attempt to cover up the contradiction and preserve it under a juggle of words. What has been the result? The Pennsylvania doctrine as to the separate use is merely a ludicrous offspring of ignorance, while a twin-brother has been brought into existence under the name of Spendthrift Trusts, which is in violation of our well recognized fundamental laws, political and statutory, of property, and absolutely inconsistent with every one of our reasons for rejecting the rational rule of the separate use.

Jenkins *v.* Eichelberger, 4 Watts. 121, is an excellent specimen of the turn of Gibson's mind and the nature of his reasoning. It was the ordinary case of the owner of raw materials employing a mechanic to manufacture them on the terms of paying him the difference between the value of the raw and manufactured article. The only possible excuse for such sophistry is that the plan may be used to conceal the real transaction. But the genuineness of the bargain is a mere matter of fact. Because juries refuse to see through the judge's spectacles, is certainly no reason for denouncing a transaction, which, if true, is fairness itself.

That the result was the same as a sale and resale was Gibson's argument. But what bearing has that on the question, which was, Is the transaction a fraud on the creditors of the mechanic? Where is the ground for a creditor's demand that he shall have a greater right than that of his debtor, as it is his right he claims? The supposed false credit by possession he alludes to he certainly knew was a mere misleading statement in a country where lending is quite legitimate, and no lender was ever asked to prove that the fact that it was a loan should be known to creditors at the peril of forfeiture by the owner; and surely the Judge must have known that it required a statute to introduce the doctrine of apparent ownership into the law of debtor and creditor.

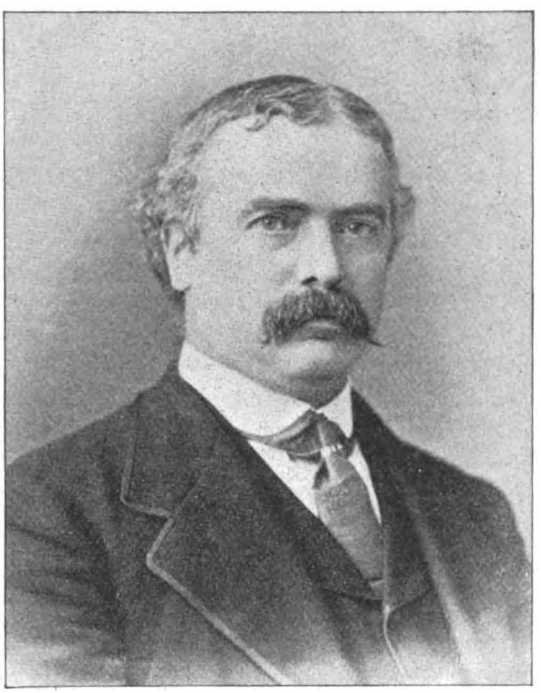
But were the consequences the same as those of a sale? They were that the risk remained with the owner of the hides, — risk of fire, theft, injuries of all kinds. The chance of the market lay on the mechanic, certainly; and how is this test of ownership avoided? By arguments that were powerful to prove the arrangement a sham. But that was not before him, unless he meant to say that such a contract is illegal, — which would be absurd.

This refusal to recognize the property of an ordinary commercial contract may have resulted from an unhappy bias got from a mistaken view of the rule known as that of Twyne's case. The court were themselves to blame for not observing that the failure to deliver possession of chattels varied as evidence of fraud according to the character of the transaction.

To assume that a delay on delivery of pig-iron or coal when for the convenience of the purchaser could be compared to the failure to deliver furniture in use by the seller when there could be no explanation of the motive of buying but that the seller desired to protect the possession, naturally led juries to pay no attention to the instructions. But the peculiarity of the mind of the Chief-Justice is brought into sharp relief in his judgment in Pritchett *v.* Jones, 4 Rawle, 260. It seems impossible to resist the inference that he assumed that the reason for the rule in Twyne's case was that there was something immoral in the retention of possession by a seller, and not that it was evidence of an intent to protect property under cover of a sale.

It is impossible to put the distinction between the contract that passes title and the contract that creates a duty to give title at a future day better than Gibson does. But

when he applies it to the sale of an unfinished article, he utterly forgets his premises, and assumes that a failure by the seller to complete the work would excuse the purchaser from accepting. And as the right to refuse for defective completion is a sure proof that title had not passed, he assumes he has proved that it did not, and that the contract is thereby proved to be executory by asserting that the purchaser of a specific article may reject it because of a failure to complete the article. This is not merely begging the question, but assuming the absurdity that an owner may decline to accept a thing that belongs to him because of misconduct by the seller after title had passed. It is not the less striking that he asserts that a contract to deliver specific hides when tanned at twenty cents per pound is a contract to sell at the market price, and not at a price definitely fixed. It may be needless to say, if all that he says is true, the judgment was wrong; for the court below had said the omission to deliver possession made the transaction a fraud *per se*. If this were so, all that he said was useless. If the evidence proved the facts he assumes they do, it was not passed upon by the proper tribunal.



JAMES T. MITCHELL.

If the object is to publish a eulogy on the very eminent man who was the last of our legitimate Chief-Justices (for I think selection and not chance is essential to legitimacy here), all that has been here written should be suppressed. If it is the desire to know something of the character of one who had the moulding of our judicial structure in his hands from 1827 to 1852, so far as this bears upon his performance of that high duty, it may be well to consider these specimens of his work. Yet such is the effect of brilliancy and point and epigram, that beyond all question he stands with the great majority as the one man that like Saul is higher from the shoulders and upward than all his fellows; and the few that appreciated his defects (and there have been such among those competent to judge) dare only whisper these opinions, or are charged with envy and jealousy for expressing them.

Jeremiah S. Black succeeded Chief-Justice Gibson. He was elected Dec. 1, 1851. He may be said to have begun the present era, though he himself seems already to be well across the frontier of the past. Of him and of Chief-Justice Sharswood, much might be told here; but accounts of them both, with portraits, have appeared in earlier numbers of these pages. One remark of Black's must be set down. Being questioned as to his estimate of the veracity of a certain very prominent railroad promoter, he said, "If he took an oath he was a liar, I might believe him." An amusing eccentricity of Judge Sharswood's should also be noticed. When the sky was clear, and no chance of rain, he would go to tea at a friend's house with a luxuriant wig of brown curls; but in stormy seasons he wore a tough, grizzled head-piece, suited to brave the inclemency of the elements.

The present era is the era of rotation. It has already numbered eleven Chief-Justices. For those unfamiliar with the State Constitution of 1874, it may be well to state the system. Article V. s. 2: "The Supreme Court shall consist of seven judges, who shall be elected by the qualified electors of the State at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not again be eligible. The judge whose commission shall first expire, shall be Chief-Justice, and thereafter each judge whose commission shall first expire, shall, in turn, be Chief-Justice."

This impersonal scheme of selection has not found universal favor. Chief-Justice Gibson, as has been seen, did not hold it a gain for the Commonwealth, and many others entitled to be heard have been of his opinion. But the step has been taken; and results are now all that it is pertinent to consider. For results that could have a scientific value, it may well be that sufficient time has not elapsed. Yet it would seem to be partial in a historical survey — even in one so incomplete as this — to select examples from the work of near a century ago, and in silence waive aside the work of a later day.

The following cases fall between the years 1886 and 1888: —

The Pennsylvania Coal Company *v.* Sanderson and Wife, 113 Penn. St. 126. Action on the case. Sanderson, the plaintiff in the court below, selected a stream of mountain water near which to build his house. The purity of the water caused this choice, and from the stream he drew the supply that kept his household going. The Coal Company then engaged in extensive mining operations on land higher up. Into the shafts sunk there came water containing sulphuric acid. This water the company pumped up and out into a ditch, and conveyed away into the brook, which it poisoned so that no use could be made of the water for cooking or washing, or any domestic purposes, and it had to be abandoned. *Held*, that Sanderson could claim no damage for this. From the opinion: "The water which percolated into the shaft was by powerful engines pumped therefrom, and, as it was brought to the surface, it passed with the flow from the tunnel, by an artificial watercourse, over the defendant's own land, into the Meadow Brook. . . . It will be observed that the defendants have done nothing to change the character of the water. . . . They have brought nothing on to the land artificially. The water as it is poured into Meadow Brook is the water which the mine naturally discharges. . . . The owner cannot be held for permitting the natural flow of mine water over his own land, . . . which by the mere force of gravity, naturally, and without any fault of the defendants, carried the water into the brook. . . . It is said that the defendants created an artificial watercourse from their mine, but this artificial watercourse was upon their own land. . . . The plaintiff's grievance is for a mere personal inconvenience. . . . Mere private personal inconvenience . . . must yield to the necessities . . . of a private corporation."

Gring *v.* Lerch, 112 Penn. St. 244. *Capias* in trespass on the case *sur* promise of marriage. The nature of the facts precludes their appearance here; but as in Overton *v.* Tyler the phrase concerning promissory notes has been often quoted, there occurs a phrase in Gring *v.* Lerch that has been quoted too: "A man does not court and marry a woman for the mere pleasure of paying for her board and washing." It is a matter of regret that many other sentences of this opinion cannot be given.

Pennsylvania R. R. Co. *v.* Lippincott *et al.*, 19 W. N. C. 513. The railroad company bought property along the south side of Filbert Street in Philadelphia, and built upon it an elevated railroad over which upward of four hundred trains pass six days of the week. Abutting owners on the north side brought case to recover damages for the depreciation of their various

properties in consequence of the noise, disturbance, smoke, sparks, and vapors occasioned by the operation of the road. Held, they could not recover. By the court: "The damage complained of results wholly from the manner in which the roadway is used. If this Pennsylvania Company has been guilty of a nuisance . . . the plaintiffs . . . have their remedy, but not for anything short of this. Any other rule would lead to this remarkable result, that the plaintiffs would be entitled to damages without having suffered any injury."

Pennsylvania R. R. Co. *v.* Marchant, 21 W. N. C. 300. Case by E. D. Marchant to recover damages for the depreciation of plaintiff's property in consequence of the construction and operation of the railroad's elevated road opposite the plaintiff's premises. The facts are the same as in the preceding case, and the same conclusion was reached. By the Court: "No principle of law is better settled than that a man has the right to the lawful use and enjoyment of his own property. . . . It is true this principle is qualified to a certain extent. A man may not carry on a business which poisons the air. . . . For manufactories of various kinds, which involve noise and disturbance to neighbors, a man must seek a secluded place. . . . These exceptions are well established. . . . But they have no application to the case at hand."

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As has been seen by the article quoted from the State Constitution, the Supreme Court of Pennsylvania now numbers seven. But they are overworked, and never likely to be less so in the growing stress of litigation. And a system that compels a court to live in trunks several months of the year cannot be too much blamed. It seems to be more and more the plan in America to overload and underpay the most important public men.

Mr. Chief-Justice Paxson succeeded Mr. Chief-Justice Gordon, whose term expired Jan. 7, 1889. The present Chief-Justice was born Sept. 23, 1824, at Buckingham, Bucks County, Pennsylvania. He was educated in the same neighborhood, at private schools connected with the Society of Friends. He was admitted to the Bar at Doylestown, Pennsylvania, in May, 1850, having studied law with the Hon. Henry Chapman. Before his election to the Supreme Court, he was a Judge of the Common Pleas.

Mr. Justice Sterrett was born Nov. 7, 1822, in Tuscarora Valley, Juniata County, Pennsylvania, near Mifflintown. He was educated in the common schools of the neighborhood, and prepared for college at Tuscarora Academy, Pennsylvania. He graduated from Jefferson College, Pennsylvania, in 1845, and studied in the law department of the University of Virginia during 1847 and 1848. He was admitted to practice at Richmond, Virginia, in 1848, and to the Bar of Juniata County, Pennsylvania, in the same year, settling at Pittsburg in the following spring. In 1861 he was appointed on the commission to revise the revenue laws of the Commonwealth, and while engaged in that work was appointed, January, 1862, President Judge of the Fifth Judicial District, to fill the vacancy occasioned by the death of the Hon. Wm. B. McClure, being elected the following October for the full term. He was re-elected in 1872. In February, 1877, he was appointed Justice of the Supreme Court to fill the vacancy occasioned by the death of the late Mr. Justice Williams. In November, 1878, he was elected for the full term.

Mr. Justice Green was appointed, Sept. 24, 1879, to fill the vacancy created by the death of Judge Warren J. Woodward. On Nov. 2, 1880, he was elected to serve for fifteen years. He was born August 29, 1828, in Warren County, New Jersey, and educated at Lafayette College, Easton, Pennsylvania, at which town he was admitted to the bar, September, 1849. He was a member of the Constitutional Convention in 1873.

Mr. Justice Clark was elected Nov. 7, 1882. He was born at Elderton, Armstrong

County, Pennsylvania, Jan. 18, 1834, and was educated at the Indiana Academy in the State, graduating at Jefferson College, Canonsburgh, Pennsylvania, in 1852. He was admitted to the Bar of Indiana County, Pennsylvania, in 1857. He was also a member of the Constitutional Convention.

Mr. Justice Williams was appointed Sept. 1, 1887, and elected for the fall term in the following November. He was born at Hartford, Susquehanna County, Pennsylvania, July 30, 1830, and educated at the Franklin Academy. He was admitted to the bar at the January term, 1854, at Wellsborough, Tioga County, Pennsylvania. He was school director there for several years, and three times elected Burgess. He was appointed a Judge of the Fourth District in March, 1865, and in the fall of that year was elected. In 1871 he was elected President Judge of the same district, and in 1881 re-elected. He was also a member of the Constitutional Convention. He served in the Common Pleas as Judge and President Judge for twenty-two years continuously, during which time he was elected three times, twice receiving the support of both parties.

Mr. Justice McCollum was chosen at the general election on Nov. 6, 1888. He was born near Montrose, in Susquehanna County, Pennsylvania, Sept. 28, 1832, and educated at the common schools, entering later the Franklin Academy. He received the degree of LL.B. from the Law School at Poughkeepsie, New York, in 1853, entering the bar two years later. After a brief sojourn in what was then the West (Illinois), he returned. In 1878 he was elected President Judge of Susquehanna County, and held the office for ten years.

Mr. Justice Mitchell was born in Philadelphia, 1834. In 1855 he graduated from Harvard University, and then studied law in Philadelphia with Mr. George W. Biddle. In 1858 he was admitted to the bar, and took his degree of LL.B. from the University of Pennsylvania in the following year. He was subsequently appointed assistant in the Law Department by the City Solicitor, Mr. Charles E. Lex. This position he resigned in 1863. In October, 1871, he was elected Judge of the District Court, Philadelphia County, and under the new Constitution of 1873 was assigned to Common Pleas No. 2, and was continuously re-elected until his translation to the Supreme Court, which has, since Jan. 7, 1889, received the benefit of his very wide and varied legal experience. Through the medium of the "American Law Register," of which he was editor-in-chief for twenty-three years, the profession is familiar with his writings.

The highest court of Pennsylvania is now two hundred and seven years old, and has seen thirty-two men called to guide it through the years as securely as they might. The story is not a great one, perhaps, but for such a space of time, pretty honorable. In the hasty journey from 1684 to the present that has been attempted, the worthy men that have been dwelt upon so briefly and in a manner so inadequate to their distinction, have been made free with, so far as fitted the twin requisitions of truth and respect. Without presuming to measure the spirits to whose large industry and high thoughts this Commonwealth owes her welfare to-day, it has been the aim to bring up for a moment a picture of them as they may have been when an unknown world lay behind the Alleghanies, and ships came seldom up the Delaware. The bellicose Lloyd, the mellow-minded Logan, the formidable McKean, and others — of necessity too few — have been recalled a little, that the present may for a moment do that rare but gracious thing, — remember. Death has permitted a candid dealing with these justices of the past. In due time death will permit a candid dealing with their descendants.

NOTE. — The author desires to thank the Hon. James T. Mitchell for his courtesy in lending his engravings for the illustrations of this article.

HENRY BILLINGS BROWN.

AMONG the elders of the Detroit Bar, one of the most active is Mr. Edward C. Walker, a Yale graduate of 1842. It has been his lot, in the course of his long practice, to have a good many young men in his office: the writer hereof was one. Some thirty years ago, or more, Mr. James F. Joy, who now, at the age of eighty, is about as busy as he then was at fifty, and who a little later was urged by his Michigan friends for that post in the Supreme Court of the United States which President Lincoln gave to Noah Swayne, came into Mr. Walker's office one day, after a prolonged absence from town, and, among other things, asked, in his brusque way, whether they had had any new students there that amounted to anything. "Why, yes," he was told, "there have been two or three: there 's Alfred Russell; there 's Ashley Pond; and there 's Charles A. Kent." There was also in the same office, at about the same time, one Henry Brown. The whirligig of time has made many revolutions since, and Brown has now become a justice of the Supreme Court of the United States. The promising trio that were named to Mr. Joy have also made their mark, and as lawyers have been not less conspicuous than their fellow-graduate from Mr. Walker's office. Russell, a polished scholar, was one of his competitors for the late appointment, and as a college friend of Secretary Proctor at Dartmouth, was supposed to have a little the better chance; Pond has long been general counsel for the Vanderbilt roads; Kent has been "eminent counsel" generally, and of like rank with the rest. This grouping of names in this connection is interesting by reason of the high standing of the owners, and of an occasional clashing, combination, or similitude in their personal interests.

Henry B. Brown was the son of a well-to-do merchant and manufacturer in Massachusetts, and was born at Lee in that State, on the 2d of March, 1836. Twenty years later he was graduated from Yale in the same class with his present colleague Brewer, and with Magruder of the Supreme Court of Illinois, and Chauncey Depew. Then he spent a year in Europe, and on his return studied law for a year at Yale and a few weeks at Harvard, but took no degree at either school. Going to Detroit in 1859, he continued his law studies in the office of Walker & Russell, and began his official life in the post of a United States deputy marshal. From that comparatively humble station he was translated to the comparatively honorable one of assistant United States district attorney, his principal being the same Alfred Russell who has now been his unsuccessful rival. In these positions he got an acquaintance among vessel-men, and a familiarity with admiralty practice that was the foundation of his subsequent fortunes; for after his next promotion, which was his appointment by Governor Crapo as judge of the Wayne Circuit Court, — a place that he held for barely five months, — he went into business as junior in the strong admiralty firm of Newberry, Pond & Brown, his partner Mr. Pond being the gentleman of that name heretofore referred to. The senior partner, Mr. Newberry, had once tried his hand at the publication of a volume of Admiralty Reports, made up of cases selected from various quarters and decided between 1842 and 1857. Mr. Brown produced another volume on this plan that contained cases decided between 1857 and 1875. Upon the sudden death in 1875 of John W. Longyear, who had been district judge since Ross Wilkins resigned in 1869, President Grant made Brown his successor, and he has held the office ever since. Within two or three years past he has also lectured upon Admiralty Law at the University of Michigan, where both Pond and Kent had previously been in the law faculty, — the latter, indeed, for twenty years. In 1887 the

University gave him the degree of Doctor of Laws.

Aside from his lectures, his judicial opinions, and his volume of reports, his contributions to letters have been few. He made a graceful public address in memory of the late Judge Campbell, — an extract from which appeared in the "Green Bag" for last June, — and in 1889 he read before the American Bar Association at Chicago, a plain-spoken paper upon "Judicial Independence," in which he dealt a blow at all that class of legislation which seeks to hamper a trial judge in his relations to the jury. It is not easy to deal with the personal characteristics of a contemporary; but as the current standards of biography seem to require it, it may be said that, socially, Judge Brown is a companionable man, — somewhat formal, without being stiff; gracious, yet not exactly cordial. Whether afoot or on horseback, he is almost painfully neat in his appearance; and with his springing step and brisk manner, there is something about him suggestive of the athlete. He has already been found to resemble Speaker Carlisle, Mr. McKinley, and Booth in "Hamlet;" and people who see a likeness between Chief-Justice Fuller and Bret Harte will, no doubt, detect Judge Brown's resemblance to any of these gentlemen, or all of them together. He is a man of nerve, as was discovered some years since by a certain burglar with whom he exchanged a nocturnal fusillade; the burglar escaped from the premises, but as his depredations thereupon ceased, and he was no more heard of, it has been supposed that the judge's aim was more correct than his own. In a quiet way he has been somewhat of a "patron" of art. He was a liberal subscriber to the erection of the handsome Art Museum in Detroit, and he has caused to be painted, at his own expense, a superb portrait, by Ives, of old Judge McLean, which he has hung in the dark and dingy court-room that for thirty years has been the temple of Federal justice in that city. His new and elegant private residence, which is said to have been the outgrowth of his wife's taste and his own, was pronounced, when it was built, to be the finest bit of architecture in the town.

During Judge Brown's fifteen years of judicial life, the Circuit Court in his district was held by Swayne and Stanley Matthews of the Supreme Court, and by H. H. Emmons, John Baxter, and Howell E. Jackson, circuit judges. Emmons was in the habit of taking prompt possession of any case that came before him, and it used to be said that a trial with him was a three-cornered fight. He was a consummate lawyer, however; and those practitioners who did not like his methods mourned his loss when Baxter followed him, for Baxter was an overbearing judicial tyrant, who disposed of business with dizzy speed. But he was not without much native common-sense, and the principal danger with him lay in the chance of his deciding a case before he had heard it stated. Brown was altogether different. He would listen patiently, consider carefully, and when he decided, it would often be in an opinion that was rich in learning and in precedents. His district ranked next to the southern district of New York in the extent of its admiralty business; and this was in part because the proctors in other lake cities so much preferred to try their cases before him that they would forbear to serve papers until they could do so within his jurisdiction.

NOTE. — An excellent portrait of Mr. Justice Brown was published in the May number (1889) of the "Green Bag."

THE COURTS OF LOVE.

IN this prosaic nineteenth century the law deals with the affairs of the heart in the same cold and unsentimental manner with which it treats other subjects of litigation. In the modern breach of promise actions love is paid for with bank-notes, and money is the panacea for broken hearts and wounded affections. Dismal, dingy, dirty court-rooms are the scenes of these sad dramas, and judges and juries are composed of cold, unsympathetic men. How different all this from the age of chivalry and romance, when the highest court was the Court of Love; when there were no juries of city shopkeepers, but conclaves of earnest and impartial dames and maidens; when, instead of bullying advocates, there were gentle and quick-witted lady pleaders; when stately matrons were the most honored judges.

Everything about those mediæval courts was in keeping, — bright, sparkling, tender. The session commenced in the gay springtime; the branches of an elm-tree, just covered with young leaves, formed a fitting roof; the beautiful flowers and merry birds within sight and hearing harmonized with the proceedings; the ladies who held office in the court were dressed in Nature's color, green. The president, sometimes a knight, but oftener a lady, had to be well versed in the forms of chivalry, and experienced in the precepts and practices of love. The names of four illustrious judges are handed down, — Queen Eleanor, wife first of the French Louis VII., and afterward of the English Henry II.; Viscountess Ermengarde, of Narbonne; the Countess of Champagne; and the Countess of Flanders. Most noted among the males were Richard the Lion-hearted and Alfonso of Aragon.

The cases brought under the jurisdiction of this court were of sufficient diversity. From André the Chaplain, Martial d'Auvergne, and other authorities of the age, a writer in "Household Words" has culled a few questions brought before this tribunal with the decisions of the court; and from him we quote as follows: —

"Once this problem was propounded: Do the greatest affection and liveliest attachment exist between lovers or married persons? The Lady Ermengarde thus determined the matter: The attachment of the married and the tender affection of lovers are altogether different sentiments. No just comparison can be established between objects which have neither resemblance nor relation to one another.

"This question is theoretical; other and more practical ones are cited. A knight claimed redress under the following circumstances: His mistress had strictly enjoined him never to contend publicly. But one day he was thrown into the company of some lords and ladies who said disparaging things about the object of his love. At first he restrained his wrath, but at last was overpowered by the desire of maintaining the honor and defending the name of the absent one. She, instead of thanking him, withdrew her favor, because he had broken the pledge exacted. The Countess of Champagne, however, when the dispute was brought before her, judged that the lady had been unlawfully severe, and that a knight could never incur blame by repelling charges brought against his mistress.

"Another knight had a more serious grievance. He appeared before the same Countess of Champagne when she was sitting in a full court of sixty ladies, and said that he had been tenderly attached to a lady whom distance and his other duties prevented him from meeting as often as he liked. They had, however, established a means of communication through his secretary, and for a time all went happily. But at length the faithless secretary showed his perfidy. He made offer of devotion to his master's mistress, and succeeded in drawing off her affections, thus violating the most sacred laws of love and honor. The Court, after mature deliberation, uttered this decision: That the dishonorable secretary had found his mate in the lady who could encourage his advances, and that the knight might be glad to leave them to what enjoyment their base alliance could afford;

but it was decreed that they, having broken the rule of chivalry, should be forever precluded from chivalrous society; they must never seek the esteem of knights or ladies, and never show themselves in any court of love.

"In contrast to this action for breach of promise, take the instance of a more humorous trial. It is the great case of The Kiss, in which a lady demanded damages for the felonious taking of that article. The defendant pleaded that he had long been deeply attached to the plaintiff, and that three months previously she had promised to bestow on him a kiss; yet, as often as he claimed the fulfilment of the pledge, she put him off with some excuse or other. At last, he said, he could wait no longer; and when the lady's husband was out of the way, he took her and it by storm. The plaintiff rejoined that in making the promise she had limited herself to no period, and that, if left to herself, she would have fulfilled it in proper time. But the Court, which appears to have generally favored the distressed cavalier, overruled this excuse as trivial, gave judgment against the plaintiff, condemned her to pay all costs, and, in addition, to furnish a supplementary kiss.

"There is another kiss affair chronicled which, for the credit of the sex, we wish we could find reason to doubt. A knight summoned his mistress before the Court on the charge of pricking one cheek while pressing her lips against the other, with the intent, etc. The lady asserted that the kiss had been taken, not given, and that the wound, if inflicted at all, was the accidental result of her proper resistance. But unanswerable evidence was brought; medical certificates were produced, and her statement was clearly disproved. It was decreed that, by way of reparation, she should kiss the injured cheek as often as the plaintiff chose until it was healed.

"All these trials took place in the twelfth and thirteenth centuries; and, alas! this is the nineteenth. The Court of Love is a dead thing; its last assembly took place about the year thirteen hundred and eighty-two."

WITCHCRAFT IN THE NINETEENTH CENTURY.

IT may surprise some of our readers to learn that, far from being a thing of the past, witchcraft has received the attention of the courts even in our day, and many a defendant who a century or two ago would have suffered death as a witch has had a more fitting punishment meted out to him or her, and has been sentenced as a cheat or a swindler. The following curious cases make it sufficiently evident that the belief in witches still exists to a considerable extent in England; and one has only to take up an American newspaper and glance over the advertisements of professed witches, fortune-tellers, and the like, to convince himself that the credulity of a large portion of our population fully equals that of our English cousins.

No longer ago than 1857 a trial at the Stafford Assizes in England exhibited a farmer and his wife in such a light as would appear almost incredible, were it not that the narrative came from their own lips. The farmer, Thomas Charlesworth, lived at Rugby. He married in 1856 against his mother's wish; she quitted his roof, and gave him a mysterious caution not to make cheese, as it would be sure to crumble to pieces. This warning seemed to imply that the young wife would bewitch the dairy; but the farmer's evidence did not tend to show what he himself believed in this matter. Very shortly everything seemed to go wrong; the cheese would not cut properly; the farmer, his wife, and the dairymaid all became unwell. In this predicament he sought the advice of a neighboring toll-gate keeper, who suggested that he should apply to a "wise man" named James Tunnicliff. The farmer and his wife started off, visited the wise man, told their story, and obtained a promise that he would come to the farm on the following

day. He did come. His report startled the poor farmer. Mr. and Mrs. Charlesworth, the maid, all the horses, all the cows, the farm, and the cheese-vat were pronounced to be bewitched. A regular tariff was named for the disenchantment, — five shillings for each human being, five shillings for each horse, three and sixpence for each cow, five shillings for the cheese-vat, etc., — until the poor dupe had paid as much as seven pounds. No good result followed; the cheese was no better than before, and the inmates of the farm were (or fancied themselves to be) very much out of condition. They believed they heard at night strange noises, the bellowing of cattle and the howling of dogs. Tunnicliff now asserted that the whole commotion was due to the influence of Charlesworth's mother over certain wizards living at Longton, Burton-on-Trent, and Derby; and that to counteract this baneful influence a large outlay of money would be needed. The farmer gave him an additional sum of thirty pounds. Still there was no improvement. And now occurred the strangest proof of deception on the one hand, and credulity on the other. The farmer took the knave Tunnicliff into his house, and allowed him to live there eleven months! The rogue lived an easy life, and fed on the best that the farm afforded. Sometimes he would make crosses on all the doors with witch-hazle, and sometimes he would burn blue lights, to overcome the power of the evil one. The farmer deposed in evidence, that one night he was taken ill; that he heard a sound like that of a carriage in the yard, and another like a rush of wind through a passage; that the house-dog entered the room, followed by "the shape of another dog all on fire;" that after the farmer had said the Lord's Prayer, the fiery dog disappeared, but the house dog stayed, with his tongue hanging out and his paws hanging down. The mistress and the maid had both of them something to say concerning this fiery dog. After this extraordinary hallucination had continued nearly a year, even the obtuse mind of the farmer began to open to the possibility that the wise man had been making a dupe of him. He consulted a lawyer, and the lawyer collected evidence sufficient to bring upon Tunnicliff a sentence of twelve months' imprisonment with hard labor, "for obtaining money under false pretences."

A curious case came before the Bethnal-Green police-court in 1856. The wife of a coppersmith, suffering under illness and anxiety, was told by some of her neighbors that she had a "spell" upon her, and was advised to go to a "wise woman" named Sarah McDonald, seeing that a medical man had failed to cure her. The wise woman told her that "some person was doing her an injury," and that the remedy would be the burning of ten powders. The dupe purchased the powders at sixpence each of McDonald, who threw them into the fire, where they "cracked, and burned, and blazed, and bounced." The wise woman muttered some words which were supposed to be part of a charm or incantation. The silly wife repeated these visits eight times, always unknown to her husband. It came out in the course of the investigation that the magic powder was only common salt; but even then the dupes (for the woman's daughter had also fallen into the snare) believed that the wise woman could "remove the spell" if she chose; indeed, the complaint before the magistrate was, not that she had done wrong, but that she *would* not do what she *could*.

At Stratford-on-Avon, in October, 1867, a whole family were smitten with a belief (so astonishing as to be itself almost unbelievable) that hideous, headless men and women were in the habit of coming down the chimneys during the night, pinching the inmates of the house, making horrible noises, and even turning the people out of their beds. A theory sprang up in the family that they were all bewitched by a neighbor, Jane Ward, and that the shedding of some of Jane's blood would be necessary to the removal of the spell. The father forthwith gave poor Jane a gash in the cheek with a knife,

whereupon the family obtained, as they declared, peaceful nights. But a trial at the Warwick assizes taught the deluded man that his peculiar mode of getting rid of witches was not exactly in accordance with the laws of England.

In November, 1868, at Tunbridge Wells a woman jealous of her husband applied to a fortune-teller to reveal whether there were grounds for her jealousy. A bargain was made that for one shilling to buy doctor's stuff, the fortune-teller should bewitch a certain other woman who was supposed to have led the husband astray, and should give her "excruciating pain." Somehow or other the wife herself was in great pain that same night, and then indicted the fortune-teller for having bewitched the wrong person. At Maidstone Assizes the charge settled down into the more definite one of obtaining a shilling under false pretences.

In 1825 a curious proof was afforded of the popular belief in a "sink-or-swim" method of detecting a wizard. At Wickham Keith in Suffolk, there dwelt one Isaac Stebbing, a small, spare, elderly man; he was a huckster, or dealer in small cheap wares. Near him dwelt a thatcher, whose wife became more and more silly as she advanced in years; while another neighbor, a farmer, also showed signs of mental weakness. The gossips of the village deeming it strange that there should be two silly persons among them, took refuge in the theory of witchcraft or necromancy, and sought about for some one who had done the mischief. The poor huckster was fixed upon. One cottager asserted that while using the frying-pans one evening, Isaac Stebbing was seen to dance up to the door. This, it seems, is one of the tests of wizard tactics; but Stebbing stoutly denied having done anything of the kind. Thereupon arose a charge that he had once called upon a neighbor with mackerel for sale, at four o'clock in the morning, before the family were up, — another proof of black magic; he admitted having called at the hour named, but only as a dealer, and denied all complicity with wizards. Not yet satisfied, the villagers ascertained from a cobbler that one day his wax would neither melt nor work properly, and that Isaac Stebbing passed his door at the very moment when this occurred, — a sure proof (in the cobbler's estimation) that the huckster had bewitched the wax. The villagers, having their minds preoccupied with the belief that Stebbing was a wizard, did not like to be baffled, and proposed that the sink-or-swim test should be applied. The poor fellow consented. There was a large pond called the Grunner, on Wickham-green, and around this pond on a certain day a strong muster of villagers assembled. Four men were appointed to walk into the water with Isaac, and the parish constable attended to keep the peace. Stebbing, wearing only his coat and breeches, walked into the pond attended by the four men; and when they had waded about breast-high, they lifted him up and laid him flat on his back on the surface of the water. Now it is well known that any person in this position can readily float if he will only keep perfectly quiet. Whether or not the huckster was aware of this, is not recorded; but he *did* float, rather to the disappointment of the wizard-hunters. They called out, "Give him another!" and again did he remain so quiet as to float when placed on the surface of the water. Not yet satisfied, they cried out, "Try him again; dip him *under* the water!" and under he went, head down and heels up; but speedily recovering himself, he floated as before. The old man was more dead than alive when he had borne these repeated duckings for three quarters of an hour, and he hoped that his neighbors would be satisfied with the result. But they were not; they wished their wizard theory to be justified, even if the poor fellow's life had been sacrificed as a consequence. It was gravely proposed to subject him to more exacting tests; but by this time the clergyman and churchwardens had heard of the affair, and forbade the further prosecution of the monstrous ordeal.

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.

WE are glad to find at least one member of the profession who appreciates our claim to be a "useless" as well as an "entertaining" journal. A subscriber in West Virginia writes:

"I have enjoyed the visits of the 'Green Bag' very much during the past year. I admire the courage which enables you to hold on to the designation of "useless but entertaining," because lawyers are a practical class, and because they admire frank admission. They make their admiration practical by holding out a helping hand to the 'Green Bag.'"

AN Ohio judge compliments us, as follows: —

"I know of no legal publication that, in my opinion, equals the 'Green Bag' in tendency to elevate the members of the bar, and deliver them from the idea that its sole aim is to make money."

A DETROIT correspondent makes the following additions to the list of distinguished Alumni of Harvard Law School, published in our January number: —

To the Editor of the "Green Bag":

Permit me to add to your list of distinguished alumni of the Harvard Law School these two residents of Detroit, —

Hon. George Van Ness Lothrop, U. S. Minister to Russia; Hon. Henry Billings Brown, U. S. District Judge for the Eastern District of Michigan, 1875–1890, — now Associate-Justice of the Supreme Court of the United States.

WE have received from a Kansas lawyer a copy of his brief, presented in a case before the Supreme Court of that State. The language is certainly forcible, even if not couched in the most polite language, as witness the following extracts: —

"But we cannot be responsible for the mistakes in the minds of the counsel aforesaid, for we have long regarded them as furnishing additional evidence of Dr. Oliver Wendell Holmes' theory of an 'idiotic area' in the human mind, corresponding to the blind spot in the human retina.

"On a motion for a rehearing this court will not consider any matters not presented on the original hearing; and as nothing was presented in the briefs of the insurance gang on the original hearing, of course they cannot present anything at this late date.

. . . . . .

"We have no patience to discuss this motion further, and it needs no authorities to show its idiocy. The records of this court do not reveal a more fraudulent attempt to defeat justice and obstruct the processes of the courts than is revealed in the somewhat variegated career of the Amick case."

THE Editor again urges his readers to aid him in keeping up the quality and quantity of the "Facetiæ," by sending in all the good stories and anecdotes which may come to their ears.

LEGAL ANTIQUITIES.

"AMONG our elder ancestors, the Ancient Britons," says Blackstone (Com. ii. 4), "cats were looked upon as creatures of intrinsic value, and the killing or stealing of one was a grievous crime, and subjected the offender to a fine, especially if it belonged to the King's household, and was the *Custos horrei regii*, for which there was a peculiar forfeiture." The fortunate cat that held the office of *warden of the royal barn* was thus protected by the law: "If any one shall kill or bear away by theft the cat which is warden of the royal barn, *it* shall be hung up by the tip of its tail, its head touching the floor, and over it shall be poured out grains of wheat until the last hairs of its tail shall be covered by the grain." This

curious amercement is the same as that which, in "The Case of the Swans," was still held to be by law the proper punishment of any one who stole a swan. This custom goes very far back indeed; perhaps it is a primitive Aryan custom. Our readers will doubtless remember that it is on this custom that in the Volsung Saga turns the whole story of the doom of gold. When the Ances killed Otter, his father, Rodmar, demanded as a *Weregild* enough gold to cover his son's body hung up by the tail in the same way. To get this gold, Loki had finally to rob the dwarf Andwari of all his hoard, and thus brought down a doom upon all possessors of the gold which had been cursed by its own last owners.

FACETIÆ.

YEARS ago there was no resident member of the bar in the county of Cape May in New Jersey, but there was some legal business to be picked up there at every circuit; so two members of the bar, then young men, but who afterwards both became distinguished in their profession, — one of them attaining judicial honors, and the other becoming United States District Attorney, — were in the habit of visiting the county at the circuits. They were firm, fast friends; but that did not prevent them from taking a fee on opposite sides of a cause if they had an opportunity.

They were both in attendance on the evening before the opening of the court, when each was retained for one of two antagonists, who had an appeal case, coming up from a Justice of the Peace. Then the Justice of the Supreme Court, who held the circuit, presided in the Common Pleas when these appeals were tried. Both clients were unknown to their counsel. The cause came on regularly for trial the next day, and was duly heard. After the judge had rendered his decision the client of the younger lawyer turned to him and said, "Well, I've won; but if I had n't known you were my lawyer, I 'd have thought you were trying the other side." This led to an explanation. The counsel said nothing to his client, but stepped across to his antagonist, and said to him, "For whom were you counsel in this cause we have just tried?"

The name was mentioned; and it turned out that the two lawyers, in blissful ignorance, had each been trying the other's cause. No injustice, however, had been done, as they were well matched, and each had done his best.

But the best of the joke is to come. That night the young gentlemen, as was their custom, went to the judge's room to spend the evening, and in the course of their visit the judge said: "Boys, I have been considering that appeal case we tried to-day, and I have concluded that I was wrong in my decision, and to-morrow morning I am going to overrule myself and give judgment for the other side."

It is very doubtful whether there ever was a case known before or since where opposing lawyers tried the other's cases.

AN old lady from the country sat all the afternoon listening to the argument of a distinguished lawyer before the Court of Appeals at Albany, and all the time industriously knitting. As she was departing, after the court had adjourned, she said to the Superintendent of the Capitol, "The man that delivered the comic lecter was pooty fair, but I 've hearn better."

A LAWYER walked down the street recently with his arms filled with a lot of law-books. A friend meeting him remarked, pointing to the books:

"Why, I thought you carried all that stuff in your head?"

"I do," quickly replied the lawyer, with a knowing wink; "these are for the judges."

A VERMONT law student, asked to state the difference between the general issue and a special issue, replied that "a special issue is when *one* of the parties to an action denies all the material facts in a case; the general issue is when *both* parties do."

JUDGE BURKE, who came from Ireland, and was somewhat of a man in South Carolina about the time of the Revolutionary War, was famous for his unfortunate remarks upon the bench. On one occasion, having to pass sentence of death on a man who had been legally convicted, he concluded as usual, with the words, "that you be hanged by the neck until you are dead." To this he feelingly added, "I am sorry for it, my friend; it is what we must all come to."

COUNSEL. Now then, sir, did you, or did you not, threaten to kill the plaintiff?

WITNESS. I did —

COUNSEL. That will do. The jury will notice the admission.

WITNESS. But I have n't finished. I was about to say that I did —

COUNSEL. Quite right to confess it. You may step down.

WITNESS. Your honor, I insist upon my right to finish the sentence.

JUDGE. Well!

WITNESS. I did — not.

A LEADING barrister of New South Wales recently perpetrated a delightful bull. "Gentlemen of the jury," he thundered, "the case for the Crown is a mere skeleton, — a mere skeleton, gentlemen, for, as I shall presently show you, it has neither flesh, blood, nor bones in it." In the adjoining colony of Victoria, Sir Bryan O'Loghlen, M.P., who has a national right to indulge in this sort of thing, gravely told the Supreme Court that "a verbal agreement is not worth the paper it 's written on." — *Irish Law Times.*

IN a jury trial in a small town not many miles from civilization, the rural gentlemen into whose hands the fate of the plaintiff and defendant was placed were so stubbornly divided that they were some twenty-odd hours in reaching a verdict. As they left the court after having rendered their verdict, one of them was asked by a friend what the trouble was.

"Waal," he said, "six on 'em wanted to give the plaintiff $4.000, and six on 'em wanted to give him $3,000; so we split the difference, an' gave him $500."

A CERTAIN suspect in a criminal trial before a justice whose acquaintance with Blackstone would seem to be limited, having clearly established his innocence of the charge against him by an alibi, the prosecuting attorney remarked to the court, —

"I think, your honor, that this trial had better stop right here. The alibi has been fully established."

"I think so myself," replied his honor, with an approving nod; and then summoning the prosecuting attorney to his side, he said, in a stage-whisper which was only too audible throughout the court-room, "I say, what is the penalty for an alibi?" — *Harper's Magazine.*

NOTES.

THE curious question is raised in New York whether a writer of a book has a right to use his or her own name if that name chances to be the same as that of an author of established reputation. Mrs. Mary J. Holmes, wife of a citizen of Ansonia, Conn., has written a society novel which Ogilvie of New York has offered to publish, but not until he is satisfied on the legal point involved as above. For, as everybody knows, there is a Mrs. Mary J. Holmes who has been writing novels for the last thirty-six years, and has made a great deal of money and some fame thereby. Dillingham, publisher of "Tempest and Sunshine" and a score or more novels besides, by the original Mary J., declares that he will bring suit if "Ashes," the first novel of the new Mary J., is issued under her name. Lawyers give opinions both ways. There is no doubt that Mrs. Holmes No. 1 has a property in her name as against a forger of it; but whether she has property in it as a trade-mark, or whether it is part of her copyright, like the title of a book, so that Mrs. Holmes No. 2 cannot use her own lawful name on her titlepage, is a question. But a slight variation ought to let her out of the difficulty. The author of "Tempest and Sunshine is Mary Jane; now, if the author of "Ashes" were Mary Josephine, would not that serve? — *Springfield Republican.*

WHEN he was a student Kenyon was very intimate with Dunning and Horne Tooke, both of whom were then keeping their terms. The trio used generally to dine together in vacation at a mean little eating-house near Chancery Lane. The splendor of their fare may be imagined from the fact that it cost them seven pence half-penny each. "As to Dunning and myself," Tooke would say, "we were generous, for we gave the girl who waited a penny apiece; but Kenyon, who always knew the value of money, sometimes rewarded her with a half-penny and sometimes with a promise." When he was called to the bar, his prospects did not improve. He was doomed to sit, term after

term, on the back benches unknown, and with scarcely any chance of success. The spirits of almost any other man would have broken down under circumstances so discouraging; but Kenyon was made of sterner stuff. He fagged on with courage, increasing his knowledge of the law by taking copious notes of the decisions of the bench when in court, and incessantly reading the text-books and reports when in chambers. At length he became gradually known as a painstaking, working counsel, who might be safely depended on in cases where industry and patience were particularly required. A reputation of this kind was the foundation of his fortune. He made no sudden hit, acquired no expected triumph; but, by steady and unceasing labor, he proved — and we commend the lesson to all placed in similar circumstances — that whoever does justice to the law, to him, in the end, will the law do justice.

In Egypt the moment a man died he was brought to judgment. The public accuser was heard. If he proved that the conduct of the deceased had been bad, his memory was condemned and he was deprived of burial.

Another illustration of the law's delay is furnished by the United States District Court in Philadelphia. A case was finally disposed of there a few weeks since, which involved only about $1000, which has been in the courts for fifty years. The principal in the case, his lawyers, the judges before whom it was first tried, the United States Supreme Court justices, and everybody else connected with the case from the start died long ago; and there is now neither plaintiff nor heirs to receive the award.

Grave judges, and others learned in the law, have contributed their quota, as in duty bound, to the common stock of popular sayings. It is Francis Bacon who speaks of matters that "come home to men's business and bosom," who lays down the axiom that "Knowledge is power," and who utters that solemn warning to enamoured Benedicts, "He that hath a wife and children, hath given hostages to fortune." We have the high authority of Sir Edward Coke for declaring that "Corporations have no souls," and that "A man's house is his castle." The expression, "an accident of an accident," is borrowed from Lord Thurlow. "The greatest happiness of the greatest number," occurs in Bentham, but as an acknowledged translation from the learned jurist Beccaria. To Leviathan Hobbes we owe the sage maxim, "Words are wise men's counters, but the money of fools." It is John Selden who suggests that "by throwing a straw into the air you may see the way of the wind;" and to his contemporary Oxenstiern is due the discovery, "with how little wisdom the world is governed!" Mackintosh first used the phrase, "a wise and masterly inactivity." In the familiar expression, "a delusion, a mockery, and a snare," there is a certain Biblical ring, which has sometimes led to its being quoted as from one or another of the Hebrew prophets; the words are, in fact, an extract from the judgment of Lord Denman at the trial of O'Connell.

Recent Deaths.

Hon. Charles Devens, Justice of the Supreme Bench of Massachusetts, died in Boston, January 7, after an illness of but a few days. Judge Devens was born in Charlestown, April 4, 1820. He was graduated at Harvard College in the class of 1838, studied in the Harvard Law School, and took his degree in 1840. From 1841 to 1849 he practised law in Greenfield, and was a State Senator from that district in 1848–1849. He was then appointed United States Marshal for Massachusetts, which office he held for several years. In 1854 he resumed the practice of his profession in Worcester as a partner of Hon. George F. Hoar, and there he remained until the breaking out of the war, when he accepted, April 19, 1861, the command of the Third Battalion of Rifles, with the rank of major, leaving unfinished a case in which he was engaged in the Supreme Court. On the evening of the next day he left with the command for Washington, and at Annapolis was ordered to Fort McHenry at Baltimore. Before the battalion's term of service expired, Major Devens was commissioned Colonel of the Fifteenth Regiment, then being recruited at Worcester. He went to the front with that regiment, and in August led the scouting-party that was sent across the Potomac.

His military record was a brilliant one, and he left the service in 1866 a Brevet-Major-General of Volunteers. He at once resumed the practice of law in Worcester. He was appointed in 1867 one of the justices of the Superior Court, and in 1873 was made a justice of the Supreme Court. He resigned in 1877, in order to become Attorney-General in the Cabinet of President Hayes. Soon after his return to the State, in 1881, he was re-appointed to the Supreme Bench of Massachusetts, and had held the position since. While he was upon the bench he delivered many addresses on public occasions, as that on the centennial celebration of Bunker Hill, at the dedications of the soldiers' monuments at Boston and Worcester, on the deaths of General Meade and General Grant, and as presiding officer at the two hundred and fiftieth anniversary of Harvard College. His last noteworthy public appearance was on the occasion of the reunion of the Devens Brigade in Springfield, Sept. 19, 1889. Judge Devens was nominated for governor by the "People's" party in 1862.

Hon. Daniel Clarke, Judge of the United States District Court for New Hampshire, and one of the most prominent characters in the political history of that State for more than half a century, died at Manchester, January 2. He was born at Stratham, Rockingham County, Oct. 24, 1809. He was educated at the Hampton Academy and Dartmouth College, graduating from the latter in the class of 1834, with first honors. After graduation, Mr. Clarke entered the office of Gen. John Sullivan of Revolutionary fame, to study law, at Exeter, and was admitted to the bar in 1837. In 1839 he removed to Manchester, and opened a law office. In 1842 Mr. Clarke was elected to the State Legislature from Manchester, and was re-elected in 1843 and in 1846. He was an adherent of the Whig party until its dissolution, when he became a Republican. In 1856 he was a delegate to the National Republican Convention, and was a presidential elector on the Fremont and Dayton ticket. In 1857 two United States Senators were to be elected, and Judge Clarke was chosen for the short term. He was re-elected in 1860, and served on many important committees. He was president *pro tem.* of the Senate for two sessions, during Vice-President Hannibal Hamlin's absence. During the impeachment proceedings of Andrew Johnson, Senator Clarke voted against the impeachment, his vote alone turning the scale and preventing the necessary two-thirds. In 1866 he failed of a re-election to the Senate; and in the same year, a vacancy occurring, he was appointed United States District Judge for the district of New Hampshire, which position he held up to the time of his death. In 1866 Dartmouth College conferred upon him the degree of LL.D. In 1876 he was president of the convention for the revision of the Constitution. In addition to representing the city five times in the State Legislature, Judge Clarke held many local offices of trust. He was city solicitor, member of the school board, and at the time of his death was trustee in the Manchester Savings Bank, the oldest director in the Amoskeag Corporation, and trustee of the city library.

Judge John Mitchell, one of the ablest members of the Des Moines, Iowa, bar, died, December 29, of typhoid pneumonia. He was born in New Hampshire in 1830, and located at Des Moines in 1856. He was twice elected to the Legislature, and was circuit judge for twelve years.

Hon. W. D. Simpson, Chief-Justice of the Supreme Court of South Carolina, died at his home in Columbia, December 26. He was a native of Laurens, and about sixty years of age. He was elected Lieutenant-Governor with Governor Hampton on the restoration of the State Government in 1876 to Democratic control. He succeeded to the governorship on the election of Governor Hampton to the United States Senate, and before the close of his term as governor he was elected Chief-Justice.

Judge William L. Muller, Judge of the Court of Claims for the State of New York, who died in New York City on January 5, belonged to one of the oldest Dutch families in that city. After graduating from college he studied law, and was admitted to the New York Bar. He was at one time a law partner of Gov. David B. Hill, and it was through Governor Hill that he received his appointment to the bench. For the past year and at the time of his death he was president of the Crosby Electric Company, New York, and had by his efforts brought that organization to be one of the largest of its kind in the country. Judge Muller was about forty-eight years of age.

RANDOLPH COYLE, Assistant United States District Attorney, died at Georgetown, January 4. Mr. Coyle was born in Washington forty-seven years ago last September. When quite a young man he was appointed assistant clerk of the Supreme Court of the United States, and held that position for some years. While still clerk of this court, he studied law, and graduated from the Columbian University Law School, and soon after resigned the Supreme Court clerkship to become secretary of the Mexican Claims Commission, when it was formed. He remained secretary of the commission as long as it was in existence, and after its labors were concluded he was appointed, some twelve years ago, an Assistant United States District Attorney under Judge H. H. Wells. He was a very thorough and careful lawyer, and a close student. It was he who framed the indictment of Guiteau for the murder of President Garfield.

REVIEWS.

THE SURROGATE, a new law magazine, published in New York, is, as its name implies, devoted to probate law and matters of especial interest to executors, administrators, trustees, guardians, etc. The editor is John L. Branch; and the first number is certainly attractive in appearance, and contains much interesting matter regarding the Surrogate's Court of the City and County of New York. We wish the new venture every success.

RUDYARD KIPLING contributes the complete novel, "The Light that Failed," to the January number of LIPPINCOTT'S MAGAZINE. Kipling is attracting more attention at present than any other living writer. His force and originality have taken the world by storm. "The Light that Failed" is this brilliant author's first novel, and fully justifies the expectations he has raised by his remarkable short stories. The other contents are: "In an Old Garden," by Eben E. Rexford; "The New Spanish Inquisition," by Julian Hawthorne; "Christmas Gifts," by Ruth McEnery Stuart; "I Remember—," by Francis Wilson; "Perversity," by Charlotte Fiske Bates; "The State of Washington," by Moses P. Handy; "Anacreontic," by Daniel L. Dawson; "The Road Movement," by Lewis M. Haupt, C. E.; "Friend Olivia," by Frederic M. Bird; "With the Wits" (illustrated by leading artists).

THE ATLANTIC MONTHLY for January, 1891, presents an interesting table of contents, made up as follows: "Noto: An Unexplored Corner of Japan," I.–V., Percival Lowell; "A New University Course," Cleveland Abbe; "The House of Martha," XIV.–XVII., Frank R. Stockton; "Compulsory Arbitration," Charles Worcester Clark; "Snowbirds," Archibald Lampman; "Two Philosophers of the Paradoxical," first paper, Hegel, Josiah Royce; "In Darkness," John B. Tabb; "Felicia," XIII., Fanny N. D. Murfree; "A Plea for Trust," Lilla Cabot Perry; "An Inherited Talent," Harriet Waters Preston; "Individualism in Education," Nathaniel Southgate Shaler; "Kismet and the King," Florence Wilkinson; "Boulangism and the Republic," Adolphe Cohn; "The Lesson of the Pennsylvania Election," Henry Charles Lea; "A Swiss Farming Village," Sophia Kirk.

SCRIBNER'S MAGAZINE for January opens the fifth year and ninth volume of a periodical which from its first issue was a popular success, and which has continued to grow rapidly in public favor. Its prospectus for 1891 contains the names of a number of contributors who are unrivalled in their special fields, — men like Henry M. Stanley, James Bryce, Sir Edwin Arnold, and Robert Louis Stevenson. The readers of the "Railway" and "Electric" series will be glad to know that a similar series on "Ocean Steamships" is promised. The issue for January contains a number of striking features, — first among them Henry M. Stanley's article on the "Pygmies," which is entirely distinct from his book, and written since its publication expressly for the magazine. Other features are Sir Edwin Arnold's second paper on "Japan," with Robert Blum's remarkable illustrations; the first of a two-part story by Frank R. Stockton, in his most amusing manner; one of a group of illustrated papers on Australia (marking the beginning of an Australian edition of the magazine); and practical articles on modern fire apparatus, and the game of court tennis.

THE first instalment of the selections from Talleyrand's long-expected Memoirs is the most striking

feature of the January CENTURY. The California series continue to be a notable attraction, and include articles by Charles H. Shinn and John T. Doyle, with illustrations from authentic sources. Another war paper is given, under the title of "A Romance of Morgan's Rough Riders." The opening article of the number is C. W. Coleman's description of the fine old mansions along the Lower James, with a number of picturesque illustrations by Harry Fenn. Octave Thanet tells a true, timely, and thrilling story of "An Irish Gentlewoman in the Famine Time" of 1847–1848. Mr. Rockhill, the Tibetan traveller, describes the Mongols of the Azure Lake. Mr. Krehbiel, the musical critic of the "New York Tribune," has an article (with music) on "Chinese Music." "Colonel Carter of Cartersville," by Hopkinson Smith, and James Lane Allen's "Sister Dolorosa" are continued. The complete stories are "In Maiden Meditation," by George A. Hibbard; "Nannie's Career," by Viola Roseboro; and "At the Town Farm," by Miss Carpenter.

IN HARPER'S MAGAZINE for January, Charles Dudley Warner, in a paper of great practical value, describes "The Outlook in Southern California." Many illustrations of scenery and interesting objects in the fruit-growing regions of California accompany the paper. The very popular series of articles on South America is resumed by Mr. Child in this number, giving his "Impressions of Péru." This paper is also profusely illustrated. F. Anstey contributes an article on "London Music Halls," which is illustrated from a number of drawings by Joseph Pennell. In "Another Chapter of my Memoirs," Mr. DeBlowitz tells how he became a journalist, and relates some interesting reminiscences of the Franco-Prussian War and the days of the Paris commune. The chief place in fiction is given to the opening chapters of Charles Egbert Craddock's new novel, "In the 'Stranger People's' Country," which is illustrated by W. T. Smedley. "At the 'Casa Napoléon'" is a story of life in the Spanish quarter of New York City, written by Thomas A. Janvier, and illustrated by Smedley. "A Modern Legend" is a beautiful short story by Vida D. Scudder. "Saint Anthony: a Christmas Eve Ballad," by Mrs. E. W. Latimer, is accompanied by three striking illustrations from drawings by C. S. Reinhart. Other poems are contributed by Richard E. Burton, Julian Hawthorne, Charles H. Crandall, Nannie Mayo Fitzhugh, and Archibald Lampman.

BOOK NOTICES.

FOREIGN AND DOMESTIC LAW. A CONCISE TREATISE ON PRIVATE INTERNATIONAL JURISPRUDENCE, based on the Decisions of the English Courts. By JOHN ALDERSON FOOTE. Second Edition. London: Stevens & Haynes, 1890. Cloth, $7.50 net.

The first edition of Foote's Private International Jurisprudence appeared twelve years ago, and attracted favorable notice in America as a careful methodical and thorough statement of the decisions of the English Courts on topics coming under the general subject of Conflict of Laws.

The scope of the work can be inferred from the table of contents, which, in brief, is this: —

PART I. PERSONS, — Nationality; Domicile; Capacity; Legitimacy and Marriage; Artificial and Conventional Persons, including Foreign Corporations, etc. PART II. PROPERTY, — Immovable Property; Movable Personal Property. PART III. ACTS, — Contracts; Torts. PART IV. PROCEDURE, — Procedure and Evidence; Foreign Judgments.

The "Continuous Summary" with which the volume closes, is a clear and compact résumé of the law as held in England.

This edition cites about eleven hundred cases, — three hundred more than were cited in the first edition; and differs from the latter especially in the chapters on nationality, legitimacy, jurisdiction over and alienation of movables, and capacity to contract.

THE AMERICAN STATE REPORTS. Vol. XV. 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, 1890. $4.00 net.

This volume contains selections of cases from reports of the following States: California, Illinois, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Texas, and Vermont. The selections are, as usual, excellent; and Mr. Freeman's annotations are as comprehensive and valuable as ever.

THE AMERICAN DIGEST (Annual, 1890), being Vol. IV. of the United States Digest Third Series Annuals, also THE COMPLETE DIGEST for 1890.

A Digest of all the decisions of the United States Supreme Court, all the United States Circuit and District Courts, the Courts of Last Resort of all the States and Territories, and the intermediate courts of New York, Pennsylvania, Ohio, Illinois, and Missouri, the United States Court of Claims, Supreme Court of the District of Columbia, etc., as reported in the National Reporter System, and elsewhere, from Jan. 1, 1890, to Sept. 1, 1890. West Publishing Co., St. Paul, Minn. Digest Publishing Co., New York, 1890.

This volume signalizes the consolidation of the complete Digest with the American Digest; and this union of heretofore conflicting interests must prove to be an advantageous step on the part of the publishers, and the profession will also be the gainers. In addition to all the features of its predecessors, the additional features which have heretofore been peculiar to the COMPLETE Digest, namely, Selected English Cases, Decisions of the Circuit Courts of Ohio and the County Courts of Pennsylvania, Memoranda of Annotations in various legal publications, and Notes of Current Legislative Enactments, are contained in this volume. The publishers have wisely concluded to make the Digest cover the court year instead of the calendar year, so that hereafter the volumes will be brought out in the autumn, the time when they are most needed.

We have heretofore expressed ourselves warmly in praise of both the Digests, now consolidated into one, and we gladly add another word of commendation. The Digest now seems to us to be as complete as it is possible to make it, and leaves nothing to be desired, except in one particular, and that is the type in which it is printed. But larger type is of course out of the question, when in its present form the volume contains nearly 4,500 pages. We wish the new combine every success.

A TREATISE ON EXTRADITION AND INTERSTATE RENDITION. With Appendices containing the Treaties and Statutes of the United States relating to Extradition, and the Treaties relating to the Recovery of Deserting Seamen; and the Statutes, Forms, and Rules of Practice in Force in the various States and Territories relating to the Rendition of Fugitives from Justice as between the States and Territories of the United States. By JOHN BASSETT MOORE, Third Assistant Secretary of State of the United States; Author of a work on "Extraterritorial Crime;" of a Report on Extradition to the International American Conference, etc. The Boston Book Company, Boston, 1891. Two volumes, law sheep. Price, $12.00 net.

Most lawyers will be more interested in the Interstate Rendition volume of this new treatise, than the Extradition part. Extradition is an extremely interesting subject to politicians and students of international law; and Mr. Moore's position as Assistant Secretary of State lends to his work additional interest and authority. But the surrender of fugitives between our own States comes home to the practice of the Bar. "Rendition" (as Mr. Moore calls it in contradistinction to the international term "Extradition") is an obscure and unsettled topic of interstate law. Each case as it arises is apt to have some novel point, which a sharp lawyer can seize upon to defeat the ends of justice.

In this work the learned and experienced author has not only framed an admirably clear and coherent treatise on Extradition, from the American point of view, but he has, for the first time in our literature, given form to the law of Rendition. Taking up leading instances one by one, he discusses the most significant cases exhaustively, disentangling from the mass of authorities the principles which should govern the surrender of fugitives or the refusal to surrender them.

While Moore on Extradition and Rendition cannot rank, perhaps, as one of the "Essentials of the Law," it certainly takes a high place among the books which every library must own, and which every intelligent lawyer will be eager to read.

A QUAKER HOME. By GEORGE FOX TUCKER. Published by George B. Reed, Boston, 1891. $1.50.

The readers of the "Green Bag" have already had a taste of Mr. Tucker's delightful literary work in the three or four short articles he has contributed to our columns. There is an indescribable charm in the natural, straightforward manner in which he tells his story; and the reader follows his narrative with a feeling that he is listening to a recital of actual facts in which the author has played a part. In "A Quaker Home" we have an interesting portrayal of Quaker life, and much valuable information is given as to many of the peculiar forms and ceremonies of the sect. The scene of the story is laid in New Bedford, and incidentally some exciting descriptions of whaling life are introduced. A curious legal question as to the construction of a will will particularly interest lawyers. We will not anticipate the pleasure which the readers of this book will find, by unfolding its plot. Suffice it to say, that the story is one which will amply repay a careful perusal.

The Green Bag.

VOL. III. No. 3. BOSTON. MARCH, 1891.

SIR JOHN THOMPSON.

THE CANADIAN MINISTER OF JUSTICE.

THE most distinguished statesmen of Canada at the present time are, with very few exceptions, members of the legal profession. In Parliament that profession predominates in numbers and ability; and barring Sir Richard Cartwright, all the able debaters are lawyers. It is not surprising, therefore, to find in the House of Commons, engaged in the exciting strife of politics, the flower of the Canadian Bar. Of the lawyers in the House, four stand distinctly in advance of their brethren in point of professional ability and eminence. They are Sir John Macdonald, the Premier of Canada, whose name is a household word in his own country; Hon. Edward Blake, a former Minister of Justice, and more lately the leader of the Liberal party in Canada; Dalton McCarthy, the intellectual leader of the section known as the "equal rights" party; and the subject of this sketch. the Hon. Sir John Thompson.

Sir John Macdonald and Mr. Blake have been in public life since the Dominion of Canada was organized, and Mr. McCarthy since 1876; but Sir John Thompson, the youngest of the four, entered the House as late as 1885. His experience in Parliament is embraced in a small number of years, yet to-day he stands unrivalled as a parliamentary debater, and is recognized as the keenest intellectual force on the Conservative side. No public man has risen so rapidly in Canadian politics, and none owes his rise more directly to his rare mental gifts and exceptionally high character.

John Sparrow David Thompson was born at Halifax, Nova Scotia, Nov. 10, 1844. His father was for a time connected with the public service as Queen's Printer and superintendent of the money-order system, and the future minister was two or three years a reporter of the debates in the local legislature of his native province. These circumstances no doubt influenced the young man in his choice of a career. After taking a course in the common schools and Free Church Academy at Halifax, he began the study of the law at an age when most young men who look forward to professional life are sophomores or juniors at the university. In 1865, just as he attained his majority, he was admitted to the bar of Nova Scotia.

His early years at the bar were years of hard and constant struggle, but in this time habits of thought and work were formed, which were afterward useful in more responsible positions. Mr. Thompson was not long in making a reputation for himself as a practitioner, and he soon began to cope with the leaders of the Nova Scotia bar; they were all his seniors, but they found him no unworthy adversary.

In 1877 the Fishery Commission under the Washington Treaty sat at Halifax, and Mr. Thompson was associated with the late R. H. Dana, Jr., as counsel for the American Government. A few months later in the same year a vacancy occurred in the representation of Antigonish County in the local legislature. The Conservatives were then in opposition, and they took advantage

of this vacancy by nominating Mr. Thompson, their strongest available man. He was triumphantly elected, and in the session following added a great deal to the debating strength of his party. In 1878 a general election took place, and Mr. Thompson again stood for Antigonish, and was this time returned by acclamation. The Liberal government was overthrown, and the Conservative leader, Mr. Holmes, was called upon to form a new government. The position of attorney-general naturally fell to the young member for Antigonish, who was again returned by acclamation by his constituency after his acceptance of office.

During his incumbency — from 1878 to 1882 — the Attorney-General was instrumental in passing some very useful legislation, such as the Municipal Corporations Act, which gave local self-government to the counties of the province, and an act looking to the consolidation of all the provincial railways. Mr. Holmes retired from public life in 1882, and Attorney-General Thompson succeeded him as premier. A general election followed, and while the new premier was again returned, his party met with defeat at the polls, and gave way to a Liberal government. A few months later, to the great acceptance of the bar, Hon. Mr. Thompson was appointed Judge of the Supreme Court of Nova Scotia, which position he occupied until 1885.

As a judicial officer he added to his already high reputation. His thorough knowledge of law, his ceaseless industry, and his unerring judgment made him the most esteemed judge of the province. Nor did he confine himself while on the bench to the routine of his office. The Judicature Act, which became law in 1884 and greatly simplified the practice of the Superior Courts, was drafted by him; and in the midst of other labors he found time to deliver a course of lectures on Evidence before the students of Dalhousie Law School.

About 1885 events began to develop which led to Judge Thompson's recall to political life. A rebellion had taken place in the Canadian Northwest, and was suppressed. Louis David Riel, the leader of the revolt, was captured, tried at Regina, sentenced to death, and hanged. The Liberal politicians who up to the time of Riel's execution had taken no side, or perhaps more properly speaking both sides, as to the expediency of that act, began to array themselves in opposition to the government on that question, and soon joined hands with the "national" leaders in the Province of Quebec, where many people regarded the rebel leader as a martyr, in denouncing the execution as impolitic, cruel, and unchristian. The provincial elections, too, went in favor of the Liberals. The Government's Northwest administration was weak, and the governor of the territories, Mr. Dewdney, was harsh in his treatment of the people under him. Altogether it looked ominous for the government; and when the house would meet, the administration had no man to pit against the eloquent leader of the opposition, Mr. Blake, who was preparing a strong attack on the government. In this crisis, some of the Nova Scotia Conservatives represented to the Premier that the services of Judge Thompson were necessary; and accordingly in September he was appointed Minister of Justice and Attorney-General, and sworn in as a member of the Privy Council of Canada. It seemed a rash experiment for a political leader in such a crisis to summon to his assistance a young man who had never before sat in the House of Commons, and whose reputation was up to that time only provincial. But the result amply justified the choice.

Before the parliamentary session of 1886 was far advanced, the great Riel debate began. Member after member took part in the discussion, and the idea was somewhat general that the government could not long survive this debate. On the 19th of March Mr. Blake rose, and began his arraignment of the administration. He was the ablest man in his party, admittedly the leading lawyer in the House. He had hitherto been with-

out a rival as a master of legal fencing. He was at his best, and had a subject peculiarly suited to his tastes. He made a most vigorous onslaught on his opponents; and when he concluded his great speech, the Minister of Justice moved an adjournment of the debate, which gave him the right to open in reply on the following Monday. The occasion had now arrived when Mr. Thompson's career was to be made or marred. He had to rescue his party or go down with them. On Monday he began his speech, and was not half an hour on his feet when it was recognized that a most keen and powerful debater had entered the ministry. Calm and dignified in delivery, severely logical in argument, he spoke for five hours, effectively repelling every attack made on the government, and by that speech took his place as the best debater in the Conservative party. From that day to the present his career has been one succession of triumphs. This great speech, it is admitted, saved the government from defeat. A general election took place in 1887, and the Minister of Justice was again elected for Antigonish, and his government sustained at the polls.

Hon. Mr. Thompson was sent to Washington while the Chamberlain-Bayard treaty was in negotiation, as legal adviser to the British plenipotentiaries, and prepared the legal brief for them. It is understood that he and the Hon. Mr. Bayard drafted the treaty. For these distinguished services he was knighted in 1888.

In the session of 1889 one of the finest debates ever heard in the Canadian House took place over the Jesuits' Estates Act. Sir John Thompson defended the course of the government, and his speech in reply to Mr. Dalton McCarthy was probably the finest effort of his life. As a masterly legal argument it surpassed the speech on the Riel question, and brought the government out of another crisis.

It is not necessary to mention in detail the many useful statutes which have become law under the supervision of Sir John Thompson. Last winter two important measures — the Bank Act and the Bills of Exchange Act — became law. The Copyright Act, which protects the interests of the Canadian publishers, was passed in 1889, but has not as yet become operative on account of the opposition of the British Government. In connection with this subject, Sir John Thompson went to England in 1890 to confer with the home authorities; and the argument on behalf of the Canadian Government was made in a very able memorandum addressed to Lord Knutsford, Secretary of State for the Colonies.

The recent death of Sir Barnes Peacock has given rise to a discussion of the claims of Canada to representation on the Judicial Committee of the Privy Council, the final court of appeal for the colonies. The idea of appointing a Canadian seems to meet with a fair measure of approval both in Canada and in England; and Sir John Thompson is mentioned as the probable choice, if a Canadian be appointed. He is certainly the Canadian best qualified for the position. His former experience on the bench, his ability as a lawyer, and his judicial temper and bearing would fully warrant his appointment. But whatever be determined in that matter, there is little doubt of the important part Sir John Thompson will continue to act in his country's affairs.

THE INNER WITNESS.

SIMPLICITY and sublimity go hand in hand. It need not therefore surprise us to observe how, in instances where every device which could be suggested by human ingenuity has failed, some sudden, quiet appeal to conscience or to Nature has resolved the most perplexing mystery. There are cases within every one's recollection in which all other means of arriving at the subtly hidden truth were, almost to demonstration, exhausted. All must remember questions so encumbered with conflicting testimony, so clothed with deeper darkness through the craft of paid advocacy, that they had to be dismissed from earthly tribunals, to abide the fiat of the Judge who never errs, before whom the inner witness, so mute, so reticent here, speaks out unbidden.

Whether the machinery of modern law, constructed, as it apparently is, with the view of rendering as difficult as possible any appeal to conscience, be wholly sound in principle, it does not enter into our purpose to discuss. It is impossible, however, not to admire the results such appeals have produced; and the drawing these, or some of them, into juxtaposition with the issues of modern inquiry may be neither uninteresting nor uninstructive.

After Leuctra, where the Spartans were defeated by the Thebans under Epaminondas, a curious difficulty arose. So large a part of the Spartan force had participated in a disgraceful flight, that the Ephori — those noble, upright magistrates who held with an equal hand the balance between kingly power and popular liberty — were at a loss to know how to deal with so vast a body of offenders. In their perplexity they referred the matter to Agesilaus, who decreed for the integrity of the law, but added that it should be regarded as having "slept" on the day of Leuctra, to awake with renewed vigor and vigilance on the morrow! By this clever "dodge" the law was vindicated, and the self-respect of the twenty thousand runaways preserved.

Zeleucus, the Locrian, seems to have been another student of human nature. It was he who ordained that any one who proposed to change a law should appear with a rope round his neck, prepared to be strangled where he stood, in the event of his amendment not being carried. The revival of this ancient custom would lend a sensational interest to the legal debates of our own time.

Some of the decrees of Zeleucus, though wise, were mild, not to say jocose. We have called him a student of Nature, and he certainly had unexpected ways of arriving at its inner sanctuaries. His citizens — the ladies especially — were becoming too luxurious. He was urged to follow the example of neighboring States, and exact penalties against excessive show. These he saw had not always answered their end. Fines and confiscations might be defied, because they carried with them no element of shame. He adopted a different course. He decreed that no woman of condition should appear in public with more than one attendant, unless she were *drunk;* that she should not quit the city at night, unless for the purpose of keeping a secret assignation; that she should wear no gold spangles nor embroidery on her garments, unless it were her intention to lead an abandoned life. Following this principle, Henry IV of France issued an edict limiting the use of hair-nets to women of shameless life, "such," it was added, "being below our legislative care."

By the agency of these wise yet gentle laws, Zeleucus succeeded in establishing modesty for license, virtue for immorality, simplicity for luxury and the corrupt manners which invariably follow in its train.

A curious escape from a judicial difficulty was that resorted to by the Areopagus, to which renowned tribunal Dolabella, when pro-consul of Asia, referred a question he found

himself unable to decide: A Smyrniote woman was accused before him of the murder of her husband, in revenge for the latter's having slain a son of hers by a former marriage. Here was a dilemma! He could not acquit a convicted murderess, and yet shrunk from condemning a mother whom love for her offspring had betrayed into crime. The laws allowed no mitigated penalties. He sent the case to the Areopagus, who, equally perplexed, tided over the difficulty by directing the criminal to come up for judgment in one hundred years. The Emperor Claudius, who was certainly no Solomon, nevertheless pronounced a judgment which might bear a parallel with that of the wise king. A mother who disavowed her son was cited before the imperial seat. The evidence proved conflicting. Claudius cut the Gordian knot by ordering the woman to *marry* the young complainant. This unexpected decree awoke the inner witness. The mother confessed her son.

Pedro the Cruel's judgment, in the case of a tiler, is deserving of remembrance. While pursuing his calling on the roof of a lofty mansion, the man lost his balance, and after clinging some agonized moments to a slight projection, let go his hold, and fell into the street. As fate would have it, he dropped plump upon an individual unluckier than himself, who was passing at that inopportune moment, and was killed on the spot; the tiler himself sustaining no serious injury. The son of the man who was killed commenced a process against him who had fallen; and the case was brought before the king, who decreed that the tiler should be absolved from all demands. Leave, however, was reserved for the plaintiff, if he pleased, to jump from an elevation equal to that from which the defendant had fallen; the latter being first placed below in a convenient position to break the other's fall. The proposal was declined.

The story of Shylock and Antonio seems to date from the age of Amurath the First. A Turk lent a Christian trader one hundred crowns, on the condition that if the debt were not paid at a certain period, the defaulter should forfeit two ounces of flesh. The debtor failed. The Moslem Shylock stuck to his bond. Amurath decreed that he might exact the penalty, but with the understanding that if he took an atom more or less than his due, he should suffer in a similar manner. No vexatious stipulations were made, as at Venice, about the "blood."

The judgments of the Duke d'Ossuna might have suggested to Cervantes the never-to-be-forgotten decisions of Sancho Panza, during his brief but brilliant rule at Barataria. On the occasion of a grand fête the duke went on board one of the galleys, with the humane purpose of releasing a prisoner, in honor of the day. Approaching the first bench, to which six of the unfortunate convicts were chained, he questioned the nearest as to his crime. The man demurely replied that he was entirely innocent of crime, but found his consolation in the reflection that the Almighty dispenser of events supplied him with the patience his case required. Number Two declared that the machinations of his personal enemies alone had brought him to the bar. Number Three took a more legal objection. He had not enjoyed the full formality of a trial. Number Four's case was particularly hard. The lord of his village had corrupted his wife, and, to get rid of him, suborned false testimony. Number Five had been accused of theft. Of that, however, he was completely innocent, and, were the whole village (that of Somma) fortunately present, they would prove it. Number Six, who had enjoyed the opportunity of observing that none of these little explanations had entirely satisfied the duke, adopted a different course. "Your Excellency," he replied, "I am from Naples. It is a large city, but, upon my faith, I do not believe its walls enclosed a greater rascal than I. Justice has dealt leniently with such a wretch, in condemning him only to the galleys." The duke smiled. "Take this scoundrel instantly from the bench," he

said. "He is enough to corrupt a whole galley of such innocent men as those beside him! Give him ten crowns to buy some clothes; and see, you rascal," he added, "that you reform your ways. As for these other worthy but unfortunate gentlemen, they will, I am sure, return me their thanks for ridding them of a fellow who might have corrupted even them."

The rumor of this incident spread rapidly in convict circles, and when, two days later, the duke paid a similar visit to another galley, and addressed his accustomed questions to the crew, the amount of self-accusation was perfectly appalling! Not a man but, by his own account, merited either the gibbet or the wheel. The duke was moved, as well he might be, by their terrible revelations. "It is strange," he said, "to find so many souls capable of such diabolical wickedness! Their punishment is the only public safety. To release these three hundred miscreants were to turn loose into the ripe corn-fields as many foxes with firebrands at their tails. Give every man of them a heavier chain." One alone made answer. He was an apostate monk. "The fetters of a convent," he remarked, "were more galling than those of the galleys." "Strike off this fellow's chain!" said the duke. "Send him back to the slavery he finds the worst."

The records of French law present us with the following remarkable case: A worker in tapestry sought to recover from a lady a certain sum for goods supplied. He was his own lawyer, and availed himself of the opportunity to make a speech of such unnecessary length, that the fair defendant, out of all patience, broke in: —

"Gentlemen, permit me to explain the matter in two words. This person undertook, for the sum named, to supply me with a piece of Flemish tapestry, comprising several figures, well designed, one, especially, being as handsome, as engaging, as — whom shall I say? — as M. le President! Instead of that, he delivers me a work displaying a group of creatures of almost diabolical hideousness, — the principal an exact portrait of himself."

That plaintiff was nonsuited.

There is no safe reliance upon the discretion of our "inner witness." He will blurt out the truth at the most unseasonable times.

Bertrand Solas, a wealthy Spaniard, resident at Naples, was accustomed to "take his walks abroad" clad in very gorgeous apparel. On one of these occasions he was run against by a porter, carrying a huge bundle of firewood, a portion of which caught and tore his silken robe. In a furious rage he carried his complaint to the viceroy himself. The latter knew that it was the invariable custom with porters to call out to any approaching person, "Gare!" — Anglicè, "By your leave!" — and inquired if he had given the usual warning. Solas replied in the negative. "Then I will punish him severely," said the viceroy.

The porter was apprehended, but was warned by the viceroy's orders that whatever questions might be addressed to him, he was to remain perfectly mute. The case was then heard, the prisoner only responding by signs. "What penalty," asked the judge, turning to Solas, "can I possibly inflict on this wretched dumb fellow?"

"He is trifling with your Excellency," said the hot Spaniard. "He is no more dumb than I am. I heard him shout out 'Gare!'"

"Ah! you did? Then why didn't you take his warning? You will pay him ten crowns for his loss of time." — *All the Year Round.*

CURIOUS CIRCUIT CUSTOMS.

OLD customs, rapidly dying out under modern innovation, appear to retain greater vitality among ancient institutions. As "going circuit" by the judges of England is one of the most ancient occurrences in our history, one is prepared to find some of the oldest ceremonies and observances connected with that time-honored usage still existing. From an article in "The Leisure Hour," we extract some interesting facts concerning "Circuit Customs."

Let us first take the matter of gloves. Every one knows that when an assize town has no prisoner for trial to bring before the Queen's Justices, or where, in more ancient time, no prisoner had to be sentenced to death, the town is, or was, said to have a "maiden assize;" and the high sheriff presented, and still presents, the judge presiding in the criminal court with a pair of white kid gloves.

But the *meaning* of the custom is not so clearly understood, and has occasioned much discussion. To wear gloves, or have the hands covered, is a mark of superiority, whereas to go without gloves is a mark of submission; and as a judge owes submission to the sovereign whom he represents, and under whose commission he sits, it would be an assumption of too great dignity were he to have his hands covered when acting as deputy of the sovereign in the execution of the royal commission; hence, says Seldon, "judges wear not gloves while they act in their commission." But where there are no prisoners to try, or in ancient times, where no prisoner was to be condemned to death, and therefore (death being the common punishment of all criminal offences, from stealing to the value of one shilling upwards) the higher powers of the Crown were not to be called in exercise, and ordinary magistrates' functions were to be executed by "delivering the gaol," the sheriff signified to the judge, by presenting him with gloves, that he might retain that portion of his attire of which he had divested himself while acting as his sovereign's representative. The gloves so presented are usually *white*, as indicative of the purity of the county from crime.

Newcastle-on-Tyne is the only remaining circuit town in England which presents gloves at the assizes, and which still observes some of the olden ceremonies in connection with judges of assize. With the single exception of the city of Bristol, no other town insists upon entertaining the representatives of the Crown during the assizes. When the assize work is over, the mayor and aldermen, in full regalia, attend the judges, and the mayor, as spokesman, makes a speech somewhat as follows:—

"My Lords, we have to congratulate you upon having completed your labors in this ancient town, and have also to inform you that you travel hence to Carlisle through a border country much and often infested by the Scots; we therefore present each of your lordships with a piece of money to buy therewith a dagger to defend yourselves."

He then presents to the senior judge a piece of gold coin of the reign of James I., called a Jacobus, and to the junior judge a similar coin of the reign of Charles I., a Carolus, and after having been duly thanked by the judge in commission retires. The Corporation have had at times great difficulty in procuring these coins for the purpose of the assize; but as keeping up the ceremony is enjoined by one of their ancient charters, they are loath to let it drop.

We cannot but share the doubts expressed by a witty ex-judge, who, upon receiving the gold after the mayor's exordium, said: "I thank the mayor and Corporation much for this gift. I doubt, however, whether the Scots have been so troublesome on the borders lately; I doubt, too, whether daggers in any number are to be purchased in this ancient

town for the protection of my suite and myself; and I doubt if these coins are altogether a legal tender at the present time."

The steward of Warwick Castle still brings to the "judge's lodgings," spring, summer, and winter,— if a winter assize be there held, — the keys of Warwick Castle grounds, that the judges may "recreate themselves therein" during their stay in the town.

Presents of food and drink, especially of the former, are now rarely made to the justices of assize, though anciently they were very frequent. Flowers and fruit are still tendered by and accepted from country gentlemen of position; and venison, when in season, from the great country parks and seats, the owners of several of which have affixed to the conditions of the tenure of their estates that of providing the King's justices with "fat bucks and does at the assizes."

At Cambridge, where the judges are lodged in Trinity College, the "heads of houses" present twelve bottles of very choice port wine, and brew three barrels of very potent ale for the judges and their attendants; while at Lancaster, under the provisions of the will of a benevolent old lady, who died some centuries since, and who doubtless gained some heavy verdict in her favor, two dozen bottles of very rare and fine old port are brought to the "lodgings" at the commencement of each assize.

The only other present we need allude to is the bouquet of flowers placed on the bench before the judge during the exercise of the duties of his office. These are mostly the result of ancient bequests; but where there is no special means from which they may be supplied, the high-sheriff provides them, sometimes at great personal cost.

Flowers in court were originally used for preventing by their odor the effects of "gaol fever" upon the judge and his associates on the bench; and for a similar purpose, and until quite recently, small bunches of rue were placed before the prisoners upon trial at the Old Bailey.

Such are some of the old circuit customs which still exist, but a greater number are among the "things which were." Not more than forty years ago in every garrisoned town the soldiers could not leave their quarters without leave of the judge first had and obtained, and to procure which, the officer first in command, in "full fig," with adjutant attending, waited at the judge's lodgings on the commission day for the requisite permission to loose his men from barracks. He presented to the judge for approval or alteration the table of rations accorded to the troops, and handed in the surgeon's report as to the health of the soldiers.

The governor of Lancaster Castle and the mayor of Lancaster, until recently, severally gave up their keys and staff of office to the assize judge when he visited that town; while both at Appleby and at Chester the judges resided during the assizes in the castles themselves, and every night, after "locking up," the keys were brought to them as governors of the fortresses. Durham is now the only town in England which receives the judges into a castle, and a grand one too, with the accessions of ancient carved oak, tapestry, and most ghost-like state-rooms.

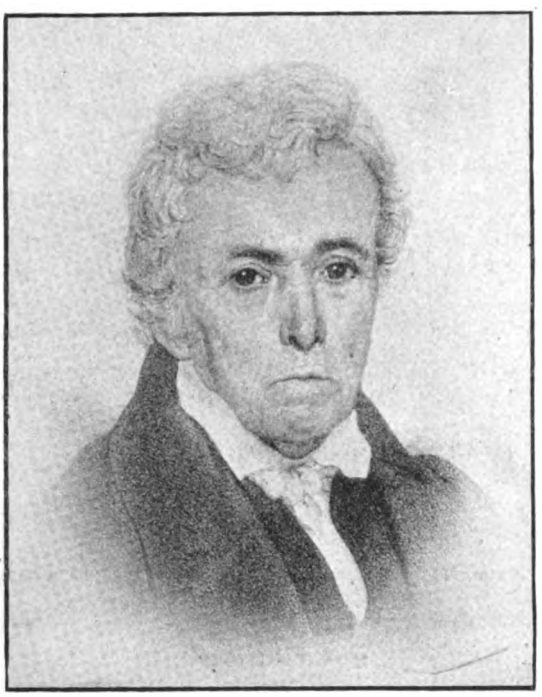
The Mayor of Banbury, accompanied by several members of the Corporation, until lately presented themselves at the judges' lodgings at Oxford, and offered the judges Banbury cakes, wine, six long clay pipes, and a pound of tobacco, accompanying the gift with many complimentary expressions.

Until 1859 the ancient Corporation of Ludlow were accustomed to come to the door of the judges' carriage, as they travelled by rail from Shrewsbury to Hereford, and to offer the cake and wine, the former upon an ancient silver salver, the latter in a "loving cup" wreathed with flowers.

THE SUPREME COURT OF LOUISIANA.

By Lamar C. Quintero.

ALTHOUGH Louisiana was ceded to France by Spain on March 21, 1800, it was not until Nov. 30, 1803, that possession was actually delivered. Twenty days afterwards, on Dec. 20, 1803, in furtherance of the treaty signed at Paris, by which Louisiana was ceded to the United States, his Excellency W. C. C. Claiborne, Governor, proclaimed that the dominion of those two countries had terminated, and that hereafter the people would be governed by the laws of the latter. The transfer by Spain to France was effected without any change as to legislation, the previous laws continuing in force. At that time there existed no formal organization for the administration of justice. Within the precincts of the capital there was some system for that purpose; but beyond them, owing to the absence of any judicial authority, the military usually took upon itself the exercise of judicial functions in ordinary civil or criminal matters of little importance. Shortly after his induction into office, the Governor established a Court of Common Pleas, from whose judgments an appeal would lie to him, in all cases over $500.

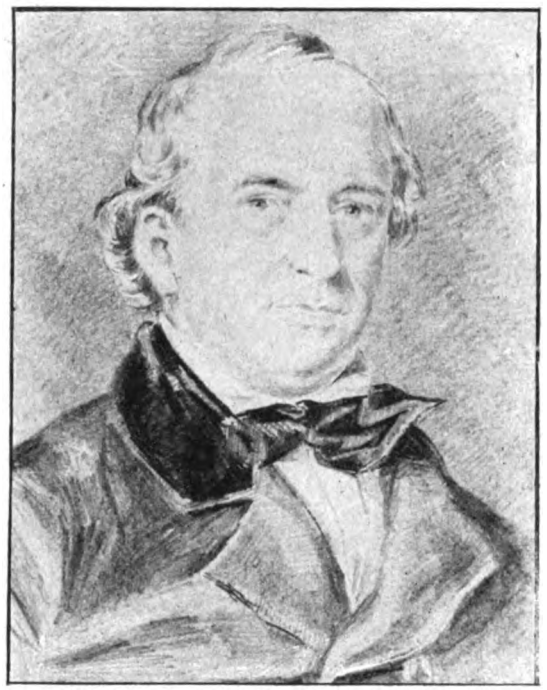


FRANÇOIS XAVIER MARTIN.

By Act of March, 1804, Congress created a Superior Court of three judges, vesting the Legislative Council, composed of the Governor and thirteen freeholders, with the power of establishing inferior tribunals. This Superior Court was clothed with original and appellate jurisdiction both in civil and in criminal cases. One judge constituted a quorum. The judgments rendered were final, and not subject to revision by any other authority. It is not known who were the judges first appointed; but the earliest volume of the Reports shows that George Matthews, Joshua Lewis, and John Thompson were members of the court. In February, 1810, Judge Thompson having died, François Xavier Martin was appointed to succeed him, and in March took his seat on the bench.

In February, 1811, Congress passed an act to authorize the people of the Territory of Orleans to make a Constitution, preparatory to its admission into the Union as a State. On Jan. 22, 1812, the Convention which had met for that purpose completed their labors. In April following, Congress passed an act for the admission, which took effect on the 30th of the same month. The first Legislature met in June, 1812. They organized the Supreme Court provided for by the new Constitution. The judges ap-

pointed were George Matthews, Dominick Augustin Hall, and Pierre Derbigny. Judge Martin was not then placed on the bench; but Judge Hall having subsequently resigned, owing to his appointment as District Judge of the United States for the Louisiana District, Judge Martin was commissioned to replace him, and accordingly took his seat on the bench in January, 1815. Etienne Mazureau was then Attorney-General. Under the Constitution, the court was to be composed of no less than three judges, whose number might be increased to five. The judges held office during good behavior, and received a salary of five thousand dollars. A majority constituted a quorum. The court had appellate jurisdiction in civil cases in which the matter in dispute exceeded $300. In 1820, Judge Derbigny having resigned, the Hon. Alexander Porter was appointed to succeed him. In 1834, Judge Porter having resigned, the Hon. Henry A. Bullard was selected to replace him. In 1836, Judge Matthews having died, a schism broke out between the Governor and the Senate, who could not agree as to the choice of his successor. Finally, Henry Carleton was appointed, but he subsequently resigned. At the death of Judge Matthews, Judge Martin succeeded him as Presiding Judge.



GEORGE EUSTIS.

François Xavier Martin was born in Marseilles, France, in 1762. His family seem to have been plain and quiet people, from whom he derived, as his sole inheritance, a rugged physique, a keen intelligence, and a robust will. In the last years of the American Revolution he came to this country, landing at Newbern, North Carolina, where he taught French, set type, and established a newspaper. He studied law at leisure moments, and in 1789, being then twenty-seven years of age, was admitted to the Bar of North Carolina. Martin was a man whose industry could not be appeased by any single employment. While practising law, he continued to carry on business as a printer, and began to busy himself with the composition and publication of books. In 1802 he published a translation of "Pothier on Obligations;" and at this time, so complete was his skill as a translator and type-setter, that in executing the work he used no manuscript, but rendered the French directly into English type in the composing-stick. In 1806 he was elected and served for one term as a member of the Legislature. When James Madison was inaugurated President of the United States, a judge was needed in the Territory of Mississippi, and the new President offered the place to Mr. Martin. He accepted the position, and filled it about one year, when he was transferred to the bench of the Superior Court of the Territory of Orleans, and this brought him to New Orleans. Under the Constitution of 1812 the territorial courts ceased to exist, and Martin was no longer a judge. He was, however, appointed Attorney-General of the new State, and so acted during the exciting events of

the war with England, until February, 1815, when, as we have already stated, he was appointed a judge of the Supreme Court of the State. He sat upon that bench for thirty-one years. While his duties as judge were performed with entire strictness, his labors in adjacent fields of intellectual work were immense. He prepared and published reports of the Supreme Court of the Territory from 1809 to 1812, and in 1827 published a history of Louisiana. When the territorial court came to an end, Judge Martin continued his work as reporter by publishing eighteen volumes of the decisions of the Supreme Court of the State. Under his incessant and protracted work, imperfections of vision increased, and in 1838 he became quite blind. For all practical purposes this blindness was total during the last eight years of his judicial life. Yet he continued to sit on the bench and to discharge the duties of his office with a regularity that was surprising. His last reported opinion was delivered in February, 1846, in which it was held that an inspector of elections who has illegally and maliciously prevented one from voting, will be responsible to such person in damages. In March, 1846, in consequence of the adoption of a new State Constitution, the court of which he was a member ceased to exist, and he was thus retired from the bench. He died in the month of December following. It would seem that a man who had been profoundly versed in law for sixty years might make a will which no one would dispute. Such, however, was not the case with Judge Martin. His will was written in 1844, in the olographic form. He bequeathed his estate, amounting to four hundred thousand dollars, to his brother residing in New Orleans. The will was contested by the State on the grounds that it was void for this, that when it was made, Judge Martin was physically incapable, on account of blindness, of making an olographic will; that the estate of the deceased (who on this theory died intestate) fell to the heirs domiciliated out of the United States, and was therefore subject to a tax of ten per cent by the statute of 1842. The court below gave judgment in favor of the State, but the tribunal where Judge Martin had so long presided held otherwise.

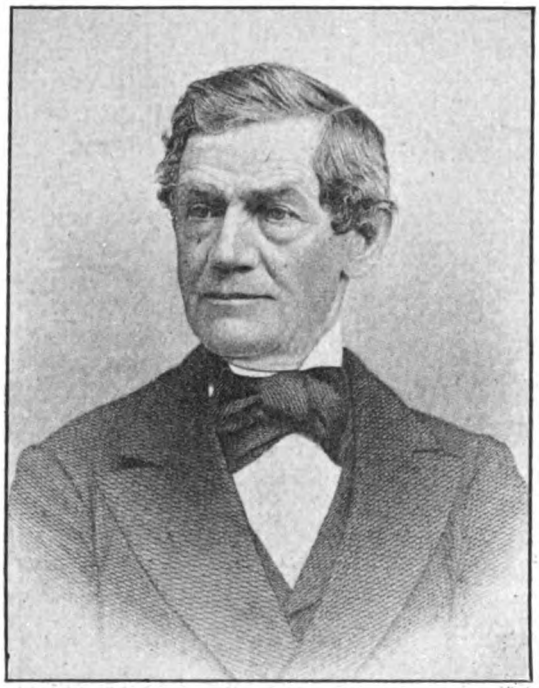
THOMAS SLIDELL.

In 1839, Judge Bullard having sent in his resignation, the vacancies then existing were filled by the appointment of Messrs. Pierre A. Rost and George Eustis, who some time after resigned. Messrs. George Strawbridge and Alonzo Morphy were appointed their successors, the former resigning not long after.

In 1840 the number of the judges was increased to five, the highest number to which it could be raised. The Court was then composed of their honors François Xavier Martin, Presiding Judge; H. A. Bullard, A. Morphy, Edward Simon, and R. Garland as associates.

Subsequently in 1843, considering that

the Constitution had vested the Supreme Court with appellate jurisdiction in civil cases only, and that it was proper that the ruling of inferior courts in criminal cases should not remain without revision, the Legislature thought itself authorized to provide a remedy. It then created and established a Court of Errors and Appeals, having appellate jurisdiction only, in criminal cases, in which the penalty would be death or hard labor; restricting it to questions of law alone, and leaving the jury the exclusive and final judges of the facts touching the guilt or innocence of the accused. This court held sessions from July, 1843, to February, 1846. It was composed of judges required to be selected from among the District Judges of the State. After the adoption of the Constitution of 1845, its jurisdiction was transferred to the New Supreme Court. Thomas C. Nicholls, George Rogers King, and Isaac Johnson were appointed judges. The latter having resigned, the Hon. W. D. Boyle was designated to replace him. The decisions of this court during that period are not voluminous. They cover some one hundred pages, and are to be found in the eighth Robinson Report.



E. T. MERRICK.

During his last eight years on the bench, Judge Martin, owing to the loss of his sight, did not decide as many cases as he would otherwise have done; but he proved eminently useful in the consultation chamber. When he was the organ of the court in cases coming to him, he was reduced by the force of circumstances to the necessity of employing an amanuensis. Although his opinions during that period bear the impress of his powerful and synthetic mind, as well as of his learning and perspicacity, they are not as developed as they would have been, had he not been thus lamentably afflicted.

The Constitution of 1845 created a Supreme Court, to be composed of a Chief Justice and of three associates. In case of equal division, the judgment appealed from was to be undisturbed. It was vested with both civil and criminal jurisdiction, when the matter in dispute exceeded $300 in the former cases, and death or hard labor was the penalty in the latter. The judges were appointed for a term of years, — the Chief-Justice for eight years; the associates for two, four, and six years. They received as salary, the former $6,000, the others $5,500. The subsequent appointments, after the expiration of terms, were to be for eight years. The judges first appointed were George Eustis, Chief-Justice; Pierre Adolphe Rost, George Rogers King, and Thomas Slidell, Associate Justices. William Augustus Elmore was Attorney-General. The court organized, and the judges took their seats in March, 1846.

Chief-Justice George Eustis, a nephew of William Eustis, Governor of Massachusetts in 1823, was born in Boston, Mass., in 1796. He was educated at Harvard College, whence he graduated in 1815. He became private

secretary to his uncle, Governor Eustis, then minister to the Hague, where he began his legal studies. He came to New Orleans in 1817, and was admitted to the bar in 1822, and served several terms in the State Legislature. He was afterwards Secretary of State, Attorney-General, and member of the Constitutional Convention of 1845, and Chief-Justice of the Supreme Court of Louisiana until 1852. His judicial opinions show a comprehensive intellect, cultivated by long study and familiarized with the sentiments of the great writers and expounders of the law. They were, as it became them, more solid than brilliant, more massive than showy. They are like granite masonry, and have served as guides and landmarks for years past.

In 1850, Mr. Justice King having resigned, Isaac T. Preston was appointed to succeed him; and in 1852, the latter having died, Mr. William Dunbar was commissioned in his place.

WILLIAM B. HYMAN.

In 1852, a new Constitution having been adopted, a Supreme Court was thereby created, composed of five members, to be elected by the people. On May 4, 1853, the Justices elected — Thomas Slidell, Chief-Justice; Cornelius Voorhies, Alexander M. Buchanan, Abner N. Ogden, and J. G. Campbell — took their seats on the bench, and proceeded to business. Isaac E. Morse was Attorney-General.

Thomas Slidell, a fellow student of Judah P. Benjamin at Yale College, was a native of New York, but came to Louisiana when still a young man. In 1845 he was appointed an Associate Justice of the Supreme Court. His industry, research, learning, and great ability, his firm and serene bearing, unwearying patience, and conservativeness, gave great force and authority to his opinions and decisions. As Chief-Justice presiding over the new court of 1852, Thomas Slidell added to the great reputation he had gained by the discharge of his duties as Associate Justice. In this position he served until 1855, when by the most disgraceful occurrence in political annals his career was abruptly interrupted and eventually terminated. Those were the Know-Nothing times. The most prominent citizens and highest officials were subjected to indignities and violence. On election day Chief-Justice Slidell was warned of the danger of going to the polls, but his fearless character would not suffer him to shrink from his duty as a citizen. He passed through the crowd and deposited his ballot. He was about to retire, when some ruffian delivered a blow of a heavy brass-knuckled fist on his head, and knocked him prostrate. The injury proved a serious one. It compelled his resignation of the Chief-Justiceship, and his return to his native State of New York, where he died in 1860. He left a widow, who was of the distinguished family of the Collenders of New York. The handsome estate which fell to the widow of his son was afterwards in charge of Charles Francis Adams, of Boston. The only portrait of the Chief-Justice extant

is an oil-painting made in Spain at the time of his admission to the bar, and a copy of it is presented in this sketch.

In 1854, Justice Campbell having resigned, Mr. Henry M. Spofford was elected in his place. In 1855, Justice Ogden having resigned, Mr. James N. Lea was elected to succeed him. In the same year, Chief-Justice Slidell having resigned, the vacancy was filled by the election of Mr. Edwin T. Merrick.

JOHN T. LUDELING.

Chief-Justice Edwin T. Merrick was born in Massachusetts, and is about seventy-five years old. He was admitted to the Bar of Ohio in 1833, and removed to Louisiana in 1838. He engaged in practice at Clinton, East Feliciana Parish, and was appointed district judge. Upon the resignation of Chief-Justice Slidell in 1855, Judge Merrick was elected to the office. On the Supreme Bench Judge Merrick proved a very industrious, able, and efficient judge. Though in politics an earnest Whig and Union man, Judge Merrick when the civil war began, embraced with great zeal the Southern cause, and upon New Orleans being occupied by Federal troops, he repaired to the Confederate State Government at Shreveport, where the Supreme Court met and discharged its duties. After the war he returned to the city to practise his profession, and is now an active, persevering, and laborious practitioner at the bar. Although nearing toward octogenarianism, he prosecutes his legal studies and labors with the vigor and pertinacity of a young lawyer.

In 1857, the term of Mr. Justice Lea having expired, Mr. J. L. Cole was elected in his place. In 1858, Mr. Justice Spofford having resigned, Mr. T. T. Land was elected to succeed him. In 1859, the term of Mr. Justice Cornelius Voorhies having expired, Mr. Albert Voorhies, his son, was elected to fill the vacancy. In 1860, Mr. Justice Cole having resigned, Albert Duffel was elected in his place. After the fall of the city in 1862, the Supreme Court held sessions in the country, not under Federal control, until a period not ascertained, and to which the books furnish no clew. It is known that to fill vacancies occurring, Messrs. T. C. Manning and P. E. Bonford were appointed by Governor Moore, and qualified as such. The court decided few cases, practically dying away in 1863. In 1864, during the occupancy of the city of New Orleans and the surrounding territory by the army and navy of the United States, a Convention met which adopted a Constitution, under the provisions of which a Supreme Court was organized, composed of five members, who were William B. Hyman, Chief-Justice; Zenon Labauve, John H. Ilsley, R. K. Howell, and R. B. Jones, Associates. B. L. Lynch was the Attorney-General.

Chief-Justice W. B. Hyman was born at Williamston, in Marion County, North Carolina, in 1814. In later years he became a resident of Louisiana, and in 1840 was practising law in Alexandria. By a close attention to his practice and by his well known

affability, he soon gained the confidence of the people of Rapides Parish, and became Parish Judge. After serving several terms in that capacity, he returned to the practice of law. In 1865, immediately after the war, Gov. J. Madison Wells appointed Judge Hyman to the Chief-Justiceship of the Supreme Court of the State. He remained on the Supreme Bench until 1869, when the Constitution of the State was changed and his successor was appointed. Judge Hyman was for several years Parish Judge of Jefferson. He was then appointed Surveyor of the Port of New Orleans, which position he retained until a few years before his death, when ex-Governor Kellogg, of Radical fame, outrageously caused his removal to make a place for Pinchback, a leading negro politician of Louisiana. The Judge then retired to his home in Jefferson Parish, where he remained until his death in 1884.

THOMAS C. MANNING.

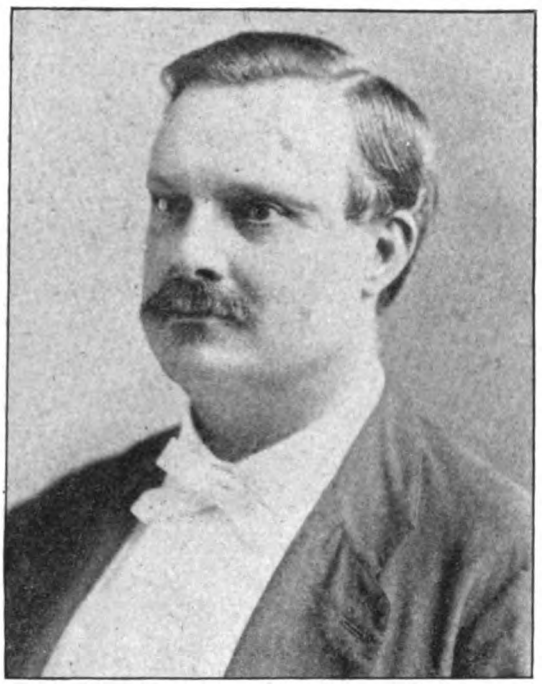
The Justices were appointed by the executive. Under the provision relative to it, the Court had appellate jurisdiction in civil and criminal cases, as the previous one had. The salary of the Chief-Justice was $7,500, and that of the Associates, each $7,000. The term of office was to be eight years. In 1868, another Constitution having been adopted, a new Supreme Court was created, composed of five justices, to be appointed by the Executive, for the term of eight years, with a salary of $7,500 for the Chief-Justice, and $7,000 for each associate. It was clothed with appellate jurisdiction in both civil and criminal cases, where the matter in dispute in the first class would exceed $500, and where death or hard labor was the penalty in the second, but on questions of law only. The justices appointed were John T. Ludeling, J. G. Taliaferro, R. K. Howell, W. G. Wyly, and W. W. Howe, who organized and took their seats in New Orleans in November of the same year. In 1872, Justice Howe having resigned, John H. Kennard was appointed in his stead by the Governor, who qualified and took his seat on the bench. In 1873 the Acting Governor appointed P. H. Morgan in the place of Justice Howe.

Justice Kennard declined to vacate his seat, and litigation followed, which was settled by the United States Supreme Court, recognizing the validity of Justice Morgan's appointment and his right to the seat occupied by Kennard, 94 U. S. 480. Consequently Mr. Justice Morgan, having qualified, ascended the bench on the first day of February, 1873. The judges' terms expired in November, 1876; but the judges held office subsequently until their successors were appointed and qualified.

Mr. John T. Ludeling was a native of Monroe, Louisiana, where he entered upon the study of law under the Hon. Isaiah Garrett. He was appointed to the Chief-Justiceship by Governor Warmoth, and his decisions are reported from the Twenty-second to the Twenty-ninth Louisiana Annuals. He died last January, at the age of

sixty-eight. He was all his life a conscientious and consistent Republican, and in the old days of his party's power in this State he was a leading spirit. Financially, Judge Ludeling was more than successful, and was at one time president of the Vicksburg, Shreveport, and Pacific Railroad.

Mr. Justice James G. Taliaferro was a Virginian, but came to Louisiana with his father when quite a youth, and settled in the Ouachita country. He was educated at Lexington, Kentucky. Judge Taliaferro in his day was one of the most excellent citizens of the State; was a first-rate scholar in the classics, science, and history; was most urbane, refined, and singularly patriotic in temperament, — his favorite motto (from Cicero) being, "Defendi rempublicam juvenis; non diseram senex." When the troubles between the States culminated into revolution, he was sent as a member of the convention of that year, which seceded the State of Louisiana from the Union. It was in that convention the Roman firmness and more than Roman integrity of his character shone so conspicuously. Devoted to the Constitution and the union of the States, he calmly, steadily, and fearlessly opposed secession, nobly breasting and combating the unreasoning fury of the popular will. And when at last the ordinance of secession was adopted by an almost unanimous vote, he drew up his protest against the act, and asked to have it spread upon the journal of the convention. This was denied him. It was upon this occasion that he uttered the memorable words: "My conscience is my guide; my judgment and patriotism approve, and though I am scorned and hissed, I am willing to abide the arbitrament of time and events as to the correctness of my course. The act I denounce as one of mad folly, and of which, if my judgment errs not, every signer of that paper will come to be ashamed; and for one, it shall not herald my name to the future infamy which I predict will be its fate."



EDWARD BERMUDEZ.

Judge Taliaferro died in 1876, at the age of seventy-eight years. He was succeeded by the Hon. John Edward Leonard; and, Mr. Justice Wyly's term of office having expired, Mr. John E. King was appointed to succeed him, the former acting from Nov. 6, 1876, and the latter only on Jan. 9, 1877. The last regular sitting of that court was on Dec. 23, 1876. Opinions were read on Jan. 9, 1877, but no minutes were kept of the doings of that sitting. There were present Chief-Justice Ludeling, and Justices Leonard and King, Justice Morgan being absent, and Justice Howell having declined to serve.

There were then two claimants for the Governorship at the general election in 1876, — Governor Nicholls, who is the present Executive of the State; and Mr. Packard, who was some years ago United States Consul-General at Liverpool. On Jan. 8, 1877, Governor Nicholls appointed five justices, who were confirmed by the Senate then sitting, which recognized his authority. Packard

also appointed five justices, who were confirmed by a senate recognizing him. The appointees of Packard held the sitting on the morning of Jan. 9, 1877. A few moments after the opening of the court, it adjourned, and the justices dispersed by reason of the capture of the court-house by the militia, under orders of Governor Nicholls. The justices appointed by this Governor were Thomas Courtland Manning, Chief-Justice; and Robert H. Marr, Alcibiades DeBlanc, William B. Spencer, and William B. Egan, Associate Justices. They took possession of the building, court-room and archives, and held court. The final recognition by the Federal authority of the Nicholls government left the legality of the court indubitable. In the case of State *ex rel.* Mercier *v.* Judge, 29 A. 225, the Court referred to the condition of affairs at that time, and declared the illegality of the Packard Legislature.

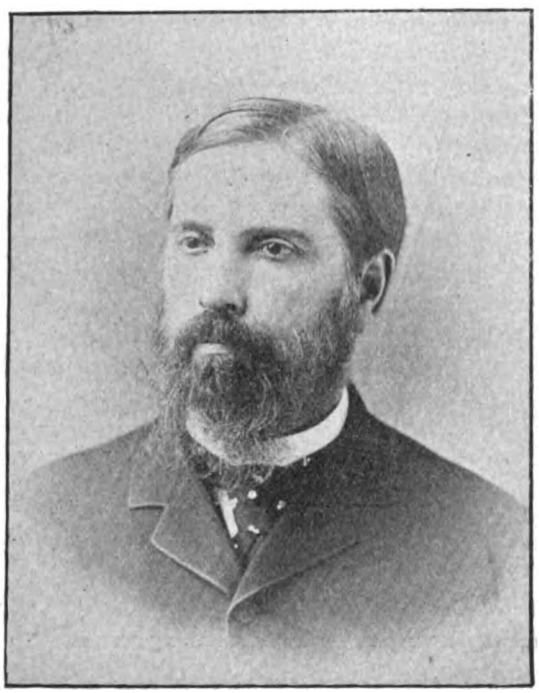
CHARLES E. FENNER.

Chief-Justice Thomas Courtland Manning was born at Edenton, North Carolina. He was admitted to the bar at Raleigh by the Supreme Court, and practised at his native town until 1855, when he came to Alexandria, Louisiana. When the war opened he volunteered in the first company that went from Rapides Parish, and rose to the rank of adjutant-general. In 1864 General Manning was appointed an associate justice of the Supreme Court; and when the State government collapsed with the Confederacy, he returned to his home at Alexandria. In 1877 he was appointed Chief-Justice, — a position which he filled until 1880, when a new Constitution went into effect. In 1882 he was appointed to the Supreme Bench for the third time. He was also Minister to Mexico under President Cleveland's administration. Few men in Louisiana had so fine a command of the English language; and as a literary scholar and analytical physician, he had no superior in the State. He was in all respects socially, politically, and legally, the highest type of the lordly Anglo-Saxon. In 1878, Mr. Justice Egan having died, the Hon. Edward Douglas White was appointed to replace him. He qualified and took his seat in January following.

Associate Justice Alcibiades De Blanc, a native of St. Martin's Parish, was a splendid type of the Creole gentleman of this State. His career in the war, and the high military rank he obtained afford the best evidences of his fidelity as a soldier. His opinions as a member of the Supreme Court attest the consciousness, zeal, and earnestness with which he discharged his duties. While he prepared those opinions with no other view than the correct administration of justice, he has with them erected a monument for himself to which those who live after him may point as a monument more "lasting than brass."

In 1879, a new Constitution having been adopted which went into effect in January, 1880, a new Supreme Court was created, having appellate jurisdiction in all civil cases

in which the matter in dispute exceeded $1,000, and in criminal cases in which the penalty was death or hard labor, on questions of law only. It was also vested with original jurisdiction for the removal of judges of the inferior courts, and with a supervisory control over them in all cases, civil and criminal, whether appealed or not, never previously possessed. There were to be five judges with a salary of $5,000 each, the Chief-Justice to be appointed for twelve years and the other justices respectively for four, six, eight, and ten years, the appointment after the expiration of first terms to be for twelve years. The Justices were to be taken from different parts or sections of the State. The Justices appointed were the Hon. Edward Bermudez, Chief-Justice, twelve years, Felix P. Poché for ten years, Robert B. Todd for eight years, William M. Levy for six years, and Charles E. Fenner for four years. The court was organized and the justices took their seats April 5, 1880, under Art. 264.



LYNN B. WATKINS.

In 1882, Mr. Justice Levy having died, the Hon. Thomas C. Manning was appointed to succeed him for his unexpired term. In 1884, the term of Mr. Justice Fenner having expired, he was reappointed for twelve years. In 1886, the term of office of Mr. Justice Manning having expired, Mr. Justice Lynn B. Watkins was appointed to replace him for twelve years. In 1888, the term of office of Mr. Justice Todd having expired, the Hon. Samuel Douglas McEnery was appointed to take his place for twelve years.

In 1890, the term of office of Mr. Justice Poché having expired, Mr. Justice Joseph Arsene Breaux was appointed to succeed him for twelve years.

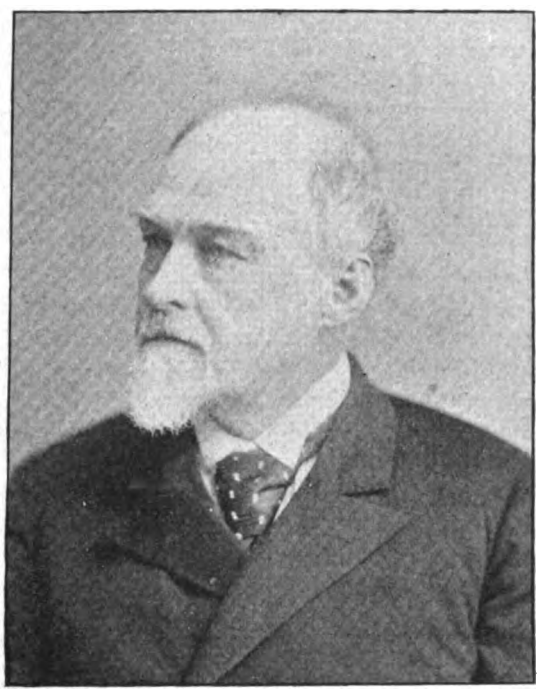
Chief-Justice Bermudez was appointed to office by Governor Wiltz, the first Governor elected under the Constitution of 1879.

The court was brand-new; none of the members of the preceding court, who had gone into office under the administration of Governor Nicholls, were retained, and none of the Justices appointed by Governor Wiltz had ever occupied a judicial station.

Before the appointments of the Justices of the Supreme Court were made by Governor Wiltz, the eyes of the public were fixed on Mr. Edward Bermudez, as a lawyer eminently fit to fill the distinguished office of Chief-Justice; and much satisfaction was felt when it was ascertained that the Governor had not disappointed public expectation.

Mr. Bermudez is a Creole, — that is, a native-born Louisianian, — of ancient and distinguished Spanish descent. He had received a thorough classical education at Spring Hill College, Alabama, where he graduated in the year 1851. While a student of law he manifested those mental qualities which are premonitory of professional success. He came to the bar at the early age of twenty-one years, and in 1876 received the degree of LL.D. In a very

short time it was evident that he was born a lawyer, and was possessed of a mental organization strictly legal. Success at once attended his efforts, and his forensic reputation continued to increase until he was removed from the forum to adorn the bench. His practice at the bar was extensive and lucrative. The causes in which he was engaged required the examination and discussion of the principles underlying every branch of law; and hence he became familiar, not alone with the civil law peculiar to Louisiana, but with commercial, criminal, and constitutional law. He was a lawyer *par excellence*, a master of the civil law. The profession then recognized in him, as it does now, a most learned, accomplished, and profound civilian. With this prestige and with robust health, Mr. Bermudez assumed the judicial ermine at the age of forty-six.



SAMUEL D. McENERY.

During the *régime* of reconstruction governors, elected to office under the reconstruction Constitution of 1868, the delays in the administration of justice had so crowded the docket of the Supreme Court that an ordinary case could not be reached in due course for two or three years after the transcript of appeal was filed. The court appointed by Governor Nicholls in 1877 had not remained in office long enough to arrest the congestion.

Chief-Justice Bermudez, endowed with breadth of intellect, with a strong and determined will, and with a capacity for labor equalled only by his love of the study and the investigation of legal principles, made such inroads on the accumulated business of the court that the mountain of cases has disappeared, and now and for several years past, a cause is called for argument in the Supreme Court of Louisiana within a month after it is entered on the docket, unless it be delayed by vacation.

When at the bar, Chief-Justice Bermudez was distinguished by a keen sense of honor, and was governed by a high standard of professional ethics; on the bench he is characterized by the most stringent honesty and integrity. He has the faculty of penetrating and sagacious observation, as well as the gift of a nice and correct discrimination. He excels in analyzing and deducing the complicated parts of a subject, and sees everything in the daylight of truth, unaffected by the coloring imparted by the imagination. His opinions are clear and terse; he may be said to write with his muscles. In his style there is coherence, order, method; but it is a concise, rapid style, sometimes advancing in a series of epithets, and in sentences short and sharp.

On the whole, the people of Louisiana are well satisfied with their Chief-Justice, who has discharged the duties of this high office for eleven years with distinguished ability and impartiality.

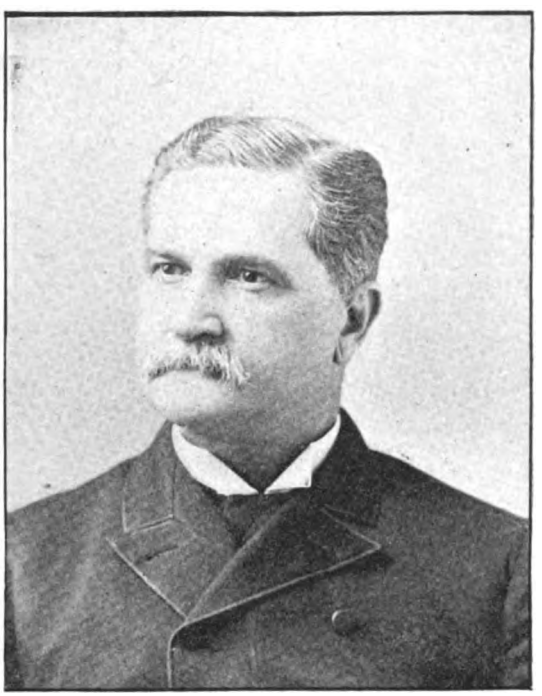
Among the many associate justices who have graced the bench of the Supreme Court, none occupied a more exalted position in the respect, confidence, and admiration of the people of the State than Mr. Justice Felix

P. Poché, whose whole record has been marked with ability, wisdom, prudence, and impartiality. A native of St. James Parish, Louisiana, of French origin, the judge graduated from Bardstown College, Kentucky, and read law in the office of ex-Governor Charles A. Wickliffe, of that State. He was admitted to the bar of Louisiana in 1859, and practised successfully until his appointment to the bench. He was a gallant Confederate soldier, and was prominent in State politics, occupying a seat in the Senate and the Constitutional Convention of 1879. In 1880 he was appointed the senior associate justice of the Supreme Court of the State for ten years, and some months ago his retention in office was urged by the people of the whole State, in testimonials never before showered on any judge in the history of the State. His great abilities, extensive and varied learning, his faculty for concise, clear, and logical reasoning, his wonderful capacity to comprehend and expound the civil law, his ready and exhaustless fund of authorities and information, his arduous and valuable services as a jurist, his uprightness and courteous demeanor, have won for him the admiration, esteem, and confidence of the bar, and certainly entitle him to reappointment.

JOSEPH A. BREAUX.

Associate Justice Charles E. Fenner, the only son of Dr. Erasmus Fenner, was born in Jackson, Tennessee, in 1834. A graduate of the Military Institution of Kentucky at the age of seventeen years, he proceeded to the University of Virginia, where he pursued his studies for two years. A graduate of the Law Department of the University of Louisiana in 1855, he at once entered into a remunerative practice, which was terminated by the breaking out of the war. He supported Breckenridge and Lane in politics, and when Lincoln was elected and the rattle of arms began to be heard under the toga of the civilian, he assisted in forming the military battalion of the Louisiana Guards, becoming captain of one of the companies. The battalion's term of service expiring before the conscript law went into effect, Captain Fenner organized a battery which bore his name and did gallant duty. In 1866 Judge Fenner was elected a member of the first legislature under the reconstruction policy of Andrew Johnson. This was the only political office he ever held. In 1880 he was appointed on the Supreme Bench for six years, and in 1886 reappointed for twelve. Of Judge Fenner's distinguished qualifications for the high office whose functions he so well discharges, it will suffice to say that the position is one of prediction ; that he has brought to it a well trained mind, broad and comprehensive in its grasp ; a learning full, digested, and made accurate by great experience ; that his labors are lightened and made grateful by a clear and facile style ; that far above and beyond all other things, there ever rests upon him that great sense of judicial responsibility without which all the other attributes of the mind which go to make up a judge are as crackling thorns beneath the pot.

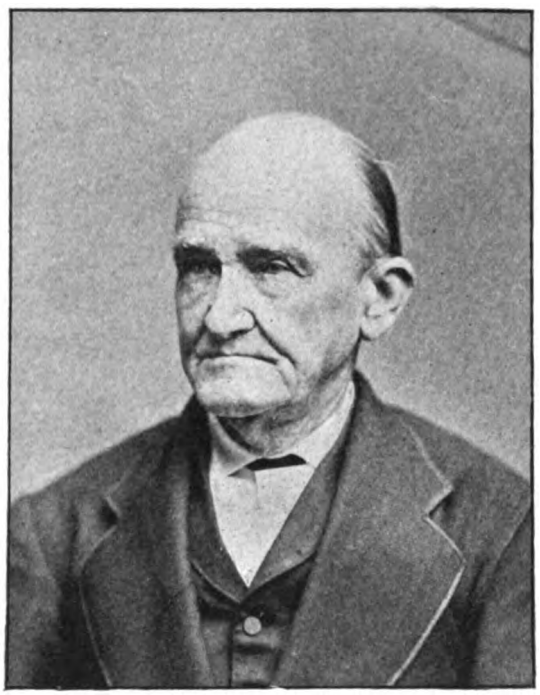
Associate Justice L. B. Watkins was born in Caldwell County, Kentucky, Oct. 9, 1836. His education was received at the Cumberland College in Kentucky, and at Bethel College in Tennessee. In 1854 he came to Louisiana, and studied law in the office of Watkins & George, and was admitted to the bar in 1859. In 1861 he enlisted as a private in Company G, Eighth Louisiana Regiment, and was mustered into service at Camp Moor. His regiment participated in the first battle of Manassas. He closed his career as soldier at the end of the war in Georgia, as captain and provost-general of the corps, having served through its entire length with a record for discharge of duty and gallantry on the field of action. At the close of the war he returned to Minden, Louisiana, and resumed the practice of law. In 1871 he was appointed Judge of the Eighteenth Judicial District. Judge Watkins was appointed to the Supreme Bench by Governor McEnery in 1886. His address is soft, gentle, and pleasant, and he is ranked as one of the finest pleaders of the Louisiana Bar.



FELIX P. POCHÉ.

Associate Justice Samuel D. McEnery is a native of Louisiana, and was educated at the Naval Academy of the United States at Annapolis, and at the University of Virginia. He graduated at law in 1859 from the National Law School at Poughkeepsie, New York. He served all through the war as an officer of the Confederate Army, and afterward took front rank among those who sought to redeem the home of his birth from the ruthless hand of the despoiler. He lived in Monroe, Ouachita Parish, and practised his profession there up to 1878. Judge McEnery refused all official honors, but in that year he was persuaded to accept the nomination for the Lieutenant-Governorship on the ticket with Governor Wiltz. During the long sickness which preceded Governor Wiltz's death, Judge McEnery was acting governor, and upon the demise of that gentleman, took the oath of office in October, 1881, as Governor of Louisiana. A determined fight was made against the re-election of Governor McEnery, but he was triumphantly renominated by the State convention of 1883, and re-elected the following April. Toward the close of his administration an intensely bitter feeling sprang up between the partisans of McEnery and Nicholls. In order to avoid dividing the democracy of the State, a party of which he had been a lifelong and most loyal follower, Governor McEnery prevailed upon his friends to forego the presentation of his name to the convention as a candidate. One of the first acts of Governor Nicholls, upon his installation, was the appointment of his predecessor in office to the then existing vacancy on the Supreme Bench. The same distinguished ability which marked his incumbency of the gubernatorial chair is displayed in the justice's rulings and opinions, and his treatment of the intricate and vexatious problems which came before him as a member of the court.

Associate Justice Joseph A. Breaux is descended from an old French and Creole family. He was born in Ibberville Parish, Louisiana, in 1838, and graduated from the University of Louisiana in 1858, and a year later from the law department. Law practice and the publication of the "Weekly Magnolia" at his birthplace occupied his time from his graduation to his enlistment in the Confederate Army. After the war he practised law at Vermillionville, Abbeville, and New Iberia, and did a lucrative business. He served in the session of the Legislature of 1862, and never accepted political office until 1888, when he was elected State Superintendent of Public Education. He resigned this position for the justiceship of the Supreme Court. Judge Breaux is a gentleman of means, a thorough scholar, and makes an excellent judge.



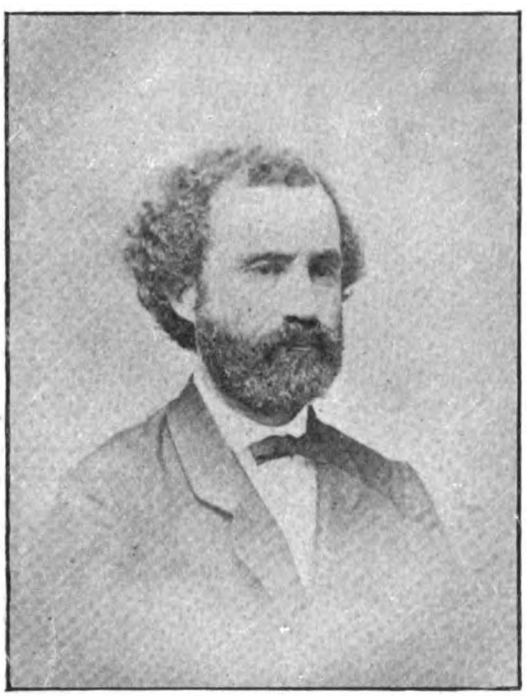
JAMES G. TALIAFERRO.

Governor Wiltz, in organizing the Supreme Court under the present Constitution, appointed representatives of the two great races, — two of the Latin and three of the Anglo-Saxon. Although changes have since occurred, the two great races are still likewise represented. By the Constitution, the State is divided into four districts, from three of which one justice and from the fourth two justices have to be selected and appointed. Chief-Justice Bermudez and Mr. Justice Fenner are from the district to which New Orleans belongs, and the other justices are from the remaining districts. When the court is divided, the minority justice or justices have the privilege of delivering a written dissenting opinion, which is published along with the majority opinion on the report of the cases determined by the court. In cases of recusation the justice or justices recused are replaced by one or more district judges, chosen by the justices not recused, who then participate in the determination of the cause. The time allowed for argument is limited to one hour to each side, but in proper cases an extension may be allowed. Judges against whom writs are asked, mandamus, prohibition, and others, are not permitted to argue in person. They may do so in writing or by counsel. In such cases the applications are not usually argued.

The cases decided by this court extend from the 32d to the 42d Annual Reports, both inclusive. They exceed in number four thousand, part of which has been reported by *syllabus* only, and in many instances not reported at all. In order to compel lawyers to present their cases more clearly and more efficaciously, the court requires, by rule, a succinct abstract of the material facts, and a *syllabus* of all the vital questions of law involved in the cases. With a view to avoid an incorrect report by the newspapers of what the decisions rendered are, as well as promptly to advise members of the bar and the bench of their real purport, and besides, to have the essential matters considered and determined more accurately put in relief in the volumes, the justices have imposed upon themselves the task

of appending to the opinions delivered by them, a *syllabus* showing exactly what the court proposed to decide. In 1884 the lower limit of the jurisdiction of this court was raised from one to two thousand dollars. While some of its business was thereby lightened, the cases coming under its supervisory control are quite numerous.

The decisions rendered and reported from 1810 to the present time are to be found in ninety-two volumes, known as Martin's Old Series, twelve volumes; Martin's New Series, eight volumes; Louisiana Reports, nineteen volumes; Robinson's Reports, twelve volumes; Louisiana Annuals, forty-one bound volumes. They have all been digested in Hennen's Digest, two volumes; Louque's Digest, one volume; Taylor's Digest, one volume; Knoblock's Criminal Digest, one volume; and Manning's unreported cases, one volume. The unreported cases are quite numerous, particularly so while the Constitution of 1868 was in force. Louisiana is governed by codified laws and by statutes. Its codes are known as the Civil Code and the Code of Practice. The Statutes in force in 1870 were revised and embodied in one volume, known as the "Revised Statutes." The acts since passed are scattered through the books. In all civil matters, where there is no express law, the court is to proceed and decide according to equity, appealing to natural law and reason, or received usages. Under that authority, when the law is silent, the courts consult the Roman, the French, the Spanish, the Common Law, as well of England and of the other States of the Union, particularly in commercial matters. There exists no distinction for the trial of cases, at law or in chancery, in the courts of Louisiana. Whatever the features of a case be, the court will pass upon it at law or in equity, or both. The Supreme Court exercises those blended powers. In original matters, ever since 1805, except when otherwise provided by special local legislation, the rules of practice and the definition of crimes and minor offences are as at common law, both in England and the United States.



ALCIBIADES DE BLANC.

The court was presided over as follows: —

Hon. GEORGE MATTHEWS, from 1809 to 1836, as Presiding Judge;

Hon. FRANÇOIS XAVIER MARTIN, from November, 1836, to March, 1846, as Presiding Judge;

Hon. GEORGE EUSTIS, from 1846 to 1852, as Chief-Justice;

Hon. THOMAS SLIDELL, from 1852 to 1855 as Chief-Justice;

Hon. EDWIN T. MERRICK, from July, 1855, to 1865, as Chief-Justice;

Hon. WILLIAM B. HYMAN, from November, 1865, to 1868, as Chief-Justice;

Hon. JOHN T. LUDELING, from 1868 to December, 1876, as Chief-Justice;

Hon. THOMAS C. MANNING, from 1877 to 1880, as Chief-Justice;

Hon. EDWARD BERMUDEZ, from April, 1880, to the present date, as Chief-Justice.

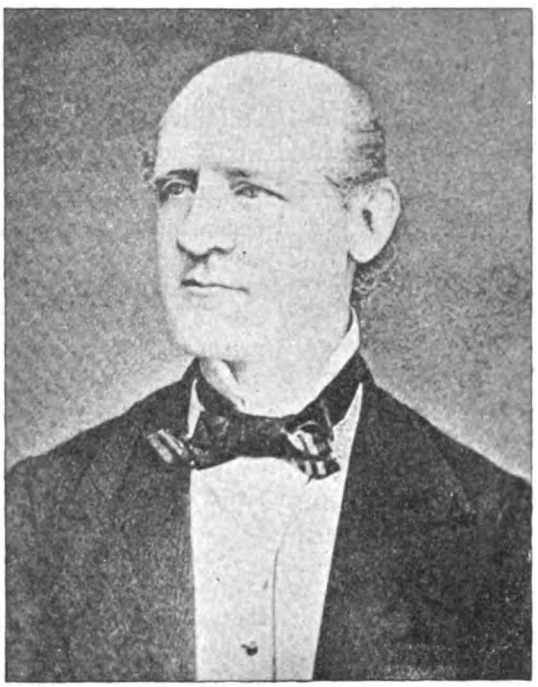
The Supreme Court room is adorned with busts and oil paintings of many

of the deceased justices of that tribunal and of a number of the members of the old bar. The busts are of Chief-Justice John Marshall, Presiding Judge F. X. Martin, Pierre Soule, Edward Livingston, Henry Clay, John C. Calhoun, and Daniel Webster. The portraits are of Chief-Justices Eustis, Slidell, and Manning, Associate Justices Bullard, Porter, Simon, Rost, Buchanan, De Blanc, Spencer, Spofford, Associate Justice John A. Campbell of the United States Supreme Court, and Counsellors Alfred Hennen, Christian Roselius, John R. Grimes, Etienne Mazureau, Sargent S. Prentiss, Judah P. Benjamin, Joachim Bermudez, J. L. Tissot. A life-size portrait of Governor Louis Alfred Wiltz also hangs upon the walls of the court, facing the bench.

JUDICIAL LIFE.

By Irving Browne.

JUDICIAL honors no sane man will grudge;
It is an awful bore to be a judge:
To sit for hours and strict attention keep
When one is dying with desire to sleep,
Lulled by the droning of the voice professional,
Like priest by penitent's outside confessional;
To look as if he never heard these things before,
When counsel every day repeat them o'er and o'er;
To hear them eat their words from term to term,
With memories or consciences infirm,—
These blowers of both hot and cold empiric
Make patient judges grow a bit satiric;
Never to be allowed to laugh at jokes,
Though counsel are so funny that one chokes;
No use to try to stop the tedious patter
Of immaterial and superfluous matter,—
Much better wait until the storm is over,
Unless one has the courage of a Grover;
Beware the fate of him, who sawing logs,
His fingers interposes 'twixt the cogs:
The saws of lawyers may be out of place,
But meddling with them does not help the case.



THE ENGLISH BENCH AND BAR OF TO-DAY.

I.

LORD COLERIDGE.

JOHN DUKE BARON COLERIDGE, the Lord Chief-Justice of England, is himself the most interesting figure in his own biography. Some of the old English judges appeal to our consideration solely on the ground of the part, often unconscious and involuntary, which they took in the development of the national or judicial life of England. Others, like Stowell and Jessel, command our sympathies by the important work which they have done. Yet a third class touch us on the human side by the record which they have to show of cruel fortune and hard circumstances overcome. Of such were Erskine and Thurlow. But to none of these three classes does Lord Coleridge belong. He has not been the passive instrument in any legal revolution, for the fusion of the courts of law and equity has produced merely a symmetrical and not a radical change. He has added nothing of permanent value to the law reports; much less is his name associated with the creation or rapid development of any branch of law. Nor did Lord Coleridge — the grand-nephew of the poet and philosopher, and himself the son of a distinguished judge — ever come into intimate personal contact with the seamy side of life at the bar, or know what it was to make up by intense effort for the want of money and friends. The external facts in his career are therefore of little interest, and shall here be lightly touched upon. The life of Lord Coleridge deserves study, not on account of anything he has accomplished, but as an example of what may be accomplished in a man. He is the personification of culture;

and the incidents and characteristics which the present paper is designed to record are more truly a narrative of the life of the Lord Chief-Justice than any recital, however accurate or detailed, of his academic distinctions, his professional contests, his parliamentary achievements, or the other minutiæ in which legal biography ordinarily delights. It may, however, be stated once for all that Lord Coleridge was carefully educated at Eton and Oxford, where he gained even more than the usual honors, was duly admitted to the Middle Temple, went through the long course of dinners which was then supposed to be the best qualification for forensic success, in the fulness of time was called to the bar, rose steadily into lucrative practice, became the Liberal Solicitor and Attorney-General, was appointed Chief-Justice of the Common Pleas, and upon the death of Sir A. E. Cockburn, attained to his present position of Lord Chief-Justice of England. He is in every point a striking contrast to his distinguished predecessor. Lord Cockburn was, in his faults and in his virtues, a typical Englishman. In his boisterous life, his intellectual strength, and his almost feudal chivalry he resembled one of our old Norman kings; while Lord Coleridge may, not unfitly, be compared to one of the polished, suave, and yet resolute ecclesiastics who stood beside them and frowned paternally upon their unruly passions. "Nature," said a hostile critic, speaking of the present Lord Chief-Justice, "intended him for a bishop; but accident has made him a judge." Again, Lord Cockburn was every inch an advocate; his forensic career had its own failures, of course, but these were relieved by triumphs which only genius of a high order could have accomplished. His reply in the Palmer case is superior to anything that can be found in the published speeches of Erskine; and his cross-examination of the medical witnesses for the defence in the same *cause célèbre* could hardly be surpassed. At the risk of a charge of irrelevancy we venture to submit to our readers a short specimen of Lord Cockburn's eloquence. The following are the terms in which he commented upon the evidence of an eminent medical man, still alive, whose cross-examination the Court would not permit him to postpone:—

"That gentleman who came here at the last moment and talked about *angina pectoris* would not have escaped so easily if I had had with me the books to which he referred, and had been able to expose, as I would have done, the ignorance and presumption of the assertion which he dared to make. I say ignorance and presumption, or what is worse, an intention to deceive. I assert it in the face of the whole medical profession, and I am satisfied that I shall have their verdict in my favor."

Now, it is fair to Lord Coleridge to say that a distinguished foreign observer of English society[1] gives to him a forensic character quite as high as that which we have attributed to Lord Cockburn. Partly because of its intrinsic interest, and partly because we mean to challenge its accuracy, we shall quote this writer's opinion in full:—

"I have often, years ago, heard his lordship examine or cross-examine witnesses in court; and if ever any individual assumed with perfect success the manner of the heathen Chinee, which, according to Mr. Bret Harte, was childlike and bland, that individual was the present Lord Chief-Justice of England. Other counsel, when they found the man or woman before them in the witness-box stubbornly stupid or reticent, would attempt to browbeat and bully. Sir John Coleridge, as he was then, would shake his head with a seraphic smile, in disapproval of so inhuman a proceeding, and would wait his turn. He went upon an entirely different tack. He never bullied, never hurried or flustered any one; but he got out of every one the exact thing he wanted, and by dint of sheer suavity inveigled those whom he interrogated into making the most suicidal admissions. The way in which he accomplished it was this. He treated the witness before him not merely as a

[1] "Society in London," by "A Foreign Resident," pp. 66, 67.

gentleman or lady, but as a kind of superior being, who had at his or her disposal just the information to extricate him from an appalling difficulty. 'My good friend,' he said, or seemed to say, 'pray help me; I really know nothing about this matter. My own faculties are exceedingly limited; I am a simple searcher after truth, and I respectfully pray for your assistance. Let me proceed to ask you, in my own unsophisticated way, a few modest questions.' When those modest questions had been put, and — as they invariably were — answered in the exact way in which the questioner had anticipated and designed, the prisoner at the bar, if it was a hanging case and Sir John Coleridge was against him, was a dead man. He felt the hempen cord tighten round his neck, and turned pale and sick."

Any man who becomes Attorney-General of England must be a reasonably competent cross-examiner; and there is no doubt that Sir John Coleridge answered to this description. But there are two circumstances which detract from the value of "a foreign resident's" opinion as to his attainments in this difficult branch of forensic study. In the first place he sketches the career of Lord Coleridge's contemporary, Sir Henry Hawkins, apparently without having known, and certainly without informing the reader, that "hanging Harry" — as the criminals call him — was the supreme cross-examiner of his day. In the second place one gathers from his language that it was chiefly in criminal cases that he had seen Sir John Coleridge's prowess displayed. Now, with all deference, the average Old Bailey prosecution or defence offers a somewhat narrow field for the exercise of the advocate's art, and it takes a comparatively small quantum of dialectic skill so to handle ignorant witnesses as to make the prisoner feel "the hempen cord tighten round his neck." It is in civil actions, where the parties themselves give evidence, and where the issue of the cause depends upon the evidence that they give, that the unrivalled cross-examiner finds his opportunity. Test Sir John Coleridge by the greatest professional effort of his life, — his cross-examination of the Tichborne claimant. Most men believe that Orton's story was thoroughly false; and yet the Attorney-General spent more than twenty days in a futile attempt to break him down. He displayed remarkable pertinacity and ability, but the episode was fatal to his claim to be the first cross-examiner at the English Bar; and Lord Cockburn, who presided at the trial, subsequently declared from the bench with just a spice of bitterness and personal pride in his tone, that "the claimant had beaten Sir John."

But if, as a legal gladiator, Lord Coleridge must yield the palm to greater rivals, he is still entitled to be called the most elegant and painstaking advocate of his day. The abilities of a rhetorician are always distrusted, especially by men who have no claim to the title; and there is a widespread impression that good English in a legal writer is barely consistent with good law. We know that Austin never forgave Blackstone for possessing a polished style. A very cursory review of the law reports will satisfy any one that Sir John Coleridge's arguments, although elegantly and even ornately expressed, were never characterized by the elaboration which dispenses with labor. The case of McDermott, 1868 L. R. 2 P. C. at p. 347, is a typical instance of the point in question. The difference between Lord Cockburn and his successor as judges is as well marked as any of those which we have already noticed. At the bar Cockburn was merely a great advocate; but when he had ascended the bench, he soon made himself a great lawyer and a great judge. His magnificent gift of exposition, matured by practice, reached a far higher development in the great Matlock will case (1864), and in the Tichborne case (1870), than even in the prosecution of Palmer. But it is not solely nor chiefly for these great judicial efforts that Lord Cockburn will be remembered. The modern law of newspaper libel is practically his creation, and no lawyer will ever speak without respect of the judge

who pronounced the decision in Banks *v.* Goodfellow.

Lord Coleridge's judicial reputation is of quite a different order. There is no department of law of which one can truthfully say "the work of his hands is there." But he is not without a judicial eminence of his own. In the first place he brings to the discharge of his duty not only metaphysical insight and a sound knowledge of law, but the power of taking a broad philosophic view of the very varied subjects which come before him. Once more, Lord Coleridge possesses, if not Cockburn's power of illuminating the most complex masses of fact, still a faculty of putting cases in a clear, if not a brilliant light. There is a class of legal text-book originated by Sir James Stephen, and most ably and happily developed by Sir Frederick Pollock. The method which these writers adopt is to analyze a series of cases, extract therefrom a few simple propositions, and then range the cases under their proper headings in this informal code. Now, the judgments of Lord Coleridge abound with terse, accurate, and elegant statements of law, which Sir James Stephen and his disciples might transplant into their works unaltered. This is no mean judicial gift. It subserves the useful purpose of popularizing the law, and makes the work of future codification easy. The Lord Chief-Justice is also a model of judicial deportment. His elaborate courtesy shines upon all who enter his court and come within his official cognizance, — upon the rich and poor, upon the learned and unlearned, upon the just and unjust. To the nervous junior who has lost the faculty of articulation and can scarcely see the writing upon his brief, he is peculiarly gentle; and many an unknown man who had fared badly in the struggle at the bar has been surprised to find that the Chief-Justice had unostentatiously discovered his name, and has gone away with the sunlight in his heart. It is easy enough to laugh at Lord Coleridge's "sentiment," and to harp upon his weaknesses; but after all has been said, he is still one of the most striking figures in the High Court of Justice. The English Bench can boast of some judges who are better lawyers than Lord Coleridge: but none of its living members is at once so good a lawyer and so great an administrator; none has attained such high distinction at once in the world of letters, the world of politics, and the schools of law; none is so well fitted to fill the office of those great justiciars who ruled England before the functions of the *curia regis* had been distributed, or the distinction — now so familiar to us all — between legislation, jurisdiction, and execution had entered into the minds of men.

LEX.

A VISIT TO AN ENGLISH POLICE COURT.

EVEN the few Americans who have seen an English police court will not all confess it. Indeed, human conditions are so peculiar that I hasten to explain how I came to see one; for police courts are not in the guide-books, and even "slumming" stops at their doors. It was in Birmingham, and I was in search of one of England's most noted specialists; who, it turned out, was a police magistrate, like so very many other rich, cultivated, and famous Englishmen. Police magistrates are chosen from among the leading men, and not only serve for life and without pay, but esteem it an honor to do so. They need not to know anything about law, and usually do not; but that is almost the only point at which they resemble the typical American police justice. There must be an enormous number of these magistrates in England, for Birmingham has about fifty. Large numbers are needed, as they sit in pairs, each

pair serves only on one day in a week, and a large proportion are too old to do anything of an official nature, except to continue to sign their titles after their names. I went to the police court (which was as grimy and as shabby as police courts and the crowds within them usually are), and sent my card to the magistrate by a policeman. It interested me to see the respect shown to the judge by the officer; for the man was afraid to speak or to do the least thing that might attract the judge's attention. His plan was to stand beside the bench, my card in hand, until the magistrate might happen to look that way. It seemed as if his honor never would turn his head; but at last, after a delay of full ten minutes, reluctant fortune favored me, and I was bidden to go up and take a seat upon the bench.

The trip-hammer effect of the blows that caste has dealt English humanity always impressed me, and almost constantly confronted me. It was not many days after this that I met an able journalist, an editor, who said that for many years he had made it a rule to drop all other work in order to report Mr. Gladstone whenever he made a speech. I congratulated him upon being so intimate as he must be with so great a man. "Intimate!" said he. "Why, I do not know him at all. I met him accidentally in a railway car last year, and was presented to him. He shook my hand; but he does not remember me." At the time of that conversation the Hon. Chauncey M. Depew and a reporter were riding up town in New York together in a horse-car, and as it fell out that Mr. Depew (who had just arrived from England) had no change, the reporter paid his fare.

But I really did go to the police court, and found it more interesting than the above digressions give reason to suspect. It was so interesting that after I had whispered my business, I asked if I might not stay up there until the last prisoner got his share of British justice.

The two magistrates sat side by side at a desk high above everything else in the court-room. The desk was enclosed on either side by glazed partitions containing doors, and behind it and the judges was the end wall of the room. The high platform on which their throne-like box was built had its own doors, for egress and ingress, in the side walls of the room. Immediately in front of the judges' bench sat "the clark," — as we would say, the clerk of the court, — on a high stool, behind a high desk like a pulpit. The clerk is as important in the law there as he is in politics here. He knows the criminal law, and is the only one except the criminals and their counsellors who does. In this court his curly black poll came a trifle above the edge of the magistrates' desk, just where a penwiper would be useful, and for all the world like one, because the rest of him could not be seen. On either side of the clerk's desk a tier of short benches arose, — one tier for reporters, and one for lawyers.

The dock took up nearly all the middle of the room. It looked like a huge bird-cage, with the door broken off. Its wires were of half-inch iron. They rose straight from the floor to the ceiling, and were boarded up in the back so that the people on the benches for the public in the rear could not see the prisoner or be seen by him. Something like an old-fashioned cellar door, slanting from the cage toward the floor, projected from one end of the cage. It was the covered way by which the prisoner was brought up into the dock from the tunnel of masonry under the court, which led from the cells in another building. When the prisoner came up out of this covered way, he found himself facing the magistrates, whom he saw through a square break in the cage wires. A court official in police blue stood in the cage all the while, holding a sheet of paper on which were the names of all the prisoners, notes of the offences of which each was accused, and a record, or "pedigree," of the number of times each had been arrested before. — JULIAN RALPH, in *Harper's Weekly*.

CAUSES CÉLÈBRES.

XXIII.

NO. 29 RATCLIFFE HIGHWAY.

[1811.]

THE recent Whitechapel tragedies recall to mind a series of crimes which eighty years ago threw not only the city of London, but the greater part of England itself into a paroxysm of consternation and terror. These murders, says De Quincey (in his essay on "Murder considered as one of the Fine Arts"), were "the sublimest and most entire in their excellence that ever were committed." While the perpetrator of the Whitechapel atrocities is still at liberty, the author of the atrocious deeds above referred to was, fortunately, speedily discovered. Less cunning than his more modern rival, he himself furnished the authorities with the means of his detection.

Within a few minutes of midnight on Saturday, Dec. 7, 1811, Mr. Marr, a young newly married man, keeping a small lace and hosier's shop at No. 29 Ratcliffe Highway, sent out his servant-girl to pay a baker's bill and to get some oysters for supper. Mrs. Marr was at the time in the kitchen, rocking her baby in its cradle. The apprentice — a young, ruddy Devonshire lad, named Goven, aged fourteen — was either busy in the shop or at work downstairs. The girl was alarmed, as she left the house on that peculiarly gloomy December night, by seeing a man in a long dark coat standing in the lamplight on the opposite side of the street, as if watching her master's house. The watchman, a friend of Marr's, had also previously noticed this mysterious man continually peeping into the window of Marr's shop, and thinking the act suspicious, had gone in and told the proprietor. A few minutes after Mary the servant left, as the watchman was returning on his ordinary half-hourly beat, Marr called to him to help him put up the shutters; and the watchman then told Marr that the man who had been skulking about had got scared, and had not been in the street since. In the mean time the girl, looking in vain for an oyster-shop still open, had wandered from street to street and lost her way. It was nearly half an hour before she got home; when she arrived there, to her surprise she found no lights visible, and no sound within the house. She rang, and then gently knocked, but there was no reply. She rang again after a pause, but violently. Presently (but we take this fact, with some slight doubt, from Mr. De Quincey's wonderful narrative of the tragedy) she heard a noise on the stairs, and then footsteps coming down the narrow passage that led to the street door. Next, she heard some one breathing hard at the keyhole. With a sudden impulse of almost maniacal despair, she tore at the bell and hammered at the knocker; partly, perhaps unconscious of what she did, to rouse the neighborhood and paralyze the murderer, feeling now certain that a murder had been committed. Mr. Parker, a pawnbroker next door, threw up his bedroom window, and the servant told him that she felt sure her master and mistress had been murdered, and that the murderer was even then in the house. Mr. Parker half dressed himself, and armed with a kitchen poker, vaulted over the low brick wall of his back yard and entered Mr. Marr's premises. A light was still glimmering through the half-open back door by which the murderer must have just escaped. The shop was floating with blood. Marr lay dead behind the counter near the window, his skull shattered by blows of a mallet, and

his throat cut. The bodies of Mrs. Marr and the apprentice, also killed in the same way, were lying in the centre of the shop floor. The wife had apparently been murdered as she came upstairs, alarmed by the scuffle; the apprentice boy after some resistance, for the whole counter and even ceiling was sprinkled with his blood. Some one in the crowd suggested a search for the child. It was found in the kitchen, crushed and with its throat cut, the cradle beaten to pieces, and the bed-clothes piled over it. At this horrible aggravation of a hideous series of crimes, the spectators uttered a cry of horror. The servant-girl became speechless and delirious, and was carried away by the neighbors.

The murderer must have worked with terrible swiftness and sagacity. The watchman remembered that a little after twelve, finding some of Marr's shutters not quite secure, he called to him, and some one answered, "We know it." That must have been the murderer. Not more than two guineas had been stolen from the house. An iron-headed mallet, such as ship-carpenters use, and with the initials J. P. on the handle, was left behind by the murderer. It was clear that the wretch must have stolen in, the moment the shutters were up and while the door was closing. He had glided in, first stealthily locking the door, and then asked to look at some unbleached cotton stockings. As Marr had turned to take these from a pigeon-hole behind the counter, the first blow must have been struck, for the stockings were found clinched in poor Marr's hands. The murder of the child seemed alone to prove that revenge had been the motive.

During the next week many persons were arrested about Shadwell on suspicion of the murders, but they were all exonerated and discharged. A sailor, half-crazed with drink, accused himself of the murders; but his insanity was soon discovered.

On the Sunday week the Marrs were buried; thirty thousand laboring and seafaring people watching the funeral, with faces of "horror and grief." All London was stricken with fear; fire-arms and thousands of rattles were purchased. There was a horrible fear that the unknown monster, having failed to secure plunder the first time, would attempt further crimes; the bravest man dreaded the approach of night.

That dread was too well founded. On Thursday, the 19th of the same month,—only twelve nights after the Marr murder, and near the same place,—another butchery took place. It occurred at the King's Arms public-house, at the corner of New Gravel Lane, a small street running at right angles to Ratcliffe Highway. Mr. Williamson, a man of seventy, and his wife, kept the house. The other inmates were a middle-aged Irishwoman, who cleaned the pots and waited in the taproom; a little granddaughter, about fourteen years old; and a young journeyman, aged about twenty-six, lodger. Mr. Williamson was a respectable man, always in the habit of turning out his guests at eleven o'clock, and finally shutting up at twelve, when the last neighbor had sent for his ale.

Nothing particular happened in the house while it was open that night, except that some timid persons noticed a pale red-haired man, with ferocious eyes, who kept in dark corners, went in and out several times, and had been met wandering in the passages, much to the landlord's annoyance.

When the guests had left, and the lodger had gone to bed on the second floor (the child being asleep on the first), Mr. Williamson was drawing beer on the ground floor, Mrs. Williamson was moving to and fro between the back kitchen and the parlor, the servant was cleaning the grate and placing wood for the morning.

The lodger, nervous in bed and only able to doze, woke at half-past eleven, thinking of Mr. Williamson's wealth, the murder of the Marrs, and his landlord's carelessness about leaving his door open so late in a dangerous and ruffianly neighborhood. Suddenly he heard the street door below slammed and locked with tremendous violence. He leaped

out of bed, and lowering his head over the balustrade, heard the servant scream from the back parlor, "Lord Jesus Christ, we shall be all murdered!" He felt at once it was the murderer of the Marrs. Half crazed with terror, and unconscious of what he did, Turner crept downstairs and looked through the glass window of the taproom (Mr. De Quincey says through the door that was ajar). He could not see the murderer at first, but heard him behind the door, rapidly trying the lock of a cupboard or escritoire. Presently there appeared in view a tall, well made man, dressed in a rough drab bearskin coat, who knelt over the body of the landlady which lay upon the floor and rifled her pockets. He pulled out various bunches of keys, one of which fell with a clash to the floor. The listening man noticed that the murderer's shoes creaked as he walked, and that his coat was lined with the finest silk. With the keys now stolen, the murderer retired again to the middle section of the parlor. Even in his fear Turner felt that there was now a moment or two left for escape. The sighs of the dying women, the clash of the keys, and the jingling of the money would prevent his footsteps on the creaky stairs from being heard. Softly and with his bare feet he ran upstairs to escape by the roof, but in his terror he could not find the trap-door. He then ran to his room, forced the bed to the door as gently as he could, and tied the sheets together to drop from the window, which was twenty-two feet to the ground. This rope he fastened to an iron spike he luckily found in the tester of the bed. In a few minutes he had let himself down, and was caught by a watchman who was passing at the time. His first thought had been to save the child, but he was afraid she might cry if he awoke her suddenly, and then both the child and he would have been murdered. Almost speechless, all Turner could do, on reaching the ground, was to point to the door of Williamson's house, and stammer, "Marr's murderer is there." It was not twelve o'clock yet, and several persons soon assembled; two of the most resolute men, named Ludgate and Hawse, armed themselves with iron crows, and broke open the door. They found the bodies of Mrs. Williamson and the servant, Bridget Harrington, with their throats cut, near the fireplace in the parlor. In the cellar they discovered the body of the landlord, which had been thrown downstairs. He had defended himself with an iron bar wrenched from the cellar window; his hands were cut and hacked, his leg was broken, and his throat was cut. The little grandchild was discovered tranquilly asleep. A rush was then made behind, where a noise was heard of somebody forcing windows; and as the door was forced, a man leaped out, crashing down the glass window-frame. There was behind the house a large piece of waste ground with a clay embankment, belonging to the London Dock Company; and across this the man escaped through the rising mist.

The agitation of the neighborhood at the news of these new crimes was irresistible frenzy. People leaped down from windows; every house poured forth its inmates. Sick men rose from their beds. One man — who died, indeed, the next week — snatched up a sword and went into the street. The one desire was to tear and hew the wolfish demon to pieces in the very shambles where he had been found. The drums of the volunteers beat to arms; the fire-bells rang. Every cart and carriage was stopped, every boat on the river and every house in the neighborhood was searched, but in vain. Rewards of fifteen hundred pounds were offered by the government and the parish of St. George.

The very next day an Irish sailor, named John Williams, alias Murphy, was apprehended at the Pear-Tree public-house, kept by Mrs. Vermillot, where he lodged. About half-past one on the night of the first murder, he had come up into the loft where there were five or six beds, two Scotchmen and several Germans. The watchman was cry-

ing the half-hour at the time. The Germans were sitting up in bed with a lighted candle reading; but they put it out because Williams said roughly, "For God's sake, put out that light, or something will happen!" In the morning a fellow lodger, named Harris, told him of the murder before he got up. He replied surlily, "I know it." Since then he had been restless at nights, and had been heard to say in his sleep, "Five shillings in my pocket? — my pockets are full of silver." Alarmed at the Marrs', the murderer had taken nothing there, although there was a sum of one hundred and fifty-two pounds in the house, besides several guineas in Marr's pocket. The mallet left, with another maul and an iron ripping-chisel, at Marr's, was identified as belonging to Peterson, a Norwegian ship-carpenter, who had left it in a tool-chest in Mrs. Vermillot's garret at the Pear-Tree, from which it was now missing. Mrs. Vermillot's children remembered the mallet, from having often played with it. The prisoner's washerwoman also proved that a shirt which he had recently worn came to her bloody and torn, and he had told her he had had a fight. It was proved that he knew Marr and Williamson, and several publicans certified that they had resolved to refuse him their houses because he was always meddling with their tills. It was also proved that he had recently cut off his whiskers, and that muddy stockings he had worn had been found hidden behind a chest.

This was on the Friday; on the Saturday he was committed for trial. On his way to prison, but for a powerful escort, he would have been torn in pieces by a fierce mob. At five o'clock he was left in his cell at Coldbath-fields, and his candle removed. In the morning he was found dead, hanging by his braces to an iron bar.

A few weeks later the guilt of this horrible wretch was finally and completely proved. In a closet at the Pear-Tree public-house, some men searching behind a heap of dirty clothes found plugged into a mouse-hole a large ivory-handled French clasp-knife, the handle and blade both smeared with blood. Williams had been seen using the knife about three weeks before the Williamsons' murder. They also found a blue jacket of Williams's, the outside pocket of which was stiff with coagulated blood, as if the murderer had thrust the money into this pocket with his hand still wet.

A lady who saw Williams at the police-court examination, described him to De Quincey as a middle-sized man, rather thin and muscular, and with reddish hair; his features mean and ghastly pale. It did not seem real blood that circulated in his veins, but a green sap welling from no human heart. He was known for an almost refined person with a smooth, insinuating manner; he is even said to have once asked a girl he knew, if she would be frightened if she saw him appear about midnight at her bedside armed with a knife. To which the girl replied, —

"Oh, Mr. Williams, if it was anybody else I should be frightened; but as soon as I heard your voice I should be tranquil!"

It is useless to discuss the motives of Williams's crimes. Mr. De Quincey hints that Marr and Williams had sailed to Calcutta in the same Indiaman, and that on their return they had both courted the young woman whom Marr afterwards married. The second murder may have been the result of a wish for money with which to find means for escape: a thirst for money and an unquenchable lust for blood are apparent in both. This good, at least, arose from the horrible tragedies: they showed to the excited and terrified city the utter incompetence of the old watchmen, and prepared men's minds for the necessity of a larger, younger, and more disciplined body of police.

MUTABLE LAW AND IMMUTABLE JUSTICE.

"ONCE justice always justice," is a maxim frequently in the mouth of lawyers, the truth of which it would be difficult to dispute. The reference to precedent is based upon it as a principle; what certain wise men in judicial ermine considered just a century or two ago being, in virtue of it, just still. And hence the maxim, "Once justice always justice," becomes synonymous with a very different proposition, "Once law always law," the falsehood of which is very apparent. For to the reflective reader of the histories of nations, few facts are more patent than the mutability of laws. Terrible and wise were the gray-bearded Druids in Britain nineteen centuries ago, with their Stonehenge, and oak temples of justice, and their criminal jurisprudence, which burned up scoundrels wholesale in wicker baskets, in a fashion considerably different from any now sanctioned by the Lord Chief-Justice of England. And in these nineteen centuries how numberless the changes, how various the law-givers, — Roman, Saxon, Norman, in succession! What was treason, in one reign, and a passport to the scaffold, was patriotism and a passport to royal favor in the next. Opinions, for the promulgation of which judges recorded sentence of death, raised some of their successors to the bench. "Once law always law," is a proposition that will not stand, whether the law be the opinion of a judge or the edict of an emperor, unless in those rare cases where the judge has had the clear vision to see, the steady hand and the unfettered will to touch, some point in immutable justice. Caprice, fashion, ignorance, and expediency, which dictate laws through monarchs, mobs, and houses of Parliament, and even through judges, are the changeful creations of the changing ages, and almost as mutable as the dresses and faces of fleeting generations; but Justice sits afar, unchangeable, dimly seen, and often wrongly seen, through the earthly mists and vapors that rise to veil its throne from imperfect human sight, yet ever claiming the allegiance of those who have realized that, not to gratify sense, but to obey conscience and work the work of duty, is the high destiny of man.

Of the influences that alter the human conception of justice from age to age, the chief is the growth of knowledge; in fact, it comprehends all the rest. As knowledge grows, iniquitous customs die out. They are offensive to the enlightened conscience, and seem to be obstructive to the enlightened selfishness of man. For what is just is good for all, and what is unjust is in the end good for no one. As the arch enemy of superstition, knowledge, surely if slowly, abolishes those unjust laws that owe their origin to superstitious beliefs.

The justness of the laws of a State depend in great measure upon the conscientiousness and enlightenment of its law-givers. If they do not know the right, they cannot do it; if unconscientious, they *will* not, although they know. But generally ignorance, the essential condition of low intellect, and a low standard of personal rectitude, go together. It is impossible for a bad man to be very wise. Life scarcely affords leisure for wickedness and the acquisition of wisdom. It is equally impossible for a wise man to be very vile; for he has observed and noted that vicious pleasure does not last long, and that remorse is a dear price to pay for it; and he has seen the worthlessness of existence as an animal or a knave, very little wisdom being competent to lead to convictions of that sort. We may say, then, that defective knowledge has been the cause of most vicious laws, and a deference to what is supposed to be the wisdom of our ancestors, but which is in reality the want of it, absolute folly it may be, is the cause of their perpetuation. But knowledge alone does not alter laws, for the knowl-

edge of the right does not always necessitate the doing of it. Knowledge directs, but it is want and misery that drive. Political economy had condemned the corn laws for many years; yet it was not science, but the hunger of Ireland, that abolished them. Therefore it happens that as knowledge lags behind true conceptions of justice, so the inertia of society, indifferent and comfortable, lags behind knowledge. Expediency too will not sanction every change simply because it is theoretically just; since changes in law are generally ruinous to individuals, and the old and understood is always more secure, though imperfect, than the new and strange. Old men dislike new ideas and new customs and new laws. Hence the conservative tendency of judicious age, which would rather keep to the tried and the tolerable than pursue the best. Hence the slowness with which law moves after equity.

Every law-giver has been hampered by the material upon which he had to work. The iniquities which the legislature cannot remove hamper the judge. He strives after equity fettered by laws and precedents which the rules of his calling forbid him to break rudely, but allow him to stretch a little, and slip aside, when absolutely oppressive and moderately loose. He is not, like the legislator, guided in the least by the clamors of the mob; his premises are generally given him, and his logic may be as perfect as his reasoning faculty can make it; but all his conceptions of equity are controlled by law. For him the maxim, which we dispute, *Equitas sequitur legem*, has a meaning and a force. It means, his ideas of equity must yield to his logical deductions from settled and existing law. When some of his premises are not matters of law but of fact, then the fresh difficulty of ascertaining truth arises to perplex him. His ignorance of fact he exchanges for presumptions of law or nice balancing of evidence. In balancing evidence, he is doing his best; but in creating presumptions of law he is sometimes furnishing excuses to ignorance, over-indolent to seek earnestly after certainty, even when it is attainable.

Some intensely practical lawyer may be asking, "What is the use of all this tedious disquisition to me?" And indeed, to satisfy some men on that score would be very difficult. Our object in what we have written was to stimulate thought, — to note the fact well, that human laws are not for all time, but only for a few generations; and to note the other fact, that, as civilization advances, they are superseded by closer approximations to abstract justice. That law has always been changing, and ever will, until the millennium at soonest, is a matter worth our friend the practical lawyer's while to know;. and few matters of knowledge could delight him more, we fancy. His work is never likely to fail unless club-law return.

Since the distance between equity and law is so great, and the barriers in the way of union so strong and various, law must long continue mutable, — we may say, must ever continue so. For as the past has altered its laws, so will the future alter the laws of the present and its own. The circumstances of human life and the tendencies of human thought will vary, as they have varied, from age to age. As the past has been, so will the future be, — alike in mutability. Vain have the wishes of nations and of rulers been hitherto, that their laws should endure forever. The laws of Solon have lost their meaning, and the debased Greeks have had many law-givers not sages, since they stooped and fell from their high estate; no orator now, with Cicero, lauds the fragments of the twelve tables as the perfection of human wisdom; and the Medes, who boasted unchangeableness of their laws, are themselves abolished. Yet amid all this decadence of human laws, the laws which regulate the physical world have not altered. River and planet keep their course, day follows night, the seasons come in their order; there is lightning in the summer cloud, and snow in the thick dim breath of winter. Birth and

death, and the seven ages between, compose the little drama of existence, as of yore. The laws of Nature never change, — in the beginning, Omniscience enacted them for all time; and we doubt not, though we cannot prove, that similar laws were enacted for moral and social existence. That code is the code of immutable justice. Happy the nation whose sages have read here a line and there a line of it. Their wisdom will bless many generations, and survive after they have passed from earth. But assuredly, under all selfish, unjust human laws, burns the divine law of change, restless as Etna's molten entrails; and the parchments of kings and emperors, bearing enactments intended for a long future, each inscribed *Esto perpetua*, shrivel up over its lava flood, and drop into it black, unnoticeable ashes. — *Journal of Jurisprudence.*

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.

IF the publication of the "Green Bag" is from any cause delayed a day or two beyond its usual time, the Editor is overwhelmed with inquiries as to the cause of the delay, showing that our readers are on the constant watch for its appearance. We intend to issue each number by the 10th of the current month; but sometimes, for unavoidable reasons, a day or two longer time is required. We think we can safely say, however, that the 15th of each month will see the "Green Bag" on its way to its expectant readers.

OUR April number will contain a sketch of the Supreme Court of Missouri, written by L. C. Krauthoff, Esq., of Kansas City. The illustrations will include portraits of William Scott, William B. Napton, John F. Ryland, Hamilton R. Gamble, David Wagner, Philemon Bliss, Thomas A. Sherwood, Elijah H. Norton, Robert D. Ray, John W. Henry, Warwick Hough, Theodore Brace, Francis M. Black, and possibly one or two others. The article is ably written, and cannot fail to interest the profession at large as well as the members of the Missouri Bar.

A BOSTON correspondent kindly corrects an error in the obituary notice of Judge Clarke, published in our February number: —

"I see that in your notice of Judge Clarke you say that during the impeachment proceedings of Andrew Johnson, Senator Clarke voted against the impeachment, and that in 1866 he failed to be re-elected to the Senate. As a matter of fact, he was not a Senator at the time of the impeachment, but was on the Federal Bench. The impeachment trial was in 1868, and the Senators from New Hampshire were then Cragin and Patterson."

As we are largely dependent upon newspaper reports for the facts in our obituary notices, errors are almost unavoidable; and the Editor trusts that corrections will be made in all cases where mistakes occur.

WE begin in this number a series of articles on "The English Bench and Bar of To-day," which cannot fail to prove of great interest to our readers. They are written by an eminent English barrister, and give a candid estimate of the character and ability of some of the leaders of the English Bar.

LEGAL ANTIQUITIES.

IN the reign of Henry VIII., assaults becoming very frequent among the fiery nobility of the court, and the law for their punishment, whereby the right hand of the culprit was forfeited, having fallen into desuetude, an act of Parliament was made establishing a court for the speedy trial of all such offenders; and it may not be uninteresting to copy one or two of the quaint clauses of that act: —

"That the serjeant or chief surgeon for the time being, or his deputy, shall be ready at the time and place of execution to sear the stump when the hand is so smitten off.

"And the serjeant of the pantry shall be also then and there ready to give bread to the party that shall have his hand so smitten off.

"And the serjeant of the cellar shall also be then and there ready with a pot of red wine to give the same party drink after his hand is so smitten off and the stump seared.

"And the master cook shall be also then and there ready, and shall bring with him a dressing-knife, and shall deliver the said knife at the place of execution to the serjeant of the larder, who shall be also then

and there ready, and hold upright the said dressing-knife till execution be done.

"And the yeoman of the poultry shall be also then and there ready *with a cock in his hand, for the surgeon to wrap about the same stump when the hand shall be so smitten off.*

"And the groom of the salcery shall be then and there ready with vinegar and cold water to give attendance upon the said surgeon till execution be done."

In addition to losing his right hand, the unfortunate criminal was imprisoned for life; and this punishment for striking in the king's palace or in a court of justice — where, by implication of law, the king was always personally present — continued to be law from 1542 to 1829, a period of two hundred and eighty-seven years.

FACETIÆ.

In the celebrated cause of Day against Goodyear, known in New Jersey as the "great india-rubber cause," Daniel Webster was employed for Mr. Goodyear. The custom then was for the court to assemble at ten o'clock in the forenoon, continue in session until one o'clock, then adjourn for dinner until three in the afternoon, and adjourn for the day at six o'clock. At the opening of the court in the afternoon, Mr. Webster, who had already begun his address, rose to continue his argument. He was dressed in his traditional costume, — blue coat, buff vest, and black trousers. He began by saying, "May it please your Honors, I come now to the investigation of that part of the cause where the witnesses from Baltimore appear." Justice Grier, in his inimitable manner, interrupted the speaker, and said: "Mr. Webster, you need n't trouble yourself about the witnesses from Baltimore; I don't believe a word they said. There never was a patent cause in this court since I have been on the bench but that some rascal from Baltimore claimed to be the first inventor." Mr. Webster was evidently "floored." He drew his hand over his chin, thrust it into his vest, but soon recovering himself, said in his blandest tones, "As your Honor has so kindly relieved me from the investigation of this part of the case, to which I had devoted two hours, I move the court adjourn until to-morrow morning at ten o'clock." Promptly turning to the crier, the Judge said, "Crier, adjourn the court until to-morrow morning at ten o'clock."

A Southwest Georgia justice of the peace had listened to the evidence in a case that was being tried before him, and when that had been concluded, one of the lawyers arose to make a speech in favor of his client. The judge listened patiently half an hour, and then began writing on a piece of paper in front of him. A few minutes later he interrupted the lawyer by saying: "Gentlemen, when you finish your speeches you will find my decision written on this piece of paper. You will have to excuse me for a while, as I have to plant some potato-slips. Let me know when you have concluded, and I will return and sentence the prisoner."

In an attack directed against the character of a witness, the examining counsel came off second-best: —

"You were in the company of these people?"

"Of two friends, sir."

"Friends! two thieves, I suppose you mean?"

"That may be so," was the dry retort; "they are both lawyers."

Judge (to Witness). What are you?

Witness (who is a physician). I am an insane expert, your Honor.

Judge. Oh, you are! Well, then you may step down, sir. I don't want any crazy persons giving testimony in this court.

"Have you read anything about this case in the papers?" asked a lawyer of a man summoned as a juror in an important criminal case.

"No, sir, not a word."

"*Not a word,* and the papers have been full of it?"

"No, sir, I don't read the papers, nor anything else, *for I can't read at all.*"

The Judge: "Mr. Clerk, swear the juror."

"Did you see this tree, that has been mentioned, by the roadside?" an advocate inquired.

"Yes, sir, I saw it very plainly."

"It was conspicuous, then?"

The witness seemed puzzled by the new word. He repeated his former assertion.

The lawyer with a sneer then asked, "What is the difference between plain and conspicuous?"

But he was hoist with his own petard. The witness smoothly and innocently answered, "I can see you plainly, sir, among the other lawyers, though you are not a bit conspicuous."

MAGISTRATE (to PRISONER). You are found guilty of meeting the plaintiff in a lonely street, knocking him down, and robbing him of everything except a valuable gold watch which he had with him. What have you to say?

PRISONER. Had he a gold watch with him at the time?

MAGISTRATE. Certainly.

PRISONER. Then I put in a plea of insanity.

Journal of Jurisprudence.

A NEW HAMPSHIRE judge tells the following of the late Gen. Gilman Marston, who practised long and successfully at the Rockingham County Bar. The General was arguing a case, and made a rather outrageous statement. "I knew that it was not law," said the Judge, "and rather thought the General did; still I put the question to him, 'Do you think that is law, General?' to which he audaciously responded with a quizzical look, 'No, I do not, Judge; but I thought you might.'"

NOTES.

AN Iowa judge has made a wise decision. An ingenious youth of that State tied a thread to a nickel, dropped the nickel in a slot-machine, got what he wanted, then withdrawing the nickel by the thread repeated the operation until he had made a clean sweep of the receptacle's contents. He was arrested on a charge of theft; but the judge who tried him held that he had committed neither burglary, larceny, nor robbery, nor either obtained property under false pretences. He had merely done what the inscription on the machine told him to do, — dropped a nickel in the slot, — and had kept on doing it. Nothing was said about leaving the coin where it was dropped. This decision will probably abate a nuisance.

IT is likely that there will be several changes in the personnel of the Supreme Court within the next two or three years. Justice Field is seventy-four years of age, while Justice Bradley, his junior in point of service, is three years his senior in age. Either could have retired on full salary for life. Two years hence the like right will be open to Justice Blatchford, who at that time will be ten years a member of the court, and seventy-two years of age. The probability therefore is, that the Supreme Court will contain more new faces within the next few years than it gained in any other equal period in the present decade. There seems to be something in service on that bench which is favorable to longevity. Few of its members have reached it until attaining middle life, yet the instances in which service has been extended to more than a quarter of a century are not rare. John Marshall, of Virginia, and Joseph Story, of Massachusetts, exceeded that limit nearly ten years, while the service of John McLean, of Ohio, and James M. Wayne, of Georgia, continued thirty-two years; that of Bushrod Washington, of Virginia, thirty-one years; of William Johnson, of South Carolina, thirty years; of Roger B. Taney, of Maryland, and of John Catron, of Tennessee, twenty-eight years; and of Samuel Nelson, of New York, twenty-seven years. Marshall heads the list in this respect, his service extending over thirty-four years. — *Central Law Journal.*

"THERE is something peculiar about preserving order in a court-room," said a judge of seventeen years' experience, just after he had been presented with a handsome ivory gavel the other evening. "Now, as a general thing, the judge who makes the most noise himself will have the noisiest court-room. It is usually the new judge who uses a gavel. A pocket-knife is my favorite article for keeping order. I find I can command more attention when I rap with that and ask for a little more quiet than if I pounded with a big gavel and made more noise." And this experienced judge put his handsome gavel back into its red-plush box, there to repose, regarded with pride as a memento of his associates' esteem, but probably never taken into court. — *N. Y. Times.*

IT is said that there is not a lawyer in the Legislature of North Dakota.

A CASE brought by a revenue officer has helped to enliven the proceedings of a somewhat prosaic court of law in Amsterdam. Upon the cause list stood the petition of a tax-collector versus the Sultan of Turkey for non-payment of rent. The judge, as usual, ordered the usher to call both parties before the court. The usher, with his stately step, left the precincts of the court, and in his formal monotone called, "Herr N—— N—— and his Majesty the Sultan of Turkey, Abdul Hamid!" and then returned into court. The judge: "Are the parties to the suit present?" The usher: "No, your honor; only the plaintiff. His Majesty the Sultan does not appear." The judge considered that the dignity of the court must be upheld, and judgment was given accordingly.

MR. BUTTON, the stenographic reporter for the Parnell Commission, gives his opinion of forensic orators as follows: —

"The man who thinks clearly and who expresses himself in respectable English, is not difficult to report. One of the most difficult of speakers to report is Sir Richard Webster. He is utterly careless as to the manner in which his sentences are constructed, and he talks very rapidly. Sir Richard is a trained athlete, and therefore a long-winded man; a sentence that would prostrate any other orator is to him mere child's play. Now, so far as a newspaper is concerned, the *ipsissima verba* of Sir Richard Webster's speeches do not matter much; his ideas can generally be put more neatly and effectively by the reporter himself. But the official shorthand-writer, be he Mr. Button or one of his three assistants, is bound to secure every word. He is forbidden either to touch up sentences or to improve a man's style. To the official shorthand-writer, therefore, Sir Richard Webster has proved one of the fastest, as well as one of the most difficult speakers heard at the Parnell Commission Court. Sir Henry James is as voluble a speaker as the Attorney-General, — he is possibly even more voluble, — but then his elocution is remarkably clear and distinct, and his style of English is at once clear and finished."

Recent Deaths.

HON. MARCUS MORTON, ex-Chief-Justice of the Supreme Court of Massachusetts, died at his residence in Andover, February 10. Marcus Morton was born in Taunton in April, 1819, and he came of a notable family. His father, bearing the same name, was a justice of the Supreme Judicial Court from 1825 to 1840, in which year he was elected governor of the Commonwealth. The son attended the common schools, a local academy, and Brown University, graduating from the latter in 1838. He studied law two years at Harvard and in the office of Sprague & Gray, Boston, and was admitted to the Suffolk Bar in 1841, and immediately opened an office in Boston. He acquired an extensive practice, and continued to make his home in Boston until 1850, when he became a resident of Andover. He was a member of the famous Constitutional Convention of 1853, being elected from Andover. In 1858 he was a member of the House of Representatives, and was chairman of the Committee on Elections. In April of the same year he was appointed a justice of the Superior Court of Suffolk County. Upon the abolition of the old court system and the establishment of the new, in 1859, he was appointed upon the Superior Bench of the State. For ten years he served faithfully and efficiently, and in April, 1869, he was appointed upon the bench of the Supreme Court, and was made Chief Justice in 1882. This position he filled with honor and distinction until last November, when ill health compelled him to retire from the bench.

JUDGE BENJAMIN R. CURTIS died in Boston on January 25. He was born in June, 1855, and was the son of the late Judge Benjamin R. Curtis, a justice of the United States Supreme Court. He attended the Boston schools during his early youth, but at the age of eleven years was entered at St. Paul's School, Concord, N. H., the largest educational institution of its kind in America. Here he became fitted for matriculation at Harvard College, where he took the degree of bachelor of arts in the class of 1875, which includes many men who are prominent in the business and professional life of Boston. His bent was in the direction of literature. He read and he wrote. He was one of the most useful and valuable editors of the "Harvard Advocate," his contributions being among those of the most scholarly and interesting. He was at the Harvard Law School in 1876 and 1877, but did not graduate. In that year, 1879, he became the principal collator of

facts which resulted in the publication of "The Life and Writings of B. R. Curtis," his father; and in the following year he edited "The Jurisdiction, Practice, and Peculiar Jurisdiction of the Courts of the United States," — a work which has had peculiar interest for all lawyers. He was appointed a lecturer in Harvard, with especial reference to the foregoing named subject, in 1881; and in 1885 he edited the eleventh volume of Myer's "Federal Decisions." He was appointed to a position on the bench of the Municipal Court of Boston in April, 1886.

Ex-Chief-Justice John Appleton, of Maine, died in Bangor, February 7. He graduated from Bowdoin College in 1822. Mr. Appleton was appointed a reporter of decisions in 1884, justice on the Supreme Bench in 1852; and ten years later he was raised to the first place, and filled it with such honor to himself and the State that he was reappointed in 1869 and again in 1876. In August, 1883, he retired, being then seventy-nine years old. He continued his law practice, however, until 1885, when he became an invalid. Judge Appleton was a ceaseless worker, and when not hearing cases was in his study actively at work upon some legal question. His name and works are continuous in the Maine Reports for about half a century, and during his justiceship he disposed of more cases than any other Maine judge. Many important statutory changes in the laws of evidence and other branches of jurisprudence resulted from his efforts. "Appleton on Evidence," 1860, is a standard law-book. He was the father of the now common law allowing criminals to testify in their own behalf, and the author of the world-famous decision that the dog is a domestic animal.

Paul West, one of the best known of the younger lawyers of the Boston Bar, died on February 3. He was born in Nantucket, August 24, 1846. His early life was spent in the service of the Tudor Ice Company, and in the course of his employment he visited almost every country in the civilized world. Abandoning mercantile life, he devoted himself to the study of the law, and was admitted to the Suffolk Bar. Endowed with great natural ability, he soon made for himself a name in his chosen profession, and entered upon a successful career which has been cut short by his untimely death.

Judge Benjamin Frederick Trimble, one of the ablest jurists of Mississippi, died in Carrollton, January 18. He was a son of Judge William Trimble, and was born in Florence, Ala., in 1830, being at the time of his death in his sixty-first year. Judge Trimble came from a line of distinguished jurists, many of whom have left an unfading impress on the jurisprudence of America. His great-uncle, Judge Robert Trimble, sat with Marshall and Story on the Supreme Bench of the United States. Two others of his great-uncles occupied the position of United States circuit and district judges. His father was Commonwealth Attorney in Kentucky; and his grandfather, Judge James Trimble, with whom he read law at Raymond, Miss., was an eminent lawyer. Judge Trimble was admitted to the bar in 1854. In 1868 he was appointed circuit judge, which position he held two years. In 1876 he was again appointed to the same office by Governor Stone, and was reappointed by Governor Lowry in 1882. He was named for judge of the Supreme Court, but declined the appointment on account of his strong friendship for Judge Chalmers. Judge Trimble was remarkable for the native strength and depth and wonderful grasp of his brilliant intellect. Nature had richly endowed him, and it is said of him that he needed no reference to adjudged cases to render a correct and impartial judgment.

Hon. Bainbridge Wadleigh died in Boston, January 24. He was born in Bradford, N. H., Jan. 4, 1831. At the age of fourteen years he was prepared for college under private tuition and at Kimball Union Academy, Meriden, N. H.; but his health, which had always been delicate, compelled him to give up his studies and spend two years in outdoor life. In January, 1847, he began the study of law in the office of Hon. M. W. Tappan, of Bradford, late Attorney-General of New Hampshire. There he spent three years in careful training, both of mind and body. In February, 1850, when only nineteen years of age, he was admitted to the New Hampshire Bar at Newport, and immediately began the practice of law at Milford, N. H., where he has since made his

home. Mr. Wadleigh at once exhibited a remarkable aptness for his profession, and took high rank as a lawyer, both as a jurist and as an advocate. His progress at the bar was rapid, and his success was well earned. He acquired a very large practice in New Hampshire, and at the time of his election to the United States Senate in 1872 he was one of the most successful lawyers in that State. During Mr. Wadleigh's service in the Senate he was chairman of the Committee on Patents, and was a member of various other important committees. He was a member of a special committee which spent nearly one whole winter in Mississippi and Louisiana taking testimony in regard to Southern election outrages. Mr. Wadleigh's influence and ability gave him important rank in the Senate. In 1879, failing of a re-election to the Senate, he came to Boston and resumed the practice of his profession.

REVIEWS.

THE MEDICO-LEGAL JOURNAL for December presents its readers with an interesting table of contents. The original articles include "The Legal Culpability of the Criminal Insane," by Judge H. M. Somerville, of Alabama; "Is Drunkenness not an Excuse for Crime?" by A. Wood Renton; "Moral Insanity," by W. P. Spratling; "Sudden and Unexpected Death," by George D. Wilcox; and "Hypnotism," by W. H. Palmer. "The Eleventh Inaugural Address" of Clark Bell, Esq., President of the Medico-Legal Society, is given in full, and contains much valuable and interesting matter. Two groups (full page) of eminent legal and medical lights are given in this number.

"THE Government and Administration of the United States," by Westel W. Willoughby and William F. Willoughby, is the opening paper of the Ninth Series of the JOHNS HOPKINS UNIVERSITY STUDIES. Originally prepared for and used as a manual in the public schools of the District of Columbia, this treatise now appears in a revised and amplified form. The aim of this revision is to furnish assistance to students beginning the study of the history and practical workings of our political institutions; and it will be found an admirable work for that purpose.

THE contents of the AMERICAN LAW REVIEW for January–February, 1891, are admirable both in selection and quality. The leading article, "The Courts of Judicature of England," by Elliott Anthony, is an interesting account of the several English courts, and their new system of pleading and practice, with law and equity blended. The other contents are "The Ancient Lawyer," an address delivered before the Virginia State Bar Association, by Hon. Charles E. Fenner; "State Quarantine Laws and the Federal Constitution," by William Hamilton Cowles; "An Effect of Ratification," by F. A. Sondley; "Spanish Laws on Marriage," by Emile Stocquart.

THE JURIDICAL REVIEW for January comes filled with interesting matter. The article which will particularly interest American readers is an admirable sketch of "Mr. Justice Miller," by William A. Maury. The other contents are "Une Bataille de Livres: An Episode in the Literary History of International Law," by Ernest Nys; "The Study of Early Law," by George Neilson; "The Recognition of Foreign Laws in the Case of Contracts," by William G. Miller; "Codification and the Partnership Act, 1890," by D. M. Kerly; "The Legal Aspects of Hypnotism," by J. W. Brodie-Innes. The frontispiece is a fine portrait of the Right Hon. Christopher Palles, Lord Chief Baron of Exchequer in Ireland.

SCRIBNER'S MAGAZINE for February contains rich illustrations in very different manners, from the snow scenes of Mount Washington in winter to Mr. Blum's exquisite Japanese drawings. There is a series of interesting portraits of African explorers (several of them from the private collection of John Murray, Esq., the London publisher, and never before engraved), and artistic reproductions of paintings and sculpture of the Neapolitan school. The number is notable for such contributors as Sir Edwin Arnold, J. Scott Keltie, the librarian of the Royal Geographical Society, Frank R. Stockton, and Richard Henry Stoddard.

CLYDE FITCH, the author of the successful plays, "Beau Brummell" and "Frederic Lemaitre," contributes the complete novel to the February num-

ber of LIPPINCOTT'S MAGAZINE. It is called "A Wave of Life," and the scene is laid in New York City, the author's own home. The characters are drawn from among the fashionable and literary people of that metropolis. The story is full of cleverly managed scenes and bright and sparkling dialogues, and has a strong, romantic interest. The shorter articles in this number are "Thomas Buchanan Read," by R. H. Stoddard; "The Example of Portia," by Maurice Francis Egan; "The Mountain-Mirage," by Joaquin Miller; "Has Been," by Ella Wheeler Wilcox; "Men's Women," by Julien Gordon; "A Love-Song," by Frank Dempster Sherman; "An American Kew," by Julian Hawthorne; "The Worst of It," by Edward Jay; "West of the Sierras," by Charles Howard Shinn; "A Poet's Apology," by Charles Washington Coleman; "Julien Gordon," by Robert Timsol; "A New Theory of the Universe," by Charles Morris; "Copyright;" "With the Wits" (illustrated by leading artists).

THE beginning of a new novel in a new field, by Dr. Edward Eggleston, is an important feature of the February CENTURY. The scene of "The Faith Doctor" is laid in New York City, and the subject is not only Christian Science, Faith Cure, etc., but the social struggle in the city of New York. Besides "The Faith Doctor," the fiction consists of the third and closing instalment of James Lane Allen's "Sister Dolorosa," an instalment of Hopkinson Smith's "Colonel Carter of Cartersville," a story by Miss Wilkins with a picture by Mrs. Mary Hallock Foote, a story, "Penelope's Swains," by Mrs. Burton Harrison, illustrated by Wiles, and a strange story by Joel Chandler Harris, called "Balaam and his Master," with pictures by Helmick. The Talleyrand Memoirs are continued, accompanied by a portrait of Talleyrand in his youth. The California Series brings the reader down to the time of the discovery of gold; and these papers are profusely illustrated.

SOME interesting and hitherto unpublished "Letters of Charles and Mary Lamb" form the leading attraction of the ATLANTIC MONTHLY for February. The other contents are "The Philosophers of the Paradoxical," by Josiah Royce; "The Ride to the Lady," by Helen Gray Cone; "Note: An Unexplored Corner of Japan," by Percival Lowell; "The New-England Meeting-House," by Alice Morse Earle; "The House of Martha," by Frank R. Stockton; "The next Stage in the Development of Public Parks," by Alpheus Hyatt; "Felicia," by Fanny N. D. Murfree. A table of contents which ought to satisfy the most fastidious reader.

HARPER'S MAGAZINE for February comes profusely illustrated, and contains an unusual amount of interesting matter. The frontispiece is a reproduction of Sargent's portrait of Edwin Booth, which is accompanied by a charming tribute from the pen of Thomas Bailey Aldrich. The article which will prove of most general interest is "The Heroic Adventures of M. Boudin," which is illustrated with original drawings by W. M. Thackeray. The other contents are "Finland," by Henry Lansdell; "English Writers in India," by Rev. John F. Hurst; "In the 'Stranger People's' Country," by Charles Egbert Craddock; "The Heart of the Desert," by Charles Dudley Warner; "Both their Houses," by Edward Everett Hale; "The Bond," by Geraldine Bonner; "Smyth's Channel and the Straits of Magellan," by Theodore Child.

BOOK NOTICES.

THE TOWN MEETING. By AUSTIN DE WOLF. George B. Reed, Boston, 1891. Half sheep. $2.25. Cloth. $2.00.

This work is a compilation of Massachusetts statutes and decisions applicable to town officers and town meetings. While the town meeting is a New-England institution, in many of the Western and Southwestern States very similar methods of town government have been adopted; and there is much in this book that will be found useful to the officials and lawyers of such places. In Massachusetts, of course, it will be of especial value.

THE MASSACHUSETTS PEACE OFFICER. A Manual for Sheriffs, Constables, Police, and other Civil Officers. By GORHAM D. WILLIAMS. George B. Reed, Boston, 1891. Half sheep. $2.75. Cloth. $2.50.

This little work contains in a compact form the Massachusetts statutes and cases bearing upon the functions and duties of peace officers. It contains much valuable information, and will prove of real

practical assistance, not only to the officers named, but to the practising lawyer. The book is essentially a Massachusetts book, although several chapters treat of subjects governed almost entirely by the common law; and resort has been had to cases arising in England, and in other States of the Union, for elucidation of the rules therein laid down.

A Treatise on the Law of Citizenship in the United States. By Prentiss Webster, of the Boston Bar. Matthew Bender, Albany, N. Y., 1891. Law sheep. $4.00.

Although the title of this work would seem to confine its subject to citizenship in the United States, it is in fact a history of the rights of citizens from the earliest Roman times to the present day. It is a book for ready reference for diplomatic and consular officers in the service of the United States abroad to cases decided by the Department of State on the authorities of the United States Courts and the Attorney-Generals of the United States, and will serve as a practical guide for the officer in considering the many questions of applicants emigrating to the United States, naturalized citizens upon return to their country of origin and to other foreign countries, citizens who purpose making a permanent home abroad, and the relations of citizens of the United States marrying foreigners with the intent to take up residences in foreign countries. It contains the naturalization laws of the United States, the treaties of naturalization, and reference to the analytical index to treaties made between the United States and foreign nations on naturalization, commerce, and tenure of property; and is, in fact, a practical manual for judges and clerks of Courts of Naturalization on decisions of the Department of State and Supreme Court in the relations of our citizens to this country and to foreign countries. Also the relations of aliens seeking citizenship in the various stages of naturalization proceedings in our own courts.

The treatise has been prepared with evident care, and while designed for the legal profession will find interested readers among all intelligent laymen.

A Treatise on the Law of Homicide, including a Complete History of the Proceedings in finding and trying an Indictment therefor; together with a Chapter on Defences to Homicide. By James M. Kerr. Banks & Brothers, New York and Albany, 1891. Law sheep. $6.00 net.

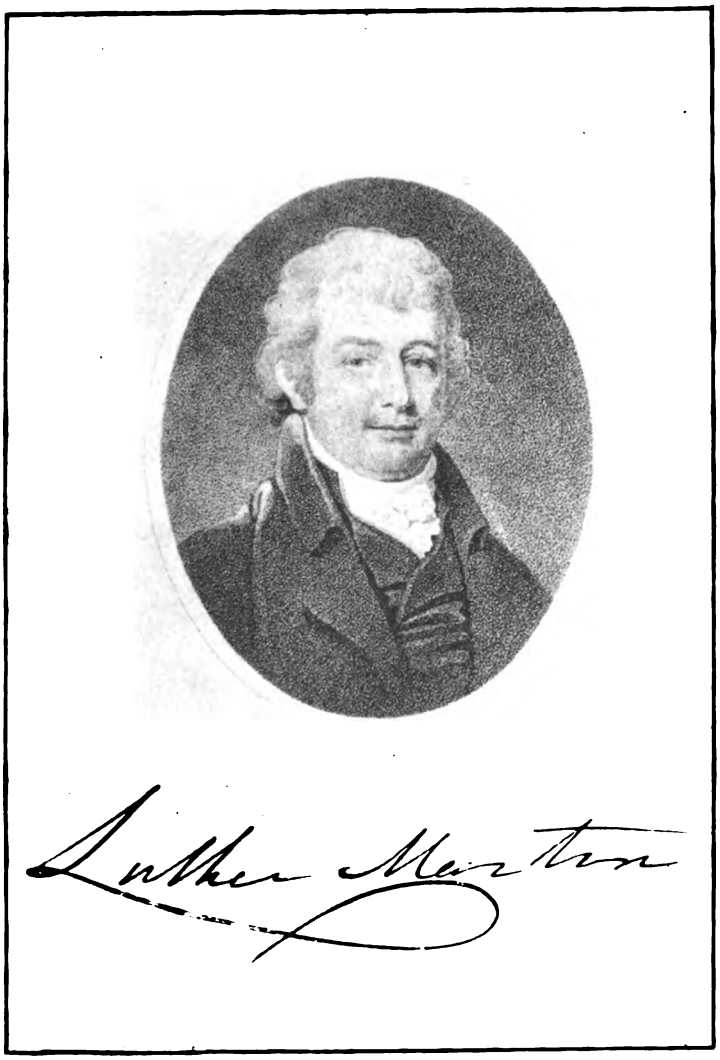
Mr. Kerr is certainly an indefatigable worker, and the quality of his work is surprisingly good. In the present treatise the law of homicide, as it exists in this country, is clearly and concisely stated, and the cases therein collected exhaustively cover every point likely to arise in the trial of homicide cases. It will prove of much value to all criminal lawyers. The index is very full, and the citations include some five thousand cases, the leading cases being printed in italics, and the date of each decision is given. It is evident, as the author says, that "neither time nor pains have been spared to make what was thought to be a book assistful to the profession, and afford a convenient key to the mass of cases on the topics treated of."

Principles of the Law of Personal Property. By William T. Brantly, of the Baltimore Bar. San Francisco: Bancroft-Whitney Company, 1891. $3.00 net.

This work of Mr. Brantly's is the last addition to the "Practitioners' Series." It includes many topics which are not treated in other text-books, as well as some which ordinarily constitute the subject-matter of entire volumes. The author's object has been to consider with due elaboration those topics which belong exclusively to the title of "Personal Property," and are not the subject of distinct works, such as the law of accession, gifts, possession, occupancy, animals, and the co-ownership of personalty. Other subjects which naturally find a place in works of this character are also concisely discussed. Mr. Brantly appears to have done his work carefully and conscientiously, and his book will prove of value to the profession.

Commentaries on the Laws of England. By Sir William Blackstone, Kt. Edited for American Lawyers, by William G. Hammond. Bancroft-Whitney Company, San Francisco, 1890. Four volumes. $10.00 net.

Without detracting in the slightest from the merits of the various editions of Blackstone's Commentaries which have from time to time appeared, the place of honor must certainly be accorded to this work of Professor Hammond's. No law-writer in this country is better fitted for the task of editing such a work; and an examination of his notes reveals a vast amount of research and learning, which render them invaluable to the practising lawyer as well as the student. References are made to all comments on the text in the American Reports from 1787 to 1890. We wish that the work might have been published in a different form, — the "Practitioners' Series," of which it forms a part, being printed in too small a type for comfortable reading. Still, we are grateful to the Bancroft Whitney Company for giving us this valuable addition to legal literature in any form.



Luther Martin

The Green Bag.

VOL. III. No. 4. BOSTON. APRIL, 1891.

LUTHER MARTIN.

BY EUGENE L. DIDIER.

THE early legal annals of this country were enriched by few names more brilliant than that of Luther Martin, the famous Attorney-General of Maryland, and the acknowledged head of the American Bar, from the time of the Revolution to the end of the first decade of the nineteenth century. This remarkable man was born in 1744, at New Brunswick, New Jersey. His father was a small farmer, with a large family, Luther being the third of nine children. The boy was saved from a life of manual labor and coarse rustic associations by displaying a precocity of talents, which determined his father to give to the genius of the family all the advantages of a university education. At the age of thirteen he entered Princeton College, where he soon attracted attention by the possession of two qualities which are rarely found in the same person, — great talents and great industry. His college career was so remarkably brilliant that after a hundred and forty years it is still one of the most cherished traditions of Nassau Hall. After a residence of five years, he graduated with the highest honors in a class of thirty-five.

When Luther Martin returned to his humble country-home, flushed with his college laurels, he saw it was no place for him, unless he was willing to bury his talents in the ground and remain a village rustic all his life. Such a sacrifice of his talents was impossible. His ambition had been fired by the fame of Demosthenes and Cicero, and he resolved to seek distinction at the bar, which at that time was the only field open to aspiring young men. Accordingly, two days after leaving college, he mounted his horse and rode away from his father's house to seek his fortune in the South. He carried in his saddle-bags all his worldly possessions, which (except a small tract of land that he deeded to his two elder brothers in grateful recognition of their kindness in assuming his share of the labor of the farm while he was at college) consisted of a few favorite books and a small supply of clothing. His pocket contained scarcely sufficient money to furnish him with food and lodging for his journey. It should be mentioned to Luther Martin's credit that he always felt a deep sense of gratitude to his parents for giving him a liberal education, thus opening for him a career of honor and distinction. Years afterward he said they had given "a patrimony for which my heart beats toward them a more grateful remembrance than had they bestowed upon me the gold of Peru or the gems of Golconda."

He taught a country school at Queenstown, on the eastern shore of Maryland, for several years, thus supporting himself while pursuing his legal studies. He had a long and desperate struggle with poverty, and but for the kind friends he made during this period of pecuniary distress, his life would have been intolerable. Among these early friends was Solomon Wright, a distinguished lawyer, who was afterward the Chief-Judge of the Court of Appeals of Maryland. This gentleman invited the struggling young

teacher to his house, gave him access to his library, made him almost a member of his family; in short, he deserved the praise which Bulwer bestows upon those who show kindness to the young, when he says, in "My Novel": "If there be a good in the world that we do without knowing it, without conjecturing the effect it may have upon a human soul, it is when we show kindness to the young in the first barren pathway up the mountain of life." The annals of biography have seldom offered a more striking illustration of the truth of Bulwer's remark than in the case of Luther Martin. Had he been treated with cold indifference, instead of warm friendship, he might have lived a "village Hampden," and died a village schoolmaster.

He availed himself so well of this opportunity to store his mind with legal knowledge that he afterward became the wonder of the bar; his mere opinion was accepted as the law, and was for many years regarded as sound authority before any tribunal of justice.

In 1771 he went to Williamsburg, at that time the capital of Virginia, with a Royal Governor, and a miniature court, where the gallant gentlemen and fair dames danced the stately minuet. But even then the mutterings of the coming Revolution began to be heard, and soon Patrick Henry was to arouse the whole country by his thrilling demand for "Liberty or Death!" Luther Martin espoused the patriot cause with the most ardent enthusiasm, and, while in Williamsburg, made many acquaintances among the distinguished men of the time. Among these were Patrick Henry, who was already rising to prominence as the orator of the American Revolution, and George Wythe, who had been the Chancellor of Virginia. Through the powerful influence of the latter Martin was admitted to the Bar of Virginia, and soon after began to practise in Accomac and Northampton Counties, on the eastern shore of Virginia, and the adjoining counties of Worcester and Somerset in Maryland. He was so successful that in a few years his professional income was $5,000 per annum, which was a very large sum for a lawyer to make in those days.

He also made what, perhaps, he valued more than money, — fame; for in 1774 he was appointed one of a committee on the part of Virginia to oppose the unjust claims of Great Britain, and also a member of the convention which was called to meet at Annapolis, Maryland, "to resist the usurpations of the British crown." These were congenial occupations for the patriotic lawyer, and he entered into them with a zeal and courage which knew no flinching, although, as he said, he "did not lie down one night in bed without the hazard of waking on board of a British armed vessel or in the other world." He made himself specially obnoxious to the royal authority, by writing a powerful answer to the proclamation issued by Lord Howe, calling upon the people of Maryland to uphold the crown in that province. The royal proclamation was treated with indifference, while Martin's address was received with enthusiasm, and the people of Maryland were stimulated to renewed efforts in the cause of American independence.

When Maryland required a man of iron will and unyielding firmness for Attorney-General during the Revolutionary War, Samuel Chase, one of the Maryland signers of the Declaration of Independence, recommended Luther Martin for the position. He was at once recognized as the right man for the place, and was confirmed without opposition. One of his principal duties was to prosecute malignant Tories, and confiscate their property, which he did with astonishing energy and extraordinary firmness. No doubt his uncompromising zeal contributed greatly to suppress the Tory feeling which at the outbreak of the Revolution prevailed in some of the western counties of Maryland.

His fame as a lawyer spread through the land; and as he declined all purely political offices, in order to devote himself exclusively to the bar, he became, as already mentioned, the head of his profession in the United States. He was not a great orator,

as Patrick Henry was; he was not a great statesman, as Thomas Jefferson was; he was not a great philosopher, as Benjamin Franklin was: but he was essentially a great lawyer, and as such, he has never been surpassed, and seldom equalled.

The triumphs at the bar are generally transient, and but two cases in which Luther Martin was engaged attained an historical interest and importance. The first of these was the impeachment trial of Judge Chase, one of the justices of the Supreme Court of the United States, accused of malfeasance in office. The trial began on the 4th of February, 1804, and took place in the Senate Chamber, the senators being the judges; and Aaron Burr, Vice-President of the United States, presided over the august court with a grace, a dignity, and an impartiality which won praise even from his enemies. The Chamber was crowded every day of the trial by all the dignitaries of the nation, and all the foreign ambassadors, while one of the galleries was filled with beautiful women. It was a splendid field in which to display learning and eloquence, and Luther Martin established his fame as the greatest of living lawyers, during this celebrated trial. It lasted from February 4 to March 1, when, after a powerful argument by Mr. Martin, Judge Chase was acquitted, being the first and last justice of the Supreme Court that ever was impeached.

Still more celebrated was the trial of Aaron Burr, when Luther Martin appeared as the leading lawyer for the defence. Burr remembered Martin's splendid and successful defence of Judge Chase, and when he got into trouble, secured his services. He displayed so much zeal, energy, and activity in the cause of his celebrated client that Thomas Jefferson asked George Hay, the prosecuting attorney, whether the Government should "move to commit Luther Martin as *particeps criminis* of Burr;" and the President of the United States goes on to denounce Martin as "an unprincipled and impudent Federal bull-dog." Having failed to prove a single *overt* act of treason on the part of Burr, the prosecution was about to introduce indirect and collateral evidence, when the counsel for the defence very promptly and properly objected; and a debate on this question took place, which lasted nine days. It has been pronounced the finest display of legal knowledge and ability of which the history of the American Bar can boast. The question was whether, until the *fact* of a crime is proved, anything may be heard respecting the guilty *intention* of the person accused. The counsel for the defence contended, first, that no overt act had been committed; and secondly, if any overt act had been committed, the evidence pointed to Blennerhassett as the principal, and to Burr as a possible accessory. It was during this debate that William Wirt made his famous defence of Blennerhassett, which became a favorite piece of declamation with ambitious schoolboy orators, and did more to make and keep Aaron Burr odious than anything ever written or spoken of him. Luther Martin took a foremost part in this debate, and its result was the acquittal of Burr. During the whole course of the trial Martin had proved himself the true friend of his client. Not only did he defend him with learning and eloquence, but day after day he entered into a recognizance for his appearance; and when Burr was acquitted, he invited him to his house in Baltimore, where he was entertained with princely hospitality.

After this great legal victory Luther Martin was appointed a judge in Baltimore, and in 1818 he again became Attorney-General of Maryland; but his declining health rendered the duties too much for him, and an assistant was assigned, who did most of the work. Finally, he had to resign; and when Aaron Burr heard that his old friend and defender was poor and helpless, he invited him to his house in New York, where he kept him in comfort and dignity until his death on the 10th of July, 1826, aged eighty-two years.

A POEM

Delivered at the Eighth Dinner of the Bar Association of the City of Boston, Feb. 25, 1891.

By Robert Grant.

LET dogs delight to bark and bite, and doctors disagree;
It were not well that all mankind should dwell in unity.
If with consummate peacefulness the Christian world were blest,
Some occupations would be gone, and ours among the rest.
But, brethren of the legal faith, how pleasant 't is to see
A company of men of law sit down in harmony,
To see the members of the Bar in social union dine,
And join in song and chorus strong across the nuts and wine!
No quarrels have we of our own, we manage others' broils;
And though we fight with all our might, we 've buttons on our foils;
We scratch a brother lawyer's eyes until they 're out, and then
We go to dine with him that night and scratch them in again.
There is a popular idea that when we get our grip
Upon a client with a case, we hate to let it slip;
That bench and bar alike conspire to keep mankind apart;
That justice means a pound of flesh cut nearest to the heart.
Yet spite of many a mouldy jest and antiquated saw
Which common carles are wont to hurl at lawyers and the law,
It 's obvious to those who scan humanity aright,
That though we have ferocious looks we all detest to fight;
That but for lawyers and the law, but for the legal mind,
There never would be peace on earth for quarrelsome mankind.
The human race from parsons down would always fighting be,
If counsel loved not compromise far better than a fee.

What is a lawyer? He who spends his time from day to day
In listening to the woes of those whom others will not pay;
In tying up for heirs unborn the merchant's golden sheaves;
In saving gentlemen from jail and jugging common thieves;
In drawing leases, deeds, and wills, and hearkening to the moan
Of legatees whose friends had thought that they could draw their own;
In telling folk who break their legs upon a winter's day,
There must be hubbles on the ice to make the city pay;
In setting forth to grasping minds that "fixtures" don't include
A broad, inflexible permit to sack the neighborhood,

To pull the mantelpieces down for which they 've chanced to pay,
Detach the plumbing from the floor and carry it away.
What is a lawyer? He who leaves his bed at early morn
To stop in transitu a car of cotton or of corn;
To libel argosies to sail upon the turn of tide;
To ask the court to free the unadulterated bride;
To claim injunction's awful aid to interdict the sale
Of patent soap, protected pills, or copyrighted ale;
To salve in general the blows of circumstance and fate,
Which fall on rich and poor alike, the paltry and the great.

You all remember King Canute, and how he stood one day
Amid his courtiers on the beach and bade the billows stay:
"Stand still, proud waves; this is my realm; you shall no farther flow!"
The waves crept rippling up the beach, and Canute had to go.
So onward moves the march of law, in spite of solemn speech:
Proud man erects his monuments upon the sandy beach,
He marks the limits of the law and where the law shall stay,—
The tide creeps slowly on, and sweeps his monuments away.
Where are the minions of the law who flourished long ago?
We miss the once familiar name of excellent John Doe;
And where are all the men of straw, that ghostly company?
And where J. S., who went to Rome upon the slightest plea?
He disliked to go to Dover, but he had a taste for Rome,
Though he was lord of Sale and Dale when he remained at home.
All, all are gone, and with them gone the glories of that day
When advocates were acrobats who juggled for delay,
When pleadings artfully confused the question being tried,
And justice seldom could prevail until the plaintiff died.
Gone are the fictions of the past, but deathless ever stand
Their names who made the common law the bulwark of our land:
The fame of Mansfield and of Cairns has never brighter shone,
And Coke burns lustrous in the light he shed on Littleton.
Oh long may learned counsel quote and never quote in vain
The principles which Holt, C. J., set forth in language plain,
When Coggs's brandy bursting bonds ran riot to the lees,
And gave his lordship an excuse to classify bailees.
Still lists the student to the tale how Shepherd once let fly
That famous squib whose devious course scorched Scott the plaintiff's eye,
Wherefrom the moral is deduced in many a learned note
That he who sets a firework off should see that he 's remote.

What though the roots of common law in English soil are laid,
Our younger race can point with pride to names which will not fade!
Shall Storey, Curtis, Kent, or Shaw the palm to Britons yield?
Will not our sons and grandsons talk of Lowell and of Field?
Death claims his own; yet death but gilds with more conspicuous grace
The worth of him[1] who late adorned our first and highest place;
Of him,[2] his colleague, who obeyed the heavenly bugle-call,
Pre-eminent in many paths, and noble in them all.

Gone are the fictions of the past: the lawyer of to-day
Wears no wig on his head to hide the crown that 's bald or gray,
No gown of richly flowing silk encompasses his frame,
He has no letters fastened to the rear end of his name;
And yet (if you 'll excuse the slang) he gets there just the same.
He is a plain and proper man, the lawyer of to-day,
Who tries to reach the point at bar as quickly as he may;
He fights with fundamental facts, he matches link with link,
Nor dares to trust to the belief that juries do not think;
He knows they will no longer gulp the glibly uttered lie,
Because he hammers with his fist or lightens with his eye;
The teary, tremulous harangue evokes the knowing smile,
For laymen when attorneys weep discern the crocodile.
But though the style of argument which made the counsel hoarse
Has given place to business-like, colloquial discourse,
And though the son may not prevail by arts which crowned his sire,
The world still heeds the voice which rings with real Promethean fire.
True eloquence controls mankind as surely and as well
As in the days when Abinger or Webster wrought the spell.
Let but the hour demand the man to talk in tongues of flame,
The gaping world still holds its breath, and wise men cry acclaim.
Oh happy he who has the power to make his words seem thongs
When sneering common-sense conspires to bolster up old wrongs!
But over every paltry case, what boots a beetling brow?
It 's not the largest kind of dog that makes the greatest row.

O brothers of the legal faith, the world is growing old!
Men say that all the poems are writ and all the stories told;
And judging by the multitude of issues framed and tried,
There should be no contentions left for judges to decide.

[1] Chief-Justice Marcus Morton.

[2] Mr. Justice Charles Devens.

That Providence which feeds the sparrow protects the lawyer still.
Man is litigious to the marrow in spite of priest and pill;
And though toward the goal of grace the world is drifting fast,
We look for quarrelling ahead as well as in the past.
Some men will still conspire to grab the things which others own
From the fugitive umbrella to the complex telephone.
Before another decade's past some mortal may be crying,
"I first invented the machine by which John Smith is flying."
Though homicide is out of date on peaceful Beacon Hill,
Electric horse-cars militate to work the murderer's will,
And specious papers on our walls abundantly exhale
The deadly poison which would make a judge and jury pale.
O brethren of the legal faith, the world is growing old,
But many a poem will still be writ and many a tale be told,
And many issues still will rise like mushrooms from their bed
To add a little butter to the lawyer's daily bread.
And so in philosophic vein I say, as I began,
Although the man of law loves peace and is a peaceful man,
Let dogs delight to bark and bite, and doctors disagree;
It were not well that all mankind should live in unity.
If with consummate peacefulness the Christian world were blest,
Some occupations would be gone, and ours among the rest.

O mighty mistress of the Law, to thee our knees we bow!
We are the high-priests of thy shrine, our adoration thou!
O moulder of the centuries who holds the world in fee,
We, as the high-priests of thy shrine, bring largess unto thee!
We pledge the ardent hopes of youth, the faith of Nestors gray,
The strength of manhood in the stress and glory of the fray.
Thou art the stern embodiment of gravest human thought,—
The essence not of what men would, but that of what men ought.
Thine attributes are still the same; but as we grow in grace,
We read new meanings in the lines of thy majestic face,
A subtler justice in thine eyes than that our fathers saw.
Oh, may we ever strive and pray to know thee better, Law!

PORTRAIT OF AN ANCIENT LAWYER.

IN his "Modèles de l'Eloq. Judiciare," M. Berryer has drawn in lively colors a sketch of one of the advocates of the olden time while engaged in the performance of his daily duties. We see him, dressed in his robes of black satin, set out at an early hour on a summer morning, from one of the picturesque houses, with peaked turrets and high gable ends, which rose above the banks of the Seine in old Paris, and hurrying forward to the court, because the clock of the Holy Chapel has just struck six, at which hour the judges are obliged to take their seats, under pain of losing their salary for the day. He is busy in thinking over the cause which he has to plead, and taxes his ingenuity to compress his speech into as brief a compass as possible; for he remembers that an ordinance of Charles VIII., issued in 1493, imposes a fine upon long-winded advocates who weary the court with their prolixity. Look at his countenance. The furred hood which covers his head, and the ample gray cloak, the collar of which hides half his face, cannot so far conceal it as to prevent you from seeing an expression of anger there, which no doubt is excited by the recollection of the arguments used by his opponent on the preceding evening. But think not that when he reaches the court and rises to reply, he will retort by any abusive language; for, by another regulation of the same king, counsel are expressly forbidden to use any opprobious words toward their antagonists. The judges are seated on their chairs; the parties are before them; and now he whose portrait we are sketching, rises to address the court. He speaks under the solemn sanction of an oath, for he has sworn to undertake only such causes as in his conscience he believes to be just; he has also sworn not to spin out his pleadings by any of the tricks of his profession, but make them as concise as possible. If, in the course of his harangue, he touches on any question which he thinks may possibly affect the interests of the crown, he suddenly stops and gives formal notice of it to the court. Twelve o'clock strikes just after the cause is over and judgment pronounced, and the court rises. His client has been successful, and he now takes his counsel aside to settle with him the amount of his fees; and it is not without an effort that he grudgingly gives him the sum which the royal ordinance permits him to receive. M. Berryer then follows him to his home, surrounded by his family, where he prepares in the evening his speech for the morrow; or indulges himself, like Pasquier, in sportive toying with the Muse; or takes up his pen, like Pithou, to defend the liberties of the Gallican Church.

THE SUPREME COURT OF MISSOURI.

By L. C. Krauthoff.

THE judicial system of Missouri has been the subject of many changes which have necessarily affected and controlled the membership of her Supreme Court. The lack of symmetry in the system has greatly contributed to impair the usefulness of that tribunal, and the uniformity of its decisions. The result has been to militate against a general recognition of the high authority and standing which those decisions deserve to enjoy. The fact that those who came to make up the early population of Missouri brought with them widely divergent views, and the recollection of many theories elsewhere in vogue; the further fact that for a time the fierceness of political controversy dominated and dictated the course of legislation; and more recently the multitude of expedients suggested and being experimented with as remedies for a crowded docket, — all these combine to explain the want of a steadfast adherence to any one consistent plan.

The history of the court may be considered as resolving itself into five periods: —

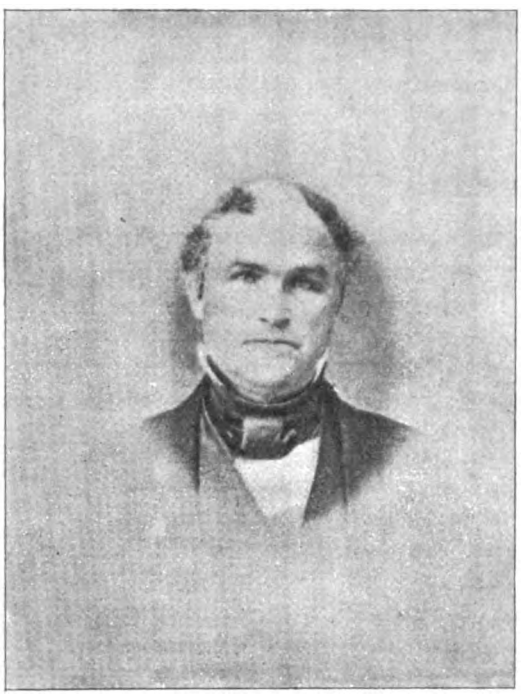
1. The Constitution of 1820, under which the State was admitted into the Union, provided for a Supreme Court of three judges, and created a separate chancery court, to consist of a chancellor. It also provided that those officers should be appointed by the governor, and confirmed by the senate, to hold during good behavior until the age of sixty-five years was attained. In 1821, by constitutional amendment, the chancery court was abolished, and its jurisdiction vested in the Supreme Court. The offices of all the judges were vacated and directed to be filled as provided in the Constitution. This system prevailed until 1848. As all the records bearing on the subject were destroyed by fire in 1837, the exact date when the first judges were appointed cannot now be definitely ascertained. In Switzler's "History of Missouri" it is stated that "among the first duties of the legislature (which met Sept. 19, 1820), was the appointment of three Supreme judges." The reports of the court show that it held its first term in March, 1821. The records in the office of the Secretary of State, prepared from recollection in 1837, and since officially continued, state that the appointments were made in 1822. The probabilities are that the appointments were made in 1820, and that in 1822 the same persons were re-appointed to fill the vacancies declared in 1821. No such distinctive office as Chief-Justice has ever been provided for. In the earlier days by rule of court, and later by statutory and constitutional provisions, the Pennsylvania rule was adopted, that the judge oldest in commission should be the presiding or chief-justice, with the further provision that in case the commissions of two or more judges bore the same date, the court should designate its chief. Until 1875 the court held its sessions at different cities throughout the State, which were fixed and changed from time to time. These were sometimes three, and at other times four in number. The State was laid off into districts accordingly. The Constitution of 1875, among other reforms, provided for a concentration of the court at the State capital, Jefferson City. The first terms were provided to be held at St. Charles, St. Louis, Fayette, and Jackson. The membership of the court from 1820 to 1848, and the periods the several judges remained on the bench, may be thus summarized: The first court consisted of Mathias McGirk, John D. Cook, and John R. Jones. Judge McGirk remained on the bench until 1841, when he resigned. Judge Cook resigned in 1823, and Judge Jones died in April, 1824. Rufus Pettibone succeeded Judge Cook, and died in 1825. George Tompkins succeeded Judge Jones on

April 27, 1824, and served until March 27, 1845, when his term expired by reason of his having attained the age of sixty-five years. It is worthy of note that there is only one instance in the roll of the court in which a vacancy occurred on this score. Judge Pettibone was succeeded by Robert Wash on Sept. 1, 1825, who served until May 1, 1837, when he resigned. Judge Wash was succeeded by John C. Edwards, who was appointed in May, 1837, during a recess of the General Assembly, until the next meeting of that body. The governor failing to nominate him when it met, his commission expired in February, 1839. In his stead, William Barclay Napton was appointed. On Judge McGirk's resignation, William Scott was appointed, August 10, 1841. Judge Tompkins was succeeded by Priestly H. McBride, March 27, 1845. On March 1, 1849, the offices of Judges Napton, Scott, and McBride were vacated by the provisions of a constitutional amendment adopted in 1848. The chief-justices during the period noted were Judge McGirk, 1820–1841; Judge Tompkins, 1841–1845; and Judge Napton, 1845–1849. The amendment of 1848, besides vacating the offices of the judges as already noted, provided that thereafter the term of that office should be twelve years. The clause providing that the judges should be appointed by the governor was retained; but the one disqualifying them to serve after the age of sixty-five years was omitted. Pursuant to this amendment Governor King, on Jan. 27, 1849, appointed William B. Napton, John F. Ryland, and James H. Birch for the term of twelve years each. Judge Napton was the only judge continued in office, and he also remained Chief-Justice of the newly appointed court.

2. Closely following this change, the people of the State, by constitutional amendment adopted in 1850, decided in favor of an elective judiciary, with shorter terms. An election was provided to be held on the first Monday in August, 1851, on which day the offices of the but recently appointed judges were in turn declared to become vacated. At the election thus provided for, William Scott, John F. Ryland, and Hamilton R. Gamble were elected. Judge Ryland was the only judge who continued on the bench. Judge Gamble became Chief-Justice, and continued to act as such while he remained a member of the court (1851–1855). Judge Scott was Chief-Justice from 1855 to 1862. Judge Gamble resigned, and was succeeded by Abiel Leonard, elected in January, 1855. At the regular election in 1857, Judges Ryland and Leonard were succeeded by William B. Napton and John C. Richardson. Judge Scott was re-elected. Judge Richardson resigned in August, 1859, and was succeeded by Ephraim B. Ewing.

3. The third period in the history of the court (1861–1868) is closely allied to the many stirring events which the late civil war allotted to Missouri. With the first mutterings of the approaching storm, a convention was called, composed of delegates elected by the people, for the purpose of considering and deciding the many questions arising out of the impending conflict. That most memorable body, which came to be generally called, and which has passed into history as the "Gamble Convention," practically governed the State and controlled her political destiny from 1861 to 1864. In October, 1861, it adopted an ordinance requiring all civil officers to take and file an oath of loyalty to the general government, and declaring that the offices of all persons failing to take and file such oath within sixty days thereafter should thereupon become vacant. Judges Scott, Napton, and Ewing all incurred the consequence thus declared. Governor Gamble, being charged with the duty of filling their places, appointed John B. Henderson, Barton Bates, and Benjamin F. Loan. Messrs. Henderson and Loan both declined to accept, and William V. N. Bay and John D. S. Dryden were then appointed as associates to Judge Bates, who became Chief-Justice. In November, 1863, the terms of these appointees expired, and an election was held to

choose their successors. Despite the fact that the war was then at its height, this election aroused a deep interest, and was preceded by a bitter and intensely exciting canvass. For the first time in the history of the State, the election of judges was the occasion of a partisan contest. The tendency of local events had its inevitable culmination, and at this period the lines were formed and issues presented along and upon which new political parties came into being. The extreme, or "radical," element nominated David Wagner, Arnold Krekel, and Henry A. Clover as its candidates. Judges Bates, Bay, and Dryden were tacitly voted for as representing the liberal or "conservative" line of thought, and were successful by a majority of about eight hundred in a total vote of over ninety-three thousand. They were, however, not destined to serve out the term for which they had been elected. The close of the war was immediately followed by a constitutional convention, representing the extreme or radical view in all its intensity. That body framed the well-known "Drake Constitution," with its test oaths and penalties without end or number. In order to fill official stations with persons in sympathy with these ideas, and to obviate difficulties in enforcing them, an "Ousting Ordinance" was passed, by force of which all civil officers, including judges, then in office were removed. Provision was made for filling the vacancies by executive appointment. Judge Bates resigned in February, 1865; but his associates denied the validity of the ordinance, and declined to yield to it. The result was an unpleasant collision, and an occurrence that mars the otherwise even and orderly tenor of proceedings in the Supreme Court of Missouri. Governor Fletcher formally demanded that Judges Bay and Dryden should give way to his appointees. On their failure to do so, he ordered his Adjutant-General to remove them by force, if necessary. Calling to his aid a detachment of police, that official took the judges from their seats, and escorted them to the police station as disturbers of the peace of the Supreme Court. The recent appointees, David Wagner and Walter L. Lovelace, assumed the vacant seats, and organized the court. A few days later, Nathaniel Holmes was appointed as the third judge. Judge Wagner became Chief-Justice. Judge Lovelace died August 5, 1866; and Thomas J. C. Fagg was appointed to fill the resulting vacancy. On August 1, 1868, Judge Holmes resigned, and James Baker was appointed to serve the remainder of the term.



WILLIAM SCOTT.

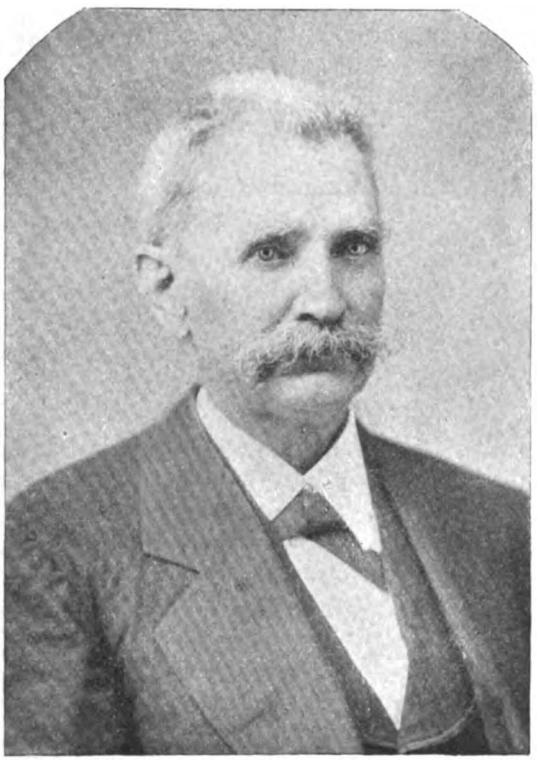
4. In November, 1868, a general election was held under the provisions of the Constitution of 1865, providing for a court of three judges, who should serve respectively two, four, and six years, as might be determined by lot, the one drawing the shortest term to become Chief-Justice. Philemon Bliss and Warren Currier were elected, together with Judge Wagner. Judge Currier was allotted the full term of six years, Judge Bliss that of

four years, and Judge Wagner that of two years, and the Chief-Justiceship. Judge Wagner was re-elected in 1870 for six years. Judge Currier resigned in December, 1871; and Washington Adams, by appointment and subsequently by election, was commissioned for the unexpired portion of the term.

5. In 1872 the membership of the court was increased to five judges, and the term to ten years. One judge was provided to be elected at each regular biennial election, and the oldest in commission was designated as the Chief-Justice. At the election of 1872 Henry M. Vories was elected to succeed Judge Bliss, whose term had expired; Ephraim B. Ewing and Thomas A. Sherwood were elected to the newly created judgeships, and for eight and ten years respectively; Judges Vories, Ewing, and Sherwood, in connection with Judges Wagner and Adams, composed the re-organized court. Judge Ewing died shortly afterward (June 21, 1873), and William B. Napton was appointed and subsequently elected for the remainder of his term. Judge Adams resigned in September, 1874, and Edward A. Lewis was appointed to fill the four months of the term. In 1874, Warwick Hough was elected for the full term of ten years. On Oct. 4, 1876, Judge Vories resigned, and was succeeded by Elijah H. Norton. At the general election of 1876, John W. Henry was elected for ten years, to succeed Judge Wagner, whose term had expired, and who had been Chief-Justice continuously since 1865. Judge Sherwood now became Chief-Justice (the death of Judge Ewing and the resignation of Judge Vories making him the oldest in commission), and served as such until January, 1883. Since that date the general elections biennially held have resulted in the choice of the following, each for a full term of ten years: In 1878, Judge Norton re-elected; in 1880, Robert D. Ray, to succeed Judge Napton; in 1882, Judge Sherwood re-elected; in 1884, Francis M. Black, to succeed Judge Hough; in 1886, Theodore Brace, to succeed Judge Henry; in 1888, Shepard Barclay, to succeed Judge Norton; and in 1890, James B. Gantt, to succeed Judge Ray. Since 1883, Judges Hough, Henry, Norton, and Ray have been successively Chief-Justices of the court.

It was evident to the framers of the Constitution of 1875 that the Supreme Court would be unable either to clear off the accumulated cases, or to dispose of those which would come to it in the usual course of events. Accordingly provision was made for the St. Louis Court of Appeals, an intermediate appellate court of three judges, whose territorial jurisdiction was confined to the city of St. Louis and four neighboring counties. In all matters involving over twenty-five hundred dollars, the construction of constitutional provisions, or of federal treaties and statutes, or of the revenue laws of the State, and titles to an office or to real estate, and cases to which a State officer or any county was a party, and of felony, an appeal was permitted to the Supreme Court. As to all other matters, the decision of the Court of Appeals was final. The validity of this arrangement, tested by the Fourteenth Amendment, was upheld in Missouri *v.* Lewis, 101 U. S. 22. It was demonstrated that the system had many good features, especially in that it largely reduced the number of cases coming to the Supreme Court. It also had its disadvantages: it involved the "toll-gate idea" of passing through one appellate court to reach the one of ultimate jurisdiction, and it was lame in failing to provide a remedy for the conflicts of opinion which were unavoidable. While the lower court was not obdurate in yielding to a reversal of one of its decisions, there was no remedy in those cases which it had finally decided to the same effect pending the appeal from its former one. The desire to extend the benefits of the system throughout the State, and to remedy the defects noted, moved the Constitutional Amendment of 1883. This extended the scope of the St. Louis court to fifty-one additional counties, and established a similar court, to be called the Kansas City Court of Appeals, to be located at that city, and to exercise jurisdiction over

the remaining counties of the State. Instead of being merely intermediate courts, they became of final jurisdiction. All cases falling within the appellate jurisdiction of the Supreme Court went directly to that court. Should any one judge of an appellate court think a decision made was contrary to a previous ruling of the other appellate court, or of the Supreme Court, a transfer of the cause for ultimate disposition to the latter tribunal was made obligatory. Although apparently somewhat complicated and open to much criticism, the system has given general satisfaction, especially since 1885, and no movement for its abolition has ever been seriously inaugurated. This is largely due to the fact that the courts have been composed of good judges, who have disposed of their cases expeditiously, and whose opinions are, in many instances, exceedingly able. The St. Louis Court of Appeals has been composed of the following judges: Thomas T. Gantt, Robert A. Bakewell, and Edward A. Lewis, who were appointed as the first judges in 1875, to hold until Jan. 1, 1877. At the election in 1876, Charles S. Hayden, Robert A. Bakewell, and Edward A. Lewis were elected for four, eight, and twelve years respectively. Judge Hayden was succeeded by Seymour D. Thompson, whose term will expire Jan. 1, 1893; and Judge Bakewell by Roderick E. Rombauer, whose term will expire Jan. 1, 1897. Judge Lewis resigned in 1887, and was succeeded by Charles E. Peers, who served the remainder of his term, and was succeeded, Jan. 1, 1889, by William H. Biggs, whose term will expire Jan. 1, 1901. The first judges of the Kansas City Court of Appeals were John F. Philips, James Ellison, and Willard P. Hall, who were appointed in 1885 to serve until Jan. 1, 1889. Judge Philips resigned in 1888, having been appointed Judge of the United States District Court for the Western District of Missouri. The remainder of his term was filled by William W. Ramsay. In 1888 Jackson L. Smith, James Ellison, and Turner A. Gill were elected for four, eight, and twelve years respectively, and now compose that court. The chief-justiceship has devolved upon the judge who for the time being held "the oldest license to practise law in this State." Under this rule, Judges Gantt, Lewis, and Rombauer have successively presided over the St. Louis court, and Judges Philips, Ramsay, and Smith over the Kansas City tribunal. It soon became apparent, however, that the machinery provided was still insufficient to avoid the evil of an overcrowded docket of the Supreme Court, nearly three years behind. The fact that the courts of appeals usually cleared their respective dockets with the close of a term threw the condition of the other docket into bold relief for the contemplation of the people. The result was still another constitutional amendment, submitted in 1889 and adopted in 1890, which provided, in brief, for an increase of the membership of the Supreme Court to seven judges, and for two divisions



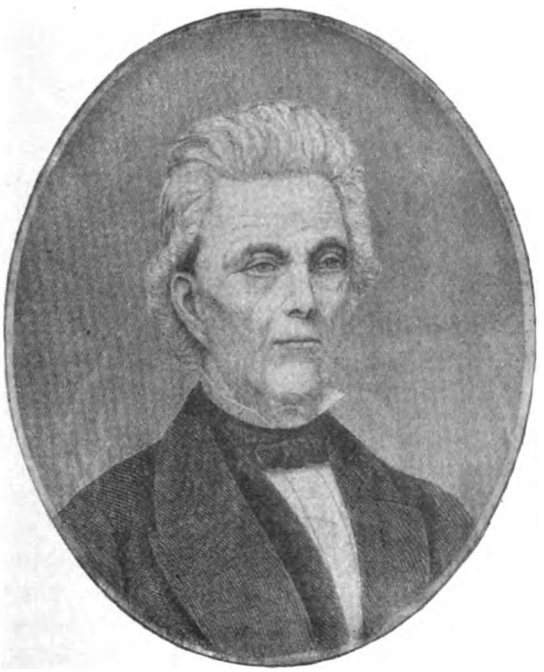
WILLIAM B. NAPTON.

of that court composed of four and three judges respectively. The former division is to be intrusted with jurisdiction over appealed civil cases only; the latter with criminal cases and all original proceedings, and when none of these claim its attention, civil cases are to be assigned to it for hearing. Upon a difference of opinion in either of the divisions, the cause stands referred to the court as a whole. Doubtless the working power of the court will be increased by this arrangement, and that was the prime consideration for its adoption. Almost any system is preferable to the one under which a case is not reached for three years, or more, after having been appealed. That the new plan has its faults is not denied by its advocates, but these are hoped to be within reach of remedy as they are disclosed. Judge James B. Gantt, elected in 1890, has become a member and presiding judge of the second division. He is a native of Georgia, a graduate of the University of Virginia; was prominent at the bar, and served with distinguished ability as judge of one of Missouri's most important judicial circuits. There is every reason to anticipate that he will be an ornament to the bench on which he has but recently taken his seat. As his associates, the Governor has appointed George B. Macfarlane and John L. Thomas. The former is well known as an accomplished lawyer, blessed with qualities and a temperament well fitting a judicial station. The latter has had a long experience on the Circuit Court Bench, and his friends bespeak for him a satisfactory service in his high station.

Although it might be germane to a sketch of Missouri's courts of final appellate jurisdiction, space forbids an extended reference to the judges who have been members of the Courts of Appeals. Judge Thomas T. Gantt had long been a prominent member of the St. Louis Bar, and was the contemporary and associate of Messrs. Gamble, Bates, Geyer, Spalding, Field, Glover, Shepley, Hill, Broadhead, Todd, Hitchcock, and others no less able. He had been especially successful in important real-estate litigation, and had amassed a large fortune. A long and active life at the bar was very gracefully rounded off by a brief but brilliant judicial service. Judges Hayden and Bakewell were also well-known members of the St. Louis Bar. Judge Lewis had been a member of the Supreme Court for a brief period, and his life will be noticed in that connection. Judge Thompson's life and features have already been presented in the pages of the "Green Bag." Judge Rombauer has seen long service at the bar, and yielded a lucrative practice for judicial honors. Judge Philips has had a career which has deservedly made him prominent as a brave soldier, a wise legislator in Missouri's General Assembly and Constitutional Convention and in the halls of Congress, as a great lawyer and advocate, a hard student and accomplished scholar, and an industrious and admirable jurist, as a member of the Supreme Court Commission, a judge of the Court of Appeals, and more recently on the Federal bench. In his present position he has been brought more closely in contact with the bar at large than ever before, and as a result it is a numerous body that accords him high and hearty praise for his splendid ability, his patient courtesy, his tireless industry, and his graceful accomplishments. Judge Ellison was comparatively a young man when he first came upon the bench, but has developed good judicial qualities, an acute mind, and a capacity for the rapid despatch of business. Judge Smith has long been an active and successful practitioner, was Attorney-General (1877–1881), and brought to the bench a mind, an experience, and the qualities of industry which have made him a satisfactory and popular judge. Judge Gill came to the bench after a long experience as a *nisi prius* judge in a busy court, and is well equipped for the labors of his position.

In 1882 the Legislature of Missouri decided to experiment with the plan of a Supreme Court Commission of three members, to be appointed by the Supreme Court,

and to assist that body by preparing reports upon cases referred to it, which, however, were required to be approved and adopted by the court before being promulgated or of force. The act was limited, by its terms, to remain in force for two years only. There had always been serious opposition to this plan as not providing for a judicial body, and its constitutionality was boldly challenged. The adoption of the Amendment creating the Kansas City Court of Appeals at the preceding election enabled its opponents to defeat the re-enactment of the act providing for a commission. This body was undoubtedly a great aid to the court, and its members were happily selected. The first appointees were Alexander Martin, John F. Philips, and Charles A. Winslow. Judge Winslow died after a short service, much lamented, and was succeeded by H. Clay Ewing. Judge Philips resigned upon being appointed to the Kansas City Court of Appeals, and was succeeded by David A. D'Armond.



JOHN F. RYLAND.

The questions which the Supreme Court of Missouri has been called upon to decide have been as great in variety and importance as those which have fallen to the lot of any court in the land. A part of the Louisiana purchase and previously a Spanish possession, Missouri contained many land titles, having their origin under the laws and customs of both France and Spain, which presented questions of the most intricate nature. Titles and questions equally as difficult arose under the legislation of Congress for the relief of persons damaged by the New Madrid earthquake. Some of the cases have become leading ones in the annals of judicial utterances. This is notably true of Chouteau *v.* Eckert, 7 Mo. 16, Affirmed, 2 How. 344; Barry *v.* Gamble, 8 Mo. 88, Affirmed, 3 How. 32; Den *v.* Bingham, 8 Mo. 579; Page *v.* Hill, 11 Mo. 149; Page *v.* Scheibel, 11 Mo. 167; Lessieur *v.* Price, 12 Mo. 14, Affirmed, 12 How. 59; Landes *v.* Perkins, 12 Mo. 238; Affirmed, s. p. Landes *v.* Brant, 10 How. 348; Burgess *v.* Grey, 15 Mo. 220, Affirmed, 16 How. 48; Harrison *v.* Page, 16 Mo. 183, Approved, 16 How. 494, 512; Kissell *v.* Public Schools, 16 Mo. 553, Affirmed, 18 How. 19; Gabache *v.* Piquignot, 17 Mo. 310, Affirmed, 16 How. 451; Carondelet *v.* Dent, 18 Mo. 284, Affirmed, 14 Wall. 308; Soulard *v.* Clarke, 19 Mo. 570, Approved, 16 How. 494, 512; State *v.* Ham, 19 Mo. 592, Affirmed, 18 How. 126; Hogan *v.* Page, 22 Mo. 55, Reversed, 2 Wall. 605; Milbourn *v.* Hardy, 23 Mo. 532, Affirmed, 1 Black, 595; Berthold *v.* McDonald, 24 Mo. 126, Affirmed, 22 How. 334; Carondelet *v.* St. Louis, 25 Mo. 448, Affirmed, 1 Black, 179; Magwire *v.* Tyler, 25 Mo. 484, Affirmed, 1 Black, 195; O'Brien *v.* Perry, 28 Mo. 500, Affirmed, 1 Black, 132; Dent *v.* Sigerson, 29 Mo. 489; Gibson *v.* Chouteau, 39 Mo. 536, Reversed, 13 Wall. 92; Public Schools *v.* Risley, 40 Mo. 356, Affirmed, 10 Wall. 91; Maguire *v.* Tyler, 40 Mo. 206, Reversed, 8 Wall. 605, Public Schools *v.* Walker, 40

Mo. 383, Affirmed, 9 Wall. 282; Williams *v.* Carpenter, 42 Mo. 327; Glasgow *v.* Lindell, 50 Mo. 60; Glasgow *v.* Baker, 85 Mo. 559, Affirmed, 128 U. S. 560; Shepley *v.* Cowan, 52 Mo. 559, Affirmed, 91 U. S. 330; Langlois *v.* Crawford, 59 Mo. 456; Prior *v.* Lambeth, 78 Mo. 538; Widdicombe *v.* Childers, 84 Mo. 328, Affirmed, 124 U. S. 400; Hammond *v.* Johnston, 93 Mo. 198.

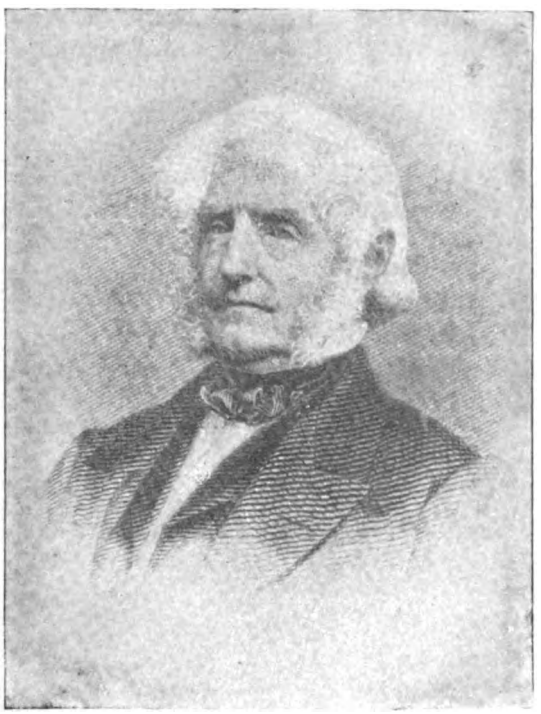
Closely allied to these are notable cases involving questions of accretions, the statute of limitations, and the validity of common law and of Indian tribal marriages. As a border State, the subject of slavery was oftentimes considered. Grave constitutional questions were decided with a wealth of learning and a profoundness of ability which richly earned for the court its high rank in this department. A constantly increasing commerce has given rise to important mercantile questions. Vast manufacturing interests, the operation of great transportation lines, and the making of expensive public improvements have combined to demand countless decisions upon questions of negligence and eminent domain, and involving the relations of the enterprises named to the public. Full discussions of the rules governing trust relations and fraud in all its ramifications have been had. The always unsettled question of the rights and liabilities of married women, confused and perplexed by statutory provisions, has been learnedly elucidated. The plan formerly in vogue of incorporating cities and towns by special charters, each materially different from the other, has called for the solution of many problems in the law of municipal corporations. Added to these, is the multitude of questions arising under the general head of contracts, bailments, agency, insurance, equity jurisprudence, criminal law, conveyances, bills and notes, corporations, administrators and executors, taxation, judgments, mortgages, partnership, evidence, wills, and the vast number of cases involving the construction of particular instruments, and of constitutional and statutory provisions, which naturally arose during seventy years of the history of a busy people and of a constantly growing commonwealth. The result is published to the world in one hundred volumes of official reports of the Supreme Court decisions, and in forty volumes of Missouri Appeal reports. It has ever been a source of deep gratification to the people of Missouri that her judges have been spotlessly pure and sincerely conscientious in the discharge of every duty. Not only has that honesty which should be the general attribute of every human being characterized these judges; but among them are noteworthy and shining examples of that higher and absolute integrity which makes its possessor an ideal minister *of* justice.

Those of us who have learned to know these men and their works are proud to belong to their race and profession; we drink deeply and to our constant improvement of the fountains of learning which mark the result of their labors; we cherish a gratefully affectionate regard for their many virtues, their industry and learning; and have for the memories of those who have been laid to rest a pious reverence. With these reflections is coupled a sincere opinion that, considering all things, and applying the exacting standard by which alone the matter should be measured, the Supreme Court of Missouri has earned for itself the esteem of the legal profession and of all lovers of an upright, laborious, intelligent administration of the science of the law. Occasionally mistakes have been made, but the court has ever manifested a disposition to correct them cheerfully and promptly. At times an overwhelming public sentiment, the intense fierceness of which can scarcely be appreciated beyond the limits of a war-scourged State, nor at all in the peaceful days which have succeeded that tempestuous epoch, may have swayed the decision of questions of a political aspect. But calmer minds and a judicial atmosphere soon steadied the tilted scales, and restored

the supremacy of the Constitution in all its pristine vigor, leaving the departures noted as some of the many monuments to mark the times when partisanship rose above patriotism, and when passion obscured the understanding and appreciation of the fact that an American citizen has rights fundamental and inalienable in their nature.

Mathias McGirk.

When Governor McNair selected the first Chief-Justice of the Supreme Court of Missouri, he set the worthy example of eschewing political considerations. Although a disciple of Thomas Jefferson, he chose one who belonged to the school now remembered as Old Line Whigs. Judge McGirk was born in Tennessee in 1790, came to St. Louis about 1814, but soon removed to Montgomery County in the interior of the State. He was appointed to his high position at the early age of thirty-one, and filled it admirably and well for twenty years. Prior to his appointment, he had served in the Territorial Legislature, and was the author of a number of the important statutes enacted by it, notably the one introducing the common law of England into the local jurisprudence. He is described to have been inclined to corpulency and of medium height. His strong sense of right, vigorous intellect, and courteous demeanor made him a popular judge. His opinions are clear and to the point, and many of them discuss questions of grave importance. In differing from his associates upon the nature of the legislation under which loan-office certificates were issued, holding that, in the light of the Constitution of the United States, they were bills of credit, he expressed the views which received the sanction of the Federal Supreme Court in the well-known case of Craig *v.* Missouri, 4 Peters, 410. His tastes were domestic and for the country. At his handsome home on Loutre Island in the Missouri River, he was hospitable to his friends, and drank deep of the sober pleasures of a full, rounded life. He retired upon his resignation in 1841, in the full possession of all his faculties, and beloved of all his fellow-citizens.



HAMILTON R. GAMBLE.

John D. Cook

came to Missouri during territorial days, and was a member of the convention which framed her first Constitution. He served as judge of the Supreme Court but a short period, and resigned to accept an appointment to the circuit court bench. His tastes led him to prefer *nisi prius* service, in which he achieved high distinction. He is remembered as a thorough master of the common law, but greatly lacking in industry and application. He was genial in disposition, and charitable to the point of prodigality. The following is related as illustrative of Judge Cook's liberality in granting applications for admission to the bar: A young cabinet-maker, with a few months' reading, imagined that he was predestined to be a lawyer, and accordingly applied for the necessary license. The committee ap-

pointed to examine him reported that he lacked the requisite qualifications. The applicant insisted upon an examination by the court, with this result: —

"What do you understand law to be?"

"Law, sir, — law, — yes, sir, — is that which governs the people, and out of which the lawyers make a living."

"But what does Blackstone say about it?"

"Ah (*pompously*), excuse me, Judge, I have not read the learned author."

"Well, what does Kent say about it?"

"Kent, Kent, — well, really, Judge, to tell you the truth, I have not read him either, but promise myself the pleasure of doing so at an early day."

After a few other questions with no better results, the judge, with one of his kindest smiles, said, —

"I will take pleasure in granting you a license, for *I think you can do as little harm in the profession as any one I know.*" (Bay's Bench and Bar of Missouri, an interesting book, unfortunately full of errors and inaccuracies, but which has greatly aided in the preparation of this sketch.)

It was doubtless one whose license was obtained in some such manner as this, that but a few years ago brought a suit for a young woman against the mother of a lover who had deserted her, to recover damages for breach of promise, with aggravating circumstances, and urged the theory that the defendant supplied the proximate cause, in that if her son had not been born, the wrongs complained of would not have happened, — at least not through the instrumentality of that particular member of the male sex.

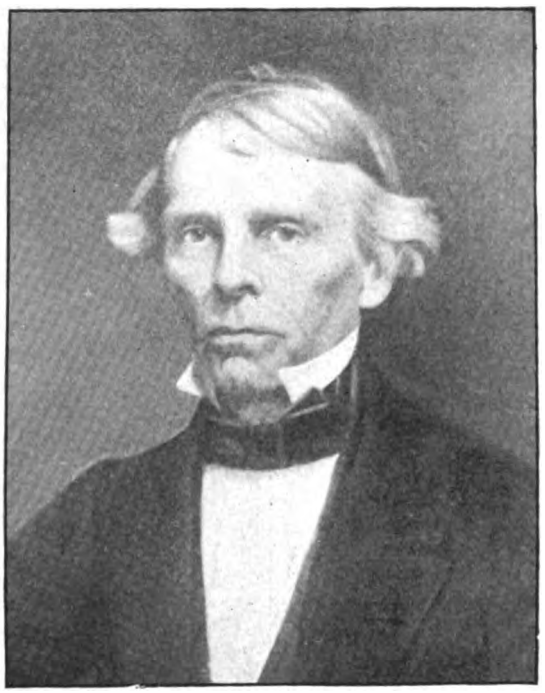
John Rice Jones.

No facts relating to the life and doings of Judge Jones are ascertainable from any person reputed as likely to know them. Existing records show him to have been a resident of Pike County at the time of his appointment. He participated in the decision of about one hundred and forty cases, and seems to have been the dissenting judge of his day. Fifteen dissenting, or non-concurring, opinions by him are reported. In twenty-eight of the one hundred and forty cases mentioned, he delivered the opinion of the court. In one of his dissenting opinions he remarked that he had not "been in the practice of the law for some time." (Holmes *v.* Elliott, 1 Mo. 41, 45.) Whether it is that circumstance which induced the large proportion of dissents and the comparatively small number of majority opinions, or whether the wholesome lesson is to be drawn that a judge prone to elaborate dissenting opinions is thereby clogged in writing opinions that are to stand for the law, is a question beyond the scope of this sketch. In Brown *v.* Ward, 1 Mo. 209, Judge Jones apologized for the brevity of his opinion because of "the very weak state of health which I have been in for these weeks past." This illness seems to have terminated fatally, for he was not on the bench after November, 1823, and died during the following winter.

Rufus Pettibone

was born in Litchfield, Connecticut, May 26, 1784, and graduated from Williams College in 1805. Choosing the law for his profession, he began the study of it in Onondago County, New York, and concluded it in the office of the well-known Abraham Van Vechten of Albany. Admitted in 1809, he settled at Vernon, Oneida County, New York, and in 1812 was elected to represent that county in the State Legislature. He removed to Missouri in 1818, and was at once offered a partnership by Col. Rufus Easton, one of the most prominent men, and probably the leading lawyer of his day at the St. Louis Bar. Judge Pettibone espoused the cause of opposition to the recognition of slavery in the then embryotic State, and was defeated for election to the Constitutional Convention of 1820 on that issue. Appointed as a circuit judge in 1821, he served with general satisfaction until his appointment to succeed Judge Cook in 1823. On the appellate bench he gave great prom-

ise. His opinions show a careful study of the case in hand; and his untimely death, July 21, 1825, was mourned as a great loss. He was associated with Henry S. Geyer, Esq., in the preparation of the Revised Statutes of 1825; and their joint work is a model in that department, and deserves the many encomiums which have been passed upon it. The exactness of the dates mentioned is due to the courtesy of Judge Pettibone's brother, who furnished them to Judge Bay.



ABIEL LEONARD.

George Tompkins was a native of Virginia, having been born in Caroline County, March 27, 1780. He was one of a large family of children; his ancestors were among the early English settlers of the Old Dominion. It has been said that he was but slightly educated in his younger days; but this is manifestly an error, for he was both an English and Latin scholar when he left his ancestral home for the far West, whither he travelled on horseback. He lived in Kentucky some years, teaching school and reading law in his leisure hours. About 1809 he travelled on to St. Louis, then a straggling village of about fifteen hundred people. These, with the exception of only two American families, were Creole French. Mr. Tompkins applied himself assiduously to the study of the French language, and soon became its master. It stood him to a good purpose in his subsequent judicial career, and some of his opinions disclose a rare familiarity with the customs and idioms of the people among whom he had come to live. His love for French literature continued through life, and he left one of the best collections of books of that language then in the State. He taught school successfully, having among his pupils L. A. Benoist, afterward a prominent banker; and Wilson Primm, who became a prominent lawyer, and was for many years a judge. He pursued his legal studies, and succeeded in grounding himself thoroughly in the learning of the profession. In 1816 he was ready to enter upon the practice, and established himself at what is now recollected as Old Franklin, then situated opposite the present city of Boonville; but long since washed away by the treacherous currents of the Big Muddy. Franklin was in the very heart of a rich and prosperous portion of the State, and Mr. Tompkins seemed to have speedily gained the confidence of his neighbors, for he was soon and twice elected to the Territorial Legislature, — a high compliment at that day. In 1824 he assumed his seat on the Supreme Bench by appointment from a governor who differed from him politically. He served a longer continuous period than any other judge who has ever been a member of the court. The universal estimate of his judicial career is that he was a gifted jurist, of spotless integrity, industrious and scrupulously careful in the discharge of his duties. It is to be regretted that his features have not been preserved to posterity. He had a splendid physique, and bore a striking resemblance to Senator

Benton. A lover of horticulture, he delighted in the splendid orchard which he established on his farm, a short distance west of Jefferson City. The long trips our early judges were required to make away from home to hold court, utilizing horses or stage-coaches, and later steamboats, as the only means of travelling, had the effect to beget a longing for a haven of rest during vacation; and there was none so admirable as the comforts of a well-tilled plantation or farm. When a constitutional provision, whose want of wisdom is now so generally recognized, enforced his retirement from the bench, he returned to his comfortable country home, proposing to resume the practice of his profession, especially before the court of which he had been so long an adorning member. But in a year, April 7, 1846, a stroke of apoplexy proved fatal, and there is only the record of a favorable beginning to prove the success that would have fallen to his lot as a practitioner.

Robert Wash.

The vacancy caused by Judge Pettibone's death in 1825 was filled by the appointment of Robert Wash, a member of the St. Louis Bar. Born in Louisa County, Virginia, Nov. 29, 1790, he received a classical education, and graduated from William and Mary College in 1808. He prepared himself carefully for the legal profession. The War of 1812 called him into service, and at its close he had attained the rank of major, and the name of having been a good officer. He removed to St. Louis, and soon became prominent in its municipal government, and served as United States District Attorney, by appointment of President Monroe. Having confidence in the future of his chosen field, he invested his means in real estate in and near the limits of St. Louis. The result realized his expectations, and enabled him to enjoy an ample fortune through life. The twelve years' service he gave his adopted State as a member of her judiciary are evidenced by his share of the opinions delivered during that period. His utterances are singularly free from pretensions to display. Clothed in the simplest of terms, he expressed his views of the law clearly and to the point. He never forgot the inborn Virginia love for the field and chase. On his resignation in 1837, he retired to a commodious home near St. Louis, where his social disposition and hospitable qualities were disclosed to his many friends. He died in November, 1856, nearly twenty years after having left the bench.

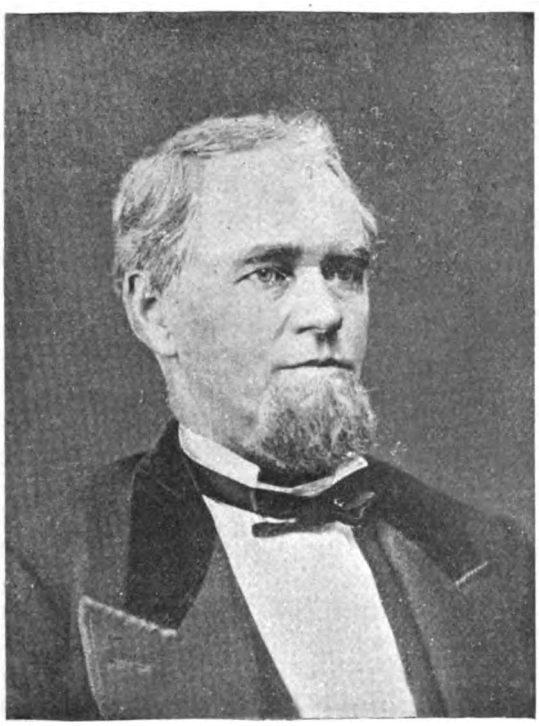
John C. Edwards.

Upon the resignation of Judge Wash, Governor Boggs appointed John C. Edwards to succeed him. The General Assembly not being in session, the appointment expired with the next meeting of that body. The failure of the Governor to renew his former designation of Judge Edwards was not due to any lack of ability displayed by the latter during his twenty-two months' service on the bench. The reasons belong more properly to a political history of the State. It is proper to mention the fact that this event largely influenced the ultimate change to the plan of an elective judiciary. Judge Edwards was a native of Kentucky, but while an infant his father removed to Rutherford County, Tennessee. The recipient of an academic education, he studied law and was licensed to practice at Murfreesboro. On his removal to Missouri, his natural bent for active political life soon brought him into prominence. Defeated as a candidate for the Legislature on the Jackson ticket in 1828, he was in the same year appointed Secretary of State by Governor Miller. He filled this position by successive re-appointments until 1837, when he assumed judicial functions. In 1840 he was elected to Congress as a Democrat, and in 1844 became Governor of the State as the candidate of the same party. During his gubernatorial term the Mexican War took place; and his heroic and energetic conduct in calling out and equipping a number of expeditions to take part in that struggle won

the admiration of the people. The heroism and splendid achievements of "Doniphan's Army of the West" will ever adorn a bright page in the history of American valor. Governor Edwards removed to California, and was an honored citizen of that State until his death in 1888 at a ripe old age.

William B. Napton.

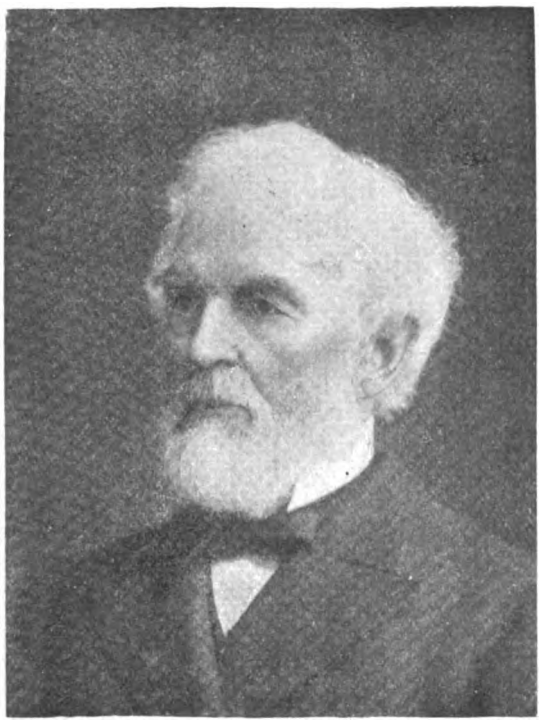
The failure of Governor Boggs to renew his provisional appointment of Judge Edwards gave to the State a judge whose three different terms aggregate twenty-five years, and whose opinions appear in thirty-six volumes of the State Reports. It also placed upon the bench a judge whose pre-eminent abilities have done much to shape and develop the jurisprudence of the State. Born at Princeton, New Jersey, March 23, 1808, he graduated from Princeton College, at the early age of eighteen, with such great distinction that the faculty declined to discriminate between Joseph Addison Alexander, Peter McCall, and the subject of this sketch, but divided the first honors of the class among them. It is the verdict of history that each of these three graduates in after life was an honor to his Alma Mater, and that each was great in his walk in life. Mr. Napton found himself called upon to earn a livelihood, and he gladly accepted the position of private tutor in the family of General Gordon, near Charlottesville, Virginia. Here he mingled in the brilliant and scholarly society of members of the Randolph, Gilmer, Rives, and Barbour families. He spent six years in and near Charlottesville, serving as private tutor for General Gordon's family, and in connection with Charles Minor, Esq., conducted an academy in the nature of a preparatory school for the University of Virginia. During the whole period he was himself a student of law and modern languages at the University. He thoroughly imbibed the strict-construction theories, politically, of his associates, and never wavered in them. His political views are enunciated in the celebrated and much debated Jackson Resolutions, which are reputed to have been drafted by him, but which took their name from the legislator who introduced them, afterward Gov. Claiborne F. Jackson. The Virginia Court of Appeals granted Mr. Napton a license to practice law in 1831, and the following year found him a resident of Missouri. After living at Columbia a short time, he removed to Fayette in Howard County. Displaying peculiar abilities in that direction, he was induced by Governor Miller and other leading citizens to assume the conduct of a newspaper, in which he achieved great success and much renown. He was Secretary of the State Senate in 1834, became Attorney-General in 1836, and served as such until his appointment to the bench in 1839. He gracefully bore the judicial ermine, and became an ideal judge. Clearness of expression and a beautiful diction characterized his opinions, and they are regarded as models for



DAVID WAGNER.

those who strive for the classics of judicial utterances. The newly instituted plan of electing judges retired Judge Napton from the bench in 1851. At that day political nominations were not made for this office, and no lawyer was a seeker for its honors. Returning to the active practice, Judge Napton soon enjoyed a high rank at the bar. The year 1857 found him elevated to the bench a second time, without solicitation or a nomination. The failure to take the Oath of Loyalty prescribed in 1861 vacated his office, and from 1863 to 1873 he was a leading member of the St. Louis Bar, with a large practice in cases from every part of the State before the Supreme Court. The sudden death of the lamented Judge Ewing in 1873 left a vacancy in the membership of that court. Three days afterward Governor Woodson enclosed a commission to Judge Napton asking him to fill the vacant seat, very felicitously saying that he did so without solicitation, and in anticipation of what he knew was a reflection of the unanimous sentiment of the bar of the State in the premises. The urgency of friends and his natural predilection for the bench moved Judge Napton to incur the pecuniary sacrifice which the acceptance of the commission involved. Re-elected in 1874, he remained on the bench until Dec. 31, 1880. At his farm and family residence, "Elk Hill," in Saline County, he died, Jan. 8, 1883. I first met Judge Napton in 1876, and for the four following years saw him almost daily during the nine months of the year for which the court was in session, and occupied an office immediately below his chambers. Gentle and retiring in the modesty of his nature, his heart and soul were those of a perfect man and an incorruptible jurist. He had a keen appreciation of the kindly forbearance due to young men; and many a client owes the success of his cause to the fact that Judge Napton brought a learning and an ability to bear upon the decision of his case which his counsel can never hope to emulate or to attain. The writer will never forget that in the first case a confiding defendant was pleased to intrust to him he was ingloriously routed in the trial court. The instructions so carefully prepared and so prayerfully offered were summarily marked "Refused." The Supreme Court was appealed to. The case involved the interesting question of the proper definition of testamentary capacity. Judge Napton reversed the rulings below, rehabilitated the rejected instructions, and established the modern and intelligent test upon the subject, — had the testator sufficient capacity to understand the nature and quality of the act in which he was about to engage, and to appreciate the claims of those who might properly be made the objects of his bounty? — and rejected the narrow view of making his capacity turn upon his ability to transact the ordinary business affairs of life. (Brinkmann *v.* Rueggesick, 71 Mo. 553.) A few days after Judge Napton's death, the St. Louis Bar adopted a touching memorial embodying and preserving a record of his life, his splendid achievements, and his unsurpassable virtues, which stands spread upon the records of the court and prefaced to Vol. 76 of the Missouri Reports, followed by a similar memorial adopted by the bar of the circuit in which Judge Napton lived and practiced for many years, and within the limits of which he passed from the land of mortal life. A few months after his death the Legislature paid a deserved tribute to his memory by directing the purchase of an oil portrait of the deceased jurist from the brush of Frank W. Pebbles. It is a faithful reproduction of his features, and is suspended immediately over the bench. It is a matter of regret that this custom has not been more generally followed, for the portrait of Judge Napton is the only one upon the walls of the Supreme Court Room. The Legislature has been more disposed to adorn the walls of its own halls by the purchase of heroes in the world political and military. Judge Napton was small in stature and erect in bearing. His chirography was diminutive and exceedingly regular. He habitually used unruled

paper, and placed his lines far apart. His practice not to dot his "i's," nor to cross his "t's," and to eschew loops, so that all letters above and below the line bore a striking similarity, made his manuscript appear as Greek to one unfamiliar with it. Those who knew the peculiarity of his writing found it an easy thing to read the page before them, unmarred by blot, erasure, or interlineation, and the careful product of deliberation by one who was a thorough and intelligent master of the subject touched upon.



PHILEMON BLISS.

During his last term of service Judge Napton was in the full possession of a well-stored mind, and delivered a large number of opinions which will ever stand as splendid monuments to his pre-eminent abilities. Full compensation will come to him who will read and study his deliverances in State *ex rel. v.* Vail, 53 Mo. 97; State *v.* Clarke, 54 Mo. 17; Vogler *v.* Montgomery, 54 Mo. 577; Kane *v.* McCowan, 55 Mo. 181; De Jarnette *v.* De Giverville, 56 Mo. 440 (dissenting); Wannell *v.* Kem, 57 Mo. 478; Morrow *v.* Benson, 61 Mo. 345; Paris *v.* Haley, 61 Mo. 453; Miller *v.* Dunn, 62 Mo. 216; Hamilton *v.* Boggess, 63 Mo. 233; Grayson *v.* Weddle, 63 Mo. 523; Owen *v.* Ellis, 64 Mo. 77; Scotland County *v.* Missouri, etc., R. R. Co., 65 Mo. 123; Ranken *v.* Patton, 65 Mo. 378; Brannock *v.* Dyer, 66 Mo. 391; Donnell *v.* Harshe, 67 Mo. 170; Stillson *v.* Hannibal, etc. R. R. Co., 67 Mo. 671; Reinders *v.* Koppelmann, 68 Mo. 482; Cagney *v.* Hannibal, etc., R. R. Co., 69 Mo. 416; Ford *v.* Hennessey, 70 Mo. 580.

William Scott.

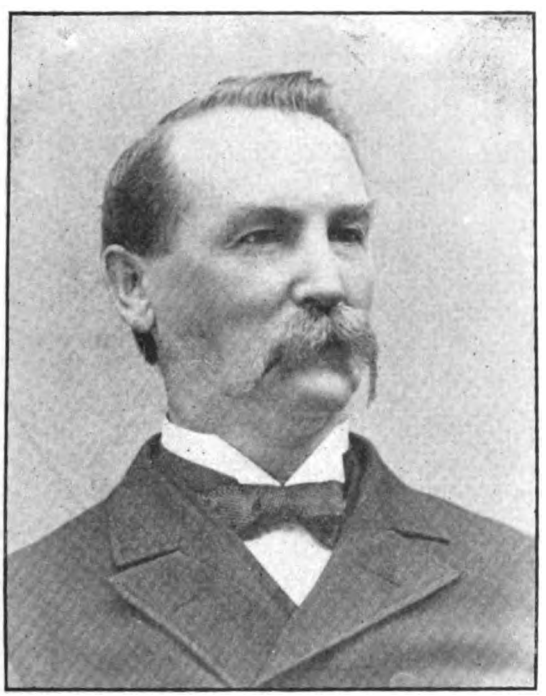
Without the benefit of the same early advantages, and denied the same graces of person and intellect which fell to the lot of his friend and associate Judge Napton, William Scott's sterling integrity, sound common-sense, and deep knowledge of the law nevertheless gained for him a place in the front rank of Missouri jurists; and many accord him the very first place. Warrenton, Fauquier County, Virginia, was his birthplace, and he first saw the light of day June 7, 1804. Tradition has it that Mr. Justice Swayne and Senator Henry S. Foote were among his classmates. The former also studied law at Warrenton, and the latter was likewise a native of Fauquier County. Judge Scott was admitted to the bar in Virginia, but at once removed to Missouri, settling at Old Franklin in 1827. He remained there a few years, and then removed to Jefferson City, the State capital. Here he practiced his profession, and in his spare moments kept the books of the then State Treasurer, and taught the higher branches to the sons of prominent citizens. About 1834 he was appointed Circuit Attorney for the judicial circuit east of Jefferson City, which caused him to remove to Union, Missouri. In following the plan of verifying the existing histories and sketches of the judges of the early days, it is to be regretted that those of Judge Scott are found

to be exceedingly inaccurate and misleading. He is represented as an unsuccessful practitioner; unsuited for the contests at the bar by reason of his excitable temperament; deficient in classical education, and given to the use of a book of legal maxims with a view to adorn his opinions by an attempted display of learning. The demands of truth, and justice to the memory of the dead, require the statement that careful inquiry has developed the fact that the deficiencies and weaknesses either did not exist or are extravagantly overdrawn. It has hitherto been unwritten history that before appointing him Circuit Attorney, Judges McGirk and Tompkins, who knew his worth and ability, felt restrained by the fear that the appointment might lead to a place on the circuit bench, the salary of which was at that time only $1,000, — a small sum compared with what they believed Mr. Scott could earn at the bar. It came to pass, however, that Judge Scott ascended the bench and remained upon it, Circuit or Supreme, most of the time until shortly before his death. Those who conversed with him from time to time bear witness that he was an accomplished scholar. The library he left at his death was rich in well-selected books, English, Latin, and Greek. He had some knowledge of Hebrew, and understood both French and Spanish. Through life he remained a great student, and the well-conned leaves of his books bear testimony that he read much and understandingly. His services as Circuit Judge attracted so much attention that he was promptly chosen to fill the vacancy in the Supreme Court caused by Judge McGirk's resignation in 1841. He was ousted by the Amendment of 1848, but the election held under the Amendment of 1851 recalled him to the bench. With Judges Scott, Gamble, Ryland, Leonard, Napton, Richardson, and Ewing upon its bench, the Missouri Supreme Court lived its golden age. Judge Scott's opinions are numerous, and cover almost every branch of the law. They are found in volumes seven to twelve, and fifteen to thirty-one of the Missouri Reports. Some of them decide important questions of real-estate law, and others discuss grave questions of constitutional construction. It is evidence of the high esteem in which his views are held that when in recent years questions previously decided by opinions from which Judge Scott had dissented, have come before the court a second time, there has been a strong inclination to adopt, and in some notable instances an actual adoption of, his dissenting views. It fell to Judge Scott to write the majority opinion in the afterward nationally important Dred Scott case (15 Mo. 582). Recent writers, who display a pardonable and justifiable affection for him an account of whose life was their subject,[1] but who display quite too much partiality, even partisanship, to deserve to be called historians, have taken occasion to reflect most seriously and unwarrantably upon Judge Scott's judicial independence and integrity (12 Cent. Mag., 208, 211, June, 1887). This is neither the time nor the place to consider the correctness of that decision; and all are agreed in gratification that the institution and circumstances which gave rise to the case are things of the past. Most of us have no impressions which are calculated to warp the mind to a view of the question so partial as not to see great force in Judge Scott's ruling, — that each State has the right to determine her own local public policy, and is not bound by any rule of comity to recognize the local policy of a sister State which is in conflict with her own laws and policy, or prejudicial to the interests of her citizens, declared and protected thereby. It is not out of place, however, to note that in the Supreme Court of the United States so accomplished a jurist as Mr. Justice Nelson, after showing that Judge Scott's ruling had the great support of the opinions of Lord Stowell, Story, Kent, Shaw, and of many courts in similar cases, declared that "it must be admitted that the current of author-

[1] Abraham Lincoln: A History, by Nicolay and Hay, "Century Magazine."

ity, both in England and in this country, is in accordance with the law as declared by the courts of Missouri in the case before us" (19 How. 468).

About 1840 Judge Scott removed to a farm some six miles west of Jefferson City. There he lived with his family until his death in 1862, and there his ashes are mingled with the dust of earth. He was a large man physically, somewhat awkward in his carriage, and entirely wrapped up in his love for law and literature. Many incidents are related illustrative of his stern sense of honesty, and of his abhorrence of hypertechnical efforts to escape just obligations. In a case which came before the Supreme Court, a county was resisting the payment of an order, drawn on its treasury, upon the ground that it contained a cut or representation of Ceres, Pomona, the Blind Goddess, or some similar figure, at one end, but entirely distinct from its body and substance, in violation of a statute requiring such instruments to be "printed in Roman letters without design or ornamentation," — a provision doubtless intended to prevent county warrants from being issued in similitude to bank-bills. After Judge Scott had listened to the effort to escape the payment of an instrument prepared and issued by the defendant county itself, and by it delivered to the plaintiff in payment of an honest demand, until he understood the situation, he picked up a convenient pair of scissors and quickly cut off the offensive illustration, and handed the warrant, "in plain print and without ornamentation," which remained, to the counsel for the county, with the remark that probably it would now be paid without any qualms of conscience on the part of the county officers. The recovery against the county was subsequently affirmed, on the ground that the statute in question was merely directory. (Young *v.* Camden County, 19 Mo. 309.)



THOMAS A. SHERWOOD.

Priestly H. McBride.

Born, reared, and educated near Harrodsburg, Kentucky, Judge McBride came to Missouri at an early age. He soon became prominent in politics as an unbending Democrat. He was appointed Secretary of State in 1829, but resigned in 1830 to become Judge of the Circuit Court, and remained so until his appointment to the Supreme Bench in 1845. His office was vacated by the Amendment of 1848, and he retired to private life and the management of a large farm near Paris, in Monroe County. While the conclusions announced in his opinions were generally well considered, he greatly impaired their value in seldom stating the line of reasoning by which they were supported.

James H. Birch.

This gentleman is better remembered for his public services than for those he rendered during his term as Judge of the Supreme Court. He was born in Montgomery County, Virginia, on March 27, 1804. His father removed to Kentucky while the son was still a boy. First taking up the study of medi-

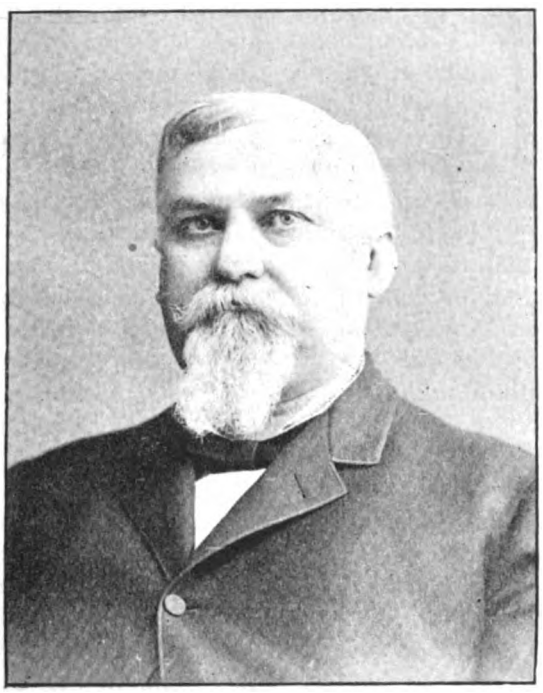
cine, Mr. Birch abandoned it for the law. Evidently his tastes were for a public life, for he was of an affable disposition, a ready writer, and an orator of no mean ability. On his removal to Missouri in 1826, he was first employed on the editorial staff of the St. Louis "Enquirer," Senator Benton's "organ." The following year he established the "Western Monitor" at Fayette. In 1828 he was clerk of the lower branch of the General Assembly, and at the next session secretary of the upper branch of that body. In 1834 he became a State Senator, took a prominent part in its proceedings, and was chairman of the committee to revise the statutes of the State. He resigned before his term expired, but in 1843 accepted the appointment from President Tyler as register of the newly established land office at Plattsburg. He received the appointment as Judge of the Supreme Court in 1849, but felt himself out of his element on the bench, and was not desirous of a re-election in 1851. He afterward accepted a second appointment as Register of the Plattsburg Land Office, which had become an important post by reason of the large influx of immigration to that garden spot known as the Platte Purchase. Judge Birch's ambitions were for congressional honors. He felt that his abilities would be in their appropriate sphere in Congress, but was not successful in his candidacies for the seat. In 1861 he became a member of the Gamble Convention, in which he was a prominent figure by reason of his eloquence and his firm stand in favor of the Union. He was tall, broad-shouldered, had a strong face, and to his last days was partial to the *ante-bellum* "swallow-tail" coat with brass buttons. He died in March, 1878, a gentleman of the old school, whose presence was a constant example to the rising generation of what constituted the embodiment of courtesy, good breeding, and manly bearing.

ELIJAH H. NORTON.

John Ferguson Ryland.

He whose life and deeds are now to be noticed embodied in his character all the graces and elements which go to make a Christian gentleman. Pure in every thought and deed of his long life, with a heart responsive to the sufferings of others, a mind richly stored with learning, and a nature most pacifically disposed, Judge Ryland was peculiarly adapted to judicial functions. He was born in Essex County, Virginia, Nov. 2, 1797. In 1811 his father moved to Jessamine County, Kentucky, where he died in the following year, leaving a widow and eight children, of whom John F. was the eldest. He manifested a deep interest, approaching a passion, for the classics, and at an early day was an adept in Greek and Latin. He taught school for a number of years, and read law in his leisure hours. In 1819 he came to Missouri, and like many others settled at Old Franklin. As the Missouri River continued its encroachments on this historic site, Mr. Ryland removed to Fayette. In 1830 the Legislature created a new judicial circuit,

composed of the entire western portion of the State and extending from Iowa to Arkansas. Judge Ryland was appointed as its judge on Jan. 18, 1831, and filled the position until 1849. He removed to Lexington in 1831, and lived there during the remainder of his life. In 1849 he became a member of the Supreme Court, and continued as such until 1857, retiring after twenty-seven years of continuous judicial service. He resumed the practice of his profession, and lived to a ripe old age, dying Sept. 11, 1873. While on the Supreme Court bench he wrote a number of important opinions, especially in criminal cases. His long experience as a circuit judge had familiarized him with this branch of the law, and he contributed greatly to the formulation of rules for which his opinions are widely cited as authority. Judge Ryland was exceedingly popular, both in the profession and with the people at large. Lawyers admired him for his uniform courtesy and modest dignity; the people for his kindness and generous impulses; and all classes loved him for his unbending integrity and great learning. Through life, Judge Ryland was a Democrat of the Jackson, Benton, and Douglas schools; and during the war remained a steadfast Union man. Though a slaveholder, he believed the institution to be a detriment to the South. With the close of the war, Judge Ryland was an earnest advocate of restoring peace in fact as well as in name, and of extending a fraternal recognition of the Southern States and their people. He yielded to the wishes of his fellow-citizens, and accepted an election to the Legislature in 1866. The bitter and proscriptive views which dominated that body jarred his mild and equable nature, and he retired to private life. He was a prominent member of the Masonic fraternity, and in 1851–1852 served as Grand Master of the State. In 1838–1840 the western portion of Missouri underwent a period of great excitement by reason of what is called the Mormon War. The criminal prosecutions resulting from it came before Judge Ryland, who exercised so much good sense and displayed so great a degree of calmness that peace was restored in the community. In every relation of life, Judge Ryland was exemplary. His love of justice, his catholicity of spirit, his patriotism and self-sacrificing devotion to duty all combined to earn for him the tribute of one who knew him well: "One of God's noblemen, whose whole life was spent in doing good to his fellow-men, whose mind was a storehouse of varied learning, and whose bright judicial career has done so much to adorn the jurisprudence of our State."



WARWICK HOUGH.

Hamilton R. Gamble.

The three citizens of Missouri who have earned the largest measure of national renown are doubtless Thomas H. Benton, Edward Bates, and Hamilton R. Gamble. Circumstances calling for a lofty courage, a genuine patriotism, and a great ability,

found Governor Gamble the man for the occasion, and equal to every demand. He was born in Winchester County, Virginia, Nov. 29, 1798, and was of Irish descent. Reaching manhood's estate, he seems to have hesitated to some extent before finally deciding to come to Missouri; for he previously, and before attaining his majority, had been admitted to the bar in at least three States. However, in 1818, he came to St. Louis, but tarried only a short period, owing to the unfavorable outlook for professional success. He chose Old Franklin, then a most attractive spot, and the goal of many lawyers seeking a location. The portion of the State north of the Missouri River then consisted of but two counties, St. Charles and Howard; and the territory embraced in them now forms no less than thirty-six counties, the other six counties on that side of the river constituting the subsequently added Platte Purchase. Mr. Gamble soon became Howard County's circuit attorney. In 1824 he was appointed Secretary of State and removed to St. Charles, then the State capital. The death of Governor Bates, who had appointed him, which occurred within a few months thereafter, induced Mr. Gamble to resign and to remove to St. Louis. That remained his home through life. He soon rose to the leadership of the bar, and the firm of Bates (Edward) & Gamble was without a superior in the West in all that goes to make an able and successful law partnership. Mr. Gamble's practice consisted largely of important litigation over land titles, and this soon made him a conspicuous figure in the Supreme Courts, both State and Federal. He first attracted general attention throughout the State by his defence of the impeachment proceedings against Judge Carr before the State Senate in 1832–1833, in which he appeared with Henry S. Geyer. He was a member of the Revising Session of the General Assembly in 1845, and in 1851, by a practically unanimous vote, was elected a judge of the Supreme Court, and became its chief-justice by the choice of his associates, Judges Scott and Ryland. As each of these had had previous service on the bench, their action in selecting Judge Gamble implied a great compliment and a recognition of pre-eminent merit. In 1854 he resigned his position, owing to the onerous nature of its duties. His opinions are learned, and display great labor and research in their preparation. Upon his retirement from the bench, he resumed the practice of his profession. When the Secession movement took substantial form, the Legislature, composed largely of members favoring measures to that end, provided for the election of a convention for the declared purpose of considering the relations of the State to the General Government. If the real design was to bring about the passage of a seceding ordinance, the result frustrated it; for the efforts of the Union party were successful in procuring the election of a large majority of their candidates to the convention. Judge Gamble became chairman of its committee on Federal Relations. During a recess Governor Jackson and a portion of the Legislature undertook to proclaim the State out of the Union, and crossed into Confederate territory. The Convention was at once called together for the purpose of organizing a provisional State government strongly pledged to maintain the State in the Union. That body contained many men then and since prominent in every department of public life. Among them, in addition to Judge Gamble, were John B. Henderson, afterward United States Senator; Sterling Price, ex-governor and subsequently a prominent Confederate general; Willard P. Hall, who had been a member of Congress and became lieutenant-governor; Robert M. Stewart, formerly governor; Gen. A. W. Doniphan; William A. Hall, who had been a member of Congress and circuit judge; John F. Philips, afterward a member of Congress, a Supreme Court Commissioner, presiding justice of the Kansas City Court of Appeals, and now judge of the United States District Court

for the Western District of Missouri; Samuel L. Sawyer, afterward a circuit judge and a member of Congress; Nathaniel W. Watkins, a prominent lawyer and a half-brother of Henry Clay; J. Proctor Knott, afterward for many years a Kentucky member of Congress, and chairman of the House Judiciary Committee, and more recently Governor of the Blue-grass State; Thomas T. Gantt, afterward presiding justice of the St. Louis Court of Appeals; Uriel Wright, the leading criminal lawyer of his day; James H. Birch, who has been already noticed; Elijah H. Norton, afterward a member of Congress, and for twelve years a judge of the Supreme Court; Robert D. Ray, judge of the Supreme Court, 1881–1891; James O. Broadhead, first president of the American Bar Association and also more recently of the National Bar Association; Henry Hitchcock, whose exhaustive address delivered as the President of the American Bar Association at Saratoga, August 20, 1890, will ever be remembered; and Charles D. Drake, afterward United States Senator and Chief-Justice of the Federal Court of Claims. That a body containing such men should intuitively and with practical unanimity, have turned to Judge Gamble to assume the gubernatorial chair, was as great a tribute as could have been paid to living man. He accepted it, and discharged every function with so broad a statesmanship and so great an ability, many times in the face of hostile criticism from contending factions, that his name and administration have earned a bright page in our national history. He enjoyed the full confidence and hearty co-operation of President Lincoln. Lieut.-Gov. Willard P. Hall loyally assisted him, and to him is due a generous share of praise. Governor Gamble succumbed to the tremendous strain, and died Jan. 31, 1864. Governor Hall succeeded him, and acted as governor until January, 1865.

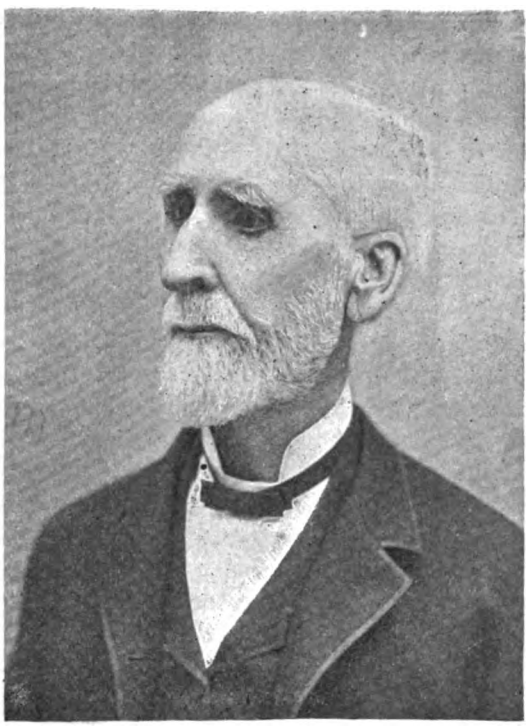
JOHN W. HENRY.

Abiel Leonard.

Were the question who was the greatest and most interesting man that ever stood in the ranks of the legal profession of Missouri submitted for decision, the living members of that profession would doubtless ratify the views expressed by those who were his contemporaries, and award the palm to Abiel Leonard. General Stringfellow, himself a great lawyer, has recorded the general estimate, that Judge Leonard was a man of "commanding intellect, profound learning, spotless integrity, unpretending generosities and kindness, and unflinching courage, moral and physical; in a word, he was the ablest lawyer I have known." And when his life from the morning of childhood to the night when death claimed him is considered, a record is presented that challenges the admiration of all mankind. He was of sturdy Puritan stock. His grandfather was a chaplain in the Continental Army, and his father an officer of the War of 1812. His mother was a granddaughter of Gen. Nathanael Greene of Revolutionary War fame. The history of

the Leonard family in the "New England Historical and Genealogical Register" shows a spendid list of names conspicuous at the bar, in the pulpit, and in the field. Abiel Leonard was born at Windsor, Vermont, May 16, 1797. At the age of sixteen he was sent to Dartmouth College to be prepared for the ministry. As the bent of his mind, however, was for the law, the original intention was abandoned. A too close application to study impaired his sight, and forced his retirement from college after an attendance of three years. He adopted farm-labor to recruit his health. In 1816 he entered the office of the prominent firm of Gould & Sill, at Whitesborough, New York, and in 1818 was licensed to practice. His aggressive nature prompted him to seek a new field for his labors. Missouri then occupied a prominent place in the eyes of the nation, and he selected it for his future home. At the present day it borders on the marvellous to learn that he made his way *afoot* from Western New York to the then flourishing outpost of civilization, called Franklin, a distance of fully twelve hundred miles, much of it through untrodden forests. He arrived at Franklin in 1819, the possessor of a well-worn suit of clothes, and twenty-five cents in money. He organized a local school in the hope of providing funds for his immediate wants. At the end of six months he opened a law-office. A small practice left him an abundance of time to fit himself thoroughly for his chosen profession. So completely did he apply himself that in about two years his eyes entirely failed him, and he stood in danger of the awful fate of total blindness. Nothing daunted, he employed a young man to read to him, paying him $300 a year for his services. By dint of care the sight was saved; and although his eyes were always a source of trouble to him, he was able to use them through life. In 1823 he became Circuit Attorney, and made rapid headway in his profession. In June, 1824, the tragic event of his life occurred. Having addressed a jury in a case in which fraud was alleged against Major Taylor Berry, the latter took offence at some of the criticisms, and assaulted Judge Leonard with a horsewhip. Physically overpowered, a moment's reflection convinced Judge Leonard that but one course was open to him. The circumstances were much the same as those which led to the suicide of Judge Reid, of Kentucky, a few years since,— an event which caused a wide-spread discussion throughout the land. It is probably true that no one can accurately theorize as to what is justifiable in such a case, and that each one must decide for himself when occasion calls for action upon a real state of facts. In Judge Leonard's instance, and at that time, neither his Puritan blood and education, nor the fact that some of his ancestors were distinguished clergymen, deterred him. He challenged Berry to fight a duel. The meeting took place, despite many efforts of friends to effect a reconciliation, and Berry fell mortally wounded. That Judge Leonard was sustained by the prevailing public sentiment stands evidenced by the fact that the Legislature immediately removed the disbarment and political disabilities which existing laws visited upon those who engaged in a duel. The recollection of the event was always a shadow over his life. He regretted that he had been put to the necessity of acting, but never regretted that he had done so when his honor was at stake and his courage in issue. He became a member of the Legislature during the revising session of 1835, and labored assiduously for a liberal public-school system. Though not entirely successful at the time, his labors have contributed largely to bring about the fact that Missouri has the largest public-school fund in the land, except only that of the State of Texas. He held no other public office before becoming a member of the Supreme Court, but earnestly devoted himself to his profession. He was always a hard student, and his library disclosed the vast range and thoroughness of his reading. All the leading text-books, periodicals, and reports, American and English, were stored on his shelves. He became

particularly devoted to the teachings of the civilians, and devoted several years of his life to a careful study of the civil law. After a number of requests to that end, he consented to accept a place on the bench of the Supreme Court. The prominence of his views in the jurisprudence of the State is such that expressions of surprise are oftentimes evoked on learning that he really served only about two years and a half. He wrote opinions in one hundred and fifty-three cases during that brief period, and not one can be recalled which his successors have criticised or overruled. His opinions bear the ear-marks of careful and painstaking preparation. It is said that he often wrote and rewrote them a number of times before they met the standard he had set for them in his own mind. It has been recently said by an eminent lawyer that if Judge Leonard "had written only Whiteside *v.* Cannon (23 Mo. 457) and none other, he would have been entitled to a place in the very front rank of American jurists."[1] That case presents a full discussion of the legal status of married women and their property, and is a masterly production. In all the decisions and legislation since its delivery his opinion has stood as an authoritative guide and landmark. That the man who had so carefully educated himself, and who was blessed with such ability, was a patriot in consenting to serve the State, is made evident by considering that the public treasury paid him the munificent salary of $1,100 per annum during a portion of his term, and $2,500 during the remainder of it. From 1822 to 1855 the salary of the office stood at the former sum. In 1855 it became $2,500; in 1865, $3,000; subsequently, and is now, $4,500. Judge Leonard resumed the practice in 1857, maintaining an office also at St. Louis. He achieved additional renown by his services as counsel in the well-known Mullanphy Will Case (Chambers *v.* St. Louis, 29 Mo. 543). The whole question of charitable uses was presented and discussed in a brief which in its wealth of learning and research is exhaustive of the subject, and entitled to be considered unsurpassed even by Mr. Binney's great effort on the Girard Will. In 1861 Judge Leonard's health completely failed, and he was compelled to retire from active life. He was an intense Union man, and fretted greatly at his inability to participate actively in the ensuing struggle. However, he gradually sank, and in 1863 closed his eyes on the stormy scenes which surrounded his home. Judge Leonard possessed in a remarkable degree the power of presenting his arguments in a logical and convincing manner. He was equally great at the bar and on the bench, and died all too soon for the good of the State and his profession.



ROBERT D. RAY.

[1] J. V. C. Karnes's Address to the Kansas City Bar Association, Jan. 29, 1891.

John C. Richardson.

The Bar of Missouri holds the memory of this jurist in affectionate reverence. Praised

by his contemporaries as a perfect lawyer, closely reaching the point of genius in the vastness and splendor of his learning, the lawyer of to-day, on turning to his remarkably concise and lucid opinions, finds himself ready to add to the meed of praise. A native of Kentucky, a graduate of Transylvania University, he became a resident of Missouri in 1840. Attaining a high rank at the Boonville Bar, he removed to St. Louis in 1850, and after a short association with Sinclair Kirtley, formed a partnership with the gifted and lamented Samuel T. Glover. The firm of Glover & Richardson enjoyed a successful and lucrative practice. In 1857 he yielded to a request to permit his name to be used at the ensuing election for judges of the Supreme Court, and his friends were overjoyed at the overwhelming nature of the favorable result. He became the close friend and warm admirer of Judge Scott. The poor state of his health impelled his resignation in 1859; and the following year death claimed him, at the early age of forty-two. The loss to the profession and to the State was great, for there was no rank beyond his reach. Distinguished authority bore eloquent testimony to his correctness of mind, his patient industry and gentle courtesy, and declared that none could know such a man without loving him, nor study his works without concurring in the estimate so expressed.

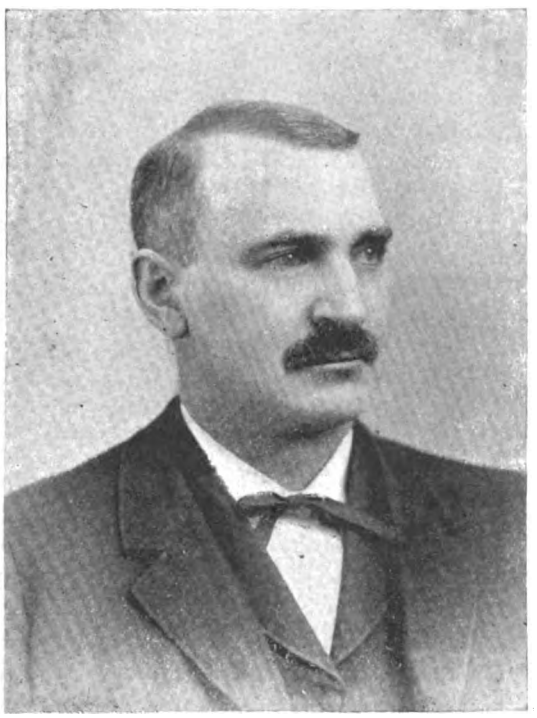
Ephraim B. Ewing.

The son of Rev. Finis Ewing, a distinguished divine, born in Todd County, Kentucky, in 1819, carefully and thoroughly educated at Cumberland College, Judge Ewing came to the study of the law well equipped by natural endowments and mental preparation to reach a leading position in the profession. He was admitted in 1842; became Secretary of State in 1849; Attorney-General in 1857; succeeded Judge Richardson in 1859, and left the bench in 1861, because of his refusal to take the Test Oath dictated by the Gamble Convention. In 1870 he was elected one of the judges of the St. Louis Circuit Court, and in 1872 was again made a judge of the Supreme Court. With a suddenness that was startling he died, as if in an instant, June 21, 1873, leaving a large family, a number of whom have since become well known in public life. Judge Ewing's marked characteristics were a conscientious fidelity, an untiring devotion to his profession, and a rare felicity in giving expression to his views. Never an orator, he was still always sure of close attention. Though reserved in disposition, he enjoyed that popularity which rests on general and unbounded confidence. He was tall and exceedingly spare, with a face that bespoke his honesty of purpose and untiring application to duty. During his last term he delivered a number of opinions which disclose his powers to fine advantage (Newmeyer *v.* Missouri, etc., R. R. Co., 52 Mo. 81; Pier *v.* Heinrichoffen, 52 Mo. 333; Ketchum *v.* American Express Co., 52 Mo. 390; Pacific Railroad Co. *v.* Cass County, 53 Mo. 17; Straub *v.* Soderer, 53 Mo. 38).

David Wagner.

Judge Wagner is one of the best known of Missouri judges, and his opinions are very numerously cited and quoted from by modern text-writers. This is attributable partly to the fact that during his term of service much of the law of the State, owing to changed conditions and an era of great commercial activity, was passing through a formative state, but principally to the fact that his vigor and originality of thought illuminated so many topics which fell to his investigation and decision. He is a striking illustration that good judges are often the creatures of circumstances. Given the opportunity, a man who might otherwise have remained to fame unknown, is lifted into prominence. Judge Wagner was born in Luzerne County, Pennsylvania, Dec. 31, 1826. He came to Missouri in 1842; was admitted to the bar in 1848, and practiced his profession until 1862. In that year he was elected a member of the State Senate, and became a leading member of that body. In 1864

he resigned his seat to accept the office of judge of the circuit court, and in 1865, in turn, resigned that station to become a judge of the Supreme Court. He was re-elected in 1868 and 1870, the last time without opposition. In 1876 he was the nominee of his party, then largely in the minority, and was defeated. He practised law at St. Louis until 1880, when he retired to a suburban home near Canton, Missouri. Occasionally he advises as consulting counsel, but is no longer in active practice. In 1870 he published a revision of the statutes of the State, and in 1872 a supplement thereto. These publications were admirably and systematically arranged. Until the official revision of 1879, "Wagner's Statutes" were almost universally cited. Judge Wagner's opinions appear in twenty-seven volumes of the reports (38–64). Some of them are leading cases, and so classified by authors. Many of them display his rare powers to fine advantage. Among those which can be studied with profit are: Hannibal, etc., R. R. Co. *v.* Marion County, 36 Mo. 294; Hayden *v.* Tucker, 37 Mo. 214; Huelsenkanp *v.* Citizen's Ry. Co., 37 Mo. 537; Gerhardt *v.* Boatmen's Sav. Inst., 38 Mo. 60; State *v.* Starr, 38 Mo. 270; State *ex rel. v.* Fletcher, 39 Mo. 388; Blair *v.* Ridgely, 41 Mo. 63; Strouse *v.* Drennon, 42 Mo. 289; Washington University *v.* Rowse, 42 Mo. 308; Gibson *v.* Pacific Railroad, 46 Mo. 163 (2 Thomps. Negl. 944); State *ex rel. v.* Gatzweiler, 49 Mo. 17; Garretzen *v.* Duenckel, 50 Mo. 104; State *ex rel. v.* Boone County Court, 50 Mo. 317 (dissenting); State *ex rel. v.* Saline County Court, 51 Mo. 350 (dissenting); McVey *v.* McVey, 51 Mo. 406; Chisholm *v.* National Ins. Co., 52 Mo. 213; State *ex rel. v.* Leffingwell, 54 Mo. 258; Dunn *v.* Railey, 58 Mo. 134; St. Louis *v.* Griswold, 58 Mo. 175; Lewis *v.* St. Louis, etc., R. R. Co., 59 Mo. 495; Greenabaum *v.* Elliott, 60 Mo. 25; Isabel *v.* Hannibal, etc., R. R. Co., 60 Mo. 475; Bailey *v.* Smock, 61 Mo. 213; Lammert *v.* Lidwell, 62 Mo. 188; Hamilton *v.* Marks, 63 Mo. 167; Dunn *v.* White, 63 Mo. 181.



FRANCIS M. BLACK.

A competent authority has said of Judge Wagner: "He possesses a strong habit of attention and a powerful memory. These enable him to seize, with great rapidity, upon all the elements of a subject, and to hold them in one connected image in his mind's eye. His most elaborate judgments are thus fully organized in his mind before he puts pen to paper, and then they are written out at one sitting, with seldom an erasure or interlineation."

Walter L. Lovelace.

By dint of industry and determination, Judge Lovelace reached the summit of his ambition. He was born in Charlotte County, Virginia, Oct. 1, 1831, of parents whose circumstances were exceedingly limited. On the death of his father in 1833, his widowed mother removed to Montgomery County,

Missouri. Walter labored on a farm during his boyhood, attending school, according to custom, during the winter months only. Later he taught school, and by his savings was enabled to attend the Missouri State University. He was admitted to the bar in 1855. In 1862 and 1864 he was elected to the State Legislature, serving as Speaker of the House of Representatives during his second term. A handsome portrait in oil hangs on the walls of the Chamber in which that body sits, a memorial placed by Legislative direction. He survived his appointment as a member of the Supreme Court but fifteen months. He suffered greatly from weakness of the lungs, and fell a victim to consumption, not yet thirty-five years old. He was an industrious judge, and his opinions indicate that with experience and good health he would have earned for himself a prominent rank.

Nathaniel Holmes.

Judge Holmes was one of the most scholarly of all who have been members of this court. He was born in Peterborough, New Hampshire, July 2, 1814; graduated at Harvard Law School, was admitted to practice at Boston in 1839, and immediately removed to St. Louis. He was a successful practitioner, and greatly devoted to scientific and literary researches. On the Supreme Court bench he wrote a number of opinions which display a keen insight into that reason which is the life of the law as well as a leaning to the rules of the civil law and the views of the continental jurists, — Clark *v.* Hannibal R. R. Co., 36 Mo. 202; Baker *v.* Stonebraker, 36 Mo. 338; Valle *v.* Cerre, 36 Mo. 575; Sawyer *v.* Hannibal, etc., R. R. Co., 37 Mo. 240; State *v.* Benoist, 37 Mo. 500; Forder *v.* Davis, 38 Mo. 107; Barnard *v.* Duncan, 38 Mo. 170; Callahan *v.* Warne, 40 Mo. 131; Murphy and Glover Test Oath Cases, 41 Mo. 339; Rutherford *v.* Williams, 42 Mo. 18; Abbott *v.* Lindenbower, 42 Mo. 162.

On his resignation in 1868, he accepted the Royall Professorship of Law in Harvard, and filled it until 1872. He is the author of a work on "The Authorship of Shakspeare," which has attracted wide-spread attention, and made him the leading advocate of the theory that Bacon was the author of the Shakspearean dramas.

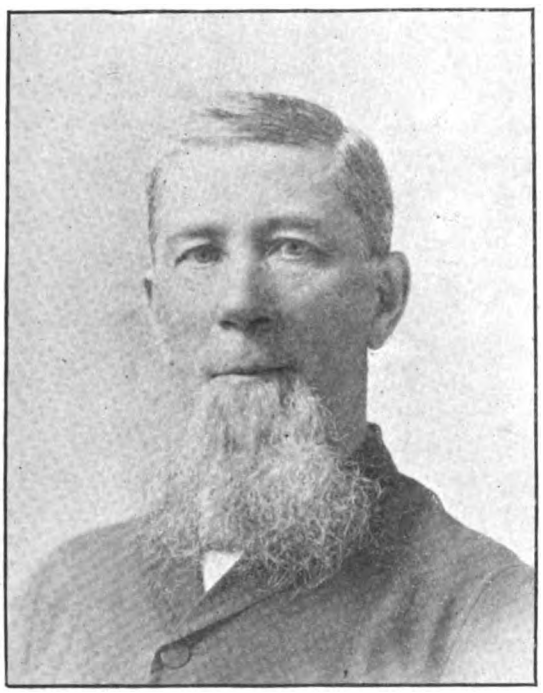
Thomas J. C. Fagg.

The vacancy caused by Judge Lovelace's death was filled by the promotion of Judge Fagg from the circuit court bench, which he had occupied for four years previously. Judge Fagg was born in Albemarle County, Virginia, July 15, 1822, and came to Missouri on his father's removal to Pike County in that State in 1836. He was admitted to practice in 1845, and for some years ensuing practised with Hon. James O. Broadhead. In November, 1850, he became probate judge; in 1855, a member of the Legislature; in 1856, judge of a common pleas court; in 1858, a member of the Legislature a second time; in 1861, a brigade-inspector and colonel; in 1862, a circuit judge; and in 1869, upon the expiration of his term as judge of the Supreme Court, he resumed the practice of his profession. These few lines disclose the busy life of a man ever active in public and professional duties. To complete the sketch, mention should be made of not a few candidacies for such positions as member of the General Assembly, Lieutenant-Governor, and Congressional seats.

Philemon Bliss.

That Judge Bliss should have accomplished all he did through a life that had in it few days of freedom from physical pain, is little less than marvellous. At the age of eighteen a severe cold generated a bronchial affection, leaving him with weakened voice, an almost constant cough, and periodical attacks of pains in the chest, which remained with him throughout his life. And yet a most cursory glance over his life-work, as lawyer, legislator, judge, author, and professor, will disclose a record which any one might be proud to claim. Born of Puritan stock at North Canton, near Hartford, Connecticut,

July 28, 1813, on a farm, to which he often referred in after-life as little more than a granite rock, compared with the magnificent prairies and fertile bottoms of the West, his father removed to Whitestown, New York, in 1821. Here Philemon did farm-work, and attended winter school at the Steuben Academy. He afterward studied at Oneida Institute and Hamilton College, either working for his board or boarding himself in his room, being in exceedingly limited means, owing to his father's want of prosperity. In 1833 he entered the law office of Theodore Sill (formerly Gould & Sill) at Whitesboro, where he studied law until the fall of 1834, when his health failed rapidly. He went to Florida, and remained there about a year without receiving material benefit. He then removed to Ohio; and his ill-health continuing, he engaged in the varied occupation of teaching, surveying, and clerking in a land office. In 1841 his health improved; and having completed his law studies, he entered upon the practice at Elyria, Ohio. In 1848 he was elected presiding judge of the circuit composed of Lorain, Cuyahoga, Lake, and Geauga Counties, Ohio, and served until the abolishment of the judicial offices by the Constitution of 1851. In 1854 he was elected to Congress from a district previously Democratic, and in 1856 was re-elected. His rapidly failing health compelled him to leave the climate of Northern Ohio, and in the spring of 1861 he accepted the appointment from President Lincoln as Chief-Justice of the then *terra incognita* called Dakota. He did not find his surroundings congenial to his tastes, and after organizing the courts of that Territory, and indulging in frontier idleness until 1863, he became interested in the political struggle then pending in Missouri, and in 1864 removed to St. Joseph in that State.



THEODORE BRACE.

In 1866 Judge Bliss was elected Probate Judge of Buchanan County, and was appointed also curator of the State University. In 1868 he was elected to the Supreme Bench, and for four years was a patient, industrious, and popular judge of that court. Upon his retirement from the bench he was appointed Professor of Law in the State University, and in 1873 founded its Law Department. This he conducted, with marked ability, until his death, which occurred in August, 1889; and with the able assistance of Professor Tiedeman, he succeeded in building up a splendid reputation and a large scholarship for that department. In 1878 he published a treatise on "Code Pleading," a second edition of which was issued in 1887. This work has become standard authority throughout the country, and is used as a text-book in many of the principal law schools.

In 1885 he published a treatise on Sovereignty, which, although it has not reached general circulation, has received the approbation of the students and writers upon that subject, and has been pronounced by eminent authority to be a valuable addition to

the library of the student of American history, and a great help to the teacher of the principles of civil government.

From boyhood Judge Bliss's convictions upon the question of slavery were fixed and earnest. His best and highest efforts were given to the cause of abolition. He was with the advance guard, — the trusted friend of Sumner, Chase, Giddings, and Lovejoy.

Although by nature of a modest and retiring disposition, and hampered by constant ill-health and physical weakness, Judge Bliss was always at the front, active, zealous, and aggressive in the cause. He had studied the question of slavery in all its phases; and his arguments made during the Kansas struggle, on the legal aspects of slavery in its relation to the Federal Government, were pronounced by Mr. Sumner and other anti-slavery leaders to be the ablest made in the House.

Judge Bliss's opinions rendered while on the Supreme Bench are singularly concise, lucid, and able, and bear the impress of careful study and training.

After his accession to the Supreme Bench and during the years following, Judge Bliss took no active part in political or other affairs of a public nature, although he maintained a lively interest in all questions affecting the public welfare, and furnished occasional articles upon current topics to various reviews.

His duties at the Law School proved highly congenial to his tastes; and the training of young men in the profession to which he was devotedly attached, was a labor of love rather than a perfunctory duty. During the last distressing days of pain and suffering, his thoughts constantly reverted to his classes, with an anxious solicitude for the success and welfare of the school he loved, and for which he had labored so long and well.

Modest, retiring, and unselfish in disposition; kind, gentle, and courteous by nature; wise, upright, and pure of heart; faithful and true in every relation and duty of life, — Judge Bliss furnished an honorable record such as few men leave behind.

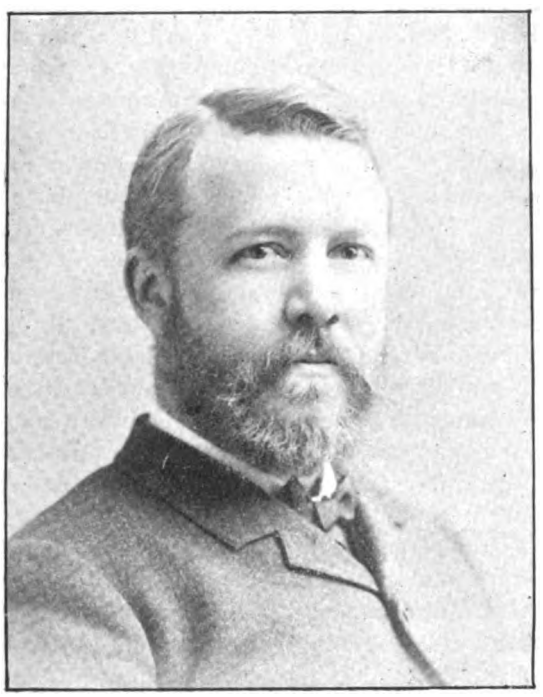
Edward A. Lewis.

Though Judge Lewis was upon the Supreme Court only a few months, he subsequently gave to the State nearly twelve years of service as presiding judge of the St. Louis Court of Appeals. He was born at Washington, District of Columbia, Feb. 22, 1820; at the age of fifteen he became an apprentice to the printer's trade in the office of Duff Green; in 1836 he became a private tutor; in 1838, a clerk in the Government Land Office; the next year he removed to Yazoo, Mississippi, where he was admitted to the bar in 1841. He was a self-made and self-educated man. In 1845 he settled at Richmond, Missouri, and after filling a number of county offices, accepted editorial charge of a newspaper in St. Louis in 1851. He was the father of that body known as the International Typographical Union. In 1853 he entered upon the practice of the law in earnest, and soon attained an enviable rank in his profession. He made St. Charles his home in 1856. He was a Presidential Elector twice, and the unsuccessful candidate of the minority party for the Supreme Court in 1868. In 1874 he became a member of that tribunal, and in 1875 was appointed a judge of the St. Louis Court of Appeals. He was a man of singularly modest and retiring disposition, but endowed with rare powers of discrimination. He was a master of the English language; and his opinions are clear, to the point, and strikingly free from dicta. In 1888 physical infirmity and increasing deafness compelled his resignation; but his associates, as a testimonial to his long and laborious services, and in a spirit that reflects credit upon them, at once appointed him reporter to the court. He held this position until his death in 1889.

Henry M. Vories.

A jolly, easy-going boy, there was little in his youth that promised an able and popular lawyer. A native of Henry County, Ken-

tucky, born in 1810, of German descent, a soldier in the Black Hawk War, he began the study of the law at the age of thirty-one, having previously failed as a merchant. In 1844 he came to Missouri, poor to the point of grinding poverty, but of indomitable energy. Fortune smiled upon him as a reward, and he soon became one of the leaders of the St. Joseph Bar He was a diligent practitioner, and became an industrious judge. His opinions bespeak a writer thoroughly in earnest, but are open to criticism because of their prolixity. He was prone to set out the pleadings, evidence, and instructions at great length, — a fault that has created the impression that he lacked the faculty of expressing himself concisely. However, his conclusions seldom met with dissent, and have rarely been departed from. His style and the fault noted can be gathered from Bassett *v.* St. Joseph, 53 Mo. 290; Henderson *v.* Henderson, 55 Mo. 534; Baker *v.* Chicago R. R. Co., 57 Mo. 265: Cooper *v.* Ord, 60 Mo. 420; Boyd *v.* Jones, 60 Mo. 454.



SHEPARD BARCLAY.

Thomas A. Sherwood.

The views of no other judge have done so much to mould the rulings of this court as those of Judge Sherwood. Endowed with a mind of undoubted genius, a capacity for great labor and research, of intense individuality, bold and aggressive in thought, equally so in expressing himself, and always exceedingly in earnest, Judge Sherwood has enriched the Reports by a large number of able and exhaustive opinions, many of which are destined to be classed as "leading cases." He was born in Eatonton, Georgia, June 2, 1834, educated at Mercer University and Shurtleff College, and graduated from the Cincinnati Law School. He began practice in 1857, and enjoyed a high local reputation. He has now served eighteen years on the Supreme Court, and his opinions are found in forty-nine volumes (52–100). Among the opinions which deserve to rank as his most important and elaborate productions are those in Freeman *v.* Thompson, 53 Mo. 183; Pomeroy *v.* Benton, 57 Mo. 531; S. C. 77 Mo. 64; Schmidt *v.* Hess, 60 Mo. 591; State *ex rel. v.* Potter, 63 Mo. 212; Clark *v.* Mitchell, 64 Mo. 464; Cass County *v.* Green, 66 Mo. 498; Griffith *v.* Townley, 69 Mo. 13; Morgan *v.* Durfee, 69 Mo. 469; Chouteau *v.* Allen, 70 Mo. 290; Baldwin *v.* Whitcomb, 71 Mo. 651; Attorney-General *v.* Collier, 72 Mo. 13; Leavitt *v.* Laforce, 71 Mo. 353; Massey *v.* Young, 73 Mo. 260; Faulkner *v.* Faulkner, 73 Mo. 327; Kelley *v.* Hurt, 74 Mo. 561; State *ex rel. v.* Hermann, 75 Mo. 340; Powell *v.* Mo. Pac. Ry. Co., 76 Mo. 80; State *v.* Addington, 77 Mo. 110; Rannells *v.* Gerner, 80 Mo. 474; Scudder *v.* Ames, 89 Mo. 496 (dissenting); Kline *v.* Vogel, 90 Mo. 239; State *v.* Partlow, 90 Mo. 608; *Ex parte* Marmaduke, 91 Mo. 228 (dissenting); Hagerman *v.* Sutton, 91 Mo. 519; State *v.* Bryant, 93 Mo. 273 (dissenting); State *ex rel. v.* Pond, 93 Mo. 506 (dissenting); Young *v.*

Kellar, 94 Mo. 581; State *v.* Meyers, 99 Mo. 107.

Judge Sherwood's style is rhetorical, oftentimes in a marked degree. He has been unsparing in his denunciation of frauds, and strenuous in his demands for a rigid adherence to the strict letter of the Constitution. In a number of notable instances he has led a dissent so ably and so forcibly that the next hearing resulted in an adoption of his views. (See Polston *v.* See, 54 Mo. 291; overruled, Edwards *v.* Knapp, 97 Mo. 432; Hargadine *v.* Van Horn, 72 Mo. 370, and Burnett *v.* McCluey, 78 Mo. 676; overruled, Burnett *v.* McCluey, 92 Mo. 230; Kanaga *v.* St. Louis, etc., R. R., 76 Mo. 207; overruled, Mueller *v.* Kaessmann, 84 Mo. 318; State *v.* Hickman, 75 Mo. 416, and State *v.* Jennings, 81 Mo. 185; overruled, State *v.* Berkley, 93 Mo. 41; Wernse *v.* McPike, 76 Mo. 249; overruled, Wernse *v.* McPike, 100 Mo. 476; Priest *v.* Way, 87 Mo. 16; overruled, Bogie *v.* Nolan, 96 Mo. 85.)

Whether the practice of elaborate dissenting opinions is a beneficial one or not, there can be no doubt that Judge Sherwood's indulgence of it has not been wholly barren of fruit. It is in the domain of equity jurisprudence that Judge Sherwood is pre-eminently great, for he is doubtless a thorough master of every aspect of its rules and doctrines. That he should have escaped criticism because of some of his utterances, would be strange in this age, when anything outside the time-honored and well-trodden paths of judicial expressions at once attracts the attention of the profession. Nor is this the time or place to discuss the merits of the criticisms made. This much can always be justly claimed for this jurist, — that he is inflexibly honest in his views, brave in expressing them, and has never faltered in their defence; and, above all, that if he has erred at all, it has been in form and not in substance, and on the side of a high standard of personal and official honesty, and in the direction of construing constitutional guaranties for the largest protection of private rights and individual liberty. A selection, at random, of some of his best known sentences can be profitably grouped in these columns, —

"It is, indeed, a very sad commentary on human nature, that accusations like the present are ever founded in fact; and it is an equally melancholy reflection that but too frequently charges of this sort result alone from the promptings of a mendacious and malevolent spirit, fortuitously furnished with some slight circumstance sufficing to give verisimilitude to some artfully woven and damning story. The judicial annals abound with instances where the sheerest fabrications respecting the offence here charged have been made to assume and wear the hue and complexion of absolute verity." (State *v.* Jaeger, 66 Mo. 173, 175, 176.)

"When we reflect on the foregoing diverse statements, and numerous others of like kidney scattered through this record, these questions come unbidden before us: Need honesty shelter itself behind prevarication? Must good faith summon to its aid the motley troop of falsehood?" (Cass County *v.* Green, 66 Mo. 498, 511.)

"Fraud is rarely susceptible of positive proof, for the obvious reason that it does not cry aloud in the streets, nor proclaim its iniquitous purposes from the housetops. Its *vermiculations* are chiefly traceable by 'covered tracks and studious concealments.'" (Massey *v.* Young, 73 Mo. 260, 273.)

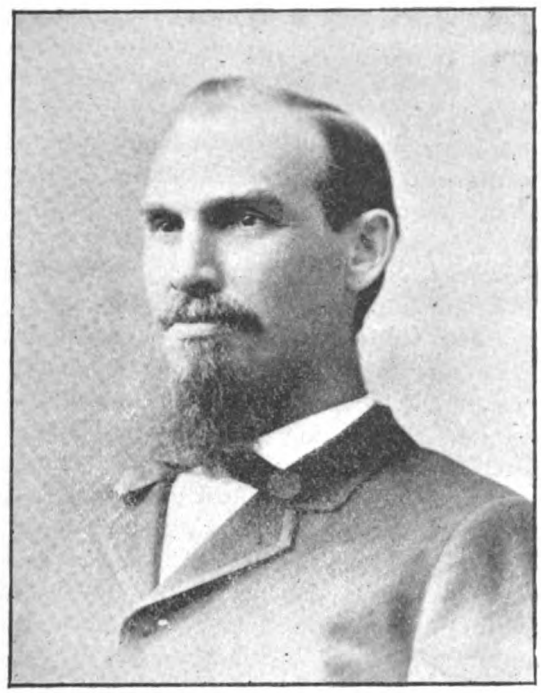
"I concur in overruling the motion for rehearing on these grounds: . . . (3) A great clamor has been made about the opinion, and I am in favor of denying the motion on that distinct ground, regardless of all other considerations. The days of any court ought to be numbered, whenever it yields by the tithe of a single hair to any other considerations except those arising upon the record." (Long *v.* Long, 79 Mo. 644, 660.)

"With all deference to my associates, I can only say that such a conviction (as supposed for the sake of argument), though *secundum legem*, as goes Hickman's case, is worthy alone of 'twelve butchers for a jury

and a Jeffries for a judge!' And I here confidently venture the prediction that when a real case like the hypothetical one shall come to this court, my associates will say aye to this declaration." (State *v.* Jennings, 81 Mo. 185, 208.)

"Error is not sacred; it has no vested right to exist; and it becomes us as *men*, certainly as *judges*, whenever error is discovered for the first time, to confess and to forsake it at the earliest opportunity. Prov. xxviii. 13." (Straus *v.* Kansas City, etc., Ry. Co., 86 Mo. 421, 437.

"In my humble opinion such a theory of the law is only equalled in its world-embracing comprehensiveness by the Missionary Hymn; it places an administrator in this State on the same pedestal where the oration of Phillips places Napoleon the Great, making him 'proof against peril, and empowered with ubiquity.'" (Scudder *v.* Ames, 89 Mo. 496, 522, 523.)



JAMES B. GANTT.

Warwick Hough.

Of distinguished parentage, the future judge was born in Loudon County, Virginia, Jan. 26, 1836. His parents brought him to Missouri during the following year, and settled at Jefferson City in 1838. He graduated from the State University in 1854; assumed the study of the law in the office of General, now Judge, E. L. Edwards at Jefferson City, and was admitted to practice in 1859. He was in partnership with J. Proctor Knott until 1861, when he accepted the appointment of Adjutant-General from Governor Jackson, whom he accompanied to the South. He served as Secretary of State under Governor Reynolds, and on the staffs, successively, of Generals Polk, S. D. Lee, and Taylor. Until the removal of the Test Oath in 1867 permitted him to do so in Missouri, he practised law at Memphis. As a judge, Judge Hough was a hard student and a careful writer. His opinions are written neatly, without a blot or interlineation; and his chirography is as clear and legible as copper-plate. He was concise in his diction, and enriched the jurisprudence of the State by his labors. Some of his best opinions are: Hall *v.* Adkins, 59 Mo. 144; Sharpe *v.* Johnston, 59 Mo. 557; S. C. 76 Mo. 660; Rogers *v.* Brown, 61 Mo. 187; Valle *v.* Obenhause, 62 Mo. 81 (dissenting). (His views approved, Campbell *v.* Laclede Gas Co., 84 Mo. 352, 378; and Valle *v.* Obenhause, overruled, Dyer *v.* Wittler, 89 Mo. 81.) Peltz *v.* Eichele, 62 Mo. 172; Turner *v.* Baker, 64 Mo. 218; Randle *v.* Pacific R. R., 65 Mo. 325; Smith *v.* Madison, 67 Mo. 694; Heim *v.* Vogel, 69 Mo. 529; McIlwrath *v.* Hollander, 73 Mo. 105; Buesching *v.* St. Louis Gas Light Co., 73 Mo. 219; State *ex rel. v.* Tolson, 73 Mo. 320; State *v.* Ellis, 74 Mo. 207; Fox *v.* Hall, 74 Mo. 315; Skrainka *v.* Allen, 76 Mo. 384; Fewell v. Martin, 79 Mo. 401.

Judge Hough is of imposing appearance and graceful manners. Since his retirement from the bench, he has become an honored member of the St. Louis Bar.

Elijah Hise Norton.

From his quiet home in Platte County, Missouri, Judge Norton can look back through the record of his long and well-spent life with profound satisfaction: born in Logan County, Kentucky, Nov. 21, 1821; educated at Centre College, Danville, Kentucky, and at Transylvania University; a member of the Platte County, Missouri, Bar in 1842; a highly popular judge of the circuit court from 1850 to 1860; a member of Congress during the stormy period of 1861–1862; a member of the Gamble Convention, 1861–1863, and of the Constitutional Convention of 1875; a judge of the Supreme Court, 1876–1889. Midst these public duties, Judge Norton found time to become a highly successful farmer and business man, so that in his chosen retirement he presents the rather unusual spectacle of a man who has been in public life, especially as a Missouri judge, and is blessed with a competency. Judge Norton is a man of strong convictions, and left his impress plainly and visibly upon the decisions rendered during his term. In the volumes published during that period are found a large number of his opinions, many of them in important cases, and covering a wide range of questions. A perusal of them will be profitable to the reader, and inspire an admiration for the industry and ability of which they are the fruits. Some of them are: *Ex parte* Jilz, 64 Mo. 205; Attorney-General *v.* Miller, 66 Mo. 328; State *v.* Shock, 68 Mo. 552 (dissenting); Kitchen *v.* St. Louis, etc., R. R. Co., 69 Mo. 224; St. Louis *v.* St. Louis Gas Light Co., 70 Mo. 69; *Ex parte* Slater, 72 Mo. 102; Gill *v.* Balis, 72 Mo. 424; Rogers *v.* Marsh, 73 Mo. 64; Wiggins Ferry Co. *v.* Chicago R. R. Co., 73 Mo. 389; Dickinson *v.* Coates, 79 Mo. 250; Farrar *v.* St. Louis, 80 Mo. 379; Harrison *v.* Smith, 83 Mo. 210; Ewing *v.* Hoblitzelle, 85 Mo. 64; State *ex rel. v.* Corrigan Street Ry. Co., 85 Mo. 263; Bell Tel. Co. *v.* Julia Bldg. Assn., 88 Mo. 258; *Ex parte* Marmaduke, 91 Mo. 228; State *ex rel. v.* Pond, 93 Mo. 606; Sheehy *v.* Kansas City Ry. Co., 94 Mo. 574.

John W. Henry.

Judge Henry was born in Cynthiana, Kentucky, Jan. 29, 1825; graduated from the Law Department of Transylvania University in 1844; and in 1845 became a member of the Boonville, Missouri, Bar. In 1854 he served as State superintendent of public schools, and in 1864 removed to Macon City, Missouri. In 1872 he was elected judge of the circuit court, and gained a high reputation as a strong lawyer and able judge. In 1876 he was elected to the Supreme Bench. A constant practice before him as a member of that court, and an almost daily association with him during his term, and since, have made the impression that Judge Henry is gifted with a singularly active mind, thoroughly trained to the law, and the happy faculty of at once grasping the salient points of a case presented for consideration. He rendered the State great services and delivered a large number of opinions. He was especially well versed in questions of negligence, constitutional law, and statutory construction. The opinions upon which he can well afford to rest his fame are: Johnson *v.* Beazley, 65 Mo. 250; Duke *v.* Harper, 66 Mo. 51; State *v.* Wingo, 66 Mo. 181; Atlantic, etc., R. R. Co. *v.* St. Louis, 66 Mo. 228; Bliss *v.* Pritchard, 67 Mo. 181; State *v.* Doepke, 68 Mo. 208; Wellshear *v.* Kelly, 69 Mo. 343; Lowry *v.* Rainwater, 70 Mo. 152; Laytham *v.* Agnew, 70 Mo. 48; Porter *v.* Hannibal, etc., R. R. Co., 71 Mo. 66; *Ex parte* Brown, 72 Mo. 83; Wright *v.* Bircher, 72 Mo. 179; Hannibal Bank *v.* Hunt, 72 Mo. 597; Acton *v.* Dooley, 74 Mo. 63; Russell *v.* Columbia, 74 Mo. 480; River Rendering Co. *v.* Behr, 77 Mo. 91; Deaver *v.* Walker, 79 Mo. 664; Blumb *v.* Kansas City, 84 Mo. 112; Moore *v.* Wabash, etc., R. R. Co., 85 Mo. 588; Siegrist *v.* Arnot, 86 Mo. 200; McDermott *v.* Hannibal, etc., R. R. Co., 87 Mo. 285.

Upon his retirement, he removed to Kansas City. In 1889 the Legislature provided two additional circuit judges, to dispose of the rapidly increasing litigation in that pros-

perous city. Judge Henry accepted one of these seats, and in 1890 was elected for a full term by an overwhelming majority. He is universally respected at the bar as an ideal judge, because of his uniform courtesy, great ability, and tireless devotion to duty.

Robert D. Ray.

By nature Judge Ray is one of the most amiable and courteous of men. Endowed with a high sense of honor, and an unbending desire to administer exact justice, he has been carefully conscientious in the discharge of his judicial duties. He was born in Lexington County, Kentucky, Feb. 16, 1817, graduated from Cumberland College in 1838, and came to Carrollton, Missouri, in 1839. He attained high rank at the bar, and was especially well known for his ability in the many difficult cases arising out of the imperfect and uncertain land titles in that section of the State. He was a member of the Legislature in 1846, and of the Gamble Convention in 1861. He remained continuously in the practice of his profession until 1881, when he assumed his seat as a member of the Supreme Court. Judge Ray's opinions display a laborious consideration of the case before him, and are in most instances exhaustive discussions of the questions involved. Some of them will always be worthy of attentive perusal. Many of them discuss interesting questions; and among those that show his abilities to good advantage are: Matheny *v.* Mason, 73 Mo. 677; St. Louis *v.* Richeson, 76 Mo. 470; State *ex rel. v.* Lewis, 76 Mo. 370; Abbott *v.* R. R. Co., 83 Mo. 271; Widdecombe *v.* Childers, 84 Mo. 382; Crow *v.* Meyersieck, 88 Mo. 411; Dyer *v.* Wittler, 89 Mo. 81; Davis *v.* Wabash, etc., Ry. Co., 89 Mo. 340; Peck *v.* Lockridge, 97 Mo. 549; Rychlicki *v.* St. Louis, 98 Mo. 497 (dissenting).

Francis M. Black.

Nature has gifted Judge Black bounteously with those qualities which go to make up a useful judge. He is of strong physical and mental development; is laboriously industrious; has a discriminating mind; is patient and entirely free from any element which can alloy the purity of his judicial temperament. He was born in Champaign County, Ohio, July 24, 1836, and became a member of the Kansas City Bar in 1864. A large practice fell to his lot, and he figured prominently and creditably in a number of instances of exceedingly important litigation. His first public office was that of member of the Constitutional Convention of 1875. In 1881, he was elected circuit judge. His services on that bench were conspicuously able and satisfactory. They have been no less so in his more elevated position. His opinions are concise, expressed in terse and vigorous phrases, and manifest a decided inclination to follow adjudged cases. A striking illustration of his readiness to yield his own previously entertained opinion is found in Webb *v.* Webb, 87 Mo. 540. This case was tried before him as circuit judge. When it came before the Supreme Court, all the judges voted for affirmance, except Judge Black himself. He filed a brief opinion dissenting from the one which affirmed his own judgment. He has been the organ of the court in quite a number of important cases. His abilities can fairly be adjudged by his opinions in Missouri, etc., R. R. Co. *v.* Tygard, 84 Mo. 263; Vawter *v.* Mo. Pac. Ry. Co., 84 Mo. 679; Givens *v.* Van Studdiford, 86 Mo. 149; Ferrenbach *v.* Turner, 86 Mo. 445; Bent *v.* Priest, 86 Mo. 475; Kiley *v.* Kansas City, 87 Mo. 103; Martin *v.* Colburn, 88 Mo. 229 (dissenting); Howe *v.* Wilson, 91 Mo. 45; Slattery *v.* St. Louis, etc., Transportation Co., 91 Mo. 217; Attaway *v.* Third National Bank, 93 Mo. 485; Robinson *v.* Ware, 94 Mo. 678; Young *v.* Boardman, 97 Mo. 181; Rychlicki *v.* St. Louis, 98 Mo. 497; Dowell *v.* Guthrie, 99 Mo. 653; Chew *v.* Keller, 100 Mo. 362.

Judge Black possesses, in a wonderful degree, the power of grouping and condensing the facts of complicated cases. A striking instance of this faculty is found

in the case of Johnson *v.* Turner, 95 Mo. 431, 441. The record in that case consisted of no less than *fourteen thousand* pages of written manuscript. It was an equity case which turned almost entirely on the facts, and involved a review of numerous and complicated transactions covering a period of twenty-five years, resting largely in parol. Both parties appealed from the judgment below, and the mountain of transcript and briefs was enough to appall the stoutest heart. Yet Judge Black read every line of it all, and presented a statement of the facts which contains not over fifteen hundred words, and in which neither party could point out an omission of a single salient fact.

Theodore Brace.

Judge Brace is a native of Alleghany County, Maryland, and was born June 10, 1835. He became a resident of Missouri in 1856. At the breaking out of the war he enlisted in the Confederate cavalry service, and by repeated promotions became a colonel. When the bar of the Drake Test Oath was removed, he resumed the practice of his profession. In 1874 he became a member of the State Senate, and gained a wide reputation as an orator of rare grace and eloquence. In 1879 he became probate judge of Monroe County; in 1881, a judge of the circuit court; and in 1887, a member of the Supreme Court. He has a ready command of language, and is particularly happy in presenting complicated chancery causes. In personal contact he is affable and genial. His abilities and traits can be fairly judged by the opinions delivered in Lewis *v.* Coates, 93 Mo. 170; Cahn *v.* Lehman, 93 Mo. 574; Dickson *v.* Kempinsky, 96 Mo. 252; Simmons *v.* Hill, 96 Mo. 679; Hargadine *v.* Henderson, 97 Mo. 375; Beck *v.* Mo. Pac. Ry. Co., 13 S. W. Rep. 1053.

Shepard Barclay.

The youngest member of the court was born in St. Louis, Nov. 3, 1847, and is a descendant of an old and prominent family of that city. He was thoroughly educated in the local public and high schools; was graduated at the St. Louis University in 1867, and at the Law Department of the University of Virginia in 1869. He spent two sessions at the University of Berlin in the study of the civil law, and incidentally acquired a good knowledge of foreign languages. He began the practice of his profession in 1872, and was exceedingly thorough in the preparation of his cases. Some of his more important and elaborate briefs are digested in 75 Mo. 319, 340, 485, and 71 Mo. 631.

In 1882 he was elected one of the circuit judges of the city of St. Louis, and in 1888 the bar of that city strongly urged his candidacy to the supreme bench. His opinions are generally concise and free from elaboration. In the very recent volumes the following evidence his characteristics: Sanders *v.* Anchor Line, 97 Mo. 26; Henry *v.* Evans, 97 Mo. 47; State *v.* Hope, 100 Mo. 347.

AN UNSEEN WITNESS.

By George B. Dexter.

SEVERAL years ago, as I was sitting in my office in Boston, I received a telegram from a friend of my father's in New York asking me to go to the city of C—— late that afternoon, and witness the signatures of some papers which were to be passed the following day. As he was interested in the transfer of some property to which these papers referred and did not know any one in C——, he wished to have some friend witness the signatures in case of a law-suit in the future. I took the five o'clock train, and reached C—— at half-past nine. On going to the hotel and asking for a room, I was informed that a convention was being held there and they could not give me a regular bedroom, but would give me half of a reception-room which was divided by a thin spruce sheathing completely closing the archway in the middle, making two very comfortable rooms. As I was very weary, I at once retired to the room, and within twenty minutes was in a cot-bed which stood close to the partition before referred to. Presently the door from the hall opening into the other room was opened. Two men entered and lighted the gas, which threw a ray of mellow light through the partition; they then began a conversation, which was carried on in a loud tone, by which I was much disturbed. I turned several times, trying not to listen to what was being said; but presently the subject of their discussion attracted my attention. I sat up in my bed and listened. From what was said, I learned that the older of the two men was an apothecary from Rockport, a town some fourteen miles distant from C——, and the other was a younger man who had evidently been his clerk up to July, it then being the month of December. "Jim" Taylor, the apothecary, laid bare this story: —

The son of old Deacon Sanborn had been killed two years before; he had been the grocer of the town, having his store in the same building with Taylor's apothecary shop. The old deacon, wishing to close out the business after his son's death, offered it to Taylor, and he bought it at $2,000, paying him $800 cash, and giving him a note for $1,200. "Now," said Taylor to his companion, "you know that note was due the 4th of last March, and you remember the deacon coming in that morning to get his money, and you know that I put him off, as I had n't the money to pay him. After you had left me I heard through the school children who went to his daughter's school, that the note had been lost sometime about the first of July; and when they came to me to inquire about it I thought I 'd play a high card, and I told them that the old man must have been demented, for I paid him the note the 4th of March. Then I made up my mind that I 'd sell out my business, both the apothecary and grocery stores (for I was running both), and clear out to Colorado. The old deacon got on to it in some way, and I 'll be hanged if he did n't serve the papers on me and hold me for that note; that 's why I telegraphed to you at Bath to come here to-day. You see the case is coming off to-morrow in court here, and the people have all closed their shops in Rockport to come down to hear the trial. Now, the deacon has n't got a blamed witness, and I 've got you."

"Well, what if you have? You did n't pay the money, and what are you going to try to prove?"

"Prove! I 'm going to say that I paid him that money on March 4, and I want you to testify that you saw me do it. You 're not getting much salary down there in Bath, and if you will do it I 'll pay you fifty dollars when the court is over to-morrow, and no-

body will be the wiser. Will you swear to it?"

"No," answered the other, "I won't."

The two men had evidently been drinking before coming into the room, and this belief was confirmed in my mind by Taylor's next remark, —

"Oh, well, then if you won't, let 's take a drink."

I heard the pouring of liquor, the clinking of the glasses; and then the conversation turned in a general way upon the people they both knew in Rockport. After a second drink Taylor began upon his former clerk again.

"Say, Bill, I 'll tell you what I 'll do. If you will testify for me in court to-morrow, I 'll give you a hundred dollars when it 's finished; no one will know anything about it, and you will do your old friend a favor."

"Well," said Bill, hesitatingly, as if he had had too much whiskey, "is there any danger of our being found out?"

"Found out? Lord bless your soul, no! I 've got my diary, and it says it was a pleasant day the 4th of March, although there was snow on the ground and it was cloudy. Now, you understand I 'm going to say that I had the money all saved up the 15th of February, and it was in the snuff-jar in the back office where we kept our money. Say, will you do it?"

"Well, yes, I will do it if you say we won't be found out."

"All right!" rejoined Taylor; "we 'll take some more whiskey. We 'll have to have our heads clear to-morrow, for it 's a smart lawyer that 's on the other side."

I heard the pouring of more liquor, the opening of the window, and the smashing of the bottle on the pavements below. The gas was turned down, and I heard the hall door shut, as the two men, who were to perjure themselves for money the following day, passed out into the corridor. For me to sleep with this upon my mind was impossible; and at last I arose, and lighting the gas, hunted for a pencil, and not finding one, I lighted a card of matches, and with the burnt ends wrote memoranda of the names, dates, etc., on the fly-leaf of a book. Having relieved my mind, I turned out the gas, retired once more, and slept. In the morning it all seemed like a dream, until I looked on the page on which I had made the memoranda the night before.

About nine o'clock I entered the office of the gentleman who had the papers which I was to witness. After the papers were signed and passed and we were left alone, I inquired where the court-house was situated. He told me it was within two blocks of his office, and asked why I wished to know. Upon his promising not to divulge, I repeated to him what I had heard the night before. Although much interested in my story, he was unable to leave his office that morning, but made me promise that I would tell him all that occurred in the court. When I reached the court-room it was just after ten o'clock, and the case in which I was so deeply interested had just been called up. Fully one hundred and fifty people from Rockport were assembled on the floor and in the gallery. They were the queerest lot I had ever seen. I took a back seat, and looking across the rail, easily picked out old Deacon Sanborn, with his gray hair falling on his shoulders and two black shepherd-crooked canes lying on the table before him. On the bench near him sat his daughter.

Deacon Sanborn was the first witness called. He testified that he was eighty-four years of age, and had never been in a court before. He said that James Taylor, the apothecary, had paid him $800 in cash, and given him his note for $1,200, due the 4th of March this year. "When the day it was due came," said he, "I went into the drug-store at about eleven o'clock in the morning. Taylor told me he had been unfortunate in collecting money, and that he would not be able to pay the note then. Knowing him to be a Rockport man, and thinking of my son, who often found it difficult to collect money,

I supposed he was honest; so I told him to pay me when he could. Time ran along; and the 1st of July, while I was cleaning out my old desk at the house, I threw away a lot of papers which I supposed were worthless. When I next looked for the note, I found it was gone. I suppose I must have thrown it away with the papers."

Upon cross-examination, he said: "James Taylor never paid me a dollar except the interest on the note. I have no witness to this transaction; but," raising his hands above his head, he added, "God knows I am telling the truth."

The next witness was his daughter. She was a woman long past fifty years of age, tall and plain, with two tortoise-shell combs on either side of her head holding back three long curls. She wore a faded shawl; but the plain face with gold-bowed spectacles showed her to be a veritable type of the Down-East schoolmarm. She testified that her father had never received the money, as they had intended, as soon as it was received, to pay off the mortgage on the small house and make the repairs which the house sadly needed. She remembered very well the day her father destroyed the papers from his desk; and she told the school children about the lost note, hoping that they might be able to find it.

The next witness was the squire of the town. He was a character. His wig, of terra-cotta color, was in strong contrast with the saffron complexion of his parchment-like skin drawn over his bony face. The ears of his unlaundered collar fell over a kerchief of brilliant coloring. A waistcoat of canary-colored silk, with pearl and brass buttons down its front, was relieved by a long coat of green baize, with large pearl buttons front and back. As he took the stand, he pulled from one of his back pockets a bandanna, and mopped his brow.

"What is your name?" asked the clerk.

"Marcellus Clough," he answered.

"How do you spell your last name?"

"Wal," said he, "the real right way to spell it is C-l-o-u-g-h; but them people down in Rockport are so darned ignorant that they spell it a dozen different ways; so a year ago said I to my wife, said I, 'Mrs. Clough, we 'll save up all the envelopes and bills we get for a year; then we 'll sort 'em

DEACON SANBORN.

out, and the way that it 's spelt the most in the lot, we 'll adopt that spellin'.' So at the end of that time we sorted 'em out, and C-l-u-ff had it. But still we have an agreement between us, whichever of us dies fust, the other will have it put on the gravestone, C-l-o-u-g-h."

He would have kept on talking about

his name if the judge had not stopped him.

"Now, what I know about this note is nothing at all; but what I am brought here for is, I suppose, to testify as to the character of Deacon Sanborn." Turning to the

THE SQUIRE.

judge, he said: "I don't know, your honor, as I can say anything better of a man than this: I had three sons, — two of 'em were killed in the war and one has died since, — and whenever the deacon would pass the house on his way to the village, many 's the time I 've called my sons to the window, pointin' out the deacon, and saying, 'Boys, thar goes old Deacon Sanborn. Now follow in his footsteps, and you 'll get thar.'"

The next witness was the squire's wife, who wore a green calash bonnet, although it was winter. She testified about the same as the squire had. They were followed by some six or eight witnesses on the deacon's side.

The counsel for the defence then called James Taylor. I was much interested in this man, whom I had heard but had not seen. He was a tall, lean, lank Down-easter, with red hair and florid complexion. With both hands in his pockets and a defiant look upon his face, he took the stand, saying that he would tell the truth, the whole truth, and nothing but the truth.

"Philip Sanborn," said he, "was killed. His grocery store being in the same building with my apothecary shop, I made an offer on the stock to his father, the deacon. The old gentleman took my offer; and I cut an arch between the two stores, and run both. I paid him $800 in cash, and gave him a note for $1,200 due the 4th of March last. On the fifteenth day of February I had the money all saved up in a snuff-jar on the shelf in my back office. About eleven o'clock in the morning of March 4th I went out in the corner of my store where the soda-fountain stands, and looking out the window down the hill across Rice's Bridge, I saw Deacon Sanborn coming from the churchyard. I watched him until he crossed the bridge and was lost behind the hill. I knew by the time I got the money out the deacon would be there; so I went into the back office, brought the bills out in my hand, leaned over the marble slab in front of the soda-fountain, and put the money on the shelf where I kept the syrups. Just at that moment the door clicked, and the old deacon came in. He said, 'Good-morning' to me; said I, 'The same to you.' I moved a chair for him, and took one myself. Said I, 'I suppose we both know what we 're here for;' and leaning over the counter, I took up the money and laid it on top of the mar-

ble slab, like this — " Wetting his forefinger in his mouth, he showed the court how he turned the corner of each one of the bills when he counted the money. " I passed it to the deacon in hundreds, he counting it after me. When I had finished he took out of his inside waistcoat-pocket a big wallet, and from it he took the note and passed it to me." (Here the deacon arose; with both canes in his hands raised above his head, he shouted in his trembling voice, "Before God it is a lie!") This aroused every one in the court-room; but the confusion was stopped by the sheriff calling them to order and threatening to clear the court. Taylor continued with his testimony: —

" And I took this very bunch of keys out of my pocket, walked to the stove door, lifted up the latch, and threw the note into the fire. That is all I know about the note."

They cross-examined him on each subject, and his answers did not vary from his first account. The next witness was "Bill" Thompson, Taylor's former clerk, — the same voice I had heard in the room the night before with Taylor. He was a thin boy, with a scared look upon his face. He testified that he had come from Bath the night before, and had reached C—— that very morning. He did not know why Taylor wanted him to come; but he received a telegram from him, and supposing it was important, came at once.

"I have not seen Taylor," said he, "except in the court this morning. I was his clerk up to July 1st, and remember perfectly well the 4th of March, when Deacon Sanborn came into the shop to collect this note. The money had been in the snuff-jar for over two weeks in the back office; and when I was n't watching it, Mr. Taylor was. I stood behind the prescription counter when Deacon Sanborn came into the shop, and I saw Taylor pay him a lot of money. The deacon took a piece of paper out of his big wallet and passed it to Taylor, who opened the stove door and put it in. Of course I don't know whether it was the note or not, but it was something in exchange for that money." In the cross-examination he was asked what the weather was on the 4th of March, whereupon he replied: "It was pleasant, with snow on the ground; but the sun came in and out from behind the clouds, and I remember perfectly well, as the deacon went out of the door, the sun came from behind the clouds and shone on his white head, and I said to myself, 'There won't many more suns shine on that old head.'" This seemed to clinch his testimony as being true, and a glance at the people showed that they believed it.

I was so astounded at the testimony of the two men, I made up my mind to expose them; but just then the judge arose and said it was one o'clock, and the court would adjourn, and re-open at three that afternoon. The crowd immediately dispersed; and through a lack of courage on my part, I kept silence. Returning to the hotel for dinner, I found I could not eat, and left the table and went to my room. As I entered, the draught which was made by the window and door being open blew the page of the book upon which my memoranda of the night before were written, so that it flapped from one side to the other of the magazine. It reminded me so forcibly of what I ought to tell and what I had not the courage to do, that I grabbed the magazine and stuffed it into my valise. The valise and umbrella I took to the coat-room and checked, and then walked up and down the corridor of the hotel waiting for the stage to take me to the depot. At twenty minutes of three I noticed two gentlemen enter the front door; and as one of them came forward I recognized him. Grasping my hand, he said: "Blake, I promised you I would not tell what you told me this morning in my office of the conversation you heard last night; but in the horse-car coming down from lunch just now, I met Mr. Brown, the lawyer, and I asked him if he knew of any such case in the court-house. He drew out of me one fact after another; and then he

started to his feet, and clapping me on the shoulder, said, 'Where is that man? I am the counsel for old Deacon Sanborn.'"

I stood mute with astonishment, as Mr. Brown came toward me. He drew me into the gentlemen's smoking-room, and asked me about the conversation I had heard. Presently remembering my train, I told him I must go, and that I would write a full account of it when I reached Boston. He smiled, and asked me if I would rather stay of my own accord or be arrested and stay. I decided to stay. Going over to the court-house, he consoled me by saying that perhaps he would not have to call on me, and told me to take a back seat.

When the court re-assembled, the evidence being all in, counsel were called upon to argue the case; whereupon Mr. Brown passed to the judge a piece of paper, and going up to the bench, engaged in a close conversation with him. Presently he turned, and in a voice which startled me said, "Will George Blake please take the stand?" Of course all who had testified in the case previously had been known to every one in the court; and when I, a stranger, took the witness-stand, they strained their necks like turkey-gobblers, wondering what I knew about the case. Afterward I learned that the most of them believed I had found the note. Mr. Brown began to question me, asking when I arrived in C——. I answered, "The night before." Asking me what room was given me, I told him No. 57, and that it was separated from the other half of the room with a spruce sheathing. He asked me abruptly if I knew who occupied the other half of the room during the evening or night. Every voice was hushed as they waited for my answer. I said, "Mr. Taylor and his former clerk, 'Bill' Thompson.' Consternation seemed to seize every one in the court-room. Even the judge moved in his chair, sat up more erect, and interrupted Mr. Brown by asking me: "Did you hear any of their conversation?" I then related all that I had heard; and when I came to the part in which I said they were drinking, there was an uproar among the people in the court-room, and a ghastly smile came over Taylor's face. When I finished, the judge asked me if I had made any memoranda of what I had heard, and where the book was on which I had written. I passed him the key of my valise, and he sent a messenger to the hotel with the coat-room check. Presently the messenger appeared with the valise, which was opened on the judge's desk. The book was produced, and the judge read my memoranda made with the burnt matches. The clerk passed it to the lawyers, and Taylor's counsel did not attempt to cross-examine me.

The judge called Taylor to the stand. He assumed rather a defiant air, with a cynical smile upon his face, as the judge asked him:

"What do you think of this young man's evidence?"

"Wal," said he, "I don't believe I could tell it quite so straight myself."

"What!" said the judge, "you realize that you have committed a greater crime than stealing this old man's money? Do you know that you have committed perjury?"

He answered, "Wal, I suppose that 's about what you call it."

Bill Thompson, his clerk, was called; and reaching the stand, the boy broke down, and tears streamed down his pale face.

"Did you not say you came up from Bath, and got in here this morning, and had not seen Mr. Taylor?" questioned the judge.

"Yes," replied Bill; "but Taylor told me to say so."

"Then you agreed to do as Taylor told you?"

"Yes," cried Bill; "for he said he 'd give me a hundred dollars when the court was over, and guaranteed that I would not be found out."

"That is enough," said the judge; and turning to the clerk, he discharged the jury, and the apothecary and his former clerk were given in charge of the sheriff.

"Bill" Thompson was sentenced to six

months in the house of correction for perjury. Taylor was sent back to Rockport with the sheriff, who was ordered to sell out the stock of the stores, and from the proceeds the note with interest was to be paid to Deacon Sanborn.

The old gentleman's head was bowed between his arms on the table; and as I passed on my way out of court, his daughter spoke to him, saying, "Father, here is the young man who turned the case in your behalf."

The old deacon started to his feet, and standing erect, looking over my head, with both his hands raised, said, "My dear, he was only the instrument of the witness; the witness was God himself, — as I said in my testimony *He* knew it was a lie."

I groped my way through sleet and storm to the hotel, feeling that I had been forced to testify, and there had been nothing courageous about it. I went into the gentlemen's reading-room, and sat down thinking over the day's affair. Presently the old squire and his wife made their appearance.

"Oh, here he is!" cried the old man, grasping my hand. "Young man, you have done my old friend a favor to-day, and my wife and I came around to thank you. The fact is, we can't go back to Rockport to-night and have to wait till morning. Now, we're Methodists in good standing and have never broken our record, and we'd like to take you somewhere to-night. We understand that down at the Academy of Music the McCaull Opera Co. is a-playing; but as I say, we've never broken our record, and don't like to take you there. Down at the Arcadian there's a Nigger Minstrel Show going on, and if you'd like to go we'll take you."

I made the excuse that I must take the midnight train for Boston, and thanked them for their kind offer. They bade me good-by, making me promise that if I ever came to Rockport I would put up at their house, as there was no hotel there.

They had just left the room, when three mechanics entered. One of them, with tobacco juice running out of the corners of his mouth, cried: "Here he is. I tell you you had it on 'Jim' Taylor to-day, did n't yer? Now, we can't go home to Rockport till morning, and we're going to paint this town red to-night; and if you're with us, we'll take a hack."

I made the same excuse to them as I did to the squire and his wife, and said good-night. As they left the room, they stood in the hall-way staring at some one approaching; and the object of their astonishment entered the room. I shared their amazement. It was Taylor, accompanied by Bill Thompson and the sheriff. Taylor put out his hand and took mine, and with a smile on his face said, —

"Wal, youngster, you rather had it on me to-day."

"I told the truth, did I not?" I replied.

"Oh, yes," said he, "I always believe in telling the truth; but what I came to see you for was this, — you 'll be going back to Boston, and 'll want to tell your friends about this; but you did n't see the joke."

"Joke!" said I; "certainly it was no joke to you."

"Wal," he said, "you did n't appreciate the laugh that went over the court-room when you said that we'd been drinking. But perhaps you 'll understand, when I tell you that I'm the President of the Temperance Reform Club in Rockport, and those very people in court to-day were the audience the night before to hear me deliver my annual speech; and your testimony kind of sot heavy on them. Good-night! Remember I always believe in telling the truth."

OVERCROWDING THE PROFESSION.

IN an article on "Lawyers," the "Scottish Law Review" indulges in a few remarks on the overcrowded condition of the profession, which apply with equal force to the state of legal affairs in our own country. The writer says: —

"The Board of Examiners hold quarterly diets in Edinburgh, in January, April, July, and October, and on an average they admit about thirty new practitioners at each diet. Unless the mortality is greater amongst lawyers than amongst their fellow-countrymen, it is plain as the proverbial pikestaff that Scotland is in danger of becoming lawyer-ridden if she does not do one of two things, — make fewer lawyers, or starve them out after she makes them. The humaner course is non-production; and if it is neglected the other course will be automatic, — with a variation on the popular examples of the principle. These move when the coin is put into the slot; the starving-out automaton will move from want of the coin. This will be a still higher development of the device hitherto thought to be very ingenious, but now seen to be perfectly simple. The prevention of overproduction lies in the hands of those who destine their young men to the law, and of lawyers themselves who, perhaps too freely, and without a due regard to consequences, apprentice as many well-educated youths as they can find work for in their offices. The lawyer's clerk who neither aims at being nor is qualified to be a lawyer, is becoming rarer and rarer, and as he was not a person whose lot was to be envied, this is not an unmixed evil. Still, as his place is being filled by young men with qualifications which beget and justify hopes and expectations that in the majority of cases are doomed to disappointment, it seems that we are having a change rather than making an improvement.

The results of the over-supply affect the profession by thinning down profits. The new practitioners always get some business, however little; and what they attract is taken from the established lawyers, though these may not be conscious of the encroachment. Carry this process far enough, and the law, though it will remain a learned profession, will cease to be lucrative; and when its unprofitableness becomes known it will no longer attract in excess, perhaps not even up to the measure, of its requirements.

> There 's a good time coming yet,
> Wait a little longer.

This cheerful couplet may encourage the profession "as such," to use the terse if not very elegant phrase familiar in certain of our legal documents, but its assurance can bring little comfort to the individual kept from entering the ranks by reason of their overcrowded condition, or undergoing in the ranks the process of starving out. The over-supply affects the public in a way the public has no means of measuring. The lawyer in large and good (*i. e.* profitable) practice probably prevents as much litigation as he conducts. In other words, he serves his clients as often by keeping them out of litigation as by attending to their interests in actions at law. Now, without questioning the prudence or honesty of newly licensed and not too well employed practitioners, we may be allowed to state the fact that they are dependent in their earlier years chiefly on court work, which they cannot afford therefore to discourage, but must cultivate. The effect of this on the clients is so obvious that we do not need to set it forth. By way of illustration of the keenness with which employment in contentious business is sought, we may mention that (it is said) certain law agents write or call and offer their services to persons who sustain injury at their employment, — if there is an employer, and especially if the employer is possessed of means. It is no doubt proper that justice should be brought to the door of the people; but justice is one thing and litigation is another. Perhaps free trade in law, in the sense of abolishing all monopolies in its practice, is for the benefit of the people; and beyond all doubt the Acts of 1865 and 1873 have increased the number of practitioners enormously as well as raised the standard of qualification and made it uniform throughout the country. Curiously, however, any alteration on the table of fees has been the reverse of what the public would have welcomed, and, had it been consulted, would have demanded. In one view the increase in the quantity of the article 'lawyer' might have had the ef-

fect of reducing the price, and in another view the improvement in the quality might have been expected to raise the price. To find which view prevailed, the reader who does not know is referred to the existing table, and recommended to compare it with its predecessor."

The condition of the bar in the United States is quite as bad in this respect as in Scotland. Thousands of newly fledged attorneys are every year added to its ranks, and but few, out of the many, will ever find substantial returns from the legitimate practice of the profession. If the ranks of lawyers are to be swelled by such yearly accessions, it becomes a serious question as to what will eventually be the result, not only to the lawyer but to the law.

The remark of Milton that "most men are allured to the *trade* of law, grounding their purposes not on the prudent and heavenly contemplation of justice and equity, which was never taught them, but on the promising and pleasing thoughts of litigious terms, fat contentions, and flowing fees," has, we fear, considerable truth in it, as applied to *some* of the aspirants for legal honors of the present day.

LEGAL INCIDENTS.

VII.

A DISCOMFITED WITNESS.

WHEN Abraham Lincoln was practising at the bar before Judge Davis (afterward Justice of the United States Supreme Court), says the "New York Call," a rather startling incident happened at one of the neighboring villages. Some kind of a religious meeting was being held. The weather was warm, and the church windows were open. Somebody outside threw a live duck through the window, to the great consternation of some of the congregation and the merriment of the trifling.

It was a flagrant and malicious breach of the law which protects religious meetings. Suspicion fell upon two young men of respectable family who were not in the church, but were known to be in its immediate vicinity at the time of the outrage. One of these young men went to the county prosecuting attorney, and swore out an affidavit against his companion. The case was brought before the local squire; but under legal advice the young man waived preliminary examination, and was held under quite considerable bonds to appear at the next Circuit Court at Springfield.

The parents of the accused were in very great distress at the vexatious and degrading predicament in which their son was placed. They went to Lincoln and offered him a retainer.

"Are you satisfied that your son is innocent?" was Mr. Lincoln's first question.

The parents said they were satisfied of it.

"Then," said the future President, "let me have an hour's private conference with the boy, after which I will tell you whether or not I will accept your retainer."

The young man duly appeared at Mr. Lincoln's office, and an interview of the most private nature took place between them.

When the day of trial arrived there was a full court-room, for the friends and neighbors of the parties concerned flocked to Springfield to be present at the trial. The prosecutor was a very little man, who lisped abominably. He did not feel himself big enough for the case; so he employed a lawyer

to assist him as big as Judge Davis himself, but who, unlike the judge, had a voice as sonorous as a fog-horn.

Lincoln sat quietly at one of the tables in the bar, busily engaged in writing out a brief of some case entirely foreign to the one in hand. The case was called. Lincoln rose with calm dignity, and said: "Your honor, I appear for the defendant." Then he sat down and coolly resumed his writing.

The jury was impanelled, but Mr. Lincoln had no objection to make to any one of them. The prosecution accepted the jury, wondering what on earth Lincoln's game could be. The big assistant prosecutor made the opening address to the jury, and fulminated against the defendant in the approved style of prosecuting counsel. Lincoln went on with his writing. Witness after witness was called for the prosecution; but when they were turned over to Lincoln he had no question to ask them. He said so. and quietly resumed his work on that interminable brief.

Then as a *coup-de-grâce* the prosecuting witness was put upon the stand. He was a wily witness. His testimony was apparently a perfect chain. It was delivered coolly, calmly, and with an assumption of candor. The witness was sometimes reticent, and had to be drawn out by the little prosecutor when his evidence was damnatory of the defendant. At last his examination in chief was concluded; and the prosecutor said, with an air of triumph, "Mr. Lincoln, take the witness."

Mr. Lincoln stopped his writing at once, threw his feet upon the table, and looking steadfastly at the witness, who was bracing himself for the usual ordeal of cross-examination, said solemnly, —

"Young man, is it customary in your village to get upon the witness-stand and swear to a lie?"

The witness was staggered, and flushed in the face blood-red. The little prosecutor shrieked in shrill alto, accompanied by his colleague in sonorous bass: "Your honor, I object." Then the two raised a little Babel, in which the words "unseemly" and "outrageous" were mainly distinguishable.

"Mr. Lincoln," said Judge Davis, "have you any special reason for using that language?"

"I have, your honor," replied Lincoln.

"Then," said the judge, "you may proceed with the question, and the witness must answer yes or no."

Mr. Lincoln repeated the question in the same calm manner in which he had before propounded it. The witness choked and gasped; and when the judge calmly insisted again that he should answer it, he fainted.

"Take him to the sheriff's room," said Judge Davis, adding sarcastically: "The weather is very sultry. The house is very close. The atmosphere is too much for the young man. Mr. Clerk, call the next case."

Lincoln had resumed the writing of his brief; and when some of the witnesses came to him and asked him if they might go home, he answered that the case was over, and those who did not want to stay need not do so.

He was right; the case was over. Shortly afterward Judge Davis, at the request of the prosecuting witness, was called into the sheriff's room, when the young man confessed that he himself threw the duck in at the church window. He said that he and the defendant had both been paying attention to the same girl, and he had been discarded. In revenge for the triumph of his successful rival he had trumped up this charge, and by the aid of confederates had hoped to sustain it successfully in court.

The Green Bag.

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

THE GREEN BAG.

OUR May number will contain a sketch of the Supreme Court of Illinois, written by James E. Babb, Esq., of the Chicago Bar. The article will prove of great interest, and the illustrations will include many of the most eminent judges who have graced the bench of that State.

A NEW YORK correspondent favors us with the following interesting and valuable suggestions upon "The Digest: Its Making and Uses."

Editor of the "Green Bag":

The recent publication of Austin Abbott's Second Supplement, embracing the decisions of the higher courts of the State of New York since 1882, brings up for consideration the value of the digest to the legal profession, and in connection therewith the enormous labor involved in such an undertaking, — greater by far than the average practitioner may be willing to allow. It may be said, however, that to no other book-making servitor of the bar is he under greater obligation. The digester aims primarily to facilitate the work of the practitioner by making easy of access the innumerable decisions with which he finds it impossible to keep pace. Practical aims are his chief consideration, — the presentation of the law as it exists through the interpretation of those whose function it is to declare it to the community. Two factors enter in securing the best results: (1) accuracy in performance; (2) understanding of what a digest is, and of the uses to which it is to be put. It is of the last factor only, that we propose to speak.

A digest is in no sense, as is commonly understood, a key to every legal difficulty which may present itself; and if consulted upon this principle, fails inevitably as an aid to the clearing up the difficulties surrounding the point under consideration. To suppose that an exactly similar case to the one engaged upon is likely to be presented, and the necessary labor of applying the law to the particular facts thus done away with, is to suppose error. No experienced digester has any such beneficent aim. He of all men best appreciates the multiplicity of facts which go to alter or in some way modify the law in particular cases. His aim is to suggest, rather than to effect, solution. He presents a kaleidoscopic view of adjudication upon similar points, and asks that they be turned to account in working out particular cases. We will examine briefly the steps by which he proceeds. It will be found that while in no sense "a worker of miracles," there is every reason to suppose that he may render substantial service.

A judicious selection of reports from which material is to be drawn, may be considered the first important step in the making of a digest. To this initial task should be brought a wide knowledge of the history of courts of record and of the character of distinct sets of reports. Those which are representative in the sense of embodying the decisions of the leading courts are to be selected. There have been in the State of New York alone, since the establishment of the judiciary, in the neighborhood of between eighty and a hundred different sets of reports; and the proportionate weight which is to be given to each of them respectively, is a matter involving no little discrimination. There is a wide range between the comparatively worthless adjudications set forth in the Chancery Sentinel, and the decisions of the Court of Appeals. A judicious pause at the outset may render the task of analysis which lies ahead, if not an easy one, at least satisfactory, in that it will not spend itself upon material comparatively worthless. The examination of decisions next engages attention, and it is here that the real gravamen of the work rests. In the hasty compilation of reports errors not infrequently creep into the head-notes. This arises from a misunderstanding of the real points in controversy, as well as from neglect to discriminate between what are mere dicta, and what is actually decided. The digester does anew the work of the reporter. An opinion tending to establish the law upon a particular point may touch indirectly upon collateral questions, and these obiter dicta in turn may go far toward determining the course of future adjudication. These are to be presented not as held, but as propositions enunciated by the courts, which have their proper place in a work aiming to present the trend of judicial opinion,

touching as it does so many and such varied topics, and not infrequently suggesting questions which the courts have not reached, but in the direction of which the current of legal controversy is setting itself. But little conception can be had, without actual experience of the matter, of the vast labor involved in sifting from the innumerable decisions such points as may be of value. In a case deciding a point in the law of Evidence, dicta may be found upon other points in other branches of the law. A well-written opinion, in throwing light upon the points in controversy, becomes oftentimes a mine of legal wealth upon points widely separated from that immediately under consideration. These indications of judicial leaning should have their place. The task of assortment is not an easy one. A sense of proportion, judgment, and analytical power are all requisite. It is no slight matter to represent that the court in Roe *v.* Doe, says that $x=y$, when, as a matter of verity, neither of these factors enters into the problem, and even if they had entered into it the result would not have been as stated.

The work of classification and arrangement next follows. Upon the wisdom of classification will depend the facility with which the digest may be serviceably handled. Its nature will depend upon the angle of vision of the classifier; but his will be the most serviceable who places himself for the time in the attitude of the consulfer, and succeeds in apprehending upon what channels of legal nomenclature he will be likely to embark, in order to reach as near as may be the desired haven. It will appear from this examination that a digest is to be approached not as a labor-saving machine primarily, but rather as a suggester of new lines of investigation, with the occasional result of throwing sufficient light upon the mooted point, to indicate clearly the path of future adjudication. With the gradual steady increase in the volume of decisions, the task of keeping abreast of the law is increasingly difficult. Without the aid of the digester the condition of both bench and bar, so far as its ability to cope with this difficulty is concerned, would become less and less favorable; but the digest, it should be remembered, is the repository of the law hitherto enacted and interpreted, and not an oracle speaking in future with a reply looking to the solution of every conceivable legal puzzle. Just in proportion as the practice of the law is allowed to tend in the direction of becoming a trade, the dangers of compendiums for the cure of all legal disputes will increase. It is one of the privileges of the digester to disclaim any such intention, and of the practitioner to understand the nature of the aid which he invokes. They may thus work together for a common end, — the mastery of the constantly increasing adjudications upon the many and varied branches of the law, which are best handled by systematic analysis and classification, keeping distinct the proper lines of demarcation, and endeavoring, as near as may be, to reduce the principles in force at a given period to a science. The problem grows increasingly difficult with each new question calling for judicial settlement. From a force lending such substantial aid in its solution, neither judges nor lawyers can afford to withhold proper recognition; and in proportion as practitioner and digester understand each the labor of the other, will the work of both be facilitated.

E. W. FITZGERALD.

LEGAL ANTIQUITIES.

THE following were the salaries of the law officers of the Crown in the year 1616: —

	£	s.	d.
Attorney-General	81	6	8
Solicitor-General	70	0	0
King's Serjeant	41	6	10
King's Advocate	20	0	0

The salaries of the judges show that they must have depended a good deal on fees: —

	£	s.	d.
Sir E. Coke, Lord Chief Justice of England	224	19	9
Circuits	33	6	8
	258	6	5
Puisne Judges of King's Bench and Common Pleas . . .	188	6	8
Besides Circuits	33	6	8
	221	13	4
Chief-Justice of Common Pleas	194	19	9
Chief-Baron	188	6	0
Puisne Barons	133	6	8
Judge on Norfolk Circuit . .	12	6	8

The usual amount of honoraries to counsel in this reign I have not been able to ascertain. From an entry in the parish books of St. Margaret's, Westminster, it appears that in the reign of Edward IV., they paid "Roger Fylpott, learned in the law, for his counsel, 3*s.* 8*d.*, with 4*d.* for his dinner."— CAMPBELL'S *Lives of the Chancellors.*

BY an Act of 52 Geo. III., transportation for a term of fourteen years was substituted for a pecuniary penalty for making false entries in parish register-books; but the clause directing the division of the

penalty was, through some egregious mistake, reinserted, so that, as the act stood as amended, one half the penalty was to be given to the informer, and the other half to the poor of the parish; that is, seven years' transportation each.

FACETIÆ.

RUFUS CHOATE, brilliant in so many ways, was fond of humorous exaggeration. Going late one evening to hear a famous singer, he was obliged to take a seat near the door of the large concert-hall, and as far as possible from the performer, where he was soon joined by a friend. Toward the end of the concert the great singer came on, and behaved in so singular a manner that the friend remarked, "I think the man is drunk." "I smelt his breath the moment he came on the stage," said Mr. Choate.

SHE was a large, resolute-looking woman, and she sat in the attorney's consultation-room and stated the case to him without any emotion.

"The thing for you to do, madam," said the lawyer, "is to sue the woman for alienating the affections of your husband."

"Can't I have her put in the penitentiary?" she demanded.

"Um — no. You can sue her for damages, though, and make the figures as large as you please."

"Damages! What for?"

"For robbing you of your husband, madam. It amounts to that in reality."

"And do you advise me to sue her for money?"

"I do."

"Then I 'll do it!" she exclaimed vindictively. "I 'll make her pay his full value. Sue her as quick as you please!"

"What damages will you claim?"

"I am an abused and insulted woman," she replied with dignity, "but I am a conscientious one. Make the damages about $1.50."

"MADAM," said the judge, sternly, "you must answer the question. What is your age?"

"I was born the same year your honor was. That would make me about — "

"It is n't necessary that you should go into particulars, madam," interposed the judge, stiffly. "Gentlemen, have you any further use for this witness? You may step down, madam."

JUDGE Q——, who once presided over a criminal court Down East, was famous as one of the most compassionate men who ever sat upon the bench. His softness of heart, however, did not prevent him from doing his duty as a judge. A man who had been convicted of stealing a small amount was brought into court for sentence. He looked very sad and hopeless, and the court was much moved by his contrite appearance.

"Have you ever been sentenced to imprisonment?" the judge asked.

"Never, never!" exclaimed the prisoner, bursting into tears.

"Don't cry," said the judge, consolingly; "you're going to be now."

IN a trial before Mr. Justice Maule, the evidence against the accused was overwhelming; and Maule proceeded, in no uncertain language, to sum up for a conviction.

On the conclusion of the learned judge's remarks, the prisoner's counsel jumped up and said, —

"I crave your lordship's pardon, but you have not referred to the prisoner's good character, as proved by a number of witnesses."

"You are right, sir," said his lordship; and then, addressing the jury, he continued: "Gentlemen, I am requested to draw your attention to the prisoner's character, which has been testified to by gentlemen I doubt not of the greatest respectability and veracity. If you believe them and also the witnesses for the prosecution, it appears to me they have established what to many persons may appear incredible; namely, that even a man of piety and virtue, occupying the position of Bible-reader and Sunday-school teacher, may be guilty of committing a heinous and grossly immoral crime."

NOTES.

THE jolly jokers, who are always ringing the changes in matters humorous, direct attention to the fact that the Supreme Court now has two colors, — a Gray and a Brown. Some years since the Chief-justice was Taney. It has had one

Miller, and now boasts of a Brewer. It has had two Chases, Samuel and Salmon P.; but only one scion of the Smith family ever reached that distinction, — William Smith, of Alabama, who declined the honor, and was succeeded by John McKinley of the same State, who by the by was no relation to William McKinley, otherwise known as "McKinley Bill." The court also had a Barbour, Philip P., of Virginia, and likewise a Story, the distinguished Joseph, of Massachusetts. There was also a Campbell on the supreme woolsack, who succeeded Justice McKinley. — *New York World.*

"If any debt ought to be paid," says the Chief-Justice (Bleckley) of Georgia, "it is one contracted for the health of souls;" and he therefore orders a Baptist church in that State to pay the back salary of the preacher, remarking in passing that simple and exact justice in this relation is "the hog and hominy, the bacon and beans, of morality, public and private."

Long before Abraham Lincoln gained any note as a lawyer or politician, he was asked by a farmer near Springfield to undertake a case for him which was to be tried in Cincinnati; and here occurred one of the most curious incidents in Lincoln's history. He went with this farmer to Cincinnati, and it happened that there were nine other defendants in the case.

Edwin M. Stanton, then one of the most prominent lawyers at the Ohio Bar, was the attorney for these nine defendants. When he saw the old farmer come in with Lincoln, he took him aside, and in a stage whisper begged him for God's sake not to bring that tall, angular gawk into the case. "His presence in the court will ruin us," said Stanton. "I have the whole proceedings well in hand, and can do you more good without him. I beg you, as you regard the interests of the case, to send your man back to Illinois."

A day later the trial came off. Stanton made the leading speech, and it took him a full day to deliver himself. At the close of the speech he said there was one of the defendants in this case who had employed another lawyer; and with that he motioned to Mr. Lincoln, and said he supposed the court would give him a chance to make a speech. Throughout the trial Lincoln had been the observed man in the court-room; and when he now arose every eye was turned upon him. He addressed the court, and made a speech of about one hundred words, and then sat down. In these one hundred words, however, he presented an entirely new aspect of the case, and one which brought forth an issue which Stanton had entirely overlooked, or which he did not consider of any moment.

As he sat down the Judge said, "Well, gentlemen, what have you to say as to that point?"

Mr. Stanton and the other lawyers said they had not considered it; and the Judge said, "Well, gentlemen, it is upon that point that the whole case hinges;" and, in short, this speech of Lincoln's decided the case and gave it to his client.

Recent Deaths.

William P. Wells, one of the most distinguished lawyers of the Detroit Bar, died suddenly on March 4. He was born at St. Albans, Vermont, Feb. 15, 1831. His father is said to have been a lineal descendant of Thomas Wells, an early Governor of Connecticut.

He took a preparatory college course at the Franklin County Grammar School at St. Albans, and then entered the University of Vermont at Burlington, and after spending four years. graduated with the degree of A.B. in 1851. After graduation he commenced the study of law at St. Albans. In 1852 he entered the law school of Harvard University, and in 1854 graduated with the degree of LL.B., receiving the highest honors of his class for a thesis on "The Adoption of the Principles of Equity Jurisprudence into the Administration of the Common Law." The same year he received the degree of M.A. from the University of Vermont, and in 1854 was admitted to the bar of his native Sta at St. Albans. In January, 1856, he settled in Detroit, entering the law office of James V. Campbell. In March following he was admitted to the bar of Michigan, and in November of the same year became a partner of James V. Campbell, the partnership continuing until Judge Campbell's accession to the bench in 1858 as one of the judges of the Supreme Court of Michigan. From that time until his death Mr. Wells continued the practice of law alone in Detroit. His legal talents early won just recognition, and his practice

extended to all the courts of the State and United States. He was counsel in many of the most important litigations of the past twenty-five years, notably in cases involving the constitutionality of the War Confiscation Acts, heard in the Supreme Court of the United States in 1869 and 1870.

In 1874–1875, during the leave of absence of Judge Charles I. Walker, Kent Professor of Law in the University of Michigan, Mr. Wells was appointed to the vacancy. On Judge Walker's resignation in 1876, Mr. Wells was appointed to the professorship, — a position he held until December, 1885, when he resigned because of the interference of its duties with his legal practice. In June, 1887, he was again called by the Regency to the Kent Professorship in the Law School.

He was one of the earliest members of the American Bar Association, organized in 1878, and for several years was a member of the General Council; and in 1888 was elected chairman of the General Council.

An excellent portrait of Mr. Wells was published in the "Green Bag" for May, 1889.

Judge Robert Carter Pitman, Senior Associate Justice of the Superior Court of Massachusetts, died on March 5. He was born in Newport, Newport County, Rhode Island, March 16, 1825. He was the son of Benjamin and Mary Ann Pitman. His father was a native of the same place, and for many years was engaged in the manufacturing business, removing to New Bedford, in this State, in 1821. His mother was also born in Newport, and was the daughter of Robert Carter, who served with distinction in the War of 1812, and who was also a native of Newport.

His early school days were passed in the common schools of New Bedford. Later he went to the Friends' Academy, fitted for college, and graduated from the Wesleyan University, Middletown, Connecticut, in 1841. He received the degree of A.M. three years later, and that of LL.D. in 1869.

During the year of his graduation he began the study of law in the office of Hon. Thomas D. Eliot at New Bedford. In the succeeding year he abandoned his professional preparation for a time, and taught school in Louisiana. He returned to Massachusetts in 1848, was admitted to the bar, and immediately commenced practice.

In 1850 he formed a copartnership with his old preceptor, Mr. Eliot, and continued that relation for five years. The succeeding nine years of his career he conducted his legal business alone, or until 1864, when he and Mr. Borden formed a partnership under the style of Pitman & Borden, that endured until the senior member was raised to the bench of the Superior Court in 1869.

In 1858 he was appointed judge of the police court of New Bedford, — an office he sustained until 1864, when he resigned.

In 1869 he was appointed a judge of the Superior Court, and this position he held at the time of his death.

In the discharge of his official duties Judge Pitman met with a large measure of success. He was a graceful, conservative, efficient presiding officer, courteous to all and faithful to the requirements of his position; he was a judge of marked ability, clear and decisive in his views, kind and considerate when needful, and stern and uncompromising, as occasion demanded.

Judge John Griffith Berkshire, of the Indiana Supreme Court, died at North Vernon, Indiana, February 19.

He was born in Ohio County, Indiana, in 1832, and during early life learned the trade and worked as a blacksmith with his father. Some years later he began the study of law at Versailles, and was admitted to practice. In 1864 he was the Republican candidate for judge of the Circuit Court, and was elected. He was re-elected to the same position in 1870, and again in 1876, which terms of office he filled with credit to himself and those who had chosen him. He was a candidate for the Supreme Court judgeship in 1882, but the opposing party carried the State in the election that year.

In 1888 he was again a candidate, and was successful. He was widely known as an upright man and an impartial judge, and his death leaves a vacancy upon the bench which it will be hard to fill.

Hon. John R. Brady, Justice of the New York Supreme Court, died on March 16. Born in 1821, Judge Brady received his early education from his father, Thomas S. Brady, a man of classical attainments. He studied law in New York City in the office of Recorder Ryker, and

on admission to the bar, entered into partnership with the eminent James T. Brady, his elder brother. In 1856 he was elected Judge of the Court of Common Pleas, and was re-elected without opposition. In 1869, at the close of his term, he was elected Justice of the Supreme Court for six years, to succeed Judge Clerke. He was unanimously re-elected in 1877 for a term of fourteen years, ending Dec. 31, 1891. He was a man much respected on the bench, and greatly esteemed in private life by all who knew him.

REVIEWS.

In the January number the Law Quarterly Review takes a new departure, and ranks itself among the illustrated journals, giving its readers a full-page portrait of Blackstone. The contents include "Trial by Jury in Civil Cases," by Judge Chalmers; "The Definition of General Average," by Thomas Barclay; "Statutes of Limitations and Mortagees," by Thomas Millidge; "Bankruptcy of Partners," by A. Turnour Murray; "A Conveyancer in the Thirteenth Century," by F. W. Maitland; "The Decline of Roman Jurisprudence," by Erwin Grueber; "Ought Bills of Sale to be Abolished?" by J. B. Matthews.

The contents of the Political Science Quarterly for March cover a wide range of subjects. "The Political Ideas of the Puritans" are set forth by Prof. H. L. Osgood; "The Case of the Negro" is discussed by Rev. Wm. C. Langdon; "Compulsory Insurance in Germany" is described by B. W. Wells; and there are articles on "Railroad Problems in the West," by Prof. A. G. Warner; "School-Book Legislation," by Prof. J. W. Jenks; "Marshall's Principles of Economics," by Prof. J. B. Clark; "Cunningham's Growth of English Industry," by Prof. W. J. Ashley.

Is there a Law of the Flag as distinct from the Law of the Port in respect to Merchant Vessels in Foreign Waters? This is the question which is ably discussed and answered in an interesting paper by Alexander Porter Morse, of Washington, D. C. We have read this little pamphlet, which is called forth by the killing of General Barrundia, with much pleasure. The conclusions arrived at by the author seem to be fully supported by the evidence he presents.

The famous Talleyrand Memoirs are continued in the Century for March; and this instalment deals with Napoleon Bonaparte, Josephine, and the Emperor Alexander. The California series is devoted to the Fremont explorations. "General Crook in the Indian Country," by Capt. John G. Bourke, derives a special and timely interest from the present Indian troubles. Lieut. Horace Carpenter, of New Orleans, in his entertaining article on "Plain Living at Johnson's Island," describes the hardships, from the point of view of a Confederate prisoner, of a sojourn in the war-prison in Lake Erie, near Sandusky. The second article on "The Anglo-Saxon in the Southern Hemisphere" is devoted to Australian cities, their advantages, and their unusual problems. A charming feature of this number is a curious story by Edith Robinson, called "Penhallow," with two full-page pictures by Will H. Low. Dr. Eggleston's serial, "The Faith Doctor," is continued, as well as "Colonel Carter of Cartersville;" and there is a strictly true story, "The Mystery of the Sea," by Professor Buttolph, and a humorous skit, "The Utopian Pointer," by David Dodge. Mr. Rockhill gives the last instalment of his account of jouneyings through Eastern Tibet and Central China.

In the March number of the Atlantic, the most valuable contribution is Francis Parkman's first paper on the "Capture of Louisbourg by the New England Militia." Miss Murfree's serial, "Felicia," is brought to a tragical end; and Mr. Frank R. Stockton's "House of Martha" continues in a vein of humor peculiar to its distinguished author. James Freeman Clarke's posthumous memoirs will be read with the greatest interest, the paper in this number being devoted to a description of his first teachers. "The State University in America," by George E. Howard, advocates the establishment of universities in each State, which shall be universities in something more than name, and the relegation of the many colleges of insufficient means to a grade intermediate between the school and the university. A paper on "The Speaker as Premier," by Albert Bushnell Hart, is a timely consideration of a question which has been much before the public

of late. Mr. Lowell continues his articles on travel in Japan.

SCRIBNER'S MAGAZINE for March contains two striking articles of exploration and adventure, — Mr. Mounteney Jephson's account of one of the most exciting periods of the Emin Pasha Relief Expedition, and Mr. M. B. Kerr's description of the latest attempt to reach the summit of Mount St. Elias in Alaska. The former is illustrated with sketches by Frederic Villiers, made under Mr. Jephson's personal direction, and the latter from photographs made by the expedition. The number is also notable for its fiction, containing four short stories, by Mrs. Robert Louis Stevenson, Richard Harding Davis, Duncan Campbell Scott, and W. H. Woods. E. S. Nadal (so long one of the secretaries of the United States Legation in London), from abundant knowledge, writes of "London and American Clubs." His article is richly illustrated, as is also the novel paper on "The Ornamentation of Ponds and Lakes," by Samuel Parsons, Jr., Superintendent of New York Parks. Sir Edwin Arnold's papers on Japan are concluded in this issue; but two more papers on the new *régime* in Japan, by Prof. J. H. Wigmore, are promised, with more of Robert Blum's exquisite illustrations which he is now completing in Tokio.

THE first instalment of "Some Familiar Letters by Horace Greeley" form one of the most interesting features of LIPPINCOTT'S MAGAZINE for March. Two notable contributions by Walt Whitman are followed by a review of the poet's life and work by Horace L. Traubel. Other interesting articles are "A Lost Art," by Anne H. Wharton; "Three Famous Old Maids," by Agnes Repplier; and a thrilling story by Anna Katharine Green, entitled "A Mysterious Case." The complete novel in this number is "The Sound of a Voice; or, The Song of the Débardeur," by the late Frederic S. Cozzens, the well-known author of the "Sparrowgrass Papers."

THE recent status of Indian affairs has called forth numerous articles upon the question of the future of that ill-treated unfortunate race. "In Darkest America," by Joseph P. Reed, in the COSMOPOLITAN for March, depicts in all its blackness the shameful treatment of the Indians by our Government; and the author makes some timely suggestions which will be read with interest. The article is fully illustrated. The principal article in this number of this popular magazine is "The Story of a War Correspondent's Life," by Frederic Villiers. Other interesting contents are "Beauty on the French Stage," by Edouard Marie; "Protestant Missions," by Edmund Collins; "The Cream City," by Capt. Charles King.

"THE Literary Landmarks of Edinburgh," by Laurence Hutton, is the most attractive article, perhaps, in the March HARPER'S MONTHLY. It is beautifully illustrated with pictures of the abodes of many well-known literary celebrities. Andrew Lang has an interesting paper on "The Comedy of Errors," and Theodore Child describes "The Argentine Capital;" both these articles are profusely illustrated. "In the 'Stranger People's' Country," by Charles Egbert Craddock, increases in interest, and bids fair to be one of the best productions of that popular author. A new novel "Wessex Folk," by Thomas Hardy, is begun in this number; and Brander Matthews contributes a short story entitled "In the Vestibule Limited."

BOOK NOTICES.

THE INTERNATIONAL CYCLOPEDIA. Dodd, Mead & Co., Publishers, New York.

No library, either of the lawyer or the layman, is complete without a cyclopedia; and an important question presents itself to every reader, namely, "Which shall I get?" There are many excellent works of this character in the market — the "Britannica," "Johnson's," "Chambers'," "The New American," etc. — all of which have more or less claim to public favor; but as a work of general reference adapted to the popular needs, we have no hesitation in saying that the "International" is unequalled. It has received the unqualified commendation of the leading scholars and literary men of the day. It is compact, accurate, and most admirable in method, and contains the latest and best in statistics upon economic questions, in history and biography, concerning the progress of science, in natural history and related subjects, and upon all matters of scientific and literary interest. It can fittingly be called a working cyclopedia, making its aid felt in all callings, in the lawyer's office, the schoolroom, library, and home. The publishers de-

serve the thanks of the public for furnishing such a complete reference library as these volumes make.

GENERAL DIGEST OF THE DECISIONS OF THE PRINCIPAL COURTS IN THE UNITED STATES. Annual, being Vol. V. of the series covering the court year ending September, 1890. The Lawyers' Co-operative Publishing Co., Rochester, N. Y. $6.00.

Competition between Digests is now reduced to that between the "General" and the "American," and each will doubtless act as a powerful stimulus to put the other to its utmost efforts to achieve completeness and perfection. The present volume of the GENERAL DIGEST certainly excels any of its predecessors, and its scope has been extended to include the lower courts of New York, Illinois, Missouri, and Texas. In addition to the Digest of Cases, it has a complete table of cases criticised, distinguished, limited, or overruled during the year. It also gives bibliographic notes of new text-books, and an index of valuable discussions in legal periodicals, as well as annotations and notes of General Statutes. At the low price at which the volume is offered every lawyer can avail himself of the opportunity to possess a complete and accurate summary of the decisions of all the principal courts in the United States.

THE AMERICAN STATE REPORTS, Vol. XVI. Selected, reported, and annotated by A. C. Freeman. The Bancroft-Whitney Company, San Francisco, 1891. $4.00.

This last volume of this admirable series of reports contains selections of cases from the States of Alabama, California, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, New York, and Texas. As usual, Mr. Freeman's work is well and exhaustively done, and the high reputation of these reports, due so largely to his good judgment and discrimination, is fully sustained.

LATER LEAVES; being the further Reminiscences of Montagu Williams, Q. C. Houghton, Mifflin, & Co., Boston and New York, 1891. Cloth, $3.75.

In our July number (1890) we noticed at some length Mr. Williams's "Leaves of Life," of which the present volume is a continuation and conclusion. Upon his retirement from the active practice of his profession, owing to a serious disorder of his throat, Mr. Williams was appointed one of the Metropolitan Police Magistrates of London; and in this work he relates many of his magisterial experiences, dwelling particularly upon the state of the London poor. His pathetic pictures of their destitution and suffering, and his suggestions of remedies for the amelioration of their miserable condition, will be read with the deepest interest, and cannot fail to be productive of much good. Mr. Williams's ideas as to dealing with minor charges are, to our mind, admirable. He says: —

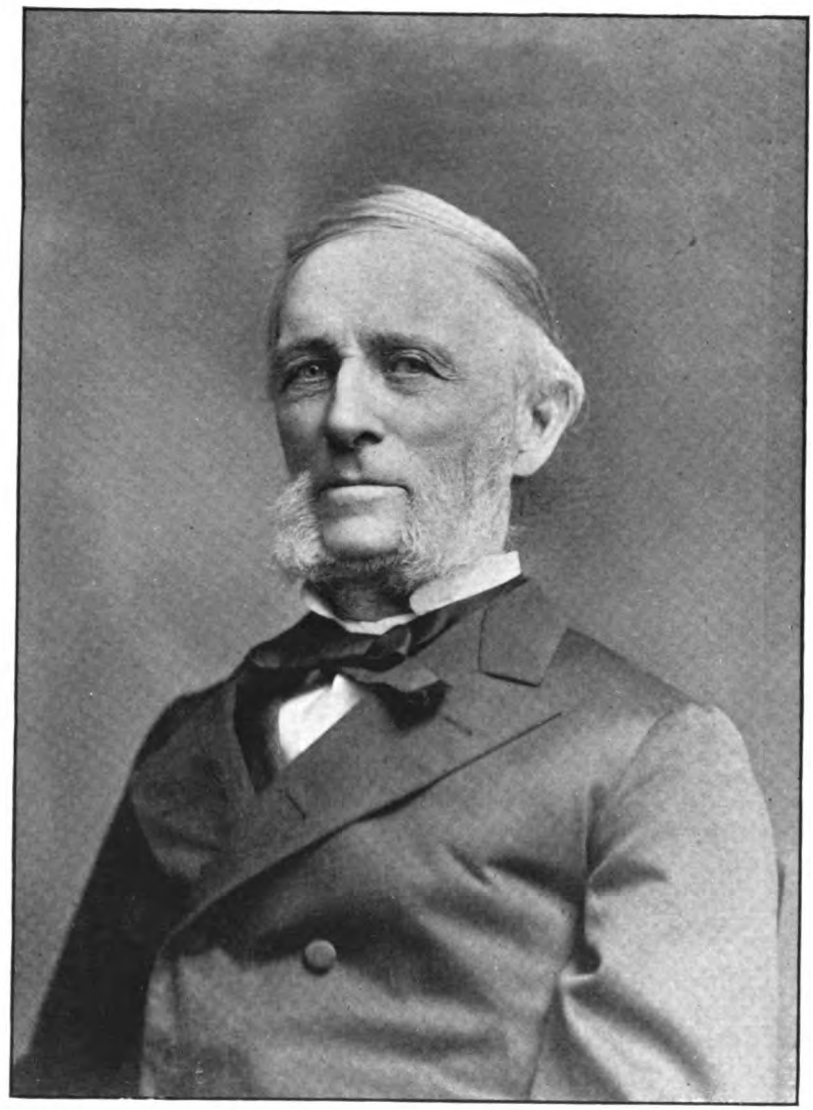
"For my own part, I am convinced that, except with habitual criminals, leniency is a more powerful instrument of good than severity. I refer, of course, more especially to minor charges, such as drunkenness and disorderly conduct. The usual routine is to inflict a fine, with imprisonment as the alternative. For my part I entirely disapprove of this course. What is the use of inflicting the fine in very poor cases? Were the money not forthcoming, the offender would go to prison, which means the bread-winner would be shut up, and the family left to starve. So the clothing of the wife or the children goes to the pawnshop, and the fine is paid.

"I think it is better to merely administer a caution in the case of the first or even second offence of this description. On the other hand, I do not think that either words or fines are of any use with the habitual drunkard. He or she is far better off in prison, out of temptation.

"Law is designed to prevent crime, and not to assist in making criminals, and therefore, if it is proved that leniency tends to reform the offender, while severity tends to harden him, little more need be said in favor of the course I am recommending. Certainly in no single instance have I had reason to regret having taken a merciful view of an offence.

"In nine cases out of ten, minor offences are, in the first instance, committed in consequence of sudden temptation. If the offender goes to jail, what is the result? His character is destroyed, and when he is liberated, he will find it well-nigh impossible to obtain employment. Added to this, his wife and family during his incarceration will have been reduced to terrible straits, and perhaps compelled to sell all their furniture and break up their little home. In ninety-nine cases out of a hundred, indeed, the wretched wife and children suffer far more acutely than the offender."

The book contains many interesting reminiscences of well-known English lawyers, with whom Mr. Williams had a more extended acquaintance, probably, than any living man. One or two chapters are devoted to dramatic incidents, and contain some delightful gossip concerning actors and actresses. The work is written in a charmingly natural and chatty style, and, with the two volumes which have preceded it, should find a place in the library of every lawyer. No more delightful reading can be found to occupy one's leisure moments.



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VOL. III. No. 5. BOSTON. MAY, 1891.

RUFUS KING.

BY JACOB D. COX.

IN the death of Rufus King, of Cincinnati, the bar throughout the country will be sensible of a serious loss. Although nearly seventy-four years of age when he died, on the 25th of March, he had continued his active work with uncommon vigor of body and mind down to November last. He had begun his usual course of lectures on the principles of constitutional law at the opening of the term in the Cincinnati Law School with which he had been connected for many years, but what seemed a temporary illness interrupted his teaching. He and his colleagues still hoped he would soon return to his favorite work, and it was not till within a very few days of his death that it became evident that his life's task was done.

Mr. King was an admirable example of the thoroughly equipped lawyer devoted to his profession, and steadily giving himself up to its private practice despite many and frequent temptations to enter public life. Of this class in the profession, very few in any part of the country were better known than he. West of the Alleghany Mountains, none, it is safe to say, who have declined political and judicial honors, have had a more solid professional career, or can more truly be regarded as the type of the highly intellectual, refined, and able lawyer, scrupulously consecrating his hours and his strength to strictly professional work, except as he with equal scrupulousness performed the quiet duties of a private citizen in the various walks of local charities, educational advancement, and diocesan church work.

Mr. King was the grandson of Rufus King, the distinguished federalist statesman of New York in the revolutionary and constitution-forming period of the national history, and inherited some of the most marked mental and moral characteristics of that great man. He had the same broad grasp of fundamental principles in law and in politics; the same devotion to true republicanism in government tempered by the same conservatism. He believed with all his heart in the nationality of the federal union, and desired to preserve it by interpreting its constitutional powers so as to give it true national strength and vigor. He had the high sense of honor which lifted him above even the temptation to self-seeking, and gave him a standard of public and private honesty which made him an acknowledged model for all about him. Without the slightest assumption or artificiality of conduct, he had a natural and simple dignity of the truest polish and the most excellent taste, because it was the outward exhibition of a modest, a refined, and an earnestly benevolent nature. With all this, he had the courage of his convictions, and whether as advocate or as citizen, he knew how to meet with vigor and to combat unflinchingly every aggression against the right. In every duty and in every place he carried with him the manifest evidence of transparent purity of purpose and chivalrous devotion; and when the charm of his personal manner was added, he appeared to be what he was, the thorough Christian gentleman, as felicitous in the form of action as in the act itself.

On both sides of the house Mr. King came of excellent American stock. His mother was the daughter of Governor Worthington, who was of the Virginia colony in Ohio, settling at Chillicothe, the first capital of the State, in the midst of the Scioto lands allotted by Virginia before the cession to her Revolutionary soldiers. The Kings were of the New England colony before they became New Yorkers, and so the best Northern and Southern blood mingled in his veins. His father, Edward King, had left New York a young man, to see what opening fortune might offer him as a lawyer in the new State of Ohio. Visiting Governor Worthington's family, he found attractions in Chillicothe which fastened him, for there he wooed and wedded Sarah Worthington, and won also an early success at the bar as an eloquent and accomplished lawyer.

When the capital of the State was removed from Ross County to Columbus, the Kings changed their home to Cincinnati, where the largest field offered itself to a lawyer of recognized power. Mr. Edward King with Mr. Timothy Walker established the Cincinnati Law School in 1833, — the first attempt at systematic legal education in the Mississippi valley. Mr. Rufus King's great interest in the Law School was therefore, like his virtues, hereditary. After preparing for and beginning his collegiate education at Kenyon College, Bishop Chase's new foundation, he completed his undergraduate course at Harvard College, taking his degree of B.A. there in 1839. He remained at Cambridge in the Dane Law School under Story and Greenleaf through a two years' course, graduating in 1841, and returned home to Cincinnati to practise his profession. His junior partners in practice constitute a long line of men in the first rank of political, judicial, and professional eminence. He himself, however, adhered to his purpose to remain a private citizen, except when in 1874 he became a member of the convention to revise the Constitution of the State. This was so eminently a call to the highest work of a lawyer that he yielded to it, and after Morrison R. Waite was transferred from its chair to the Chief-Justiceship of the Supreme Court of the United States, Mr. King was his successor in the presidency of the convention.

He did not shrink from the labor of administering local interests, especially educational. He was long active in the board of directors of the public schools; he was the chief actor in creating the Cincinnati Public Library; he was one of the first trustees of the McMicken bequest, and for many years nursed it into the foundation of the University of Cincinnati.

In 1875 the trustees of the old corporation of the Cincinnati College (incorporated in 1819) determined to enlarge the course of study in the Law School, and Mr. King became the Dean of the Faculty, with the arrangement that he should retire from active practice in court and devote most of his time to the school. He took upon himself the burden of instructing the Junior class daily in the Elements and Institutes, beside lecturing to the Senior class in one department of the law. In connection with this he continued his consultation and chamber practice, but after five years asked to be relieved from the deanship, resuming full practice and continuing his lectures on Constitutional Law and the Law of Real Property. In these professional relations his last years were spent; and though he was relieved from the most severe labors of the court-room and of the office, he kept the harness on till his last sickness overtook him.

In 1888 he wrote for the American Commonwealth series his historical volume on "Ohio, the First-fruits of the Ordinance of 1787." This is chiefly devoted to the analysis of the events which led to and accompanied the organization of Ohio as a State and gave character to the new community. The picture of Western colonization and of the elements and forces co-operating to make the new State what it was, is ably and attractively drawn. The bent of mind of the constitutional lawyer is seen in each step of the

historian's work, and gives broader scope and value to a narrative that is singularly lucid and often even picturesque.

Mr. King was always an active member of the bar association of his State, and for many years a prominent figure also in the meetings of the National Bar Association. In the meeting of the bar which crowded the United States Court-room in Cincinnati to express sorrow at his death, the key-note was well struck by the Hon. William S. Groesbeck, who said that with all his professional activity and his valuable labors as a professor of law, Mr. King would still be best remembered by his friends and neighbors as the model citizen, using his legal knowledge and his business acumen to aid every good cause, to foster every local improvement, to advance education in all departments, and to befriend every man and woman needing the counsel and the assistance of a large-hearted and able friend.

MEMORIAL DAY.

By Wilbur Larremore.

BENEATH this labyrinth of mounds asleep,
The victims of Antietam's bloody fray,
The wearers of the blue and of the gray,
Pass back to dust in many a blended heap.
Sown in corruption, laurelled life they reap;
Firm-rooted in mortality's decay,
Returning flowers each Memorial Day
The fame of heroes ever fragrant keep.

And we who see with clearer eyes than theirs
The conflict was not one of choice but fate,
We, of their blood not shed in vain the heirs,
Possessors of a newly risen State,
Should glow with love as pure as Nature wears,
A brothers' love with root in buried hate.

SIR FRANCIS BACON'S MOTHER-IN-LAW; HER FAMILY; HER HUSBANDS, AND HER SONS-IN-LAW.

By Alexander Brown.

BACON'S mother-in-law, I believe, has never been fully identified by his biographers. They seem to have some doubt as to her family and social position, and state, in a general way, that she was "*Alice*, the daughter of *Humphrey* Smith, Queen Elizabeth's silkman, said to be of an ancient Leicestershire family;" and for the truth thereof, we are sometimes referred to her first husband's epitaph in Strype's Stow's London, edition 1720, book ii. p. 183, which states clearly, in good old Latin, that her name was *Dorothy*, and her father's *Ambrose*.

The family name was originally Heriz, or Hares; but in the reign of Henry VII., William Heriz of Withcock, in Leicestershire, assumed the name of Smith, or Smyth. One of this William's descendants, styled in the Visitation of London (1568) "John Hares *alias* Smyth, of Withcock in Com. Leicester, gentleman," married Dorothy, daughter of Richard Cave, of Stanford, Esq., and had by her (1) Erasmus, (2) Ambrose, and six other sons.

(1) Erasmus Smyth married, secondly, Margaret (relict of his first cousin Roger Cave), daughter of Richard Cecil, and sister of William Cecil, the great Lord Burleigh, which Margaret by her first husband, Roger Cave, was the mother of Margaret Cave, who married Sir William Skipwith, and became the mother of Sir Henry Skipwith, whose son, Sir Grey, came to Virginia in the cavalier emigration of 1649–1659.

(2) Ambrose Smyth (named, I suppose, for his uncle Sir Ambrose Cave, knight hospitaller of St. John, of Jerusalem) became a citizen and mercer of London; married Joane, daughter of John Coo, of Coxall, and had issue two sons and four daughters. The third daughter, of whom I write, was named Dorothy; she was born about 1568. (Rev. Henry Smith, 1560–1591, the celebrated divine patronized by Lord Burleigh, and "commonly called the silver-tongued Smith, as being second only to Chrysostom the golden-tongued," was nearly related to Dorothy, who, we will see, had a sharp tongue.) She married, first, about 1588, Benedict Barnham, merchant and Alderman of London, and benefactor of St. Alban's Hall, Oxford. He died April 3, 1598, leaving four daughters, — Elizabeth, Alice, Dorothy, and Bridget, of whom hereafter.

Mrs. Dorothy Smyth-Barnham married, secondly, Sir John Pakington, in November, 1598. We are told that "Barnham left his widow very rich; and that consideration, together with her youth and beauty, made it impossible for her to escape the addresses even of the greatest persons about the court; but Sir John was the only happy man who knew how to gain her, being recommended by his worthy friend Mr. William Seabright, town clerk of London. This lady's daughters by her first husband were very young when they lost their father, and therefore needed a faithful friend to manage and improve their fortunes, in which capacity Sir John acquitted himself so honorably that they had ten thousand pounds each for portion." Sir John Pakington was a celebrated man, a Knight of the Bath, one of the Privy Council, and an especial favorite of Queen Elizabeth.

Lady Pakington's daughters by her first husband formed the following alliances: *Elizabeth* was the first wife of Mervyn Touchet, the notorious Lord Audley and Earl of Castlehaven, who was executed on Tower Hill, May 14, 1631; *Alice* married Sir Francis Bacon; *Dorothy* married Sir John Constable of Gray's Inn and of Dromby, Yorkshire; and *Bridget* married Sir William

Soame of Thurlow, in Co. Suffolk, eldest son of Sir Stephen Soame, sometime Lord Mayor and Alderman of London.

Bacon's creditors were pressing him in 1603, and on July 3 he wrote to Robert Lord Cecil, that he intended to sell some of his lands and pay his debts; "that he desired to marry with some convenient advancement; that he had found out an Alderman's daughter, an handsome maiden, to his liking," etc. Alice Barnham's portion of £10,000 was a large sum in those days, and would be a very "convenient advancement" even now. Cecil recommended Bacon to her mother, and in due time the usual agreements were entered into; but the daughter was probably under twelve years of age in 1603, and the marriage did not take place until May 10, 1606. The following letter is said to contain the only contemporary account of the marriage that has been preserved.

Carleton to Chamberlain.

LONDON, May 11th, 1606.

. . . Sir Francis Bacon was married yesterday to his young wench in Maribone Chapel. He was clad from top to toe in purple, and hath made himself and his wife such store of fine raiments of cloth of silver and gold that it draws deep into her portion. The dinner was kept at his father-in-law Sir John Packington's lodging over against the Savoy, where his chief guests were the three Knights, [Walter] Cope, [Michael] Hicks, and [Hugh] Beeston; and upon this conceit (as he said himself), that since he could not have my Lord of Salisbury in person, which he wished, he would have him at least in his representative body.

These three knights were in the confidential employment of Salisbury.

It seems that Lady Dorothy Pakington had been in the habit of giving Sir John "a piece of her mind" in a private way; but soon after she became Bacon's mother-in-law, she began to "show her hand" more publicly. Chamberlain wrote to Carleton on the 13th of February, 1607 (N. S.): "Sir John Packington and his little violent lady are parted upon foul terms." I do not know what this trouble was, but it may have been incidental to the contracting of her daughter Dorothy to John Constable, Esquire. The marriage took place before Constable was knighted, probably in September, 1607; but the contracting may have begun as early as February. This, of course, is mere speculation; there is ample evidence, however, that Lady Dorothy violently opposed the match. Sir John Constable was a lawyer; a lifelong friend and an executor of Lord Bacon. The following letter from Sir Francis Bacon to Lady Dorothy, written in the autumn of 1607, is in reply to a message from her to him relative to Constable's marriage: —

MADAM, — You shall with right good will be made acquainted with anything which concerneth your daughters, if you bear a mind of love and concord; otherwise you must be content to be a stranger unto us. For I may not be so unwise as to suffer you to be an author or occasion of dissension between your daughters and their husbands, having seen so much misery of that kind in yourself.

And above all things I will turn back your kindness, in which you say you will receive my wife if she be cast off. For it is much more likely we have occasion to receive you being cast off, if you remember what is passed. But it is time to make an end of those follies. And you shall at this time pardon me this one fault of writing to you. For I mean to do it no more till you use me and respect me as you ought. So, wishing you better than it seemeth you will draw upon yourself, I rest,

Yours, etc.

Bacon's letter gave Lady Pakington no satisfaction, and she made her next appeal to Robert Cecil, Earl of Salisbury, in the following letter: —

MY VERY GOOD LORD, — Whereas I have understood of your Lordship's late favour and care had of two of my daughters, in taking them from the place of danger, and putting them into safe keeping, at what time one of their sisters was, by the practice of Sir Francis Bacon, in marriage with one Cunstabell, cast away, I thought it my duty, by some few lines, to testify my thankfil-

ness to your Lordship for the same. And where I have also heard that your honour, together with some other lords of his Majesty's Privy Council, examining the manner of his proceedings in contracting my daughter to Cunstabell, she being but twelve years of age, and finding her age abused, and how carelessly and slenderly she was provided for, without jointure or other provision for her, taking pity of her estate your Lordships were pleased to take some further care for her, which forasmuch as I have endeavoured by sending unto the said Bacon to know what is done for her, and instead of satisfaction, have received an insolent letter of contempt, penned after his proud manner of writing, — my husband nor my brother knowing nothing, as being secluded and thrust out from all privity of dealing therein, — I am forced to beseech your Lordship to let me know what order is taken for her. And thus being sorry I have such cause to complain of his bad dealing, whom your Lordship heretofore recommended to me, and whose folly hath lately more abounded in procuring the said Cunstabell to be knighted, being of himself a man of very mean estate, — whereby he hath taken all ordinary means of thriving from him, — craving pardon for my boldness, I humbly take my leave.

From Drury Lane, this 28th of November, 1607. Your Lordship's poor well willer to my best power,

DOROTHE PAKINGTON.

As the Earl of Salisbury's aunt had married her uncle, it may be supposed that he took an interest in her case; and the following paper now preserved in the Rolls House is one of the results of her appeal to him, or of the Council's "further care for her" daughter. The paper is without date, but entered in the Calendar under "January (?) 1608." It is entitled: "Conditions to which I am content to yield unto, and did from the beginning intend and offer, for the jointure and advancement of Dorothy Barnham, my spouse." It is signed "Jo. Constable," and indorsed: "Sir Fr. Bacon and his wife." The gist of it is that Constable offers to assure his spouse a jointure of £400 a year, as soon as he comes to his estate, — his grandfather and his father were both still alive. But he very strongly provides "that those her friends which have so intolerably slandered and wronged me, shall have no intermeddling at all either in the assurance or in the allowance of these articles." So we may feel assured that the mother-in-law was to be excluded.

"The little violent lady" was evidently a strong-minded woman, "not afraid to beard the lion in his den," or to brave Lord Bacon on the bench. Whenever we find her in the records, we find her on the war-path, fighting her battles with her husbands or with her sons-in-law. On July 5, 1617, Chamberlain wrote to Carleton: —

"There be great wars betwixt Sir John [Pakington] and his lady, who sues him in the high commission, where, by his own wilfulness, she hath some advantage of him, and keeps him in prison. But the lord keeper [Bacon] deals very honourably in the matter, which, though he could not compound, being referred to him, yet he carries himself so indifferently [*i. e.* impartially] that he wished her to yield, and tells her, plainly and publicly, that she must look for no countenance from him, as long as she follows this course."

It is not necessary to follow Lady Dorothy's various suits in detail. Her second husband, Sir John Pakington, died at his house at Westwood in January, 1625, having had by her one son and two daughters, — John, Anne, and Mary. The son John (1600–1624), who was created a baronet, died before his father, leaving one daughter and one son, (1) Elizabeth, and (2) John the second, baronet. (1) Elizabeth married, first, Col. Henry Washington, the first cousin to John the emigrant, ancestor of Gen. George Washington; (2) Sir John, the second baronet (1622–1680), married Dorothy Coventry, "one of the most learned of her sex, daughter of Thomas, Lord Coventry, who in 1629 ordered the Massachusetts charter to be issued."

Lady Dorothy (Pakington) married, thirdly, Robert Needham, Viscount Kilmorey; and he died in 1627. In 1628 she was having a

long suit before the House of Lords with Sir Humphrey Ferrers and Sir Richard Brooke, who had married her Pakington daughters. She married, fourthly, Thomas Erskine, 1st Earl of Kellie (his third wife), who had succeeded Raleigh in 1603 as Captain of the Yeomen of the Guard, an especial favorite of James I., one of the Privy Council, etc. "*The Earl of Kellie's differences with his last wife were so serious as to require the intervention of King Charles himself.*" The Earl of Kellie died in 1639. The date of the death of Lady Dorothy is not known to me.

Bacon's mother-in-law was certainly of an ancient Leicestershire family; she was related to the Caves, the Cecils, the Skipwiths, etc. She was frequently well married herself; she lived to see all of her children suitably married; *and she saw to it herself*, that they were properly provided for. She wielded a vigorous pen, and probably gave her husbands and her sons-in-law cause to think that she had a sharp tongue. Yet there must have been something very attractive about "the little violent lady;" for, notwithstanding these drawbacks, she no sooner lost one husband than she found another; and, regardless of her advancing years, she constantly took an advance step matrimonial in the social scale at each succeeding venture,—her first husband being an alderman, her second a knight, her third a viscount, and her fourth an earl.

There is still something very attractive in the picture of this "little violent lady," in her "great wars" with her husbands and her sons-in-law, and we must regret very much that Bacon failed to leave us an essay on *the mother-in-law*.

TRANSMISSION OF CRIMINAL TRAITS.

THAT criminality, like moral greatness, "runs in the blood," there can be no doubt. It would in fact be a most unwonted violation of the commonest law of Nature, were we to find the children of criminals free from the moral taints of their parents. As physical disease is transmissible, and as the conditions regulating its descent are now tolerably well ascertained, so moral infirmities pass from one generation to another, and the "law of likeness" is thus seen to hold true of mind as well as of body. Numerous instances might be cited of the transmission of criminal traits of character, often of very marked and special kind. Dr. Despine, a continental writer, gives one very remarkable case illustrating the transmission from one generation to another of an extraordinary tendency to thieve and steal. The subjects of the memoir in question were a family named Chrétien, of which the common ancestor, so to speak, Jean Chrétien by name, had three sons, Pierre, Thomas, and Jean-Baptiste. Pierre in his turn had one son, who was sentenced to penal servitude for life for robbery and murder. Thomas had two sons, one of whom was condemned to a like sentence for murder; the other being sentenced to death for a like crime. Of the children of Jean-Baptiste, one son, Jean-François, married one Marie Tauré, who came of a family noted for their tendency to the crime of incendiarism. Seven children were born to this couple with avowedly criminal antecedents on both sides. Of these, one son, Jean-François, named after his father, died in prison after undergoing various sentences for robberies. Another son, Benoist, was killed by falling off a house-roof which he had scaled in the act of theft; and a third son, "Clain" by nickname, after being convicted of several robberies, died at the age of twenty-five. Victor, a fourth son, was also a criminal; Marie-Reine, a daughter,

died in prison, as did also her sister Marie-Rose, whither both had been sent for theft. The remaining daughter, Victorine, married a man named Lemarre; the son of this couple was sentenced to death for robbery and murder.

This hideous and sad record of whole generations being impelled as it were hereditarily to crime, is paralleled by the case of the notorious Jukes family, whose doings were long matters of comment amongst the legal and police authorities of New York. A long and carefully combined pedigree of this family shows the sad but striking fact, that in the course of seven generations no fewer than *five hundred and forty* individuals of Jukes blood were included amongst the criminal and pauper classes. The account appears in the Thirty-first Annual Report of the Prison Association of New York (1876); and the results of an investigation into the history of the fifth generation alone, may be shortly referred to in the present instance as presenting us with a companion case to that of the somewhat inaptly named Chrétien family. This fifth generation of the Jukes tribe sprang from the eldest of the five daughters of the common ancestor of the race. One hundred and twenty-three individuals are included in this generation; thirty-eight of these coming through an illegitimate granddaughter, and eighty-five through legitimate grandchildren. The great majority of the females consorted with criminals; sixteen of the thirty-eight were convicted, — one nine times, — some of heinous crimes; eleven were paupers, and led dissolute or criminal lives; four were inveterate drunkards; the history of three is unknown; and a small minority of four are known to have led respectable and honest lives. Of the eighty-five legitimate descendants, only five were incorrigible criminals, and only thirteen were paupers or dissolute. Jukes himself, the founder of this prolific criminal community, was born about 1730, and is described as a curious, unsteady man of Gipsy descent, but apparently without deliberately bad or vicious instincts. Through unfavorable marriages, the undecided character of the father ripened into the criminal traits of his descendants. The moral surroundings being of the worst description, the beginnings of criminality became intensified, and hence arose naturally, and as time passed, the graver symptoms of diseased morality and criminal disposition.

The data upon which a true classification of criminals may be founded are as yet few and imperfect; but Mr. Gatton mentions it as a hopeful fact, that physiognomy and the general contour of the head can be shown to afford valuable evidence of the grouping of criminals into classes. This method of investigation, however, it must be noted, is by no means a return to the old standing of phrenology, which, as all readers know, boasts its ability to mark out the surface of the brain itself into a large number of different faculties. The most that anthropologists would contend for, according to the data laid down, is that certain general types of head and face are peculiar to certain types of criminals. Physical conformation of a general kind becomes thus in a general manner related to the mental type.

The practical outcome of such a subject may be readily found in the ultimate attention which morality, education, and the State itself may give to the reclaiming of youthful criminals, and to the fostering, from an early period of their history, of those tendencies to good which even the most degraded may be shown to possess. If it be true that we are largely the products of past time, and that our physical and mental constitutions are in great measure woven for us and independently of us, it is none the less a stable fact, that there exists a margin of free-will which, however limited in extent, may be made, in the criminal and debased, and under proper training and encouragement, the foundation of a new and better life. — *Chambers' Journal.*

THE SUPREME COURT OF ILLINOIS.

By James E. Babb.

COURTS have been maintained by different sovereignties, administering different systems of law, in the territory which now constitutes the State of Illinois.

Though Spain claimed the territory, it never through a judicial tribunal exercised jurisdiction therein.

The claim and jurisdiction of France became quite well settled and defined. In 1712 Louis XIV. by Letters Patent granted the territory of which Illinois was a part to M. Crozat, "under the name of the Government of Louisiana." Article VII. of the Letters Patent provided that "Our edicts, ordinances, and customs, the usages of the mayoralty and shrievalty of Paris, shall be observed for laws in the said country of Louisiana."

Louisiana during French rule was divided into nine districts. One of these was called Illinois. Each had a governor and a judge. From the decisions of these district judges there was an appeal to a Superior Court, which sat at New Orleans.

In "Early History of Illinois," by Sidney Breese, copies are given from the records of judicial proceedings before magistrates of these courts.

By a treaty concluded between France and England at Paris, Feb. 10, 1763, the jurisdiction of France over this territory ended and that of England began. King George III., Oct. 7, 1763, issued a proclamation providing for English government.

Lieut.-Col. John Wilkins, the British military commandant of the territory, issued a proclamation, Nov. 21, 1768, stating that by order of Gen. Thomas Gage, Commander-in-Chief of the British forces in North America, he was to establish a court of justice in Illinois, for settling all disputes and controversies between man and man, and all claims in relation to property, both real and personal.

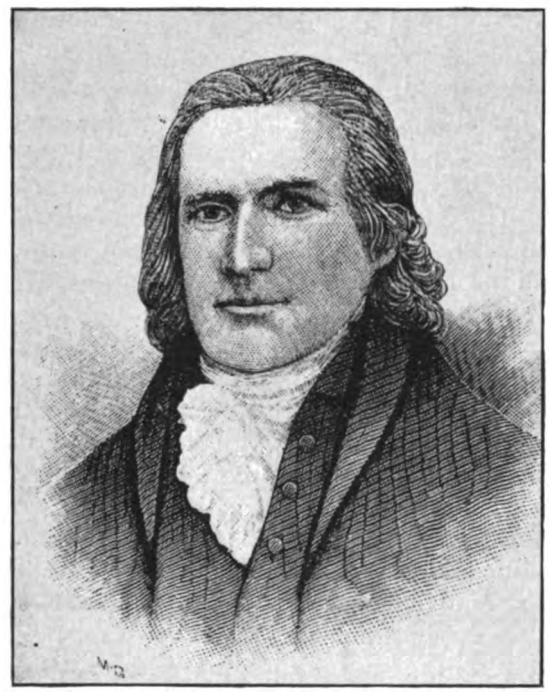
As military commandant, Colonel Wilkins appointed seven judges, who met and held their first court at Fort Chartres, Dec. 6, 1768. Courts were thereafter held each month.

In Moses' History of Illinois, vol. i. p. 140, it is said that this was "the first British court west of the Alleghanies. Instead of appeasing, it increased the discontent of the French; it was repugnant to all their ideas of justice that the rights of persons and property should be safer in the hands of a panel of miscellaneous tailors and shoemakers, than in those of erudite and dispassionate judges."

In 1778 Col. George Rogers Clark, pursuant to a letter of direction from Patrick Henry, Governor of Virginia, dated Jan. 2, 1778, captured the British posts in the vast territory of the Northwest, and sent the British Governor of Illinois a prisoner to Williamsburg, the capital of Virginia. Thereupon, in October, 1778, the House of Burgesses of Virginia enacted that all the citizens of the Commonwealth of Virginia "who are already settled or shall hereafter settle on the *western side of the Ohio* shall be included in a distinct county which shall be called *Illinois County;* and the Governor of this Commonwealth, with the advice of the Council, may appoint a County Lieutenant or Commandant-in-Chief in that county, who shall appoint and commission so many deputy commandants, militia and officers and commissaries, as he shall think proper, all of whom shall take the oath of fidelity to this Commonwealth."

John Todd, of Kentucky, having been appointed Lieutenant of Illinois County, issued his proclamation as such at Kaskaskia, June 15, 1779. In the same month a court of civil and criminal jurisdiction was instituted at Post Vincennes, which was composed of

several magistrates. Col. J. M. P. Legras acted as president of the court, and in some cases exercised a controlling influence over its proceedings. Adopting in some measure the usages and customs of the early French commandants, the magistrates of the court of Post Vincennes began to grant or concede tracts of land to the French and American inhabitants of the town, and to different civil and military officers of the country. The commandant and magistrates, after having exercised this power for some time, began to believe that they had the right to dispose of all that large tract of land which had been granted for the use of the French inhabitants of Post Vincennes Accordingly the country was divided between the members of the court, and orders to that effect entered on their journal; each member absenting himself from the court on the day that the order was to be made in his favor. (Western Annals, 698.) Other magistrates of this court were F(rancis) F. Bosseron, L(ouis) Edeline, P(ierre) Gamelin, P(ierre) Querez.



JOHN CLEVES SYMMES.

The decisions of the Court of Last Resort in Virginia during the time this territory constituted Illinois County of Virginia, are reported in the first few pages of 4 Call's Reports, and include the case of Commonwealth *v.* Caton, celebrated in constitutional history.

By a process the details of which are well known, the State of Virginia on March 1, 1784, made to the United States a deed of cession of the lands northwest of the Ohio River. In the following April Congress provided for the maintenance of a temporary government of that territory, which provision was on July 13, 1787, repealed, and in lieu thereof there was then enacted the famous Ordinance for the Government of the Territory of the United States northwest of the River Ohio.

By this ordinance there were to be appointed for the territory a governor and three judges, the latter to form a court and have common-law jurisdiction. The governor and judges were given authority with certain qualifications to enact laws until the territory should have a population of five thousand free male inhabitants of full age, when it was provided that a General Assembly should be elected with legislative authority.

The first judges chosen for the Northwest Territory were Samuel Holden Parsons, James Mitchell Varnum, and John Armstrong; the last declining to serve, John Cleves Symmes succeeded him. Those who thereafter served as judges under this ordinance were George Turner, who took the place declined by William Barton; Rufus Putnam, the one made vacant by Samuel Holden Parsons; Joseph Gilman, who succeeded Putnam, and Return Jonathan Meigs, Jr., the successor of Turner.

Parsons was born at Lyme, Connecticut, May 14, 1737, was graduated at Harvard at nineteen, admitted to the bar, served eighteen

sessions in the Assembly of Connecticut, was a member of the Constitutional Convention of that State in 1778, and a Brigadier-General in the Revolutionary War. He died Nov. 17, 1789.

Varnum was born at Dracut, Massachusetts, Dec. 17, 1748, was graduated at Brown College with first honors, was a Brigadier-General in the Revolutionary War, and thereafter became a distinguished lawyer and brilliant orator in Massachusetts. He was a brother of Joseph Bradley Varnum, United States Senator from Massachusetts. He died at Marietta, Ohio, Jan. 10, 1789.

John Cleves Symmes was born on Long Island, New York, July 21, 1742. He was a delegate to the Continental Congress from Delaware, judge of the Superior Court and Chief-Justice of New Jersey. His wife was a daughter of Gov. William Livingstone; his daughter, Anna Symmes, married President William Henry Harrison. He died at Cincinnati, Feb. 26, 1814.

JESSE BURGESS THOMAS.

Putnam was from Massachusetts. He was a cousin of Gen. Israel Putnam. He was a member of the Massachusetts Legislature, a Brigadier-General in the Revolution, one of the prominent members of the Ohio Company of Associates, Surveyor-General of the United States, and a member of the Constitutional Convention of Ohio in 1803. He died at Marietta, Ohio, May 1, 1824.

Return Jonathan Meigs was a son of a distinguished Revolutionary soldier of Connecticut of the same name, to which it seems a bit of romance is attached. The grandfather of the judge, after several refusals from his lady-love, mounting his horse to leave her for the last time, heard her then relenting call, "Return, Jonathan." These words he gave his son, the father of our subject, for a name.

Judge Meigs was graduated at Yale with first honors, was a member of the first General Assembly of the Northwest Territory, Federal Judge in Michigan and Louisiana, United States Senator, Chief-Justice of the Supreme Court of Ohio, and Postmaster-General. He died at Marietta, Ohio, March 29, 1825. Judge Turner was born in England in 1750. He was a captain in the Revolutionary War, and died at Philadelphia, March 16, 1843.

Joseph Gilman was from Exeter, New Hampshire, and was probably a cousin of Nicholas Gilman, who was a member of the Constitutional Convention of 1787 from New Hampshire.

The Governor, General Arthur St. Clair, and the judges, first met as a legislative body at Marietta, Ohio, July 15, 1788, when a code of laws was adopted. The laws were largely taken from those in force in Pennsylvania, Massachusetts, Virginia, New York, Connecticut, New Jersey, and Kentucky. In 1795 a Virginia Act of May 6, 1776 (adopting the Common Law and Statutes of England of a general nature, prior to the fourth year of the reign of James I.), was adopted.

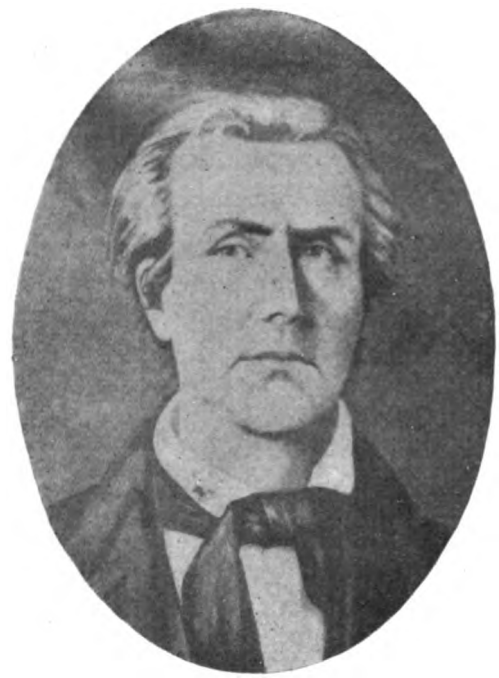
The first General Assembly of this Territory enacted that applicants for admission to the bar should produce a certificate that they had read law four years.

The first session of court for the trial of causes was opened Sept. 2, 1788, at Marietta, Ohio, with impressive ceremonies. At first the Supreme Court sat at Marietta, Cincinnati, Vincennes, and Kaskaskia; later Detroit was added to the circuit, and this wide circuit the judges travelled on horseback. The court had power to review the decisions of courts inferior to it, but there was, it is stated, no appeal from its own decisions.

May 7, 1800, Congress passed an act which created within the limits of the Northwest Territory Indiana Territory. Indiana Territory thus constituted included the present bounds of Indiana and Illinois.

William Clark (in the statutes of Indiana Territory spelled "Clarke"), Henry Vanderburgh (in the statutes of Indiana Territory spelled "Vander Burgh"), and John Griffin were appointed the judges of Indiana Territory. They, with the Governor, William Henry Harrison, until 1805, when the first Assembly met, had powers of legislation similar to those of the governor and judges of the Northwest Territory.

Jan. 12, 1801, the governor and judges met at Vincennes and enacted laws, those of the Northwest Territory being largely adopted; and there, March 3, the first session of the court was held. In 1808 an act was passed requiring this court to deliver its opinions in writing.



WILLIAM WILSON.

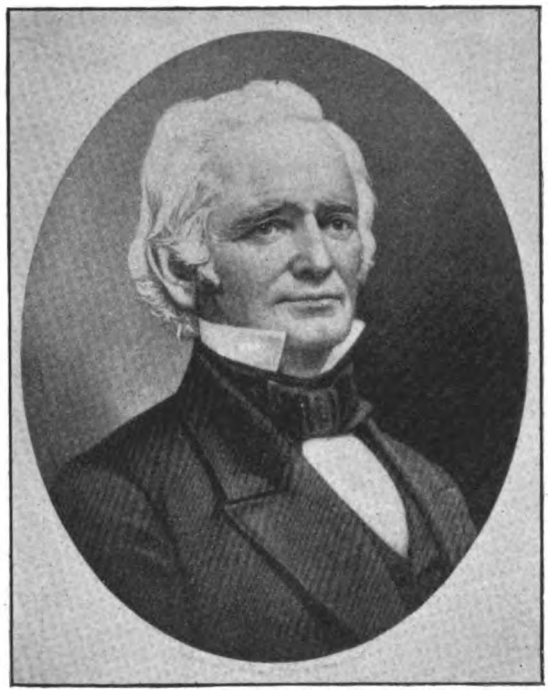
William Clark was a younger brother of the celebrated Gen. George Rogers Clark. After his term as judge of Indiana Territory he became a resident of St. Louis, as agent of the United States in charge of Indian affairs, and the associate of Lewis in the famous "Lewis and Clark Expedition." He was governor of Missouri Territory from 1813 till it became a State. Thomas Terry Davis succeeded Clark in 1803. Davis was one of the trustees named in the act incorporating "Vincennes University."

Vanderburgh was a resident of Vincennes, and a representative from there in the first Assembly of the Northwest Territory, becoming the Speaker or President of the Upper House of that Assembly. Griffin was a native of Scotland, but came from Virginia to Indiana. He afterward became a judge of Michigan Territory. Later he returned to Scotland to enjoy a fortune left him there. Feb. 3, 1809, an act was passed by Congress, dividing Indiana Territory into the territories of Indiana and Illinois; and March 7, Alexander Stuart, Obadiah Jones, and Jesse Burgess Thomas were appointed judges of Illinois Territory. They and Ninian Edwards, the Governor until an Assembly was elected in 1812, had legislative powers similar to those exercised by the governors and judges of the Northwest and Indiana Territories.

June 16, 1809, they enacted a code of

laws which were mostly copied from those of Indiana Territory. Dec. 13, 1812, the first Assembly of Illinois Territory adopted all laws passed by the Indiana Assembly and by the Governor and Judges of Illinois Territory which were in force. An act was passed in the same year which required this court to deliver its opinions in writing. In 1814 the judges were required to hold circuit courts.

This court had concurrent original jurisdiction in "all cases, matters, and things pertaining to property, real, personal, and mixed," and exclusive original jurisdiction of higher crimes and of all cases in equity where the amount involved was in excess of one hundred dollars. It also had appellate jurisdiction in all cases, and other special powers.



SAMUEL DRAKE LOCKWOOD.

Alexander Stuart was a Virginian of education and gentlemanly address. He resigned almost as soon as appointed, and became one of the judges of Missouri Territory.

Stanley Griswold took the place of Stuart. He was born at Torrington, Connecticut, Nov. 14, 1763, was graduated at Yale in 1786, was in his early days a preacher and edited a paper at Walpole, New Hampshire. He was appointed Secretary of Michigan Territory in 1805. Thence he removed to Ohio, where he was appointed to fill an unexpired term in the United States Senate. Thence he came to Illinois. He died at Shawneetown, Illinois, August 21, 1815.

Henry Towles succeeded Griswold, and served during the remainder of the existence of the court. He was a well-educated, native-born Irishman. He was Federal District Judge a short time after Illinois became a State.

Obadiah Jones was appointed Judge of Mississippi Territory in 1805; and at the end of his service in Illinois, he returned to his former position. Thereafter he became Judge of the Federal Court for the District of Mississippi.

William Sprigg succeeded Obadiah Jones in 1813, and served till 1818. In Reynolds's "History of Illinois," it is said that Sprigg "possessed a strong, discriminating mind, and made an excellent judge; he was a fine classical scholar and a well-read and profound lawyer. He was born in Maryland, and was of excellent family. His brother was the Governor of Maryland, and other relatives occupied important stations in that State. He had an utter contempt for street politics. A purer heart or one with more integrity never found its way to the bench." He was a judge of the Supreme Court of Ohio in 1803, and is undoubtedly the William Sprigg mentioned in the article in the "Green Bag" on the Supreme Court of Michigan.

The most distinguished of the judges of the Court of Illinois Territory was doubtless Jesse Burgess Thomas. It is alleged that he was a descendant of Lord Baltimore. He was born in Hagerstown, Maryland, in 1777, and studied law with his brother Richard Symmes Thomas, in Bracken County, Kentucky. In

1803 he located at Lawrenceburgh, Indiana Territory, and practised law. In 1805 he was elected to the first Assembly of Indiana Territory, of which he became Speaker. He presided until 1808, when he was elected delegate to Congress. He was commissioned by Governor Harrison in 1805 a Captain of Militia of Dearborn County. During his service in the Legislature he moved to Vincennes. On the organization of Illinois Territory in 1809 he moved to Kaskaskia, afterward to Cahokia, and later to Edwardsville. Having served during the existence of Illinois Territory (nine years) as a Judge, he became, in 1818, a member and President of the Convention which formed the first Constitution of Illinois. He was elected United States Senator from Illinois by the first Legislature of the State, and served as Senator from 1818 to 1828. In 1820 he introduced the Missouri Compromise; he was chairman of the Committee of Conference on the measure, and it is stated that as adopted it was his work. In 1824 he was one of the caucus that nominated William H. Crawford for President. In 1840 he was active in securing the nomination of William Henry Harrison for President. At the close of his senatorial career he made Mt. Vernon, Ohio, his home, and died May 4, 1853. Judge Thomas was talented, dignified, commanding, respectful, and refined. In his intercourse with his fellow-men he acted upon a saying reputed to him, that "you could not talk a man down, but you could whisper him to death."

SIDNEY BREESE.

The Constitution of 1818 vested the judicial power in a Supreme Court and such inferior courts as the General Assembly might establish. The Supreme Court was given appellate jurisdiction only, excepting in cases relating to revenue, cases of mandamus, and certain cases of impeachment which might be required to be tried by it. The court at first consisted of a Chief-Justice and three Associates. They were appointed by joint ballot of the two branches of the General Assembly and commissioned by the Governor. The office was held during good behavior until the end of the first session of the General Assembly convened after Jan. 1, 1824. Until that time the judges of the Supreme Court were to hold circuit courts as the General Assembly might require.

The State was divided into four circuits, within which the judges of the Supreme Court were required to perform circuit duties until the expiration of their terms.

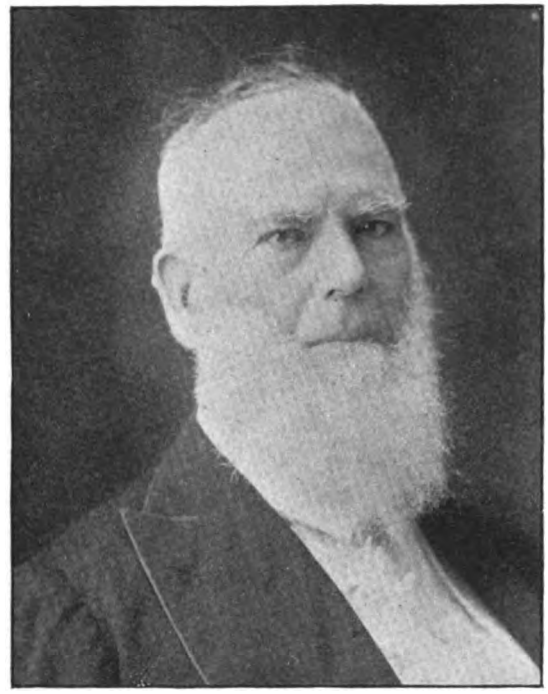
In 1824 they were relieved of *nisi prius* service by a provision for the appointment of five circuit judges. In 1827 the Supreme Judges were required to hold circuit courts again as before 1824.

In 1829 a fifth judicial circuit was created in the northern part of the State and a judge was provided for, to hold court therein, leaving the judges of the Supreme Court to hold courts in the first, second, third, and fourth circuits. In 1835 the judges of the Supreme Court were again relieved of circuit duty, five circuit judges being elected in

addition to the one existing, and a sixth judicial circuit established.

No change was made in the Supreme Court until in 1841, when an act was passed repealing all laws authorizing circuit courts and judges thereof, and providing for election by the General Assembly of five additional judges of the Supreme Court, who should with those already in office constitute the Supreme Court, and who should hold all circuit courts.

By the Constitution of 1848, the Supreme Court consisted of only three judges. The State was divided into three grand divisions in each of which one judge was to be elected by the people for nine years. Vacancies if the unexpired term did not exceed one year might be filled by appointment of the Governor. Since the Constitution of 1848, the judges of this court have not been required to hold circuit court.



JOHN DEAN CATON.

Under the Constitution of 1870, the court consists of seven judges, one of whom is chosen annually by the court as Chief-Justice. For the election of judges the State is divided into seven districts, in each of which one judge is elected by the people for nine years. The State is divided into the Southern, Central, and Northern Divisions, in each of which, at Mt. Vernon, Springfield, and Ottawa respectively, the sessions of the court have been held since 1848. Prior thereto and since the July Term, 1838, the court sat at Springfield. Theretofore and since the December term, 1820, the sessions were held at Vandalia and theretofore at Kaskaskia. At the writing of this article a bill is pending in the Legislature which provides for holding all the sessions of the court at Springfield.

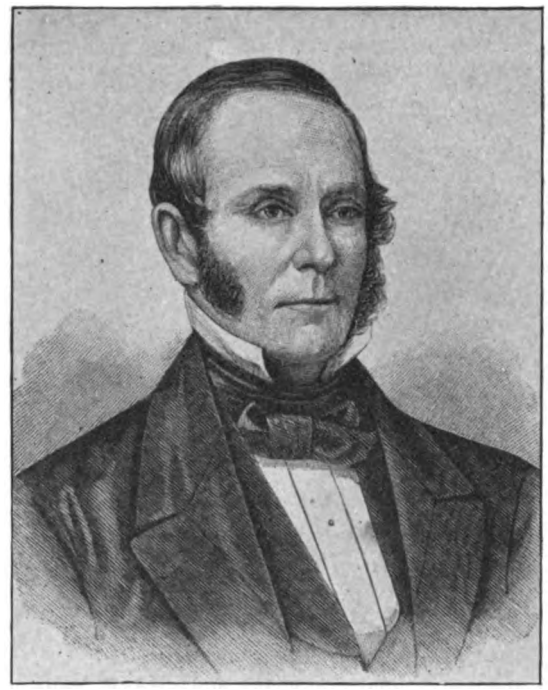
The first term of this court under the Constitution of 1818 was held in December, 1819, at Kaskaskia. It is said that up to the close of 1831 the court had not access to "even an ordinary Law Library."

The first judges were Joseph Philips, Chief-Justice, and Thomas C. Browne, John Reynolds, and William P. Foster, Associate Justices.

Foster is undoubtedly the most anomalous judge in the history of the court. He was from Virginia, and had been in the State only a few weeks before his appointment. He drew one year's salary and resigned. Thereafter, it is said, he became a roaming swindler.

Joseph Philips was born in Tennessee and received a classical education. He was a captain in the War of 1812, and Secretary of Illinois Territory. He resigned from the Supreme Bench July 4, 1822, and in the fall following he was the pro-slavery candidate for governor of Illinois against Edward Coles. After an exciting campaign he was defeated by Coles, who had a plurality of only fifty votes. Philips, after his defeat, returned to Tennessee. He was a man of talent, education, and honor. The reported decisions of the court to the time of his resignation fill only nineteen pages, and it does not appear from them which of the judges wrote the opinions.

John Reynolds was born in Montgomery County, Pennsylvania, Feb. 26, 1788. He came with his parents to Illinois, after living awhile in Tennessee. After pursuing a collegiate course he studied law in Knoxville, Tennessee, and was admitted to the bar at Kaskaskia in 1812. He served upon the Supreme Bench from Oct. 9, 1818, to August 31, 1822, was a member of three General Assemblies of Illinois, Speaker of the Lower House, a representative from Illinois in four Congresses, and its fourth Governor. He is the author of "Pioneer History of Illinois" and "My Own Times;" he died in Belleville in May, 1865.



JAMES SEMPLE.

Thomas C. Browne was born in Kentucky, studied law there, came to Shawneetown, Illinois, in 1812, served in the Legislature of Illinois Territory from 1814 till it became a State, was appointed prosecuting attorney in 1815, and served continuously on the Supreme Bench from Oct. 9, 1818, for a period of thirty years, — the longest term of service of any judge in the history of the court. During his life it was said of him by Reynolds, in his "History of Illinois," that "he possesses many excellent traits of character. He is endowed by nature with a strong intellect, and with a benevolence and goodness of heart that have marked his whole progress through life. . . . Honor, integrity, and fidelity are prominent traits in his character."

Ex-Chief-Justice John Dean Caton, a contemporary of Browne, writing of him in the "Chicago Legal News" of April 20, 1889, said: "If he ever read a law book it was so long ago that he must have forgotten it. He had already occupied a seat upon the Supreme Bench for twenty-four years. . . . During all that time I have reason to believe that he never wrote an opinion. One of the opinions which appears to have been written by him in his reports, Judge Breese testified before the Legislature . . . that he wrote for Browne. In the conference-room I never heard him attempt to argue any question, for he did not seem to be able to express his views in a sustained or logical form, and yet he was a man of very considerable ability. . . . He expressed himself in epigrams or short and pungent sentences which showed that he was a good thinker and had clear and distinct views of his own. He was a profound student of nature, and could judge with great accuracy not only of individual character, but of what would influence the minds of men."

An attempt was made to impeach Judge Browne before the Legislature of 1843, "for want of capacity to discharge the duties of his office." It is stated in Moses' "History of Illinois" (vol. i. p. 456), that the charge was "voted down by a nearly unanimous vote. Although a Whig he was able to command very strong support from leading Democrats, who regarded the attack upon him as a persecution set on foot by disappointed attorneys."

Without deciding the controversy, it may probably be safely said that Judge Browne

was not to the profession an ideal or even oftentimes a satisfactory judge; and that there were some disappointed attorneys among those who pressed the prosecution.

William Wilson, the successor of William P. Foster, was born in Loudon County, Virginia, in 1795; studied law with Hon. John Cook, a distinguished lawyer and Minister to France; came to Illinois in 1817, and was appointed to the Supreme Bench when only twenty-four years of age. He became Chief-Justice at twenty-nine, and remained on the bench for twenty-nine years until Dec. 4, 1848, — with the exception of Judge Browne's, the longest term of service in the history of the court. Judge Wilson died April 29, 1857, in White County, Illinois. The early age at which he went upon the bench, his long term of service, his modesty, efficiency, dignity, and sociability make him an interesting character. His first opinion after the reports begin to show by whom the opinions were written, is in the case of State Bank *v.* Kain, Breese's Rep. 75; and his last is in the case of Bruen *v.* Graves, 4 Gilman, 283. Ex-Chief-Justice Caton, speaking of Wilson ("Chicago Legal News," April 13, 1889), said: "He did not know all the law . . . but . . . he had the capacity to understand the law . . . with the reasons in support of it." Hon. James C. Conkling, speaking of him, says: "As a writer, his style was clear and distinct; as a lawyer, his judgment was sound and discriminating."

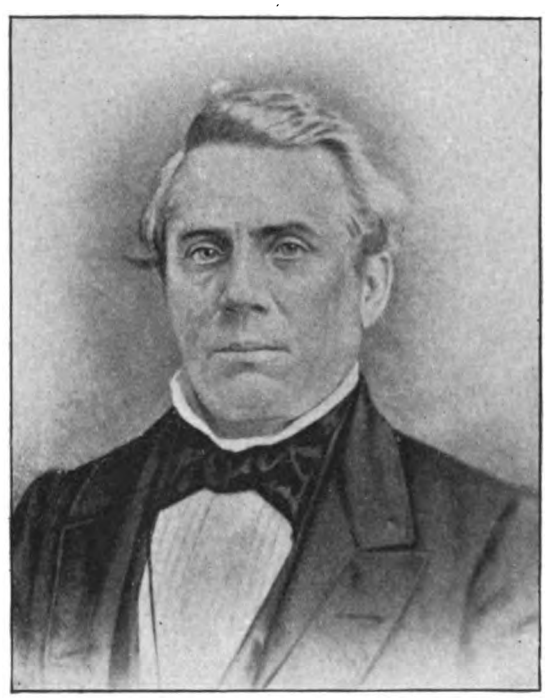
JOHN M. ROBINSON.

Thomas Reynolds was the second Chief-Justice of the court. He succeeded Philips and preceded Wilson in that position. He was a younger brother of Judge John Reynolds; was clerk of the first and member of a subsequent General Assembly of Illinois; served as Chief-Justice from Aug. 31, 1822, to Jan. 19, 1825; moved to Missouri in 1828, and became Governor of that State in 1840.

Jan. 19, 1825, there came to the bench Samuel Drake Lockwood and Theophilus Washington Smith. They, with Judges Browne and Wilson, constituted the court thereafter until Feb. 15, 1841.

Lockwood was born August 2, 1789, at Poundridge, in Westchester County, New York. He studied law with his uncle Thomas Drake, at Waterford, New York, was admitted to the bar in 1811, began practice at Batavia, New York, and became a Master in Chancery in 1813. He moved to Illinois in 1818; became its Attorney-General, receiver of Public Moneys in the Edwardsville Land Office, Judge of the Supreme Court (which position he filled twenty-three years ten months and fifteen days), member of the Constitutional Convention of 1847, State trustee of the Illinois Central Railroad, charter trustee of the institutions for the insane, deaf, dumb, and blind, and until 1868 a trustee of Illinois College at Jacksonville, which was founded in 1829. The fourth opinion of Judge Lockwood was rendered in a peculiar political case. The State had in the office of Lieutenant-Governor Adolphus Hubbard, a politician fully the

equal of any of that profession of the present time. Governor Coles having taken a short leave of absence from the State, Hubbard assumed the Governor's office, and on the return of Governor Coles asserted the right under the Constitution to hold the office "until the time appointed for the election of Governor." Of course his first act was to appoint some officer. This honor was conferred on W. L. D. Ewing, whom he appointed Paymaster-General of the Illinois Militia. Upon the refusal of the Secretary of State to issue a commission to the new appointee, application was made to the Supreme Court for a writ of mandamus to compel the Secretary to issue the commission. In an opinion evincing extended research, the application was denied. Of the twenty-three cases decided at the two terms in 1825, Judge Lockwood wrote the opinion in thirteen, as much of the work frequently devolved upon him. Hon. Alfred M. Craig, a judge of this court, in an address at the laying of the corner-stone of the Knox County Court House, in 1885, said: "Our criminal code, with but few amendments, has been in existence since 1825. It was drafted . . . by Judge Lockwood, one of the ablest judges our State ever produced. We had a constitutional convention in 1847, and again in 1870, since when the Legislature has revised our statutes; but while the statutes on various subjects were changed, the Criminal Code was found to need but few amendments, and was left substantially as originally prepared in 1825."



GUSTAVUS P. KOERNER.

Ex-Chief-Justice Caton said ("Chicago Legal News," April 20, 1889): "If Judge Lockwood was not a great man, he was a good man and a good judge. He had been a close student of the law. . . . His style of writing was easy and perspicuous . . . he was a close and accurate thinker." Judge Lockwood died at Batavia, Illinois, April 23, 1874.

His "Life and Times" was written by William Coffin, and published at Chicago in 1889.

Judge Smith is one of the striking characters in the history of the legal profession in Illinois. He was born in New York City, Sept. 28, 1784, studied law in the office of Aaron Burr, was a fellow-student of Washington Irving, was admitted to the bar in 1805, came to Illinois in 1816, served two terms as State Senator, and upon the Supreme Bench for seventeen years eleven months and seven days. All historians have charged to him a great deal of political and other intrigue. His activity as a politician made him enemies. These enemies and his acts of doubtful honesty brought upon him a trial for impeachment in which he barely escaped defeat. In Linder's "Early Bench and Bar of Illinois," one of the many positions of apparently doubtful honor which he occupied is thus described: "Judge Smith delivered the opinion of the Supreme Court in the case of Beaubien against the United States, involving the title to the old Fort

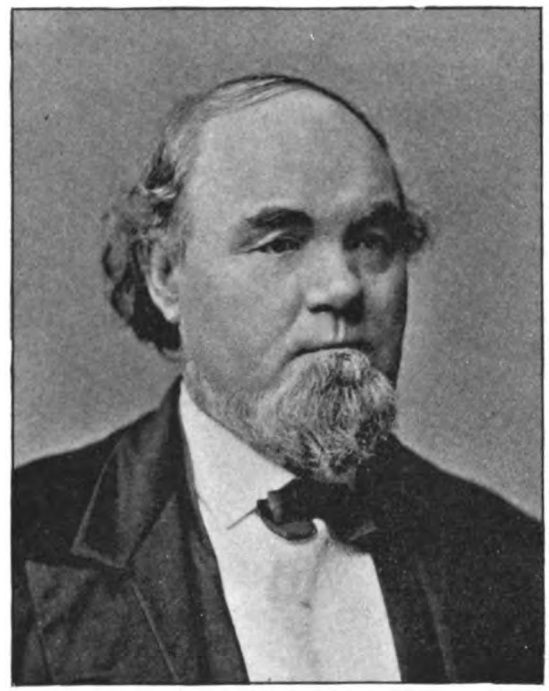
Dearborn property in Chicago. The opinion was in favor of Baubien. . . . Baubien had laid out the ground in town lots, and *had made deeds of gift to the different children of the judges of the Supreme Court*, of a considerable number of these lots. . . . Wilson and Lockwood had too much modesty to sit in the case, . . . but Smith and Browne had no such scruples." The Hon. Levi Davis, of Alton, in a recent letter writes of Judge Smith thus: "At Hillsboro in Montgomery County, in the fall of 1831, two incidents occurred of much prominence in Judge Smith's judicial life. A man named Dryer (if I rightly remember), a Quaker, came into court with his hat on, and Judge Smith directed the sheriff to order Dryer to remove his hat. This Dryer refused to do, and Judge Smith ordered him to jail. Judge Hall, a member of the bar, got up and said: 'Your Honor is not, perhaps, aware that Mr. Dryer is a Quaker, and wears his hat in court from conscientious motives.' Judge Smith replied, 'I don't care; a man may take it into his head to come into court naked.' Dryer was sent to jail, where he remained until court convened the next morning, when Judge Smith directed that he be brought into court. Dryer stated his reasons for wearing his hat and was discharged. This incident created an intense excitement against the judge in Hillsboro, where Dryer was a much respected citizen. The other incident to which I have alluded was as follows: A suit was pending in the court between a man named Jackson and an old German named Hillsabek. An application had been made for a change of venue. John S. Greathouse, a lawyer residing at Edwardsville, was Hillsabek's lawyer. When the court adjourned at noon, and as Greathouse was getting on his horse to go home, Hillsabek came to him and asked him where he wanted his case to be sent. Greathouse told him he did n't care; Judge Smith might send it to hell, but he did not want it sent to any place where Judge Smith presided. As soon as court met after dinner, old Hillsabek came in, and walking up to the Judge's seat said, 'Judge, Squire Greathouse says he don't care where you send my case; you may send it to hell if you choose, but he don't want you to send it to any place where you preside.' 'Bring Mr. Greathouse into court,' said Judge Smith; and when the sheriff reported that Greathouse had gone, Judge Smith directed the clerk to enter an order suspending Mr. Greathouse from practising in his circuit for the period of eighteen months. At the next session of the Legislature, in 1832–1833, articles of impeachment were preferred against Judge Smith, and the incidents I have mentioned formed the main grounds for his impeachment. The trial excited great interest, it being the only one that had ever taken place in Illinois. Judge Breese was the leading counsel for Judge Smith; and Benjamin Mills, the most brilliant lawyer that ever lived in Illinois, was the leading manager on the part of the House of Rep-

ALFRED M. CRAIG.

resentatives, and made one of his greatest efforts. . . . Judge Smith was a man of unquestioned ability, and in the courts in his circuits in which I practised he always presided with dignity, and was courteous and affable in his intercourse with the members of the bar. For some cause unknown to me, there was a bitter feeling existing against him on the part of some members of the bar at Edwardsville. As the Supreme Court sat in Vandalia during the session of the Legislature, Judge Smith could not, from some idiosyncrasy, resist the temptation to intermeddle with matters before the Legislature, and this trait in his character frequently subjected him to unfavorable criticism."

Judge Smith died at Chicago, May 6, 1846.

It is proper now to notice a storm of politics which came upon the court. A vigorous presidential campaign had engendered among the politicians deep-seated enmities. The Democrats, having been unsuccessful in national politics, resolved to utilize their power in State affairs. The Supreme Court, containing three Whigs and only one Democrat, excited their special jealousy. A decision in Field *v.* The People, 2 Scammon, 79, and in another case contrary to the interests of the Democrats, afforded a reason for attack upon the court. Alexander P. Field, a Whig, had long been Secretary of State. Governor Carlin nominated John A. McClernand to the office, and the Senate refused to confirm him. Notwithstanding this, after the Legislature adjourned, the Governor commissioned his nominee as Secretary of State, and McClernand being refused possession by the incumbent, sued out a writ of Quo Warranto. Judge Breese decided in favor of McClernand. Field appealed to the Supreme Court, where Cyrus Walker, Justin Butterfield, and Levi Davis argued for the appellant, and J. B. Thomas, S. A. Douglas, James Shields, and Wickliffe Kitchell argued for the appellee. The decision below was reversed. The court held, among other things, that the powers of appointment given the Governor by the Constitution *did* not authorize the Governor to remove an officer. Judge Browne did not sit in the case. The opinion was delivered by Judge Wilson; Judge Lockwood delivered a concurring, and Judge Smith a dissenting opinion.



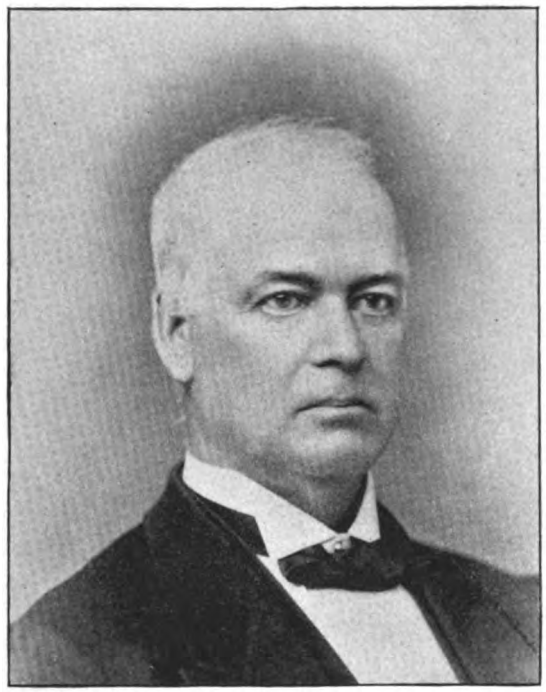
PINKNEY H. WALKER.

These opinions occupy one hundred and four pages of the report, and review exhaustively the discussions of that interesting question which had been made under the Federal and different State Constitutions.

This decision was so distasteful to the Democrats as to cause them in 1841 to force the passage of the act heretofore mentioned under which five Democrats were added to the four judges already upon the Supreme Bench. Those thus added were Thomas Ford, Sidney Breese, Walter Bennett Scates, Samuel Hubbel Treat, and Stephen Arnold Douglas. Ford was born at Uniontown, Pennsylvania, in 1800. He was a half-brother of Hon. George Forquer. He was successively pros-

ecuting attorney, Circuit Judge, a member of the Supreme Court one year and a half, and Governor of Illinois. He wrote a history of Illinois from 1818 to 1847. He died Nov. 2, 1850, at Peoria.

Scates was born at South Boston, Virginia, Jan. 18, 1808. He studied law in the office of Governor Morehead in Kentucky. He was assistant clerk of the Illinois House of Representatives, Circuit Judge, Attorney-General, Judge of the Supreme Court about ten years, Chief-Justice about two and a half years of that time, a member of the Constitutional Convention of 1847, and a Brigadier-General in the late war. From 1857 to 1862 and continuously after the war until his death, Oct. 26, 1886, he practised law in Chicago. He was one of the co-editors of Treat, Scates, and Blackwell's Statutes of Illinois, in force Dec. 1, 1857, in two volumes. The honors of Judge Scates were unsolicited offerings of the people. His integrity was unquestioned. His written opinions entitle him to, and he has received, high rank among the judges of the court.



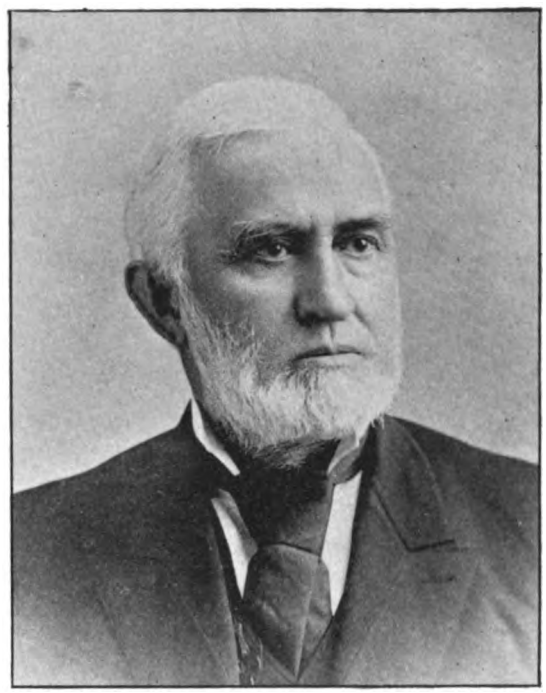
WILLIAM KING McALLISTER.

Of Douglas, who was a judge of this court only from Feb. 15, 1841, till June 28, 1843, it is sufficient to say that his career in the House of Representatives, the United States Senate, his political debates with Abraham Lincoln, and other incidents, have given him a fame which renders further statement here unnecessary.

Treat was born in Otsego County, New York, June 21, 1811. He came to Illinois in 1834, became a Circuit Judge in 1839, which office he held until his elevation to the Supreme Bench in 1841. He remained upon the Supreme Bench about fourteen years. For six years he was Chief-Justice. In 1855 he was appointed Judge of the United States District Court for the Southern District of Illinois, which position he held till his death at Springfield, March 27, 1887. His long list of written opinions are devoid of ostentation, and among the briefest and clearest that have been written. He was one of the co-editors of Treat, Scates, and Blackwell's Statutes. He was held in the highest regard by the profession and public. He was a cousin of Samuel Treat, lately Federal District Judge of the Eastern District of Missouri.

Breese has probably received more universal praise for judicial ability than any other judge of this court. He was born in Oneida County, New York, July 15, 1800. At eighteen years of age he was graduated at Union College, third rank in a class of sixty-four, among whom were Bishops Alonzo Potter and George W. Doane, and United States Senators A. S. Porter and James A. Bayard. He came to Illinois in 1818, on the invitation of his friend Elias Kent Kane, in whose office he studied law. He was admitted to the bar in 1820, married a sister of William R. Morrison, who is a member of the Inter-state Commerce Commission, became Circuit Attorney and United States District Attorney, published "Reports of the Decisions of the Supreme Court of the

State of Illinois from 1818 to 1831," became a Lieutenant-Colonel in the "Black Hawk" War, was a Circuit Judge, and a member of the Supreme Court in 1841. He resigned the following year. During this brief term as a member of this court he wrote the opinions in thirty-four of the one hundred and thirty-one opinions rendered by the court, then consisting of nine members. Upon his resignation he was elected to the United States Senate. There he presented resolutions of respect to the memory of Samuel McRoberts, Illinois's deceased Senator, advocated tariff for revenue only, favored annexation of Texas, supported the Mexican War, and fostered canal and railroad construction. He was afterward Speaker of the House of Representatives of Illinois. In 1857 he returned to the Supreme Bench, where he remained till his death, June 28, 1878, making a total service in this court of over twenty-two years. Ten years he was Chief-Justice. Since his death the late Hon. Thomas Hoyne has edited and published a manuscript left by him, entitled "The Early History of Illinois, from its discovery by the French in 1673 until its cession to Great Britain in 1763, including the narration of Marquette's discovery of the Mississippi."



JOHN M. SCOTT.

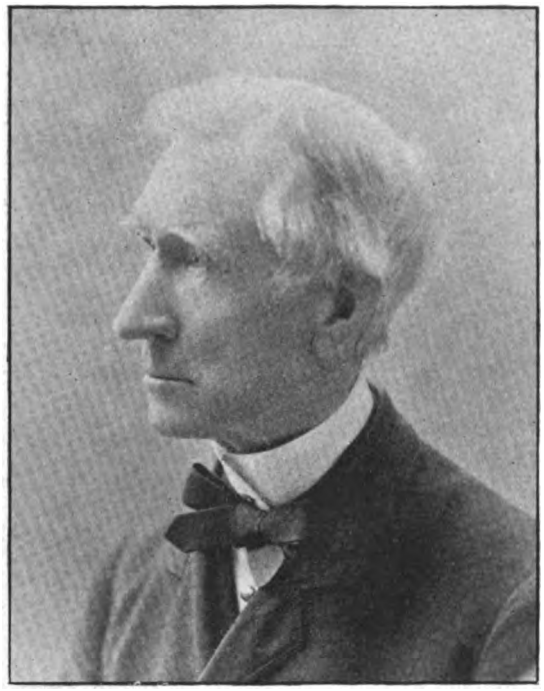
In one whose life was so happily varied by professional practice, legislative and judicial duties of the higher order, we expect to find, as we do in Judge Breese, varied learning and rare wisdom. His judicial opinions begin in 2d Scammon and end in the 88th Illinois, and number about nineteen hundred.

Our honored Chief-Justice Melville Weston Fuller, in an address before the Bar Association of Illinois in 1879, spoke of Judge Breese thus: "His judicial style was graceful, easy, and flowing, sometimes too ornate, but always pleasing, and often enlivened by witty or humorous allusions which, relieving the argument, did not detract from its solidity." In the case of Galena and Chicago Union Railroad Co. *v.* Jacobs, 20 Ill. 478 (1858), Judge Breese is believed to have originated the doctrine of comparative negligence, which prevails in Illinois, in these words: "The more gross the negligence manifested by the defendant, the less degree of care will be required of the plaintiff to enable him to recover," and "Whenever it shall appear that the plaintiff's negligence is comparatively slight, and that of the defendant gross, he shall not be deprived of his action."

The most celebrated cause in which he rendered an opinion was doubtless Munn *v.* The People, 69 Ill. 80. His opinion in that case was affirmed by the United States Supreme Court. From this opinion have grown and are growing some of the most important questions in the history of public affairs in this country.

John Dean Caton is one of Illinois's most distinguished judges. He was born March 19, 1812, in Monroe, Orange County, New York. Entirely unaided from a very

tender age, he obtained for himself what was then considered a pretty good education, and was admitted to the bar in Illinois in 1833. He was the second lawyer to practise in Chicago, and the first to begin a suit in the Circuit Court there. Practising law, he earned a reputation which secured his appointment as a member of the Supreme Court, August 20, 1842. Excepting from March to May, 1843, he remained upon the Supreme Bench continuously a period of about twenty-two years, a little over six years of which time he was Chief-Justice. His first opinion was a dissent in Camden *v.* McKoy, 3 Scammon, 437, a very important early Commercial Paper case. His last opinion was in Livings *v.* Wiler, 32 Ill. 387.



BENJAMIN R. SHELDON.

In Munn *v.* Burch, 25 Ill. 35, Judge Caton delivered an interesting opinion, deciding that the holder of a check drawn on a bank having funds of the drawer could sue the bank on the check.

In Olds *v.* Cummings, 31 Ill. 188, he wrote the opinion holding that the *bona fide* purchaser of a note for value, before maturity, though holding the note discharged of defence against it in the hands of the payee, takes the mortgage which secures the note, subject to such defences.

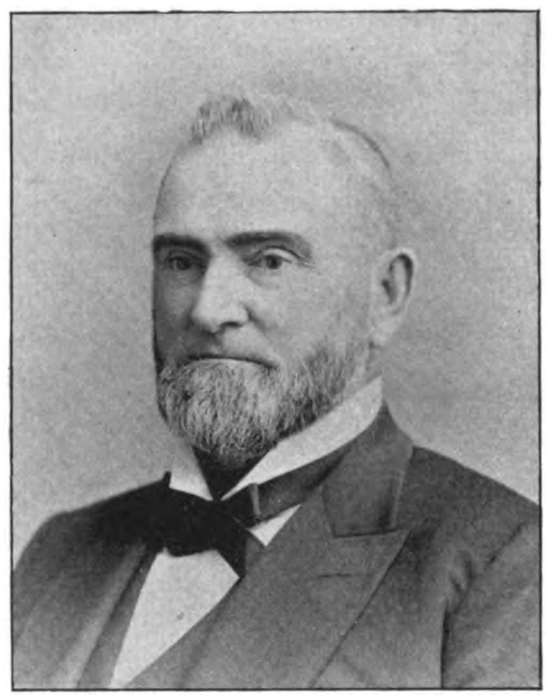
Judge Caton, though not a public speaker, has been eloquent on those few occasions when it was his duty to speak. His professional and judicial career, though long and honorable, is probably only a small part of his varied activity. In a biographical sketch of him by Robert Fergus it is said: "Viewed in other phases, we find in him the practical and sagacious business man, capable of originating and directing the most complex affairs; founding a vast system of telegraphy; engineering water-works; organizing starch-factories, glass-works, copper-mines, coal-mines, and other enterprises. He is also a country gentleman surrounded by his flocks and herds; and his ample parks are stocked with deer and elk, whose habits he notes and describes with the trained eye of the naturalist." He has published a volume of his occasional addresses and essays, entitled "Miscellanies." He has travelled extensively and published "A Summer in Norway," and has on other travels written series of letters which have been published in newspapers and periodicals. In 1888–1889 a series of papers written by him appeared in the "Chicago Legal News," on Circuit Court scenes, and the Conference-room of the Supreme Court, and other early history connected with the profession in Illinois. He has a home in Chicago and at Ottawa, and is being granted a long enjoyment of the rich fruits of his active career.

We shall now pass to a number of men whose terms in the Supreme Court were more or less brief. James Semple, Richard M. Young, and John M. Robinson (a brother of James F. Robinson, Governor of Kentucky), all deceased, were each by birth Kentuckians and United States Senators from

Illinois, — the latter for ten years. Semple was a member of three Illinois General Assemblies, twice Speaker of the Lower House, also Attorney-General, Brigadier-General in the Black Hawk War, Minister to Columbia, South America, and author of an elaborate unpublished History of Mexico. His son, Eugene Semple, has been Governor of Washington Territory.

Jesse B. Thomas, Jr., grand-nephew of Jesse Burgess Thomas, held various State offices, and was a judge of this court for about two years. He married the daughter of Judge Theophilus W. Smith, and was the father of Jesse B. Thomas, a prominent clergyman.

James Shields, born in County Tyrone, Ireland, in 1810, Auditor of Public Accounts of Illinois, Commissioner of the General Land Office under Polk, Brigadier and Breveted Major-General in the Mexican War, United States Senator at different times from Illinois, Minnesota, and Missouri, was a judge of this court almost two years.



DAMON G. TUNNICLIFF.

Gustavus Koerner born at Frankfort-on-the-Main, Germany, Nov. 20, 1809, was graduated in law at Heidelberg, and studied American law at Transylvania University. He has been twice a member of the Illinois Legislature, a Presidential Elector, and Lieutenant-Governor. He served upon the Supreme Bench from April, 1845, to December, 1848, when he returned to a large law-practice. He is the author of "Das Deutsche Element in den Vereinigten Staaten, 1815–1848," now in its second edition, and a number of other pamphlets. He was a Colonel in the late war and Minister to Spain from 1862–1865. He and his son, G. A. Koerner, are engaged in practice together at Belleville, Illinois.

Norman Higgins Purple born at Exeter, New York, March 29, 1808, came to Peoria in 1837, was a Presidential Elector in 1844, a member of the Constitutional Convention of 1862, and Judge of the Supreme Court from August, 1845, to December, 1848. He edited "Statutes of Illinois relating to Real Estate" in 1849.

Judge Caton in a recent letter says of him: "He was a lawyer of learning, a successful practitioner, and at times eloquent. . . . I often heard it remarked by lawyers who practised before him that he was the finest Circuit Judge who ever presided in the State of Illinois. While we were on the Supreme Bench together, . . . we handed opinions to the clerk for record without reading; previous to that time all opinions were read from the bench before they were handed down, as is still the practice in the Supreme Court of the United States. From that time on the practice was changed, and so far as I know, opinions have been handed to the clerk without the formality of reading them in open court." Judge Purple died in Chicago, August 9, 1863.

William A. Denning and Onias C. Skinner were each judges of this court two years or more, each having been Circuit Judges

and members of the Illinois Legislature. Skinner was a member of the Constitutional Convention of 1870, and, says Chief-Justice Fuller, "gave proofs . . . of marked ability as a jurist."

Lyman Trumbull was a member of this court from Dec. 4, 1848, to July 4, 1853. A sketch and portrait of him appear in this magazine (vol. i. p. 337).

Corydon Beckwith, born in Caledonia County, Vermont, July 24, 1823, came to Illinois in 1853, and was appointed by Gov. Richard Yates a judge of the Supreme Court, and served from Jan. 7, to June, 1864. Thence until his death, August 18, 1890, he practised in Chicago, and was the General Solicitor of the Chicago and Alton Railroad.

DAVID JEWETT BAKER.

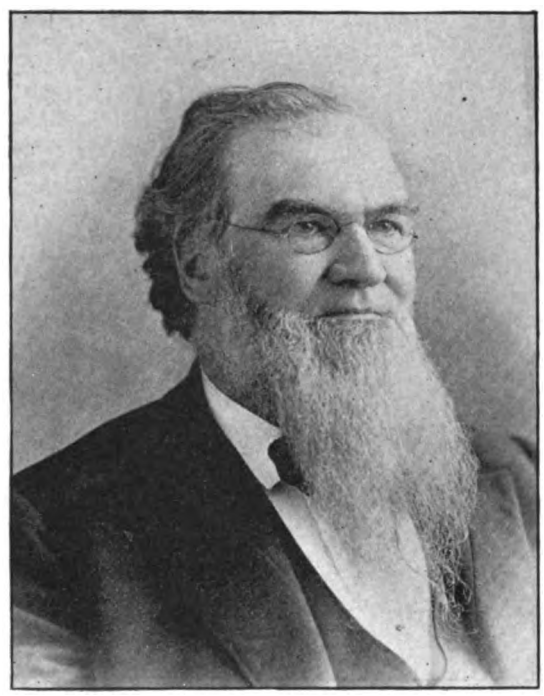
Pinkney H. Walker, whose services in this court were as extensive as any in its history, was born in Adair County, Kentucky, June 18, 1815. He studied law with his uncle Cyrus Walker, a prominent lawyer in Illinois. He became a Circuit Judge in 1853, and a member of the Supreme Court in 1858, where he remained twenty-seven years nine months and twenty-eight days, till his death, Feb. 7, 1885. He was Chief-Justice about five and a half years of that time.

Chief-Justice Scholfield in a memorial response said: "Judge Walker's mind was strong and practical, and he was industrious to a degree that I have never seen surpassed. He was thoroughly and incorruptibly honest. . . . His first opinion is reported in the 19th Volume of Illinois Reports, and his last will probably appear in the 114th volume of that series, making in all ninety-five volumes. . . . Throughout that long period of time he was never absent from his place on the bench during a single term. . . . He was usually the first one to enter the conference-room . . . and the last one to leave it. . . . He never failed to write an opinion in a case assigned to him, . . . and he . . . very often wrote opinions in cases not assigned to him, to assist and relieve a brother judge. . . . Neither private business nor social enjoyment, not even sickness of friends or family, was allowed to claim his attention at the expense of the business of the court. . . . His life was literally sacrificed to his sense of judicial duty."

He wrote about three thousand opinions, among which was the one in Swift *v.* Castle, 23 Ill. 209. This case is unusual because of the vigorous and elaborate dissent of Justice Breese, the reply of Chief-Justice Caton thereto, and Justice Breese's rejoinder. In Carroll *v.* City of East St. Louis, 67 Ill. 568, and Starkweather *v.* American Bible Society, 72 Ill. 50, he wrote the opinion of the court in important cases involving the power of foreign corporations to hold land in Illinois.

Charles B. Lawrence, Judge of this court nine years from June, 1864, and Chief-Justice three years of that time, was born in Vergennes, Vermont, Dec. 17, 1820. His father was Judge Ville Lawrence, whose great-

grandfather, John Lawrence, emigrated to Watertown, Massachusetts, in 1636. Charles B. Lawrence was graduated at Union College in 1841, taught school in Alabama, studied law in the office of Alphonso Taft in Cincinnati and Senator Geyer in St. Louis, practised law at Quincy, Illinois, and was a Circuit Judge three years from July, 1861. He wrote the opinion of the Court in C. & A. R. R. Co. *v.* The People, 67 Ill. 11. This opinion was concurred in by the whole court, yet it so offended the Granger element in politics that he was defeated of re-election. He then came to Chicago, where he commanded a large and remunerative practice, and the entire and highest respect of the people till his death, April 9, 1883. His nephew, Charles H. Lawrence, who practised with him after 1873, now practises in Chicago.



JOSEPH MEAD BAILEY.

Anthony Thornton, a Kentuckian by birth, received a collegiate education, was a member of the Lower House of the Illinois Legislature and of Congress. He was in the Constitutional Conventions of 1847 and 1862, and a Judge of this court from July, 1870, till his resignation, May, 1873, since which time he has lived at Shelbyville, Illinois, active in the practice of law.

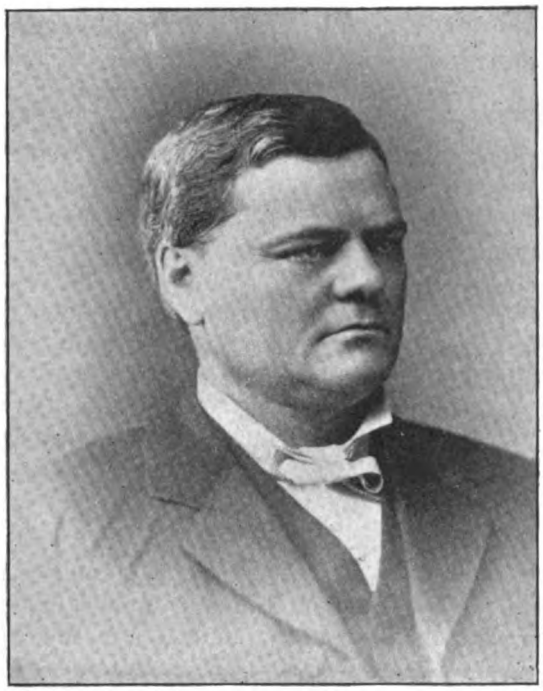
William King McAllister came to Chicago from New York in 1854. He practised law till he was elected to the Supreme Court in 1870. He resigned, Nov. 26, 1875, and immediately became a Judge of the Circuit Court of Cook County, at Chicago, which office he held till his death, Sept 18, 1888. From June 16, 1879, till he died, he, by selection of the Supreme Court, served as Judge of the Appellate Court of Illinois for the First District. His large number of printed opinions while upon the benches of the Supreme and Appellate Courts have given him high rank for judicial ability.

Thomas A. Moran, his associate on the Appellate Bench, spoke of him as follows ("Chicago Legal News," vol. xxii. p. 99): "Why is it that, go where you will in this community, among the common people, though they had never perhaps seen the man, they speak of him with reverence and love? . . . I believe there exists between such men as William King McAllister and the great people some imperceptible chord . . . and that it is intuitively felt that such a heart beats in exact time with the great heart of the common people. . . . He loved everything in Nature. He loved his country. . . . He loved society and order. . . . He loved the trees, the flowers, but above all he loved his fellow-men."

Theophilus Lyle Dickey, Judge of this Court from December, 1875, till his death, July 22, 1885, and Chief-Justice one year of that time, was born in Bourbon County, Kentucky, Oct. 3, 1811, of Scotch-Irish ancestry, was graduated at Miami University, Oxford, Ohio, taught school, studied law in the office of Cyrus Walker, organized a company and fought in the Mexican War, was a Circuit Judge, raised a regiment of cavalry

and served in the war of the late rebellion of the Southern States, became Assistant Attorney-General of the United States in 1868, and in 1873 corporation counsel of the city of Chicago.

His dissenting opinion in Parker *v.* The People, 111 Ill. 600, is indicative of his industry, learning, logic, and skilful powers of discussion. Gen. William H. L. Wallace, a prominent lawyer in this State, who came to an early death in the battle of Shiloh, was a son-in-law of Judge Dickey.



JACOB W. WILKIN.

The first man born in Illinois who became a Judge of the Supreme Court, was John M. Scott, the son of Samuel and Nancy Biggs Scott, born August 1, 1824, in St. Clair County, a descendant in the paternal line of Irish ancestry. He was educated in the public school and by private instruction, studied law in the office of Hon. William C. Kinney at Belleville, began the practice of law at Bloomington in 1848, was elected Judge of the County Court of McLean County in 1852, served as Circuit Judge as successor of David Davis from 1862 to 1870, and was Judge of the Supreme Court from that time until 1888, when he declined to be a candidate for re-election. He was during that time Chief-Justice of the court for three years. His opinions begin with the 54th and end with the 126th volume of the Illinois Reports. One of his prominent later opinions was that rendered in the case of Marshall Field *v.* Levi Z. Leiter, 118 Ill. 17, a case involving party-wall rights in valuable property in Chicago. The present Federal Chief-Justice, and Robert Todd Lincoln, Minister to England, were among the attorneys in this case.

While Chief-Justice, Judge Scott conducted the proceedings of the court with a dignity quite worthy the office. His relations with the bar were pleasant. His abilities and character secured him the respect of the people and the profession.

Benjamin R. Sheldon has had a longer judicial career, including his service in the Circuit Court, than any other judge of this tribunal. He was graduated at Williams College, and studied law at Yale. He was Circuit Judge from December, 1848, till July, 1870, and thence till June, 1888, he was a member of this court, and Chief-Justice thereof three years. He declined a re-election. His learning and experience made him a most efficient judicial officer. His intercourse with the profession was dignified and friendly. His long and honorable career upon the bench has secured him a respect which makes pleasant his retirement at Rockford from official duty.

John H. Mulkey was a member of this court nine years from June, 1879, and Chief-Justice one year of that time. He declined a re-election. He had enjoyed probably as extensive a practice as any lawyer in Southern Illinois, and had been a Circuit Judge. He was a profound real-estate lawyer. His opinion in Fort Dearborn Lodge *v.* Klein, 115 Ill. 177, discussing the plea of *liberum*

tenementum and incidentally the law of seisin and disseisin, has secured him many compliments. In a number of cases he discussed elaborately the construction of wills. His opinion in Johnson *v.* The People, 113 Ill. 99, shows him to be equally interesting, learned, and successful in dealing with questions in Criminal Law. He is enjoying life at his home at Metropolis, on the bank of the Ohio River, loved by his neighbors, respected by the people of the State, and comforted by a sufficient fortune.

Damon G. Tunnicliff, a Judge of this court, by appointment, from February till June, 1885, the unexpired term of Judge Walker, was born in Herkimer County, New York, August 20, 1829, read law in this State with Judge Walker and Robert S. Blackwell, and has devoted himself exclusively to the practice of law. He was a Presidential Elector in 1868. He is now in practice at Macomb, Illinois.

Judge Tunnicliff is eminently representative of what man has been able to make of himself in Illinois in a life of entire and exclusive devotion to the practice of law.

We have now come to the present bench, which consists of John Scholfield, Alfred M. Craig, David Jewett Baker, Simeon P. Shope, Benjamin D. Magruder, Jacob W. Wilkin, and Joseph Mead Bailey, who were all elected in June, 1888, for a term of nine years.

Judge Scholfield was born in Clark County, Illinois, August 1, 1834, where he has ever since resided. He attended the law school at Louisville, Kentucky, was elected State's Attorney in 1856, a member of the Legislature in 1860 as a Douglas Democrat, a member of the Constitutional Convention of 1870, and a judge of the Supreme Court in June, 1873, which office he has held to the present time. At the end of his present term he will have served upon this bench twenty-four years. Two years he has been Chief-Justice.

In Linder's "Early Bench and Bar of Illinois," it is stated that Judge Breese, speaking of Judge Scholfield about ten years before his elevation to the Supreme Bench, said: "He is one of the most promising young lawyers in America. I have had a good opportunity of estimating his ability, and know of no lawyer, old or young, that I can place above him." According to the statements of the daily press at the time, which were doubtless true, he was given an opportunity to refuse an appointment as the successor of Morrison R. Waite, Chief-Justice.

Judge Baker was born at Kaskaskia, Randolph County, Illinois, Nov. 20, 1834. His father, David Jewett Baker, came to Illinois in 1819, and became United States District Attorney, United States Senator, and the equal of any contemporary lawyer at the Illinois Bar.

Judge Baker was graduated at Shurtleff College at Upper Alton, Illinois, in 1854, and in 1888 received the degree of LL.D. from that institution. On admission to the bar he began practice at Cairo, where he was an Alderman, City Attorney, and Mayor. He was elected Judge of the Circuit Court in March, 1869, and held that office continuously till his election to the Supreme Court in June, 1888, excepting from July, 1878, till June, 1879, when he filled by appointment an unexpired term in the Supreme Court.

On the organization of the Appellate Court in 1877, Judge Baker was selected as one of the judges of the Appellate Court. He sat continuously in that court, excepting one year, thence until his election to the Supreme Court. He has opinions running through about twenty volumes of the Appellate Court Reports which were frequently adopted by the Supreme Court in full as their own opinion in the case on appeal.

Alfred M. Craig, a Judge of this court since June, 1873, was born in Edgar County, Illinois, Jan. 15, 1831. He was graduated with honor at Knox College, Galesburg, Illinois, was Judge of Knox County, a member of the Constitutional Convention of 1870, and at the time of his election to the Supreme Court a wealthy farmer and lawyer.

Benjamin D. Magruder became a member of this court Nov. 3, 1885. He was born

near Natchez, Mississippi, and was graduated at Yale College, where Justices Brewer and Brown of the United States Supreme Court and Hon. Chauncey Depew were his classmates. He was graduated and was valedictorian of his class at the Law School in New Orleans. He practised some time at Memphis, Tennessee, and came to Chicago about 1861, where he became a Master in Chancery, which position he held till he was elected to the Supreme Court. Judge Magruder has rendered some opinions which have attracted wide attention. He wrote the opinion in Spies *et al. v.* The People. This is one of the celebrated causes of this court. It is popularly known as the Anarchist Case, and occupies two hundred and sixty-six pages of the report.

Jacob W. Wilkin, of Danville, Illinois, a Presidential Elector in 1872, Circuit Judge from June, 1879, till June, 1888, sitting a portion of that time as Judge of the Appellate Court, and mentioned by the press as a Senatorial possibility at the writing of this article, was elected a judge of this court in June, 1888.

Simeon P. Shope, of Lewistown, Illinois, a member of the Lower House of the Illinois Legislature in 1862 and 1864, and a Circuit Judge about two years, has been a member of this court since June 1, 1885. He has written the opinion of the court in several important real-estate cases, and has been Chief-Justice one year.

Judge Bailey, elected Judge of the Supreme Court June 4, 1888, was born at Middlebury, Vermont, June 22, 1833; was graduated at the University of Rochester, New York, in 1854; began practice at Freeport, Illinois, in 1856; was twice a member of the Lower House of the Illinois Legislature, a Presidential Elector in 1872, Judge of Circuit Court from August, 1877, to June, 1888, sitting by selection of the Supreme Court as Judge of the Appellate Court at Chicago during that time. His opinions in the Appellate Court Reports have been quite widely cited.

While practising at the bar and attorney for an Insurance Company, he wrote a book upon that subject, largely for the information of local counsel for the company. He was a trustee for the old University of Chicago, and is now trustee of the new University of that name, supported by the magnificent gift of John D. Rockefeller and the citizens of Chicago. Judge Bailey gives some instruction each year in the Chicago College of Law. He has received the degree of LL.D. from the University of Chicago and from the Rochester University. Besides these duties in the line of his profession, he has been a man of affairs and commercial enterprise.

The first official reporter of this court was Sidney Breese. He has been succeeded by Jonathan Young Scammon, Charles Gilman, Ebenezer Peck, and Norman L. Freeman.

Hon. Norman L. Freeman, when appointed at the April term, 1863, was a prominent and able practising lawyer. He compiled an early Illinois digest, and was the author of a work on Pleading and Practice in Illinois. His reporting begins with 31 Illinois, and he at the writing of this article has issued the last advanced sheet of 133 Illinois Reports.

In a preface to 47 Illinois, Mr. Freeman in 1870 called the atttention of the profession to the evil of the indiscriminate multiplication of reports of decisions, and advised that the court be given power to determine what opinions should be reported, in order that the number of volumes might be decreased and their value to the profession enhanced. Mr. Freeman stated that the number of cases reported in the Illinois Supreme Court in 1839 was seventy, and in 1854 one hundred and fifty. The number reported in the year, Jan. 21, 1889, to Jan. 21, 1890, is two hundred and ninety-five. This last number would be much larger but for the Appellate Court, established in 1877, where many cases in which opinions are written stop, which otherwise would appear in the Supreme Court.

THE FRONT ROW.

By Irving Browne.

FOX *v.* DOUGHERTY, 2 Weekly Notes of Cases (Pa.), 417.

(*One who is hurt at a theatre by the fall of a trapeze performer is not negligent because he sat in a front seat.*)

THERE 's danger in the van
Of battle: pressing on the foe,
Those in the front are first to go
In senses more than one; and I
Would rather be the last to die,—
As shrewd Ulysses in the cave,
When Polyphemus blind did rave,
Found solace in the thought, though beaten,
He was to be the last one eaten.

There 's danger on the bow
Of "record" ship or ferry-boat
From iceberg or from landing-float,
To those who flock to see the fun,
Or in mad haste do push and run
In senseless rivalry and zeal,
And boundless satisfaction feel,
When risking life or limb or gore,
They are the first to get ashore.

There 's danger in the front
Of theatre, called "bald-head row,"
When at the gay-placarded show
The masculine spectators sit
And watch the painted dancer flit
With heaving breast, on pointed toe,—
A "stock" exhibitor, who salves
Misfortune's rubs by raising calves.

'T was in that fatal row
That crafty Fox one evening sat

To see a famous acrobat
Perform upon a high trapeze
Contortions fit one's blood to freeze.
I cannot tell the tumbler's gender,
But Fox I think would not expend a
Cent extra on a manly whirl,
And so it must have been a girl.

But on the aforesaid night,
When Fox confiding sat so near,
That "star" performer from her sphere
Most madly shot, and straight on Fox
Came down with blow to fell an ox.
But when he sued the manager,
The latter did the plea prefer
That Fox himself should bear the brunt
Because he sat so near the front.

Then said that weighty court:
"When you sold Fox that seat reserved,
That he from harm should be preserved
You guaranteed; your shooting-stars,
Whether they 're Venuses or Mars,
You must restrain, or when they set,
Contrive to catch them in a net.
While nothing dangerous revealing,
This Fox's fate you came near sealing."

This was a frontier case;
But a New Jersey traveller
Who did the smoking-car prefer,
And so was hurt on railway track
When safe he'd been if farther back,
Was blameless held, for smoke and poker
As near as possible to stoker
The company itself directed,
That others' tastes might be respected.

WOMAN AND THE FORUM.

By Martha Strickland.

"For woman is not undeveloped man,
But diverse: could we make her as the man,
Sweet love were slain: his dearest bond is this, —
Not like to like, but like in difference."

IN discussing the subject of woman and the forum it is not my purpose to treat of women as lawyers or of the legal profession as an occupation for women, but rather to consider the broad subject of woman in all her relations to courts of justice.

It is fast coming to be recognized that government exists for all citizens, regardless of accidental differences of physical or mental organization, and that in its different departments all should find the same consideration. In theory, at present all do; but in reality, even in our Republic, of which we are so justly proud, there are many classes of persons who are either wholly or partially overlooked, and whose interests, privileges, and rights are at the disposal of those who, from the very constitution of their beings, do not and cannot give full meed of justice. Especially is this true of women in the judicial department. In that very branch of government whose fundamental principle is that all men shall be tried by their peers, women, save in the most limited degree, are called upon every day to submit their dearest rights of happiness, property, and life to the judgment of persons differently constituted, mentally and physically, from themselves, and so widely separated by instincts, habit, thought, political and social environment, that the maxim of Charles Reade's hero, "Put yourself in his place," is impossible, and any attempt thereto must from its inception prove a failure.

The differences between man's nature and woman's nature are a bar, eternal as are Nature's laws, to the equitable administration of justice for humanity by men alone. Men cannot know all the subtile springs of feeling and action hidden within woman's complex organization. They cannot measure her needs by their own; nor mark for her the path which her own nature and her nature's God traces through the wilderness of human thought and action. And yet from the paved market-place in ancient Rome, where sat the magistrates for the transaction of their business, to the wider forum of civilized America, woman's legal rights have been brought to the bar of masculine knowledge and manly chivalry. The result is that women have suffered, and through women all humanity have suffered. For broad as is man's outlook upon the world of knowledge, and deep as are the well-springs of his love and tenderness for woman, that complete appreciation of needs and innate sympathy with wants which members of one sex alone can have for one another, and which is the golden heart of justice, has been wanting to his adjudications.

It is sometimes claimed that men are better friends to women than women are to one another. All womanly, worldly experience denies this. Men are, it is true, devoted lovers; but when it comes to a matter of simple, true, appreciative friendship, that of women for women cannot be surpassed, and is only equalled by that of men for men. There is an innate knowledge that comes from sameness of organization, which seizes upon the difficulties of life and solves the problem for weal or woe without delay or difficulty. This innate knowledge women have of women, and men of men; but the distinct indi-

viduality of the sexes forbids it to one sex of the other.

And so we find that litigation involving women's interests to-day wants the complete justice which the advanced thought of the time demands. Not only must women, for the establishment of their complete rights, be represented at the bar by those of legal knowledge, who are capable of viewing their interests from the standpoint of perfect sympathy, but they should be able to take their rights and wrongs to courts capable of the same perfect understanding, and submit their causes to juries of their fellow-women, — to juries of their unquestioned peers.

Perhaps among all the truths in Edward Bellamy's wonderful book, "Looking Backward," the most important is the recognition of this need. He pictures to us a system in which causes where both parties are women are tried before women judges, while those where the litigants are a man and a woman are tried before judges of either sex. This is what we need now; and it is as well adapted to our own time as to the year 2000, — at least, it is as well adapted as any scheme for the advancement of women can be under our present industrial system. It may not be necessary that in every case where women are litigants only women should be upon the bench and jury. It might and probably would be better that both sexes be represented even then. There cannot be as rounded, complete, harmonious action in any department of life by men or women alone as there can be by both. Humanity is dual in its nature, and the masculine and feminine qualities each gain additional strength and perfection through union with the other. Possibly, nay, I would say certainly, woman's judgment upon woman might well be tempered by that mercy toward women which is the proverbial quality of man. But the knowledge each sex has of its own needs is, after all, the chief requisite in judge and jury; and if the qualities of both sexes are not to be brought into play, then by all means let women's interests be the especial care of women, and men's interests be the especial care of men.

Seven years of active practice in the profession of the law has brought me to this opinion, although I started upon my work actuated solely by a desire to gain my living by the labor in which I delight. Gradually, as the years have passed and I have become more familiar with our courts and the administration of justice, the opinion has been forced upon me that not only is there need of women lawyers, but of women in all parts of our judicial system. Now it is a mother asking for the custody of her child, and that, too, in a State where the laws are so liberal that in case of separation of father and mother the mother is *prima facie* entitled to its custody, and the burden of proof is upon the father to show the mother's unfitness. But the judge, admitting the mother's perfect competency, gives the custody of a little deaf and dumb girl of nine years to the father, because, as stated by him, "the father appears to love the child, and I think would suffer very much in giving it up." Again, when an unhappy wife and mother wins relief from bonds not longer to be endured because of the fault of the husband and father, and is given, as she should be, the custody of her children it is of almost universal practice for the judge, in dividing the property acquired during the marriage, to give the wife often less, but never more, than one third of the estate. From this third she must support and rear her children and maintain herself, handicapped as she is both by her sex and her guardianship of her little ones; while their father, with none but himself to support, and better equipped by nature and social-economic conditions for a struggle with the world, is permitted to retain two thirds of the whole. The judge is familiar with the wants of men in the business world; he knows the need of the man for capital, and he reasons: "If I take from him more than a third of his property he will be crippled, and perhaps cannot keep his business stand-

ing," etc.; and so, without meaning to be heartless or unfair, he, because of his incompetency to view the situation of the woman from the standpoint of experience, fails in complete equity. A woman would know full well the difficulties to be met by a mother thus thrown upon her resources, and would add the weight of her knowledge to the decision.

There is, perhaps, in the whole range of our daily experience no more glaring inconsistency than the failure to give women their full property rights, while at the same time deprecating their entering various new fields for their own and their children's support. "Women should remain in the home; they have higher and holier duties to perform than that of bread-winning," is cried from every side; and then straightway, if their rightful protector fails in his duty, instead of giving his substance to the woman so that she may remain in the home and fill her "proper sphere," the court gives her a paltry part, and she is left to perish in that home, or go out into the world and compete with man for daily bread.

But space does not admit of relating the cases which have demonstrated to me the truth of my position. I must content myself with showing its antecedent probability from propositions admitted by all, and the assertion that my experience confirms it. In the relations of husband and wife, parent and child, guardian and ward, — all the domestic relations, in short, — a little thought will show that woman's knowledge — woman's instinct, if so you please to call it — should find play in their adjustment. What can the man and father know of the vital interests of the woman and mother? He can learn something from what he sees as, standing upon the eminence of fatherhood, he looks up to the summit of motherhood towering beyond him. But, ah! who shall say what verdant depths, what crystal springs of thought and feeling, are hidden beyond his ken!

Do not misunderstand me. I am not arraigning man's wisdom, man's love of justice, or that attribute which gives the charm of poesy to life's prosaic details, — man's chivalry; I am merely saying that there are some things that men do not know, that men cannot learn, and that women do know.

Neither do I arraign the past, nor fail to see how natural it is that we to-day are suffering the necessary results of having outgrown our environments. Our civilization had its birth in a crude and barbarous age; and especially did our common law spring from a condition far different from the present. It had its origin and early development when the material interests of life were uppermost; when the forceful, the muscular, the aggressive qualities of human nature were the ones required for the establishment of human rights and the maintenance of human government. And so man, by nature endowed with the ability to cope with the necessities of those times, was the active element in society and government, and naturally gave the coloring of his nature to the jurisprudence which developed. In this jurisprudence woman, the member of the human race representing by her weaker physical organization and her peculiar qualities of mind the more æsthetic and ethical interests of the race, held the place of ward, so to speak, to the dominant sex. It was sought to protect and care for her that the high and holy mission of motherhood might not be jeopardized by contact with the crude and incongruous influences of outer life in a material age.

And it is well. Who shall say what development the race may not have reached from this very protection; from the seclusion incident to the condition of coverture and dependence! We cannot know. The most that we can say is that whatever of greatness and glory womanhood has reached has been achieved under the conditions men have imposed. That other conditions would have produced better results is not known, and does not seem probable.

Now, however, all is changed, or at least

is changing. The material world is well-nigh subdued. Man's dominion over the earth is accomplished. There is developing a desire for a more æsthetic and ethical era among mankind; and upon the night of woman's dependence the full moon of her awakened individuality is shining with the silver light of a reflected sun of knowledge. After a little the night shall pass, and upon the world of human life there will burst the full day of woman's emancipation. In that day will be recognized the distinct individuality of her nature, and the need for full and perfect justice, that her qualities of head and heart be brought into play. Then in the forum she will take her place by the side of her brother-man, endowed with full powers in the administration of justice. The two shall form a perfect whole, each supplementing the other, and giving each to the other the benefit of a different organization and a different experience.

"And so these twain, upon the skirts of Time,
Sit side by side, full-summ'd in all their powers,
Dispensing harvest, sowing the To-be,
Self-reverent each and reverencing each,
Distinct in individualities,
But like each other even as those who love.
Then comes the statelier Eden back to men;
Then reign the world's great bridals, chaste and calm;
Then springs the crowning race of humankind.
May these things be!"

THE MAIDEN'S KISS.

IN an old German chronicle may be found the following statement: "A. D. 1533, the *Eiserne Jungfrau* (the Iron Maid) was constructed for the punishment of evil-doers within the wall of the *Froschthurm*, opposite the place called the *Sieben Zeilen*" (in Nuremberg). This instrument of punishment was an iron statue, seven feet high, which stretched out both its arms in the face of the criminal; and death by this machine was said "to send the poor sinner to the fishes," — for as soon as the executioner moved the step on which it stood, it hewed, with broad hand-swords, the victim into little pieces, which were swallowed by the fishes in the hidden waters.

The chamber in which this infernal machine was said to have stood was well known; but the instrument itself disappeared for centuries, and it was not until 1834 that it was discovered among a collection of antiquities in the castle of Feistritz, and was restored to its former gloomy abode.

The Iron Maid can now be seen in the chamber where the chronicle reports it to have been placed in "the good old times." Entering a door close to the *Max Thor*, the visitor descends thirty or forty steps, and passing through the casements under the town wall, arrives at a sort of antechamber, where the prisoners were detained before being led to execution. Almost opposite this room is a narrow passage, terminating in a door; the visitor opens it, and he is in the torture-chamber. In the middle of this vault stands a figure seven feet high, representing a Nuremberg woman of the sixteenth century. Her head wears a sort of cap; the body is covered with a long cloak ornamented with a curious border. The front part of the figure consists of valves, united with the back by strong hinges. When opened, the Iron Maid presents to view a mass of bars and hoops coated with iron. In the inside of the valves are twenty-three quadrangular poniards, thirteen of which stick in the right breast, eight in the left, and one in each side of the face. The bottom is a trap-door, which is opened by touching a spring on the outside of the figure. As soon as the criminal was placed in the Maid, the valves were, by machinery,

forced upon him. In this terrible pressure consisted the *Maiden's Kiss.* After a while the trap-door was opened, and he was "sent to the fishes." The offender fell through the trap-door into a lower chamber, upon a machine composed of a number of movable swords, which, set in motion by the fall of the body, cut it up in a most terrible manner. Thereupon a sluice was opened, and the water carried away all traces of the barbarous punishment.

This cradle of swords makes one believe that originally there were no poniards inside the figure (or, at all events, smaller ones); for, supposing even the spikes which the machine has now, did not kill the prisoner as soon as they had pierced him, he certainly must have been dead before the body could loosen itself from the points on which it hung. Thus the movable swords below would have been perfectly useless.

Near the door of the upper room was formerly another door, now walled up; it opened into a subterranean passage that communicated with the Banner House. Thence the prisoners could be brought to the torture-chamber with greater secrecy than by the way open to visitors.

It is a fearful place, — that dismal vault, into which the light of day never shone. The skin feels chilled by the damp air, and the blood runs cold when one looks at the fiendish invention in the middle of the chamber. The horrid scene of old days passes through one's mind. One fancies one beholds those merciless men sitting in judgment over a poor offender; one hears his faltering steps, his vain appeals to man, and his fervent prayers to God; one sees his parted lips and starting eyes, as he is led to the infernal machine; a grating noise as it is being closed jars upon the ear; there is a shriek of agony, the cries turn into moans, the moans die away into silence; the judges rise from their seats and walk away; and all again is still, — still as the walls that saw, but never told of those deeds of darkness.

There is reason to suppose that the Iron Maid was not invented in Germany. Most of the machines of torture in that country were remarkable for their rudeness and simplicity, which cannot be said of the object in question. It is far more likely that the Iron Maid was transplanted to Germany from Spain, where a great deal more ingenuity was shown in the construction of such machines, and where something similar, the *Mater Dolorosa*, is known to have existed.[1]

[1] The above is condensed from an interesting account of the discovery of the Iron Maid, published in Chambers' Journal some years since.

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 BOSTON correspondent favors us with the following interesting reminiscences of Rufus Choate:

Editor of the "Green Bag":

It is an immense loss to literature that so little of Mr. Choate's accomplishments at the bar, in the forum, or in Congress has been preserved for succeeding generations. Stenography was in its veriest infancy in his day, and was unable to represent him fully; it could not express his tone, his gestures, or his manner. His exuberant diction, his musical voice, the quick, nervous tremor of his lip, the flash of his brilliant eye, and the general magnetism of his manner fascinated the spectator with a sense of superior power.

One of his biographers has felicitously said, "He often drove a substantive and six," referring to the numerous adjectives and epithets which he unsparingly employed; as in the famous Tirrell trial, where, speaking of the defendant, he said "Doating, gloating. fond, enamoured, fascinated fool that he was." This case was remarkable as an exhibition of Mr. Choate's influence upon a jury which, not doubting the prisoner's guilt, nevertheless acquitted him of the charge of wilful murder.

In an argument before the Board of Aldermen of Boston in 1856, where he was employed by the storekeepers on Washington Street to oppose the petition of the Metropolitan Railroad Company for leave to lay down rails on that great thoroughfare, Mr. Choate spoke as follows: "Why, gentlemen, if property be taken by constitutional authority, except upon these two considerations, *first*, that it is necessary, and *second*, that the owners should be completely paid for it,— ay, gentlemen, *completely paid* for it,— there is an end of our boasted freedom, and liberty is but a breath! In such a state of things I 'd rather live in despotic Prussia than in the American Union; for, gentlemen, in the reign of Frederick the Great, who was nearly the equal of Napoleon in ability though not in war, there stood opposite the palace of the monarch at Potsdam a simple, singular mill, the property of a poor subject. As an incumbrance on the view from the palace the miller was directed to remove the mill. He declined the removal. He was requested to name his price. He refused to name a price. He was then told that the king would destroy the mill. In reply to that threat the miller calmly stated that there was a tribunal at Berlin that would respect his rights. Gentlemen, that mill was suffered to remain, and there it stands to-day in front of the imperial palace, — a more splendid monument to the intelligence and justice of the great Frederick than the most gorgeous column which could be erected in commemoration of his Austrian victories."

In the same argument he displayed a singular readiness and tact in converting an apparent discomfiture into a triumphant argument for his position. The petitioners had introduced a manufacturer of platform scales in New York to show that his wagons by running their wheels upon the rails could carry heavier loads than otherwise could be conveyed, and that therefore the rails were no impediment to general travel. Now, Mr. Choate's manuscript was simply abominable,— no one could decipher it, and it was often illegible to himself when it was *cold;* so on this occasion, while reviewing in his argument the testimony of the petitioners, and glancing hastily at his notes, he remarked, "What is the testimony on the other side? They have imported from New York a *sail-maker!* Pray, what is his statement worth, where progress through our streets is not dependent upon the billowy canvas, but on the cold obstruction of a rigid rail —" "But, Mr. Choate," interrupted the opposing counsel, "the man is a *scale*-maker, not a *sail*-maker." "Ah," resumed Mr. Choate, with a smile, "my brother says the witness is a *scale-maker.* Well, gentlemen, the evidence of a *sail*-maker would be better on a question of locomotion; but now his testimony is worth *nothing at all*, for in this case there is nothing to be *weighed* except the grasping avarice of a gigantic monopoly on the one side, and the diligent industry and unswerving integrity of our honest shopkeepers on the other."

No description could adequately represent Mr. Choate when he was warm and earnest in argument or debate. The pencil of the reporter was stayed by the power of his eloquence, which fascinated the eye as well as charmed the ear of his auditor. To have *seen* him was a sensation, but to have *heard* him was an ecstasy.

LEGAL ANTIQUITIES.

By an imperial ordinance, addressed by the Emperors Valentinian, Valens, and Gratian, A.D. 370, to Olybrius, the Prefect of Rome, it was declared to be the duty of the presiding judge at the trial of a cause to see that a fair distribution of the leading advocates was made, so that they might not all be engaged for the same client. And if it appeared that a party had retained so many counsel on his side that his adversary was unable to obtain proper legal assistance, this was to be taken as a proof that his cause was unjust, and he was to be reprimanded and punished by the judge. It seems, therefore, that "muffling" retainers were by this equitable law prevented, and the contest between the parties rendered as fair as an equality of weapons could make it. And if any advocate was assigned by the judge to either party, and declined the task on insufficient grounds, he was to be disbarred forever.

FACETIÆ.

The jury brought in a verdict of "Not guilty." The judge said admonishingly to the prisoner:

"After this you ought to keep away from bad company."

"Yes, your honor, you will not see me here again in a hurry."

A couple of lawyers engaged in a case were recently discussing the issue.

"At all events," said the younger and more enthusiastic, "we have justice on our side."

To which the older and warier replied, "Quite true; but what we want is the Chief-Justice on our side."

A coroner out West recently reasoned out a verdict more sensible than one half the verdicts usually rendered. It appears that an Irishman conceiving that a little powder thrown upon some green wood would facilitate its burning, directed a small stream from a keg upon the burning pile; but not possessing a hand sufficiently quick to cut this off, was blown into a million pieces. The following was the verdict, delivered with great gravity by the official: "Can't be called suicide, bekase he did n't mean to kill himself; it was n't 'visitation of God,' bekase he was n't struck by lightning; he did n't die for want of breath, for he had n't anything left to breathe with; it 's plain he did n't know what he was about, so I shall bring in, — Died for want of common sense."

A judge, in pronouncing the death sentence, tenderly observed: "If guilty, you deserve the fate that awaits you; if innocent, it will be a gratification for you to feel that you were hanged without such a crime on your conscience; in either case you will be delivered from a world of care."

Counsel. What is the plaintiff's attitude as to this question?

Witness. Recumbent. Lies about it constantly.

An amusing anecdote is told of a very amiable and, withal, a very modest widow in New Jersey. Soon after her husband paid the debt of nature, leaving her his legatee, a claim was brought against the estate by his brother, and a process was served upon her by the sheriff of the county, who happened to be a widower of middle age. Being unused at that time to the forms of the law, though in the protracted trial that followed she had ample opportunity of acquiring experience, she was much alarmed, and meeting, just after the departure of the sheriff, with a female friend, she exclaimed with much agitation, "What do you think? Sheriff Prince has been after me!" "Well," said the considerate lady, "he is a very fine man." "But he says he has an attachment for me," replied the widow. "Well, I have long suspected he was attached to you, my dear." "But you don't understand, — he says I must go to court." "Oh! that 's quite another affair, my child; don't you go so far as that, — it is his place to come and court you."

There was, not long since, a venerable and benevolent judge in Paris, who, at the moment of passing sentence on a prisoner, consulted his associates on each side of him as to the proper penalty to be inflicted. "What ought we to give this rascal, brother? ' he would say, bending over to the one upon his right. "I should say three

years." "What is your opinion, brother?" to the other, on his left. "I should give him about four years." The judge, with benevolence: "Prisoner, not desiring to give you a long and severe term of imprisonment, as I should have done if left to myself, I have consulted my learned brothers; and shall take their advice. Seven years!"

In giving an account of an inquest, the printer chose to state: "The deceased bore an accidental character, and the jury returned a verdict of excellent death."

In a trial where the counsel for the defence was attempting to get a murderer off on a plea of insanity, an old physician, who was a witness, was asked: —

"Where shall the line be drawn between mental and moral insanity?"

"Well," deliberately answered the old doctor,— "well, I think the line should usually be drawn around the neck."

Indignant Client (with lawyer's bill in his hand). Sir, this charge is outrageous!

Lawyer. Well, so was the charge against which I defended you.

NOTES.

The "Ohio Digest," Vol. IV., covering the period from July, 1882, to July, 1890, contains a "Table of Legal Essays, *Monograms*, and Miscellaneous Matters contained in the twenty-four volumes of the Weekly Law Bulletin." We congratulate all parties concerned, especially the compiler of the Table and the proof-reader, upon the "Monograms."

An erudite Pennsylvania judge has decided that piano-playing is manual labor. If this is the case, we will all cheerfully agree to shorter hours for the workingman. — *Boston Post.*

An Elmira attorney was recently fined $50 for insulting the counsel on the other side. If the time-honored practice of the profession is to be hampered in this way, a good many of its members will have to begin over again. Lawyers whose principal accomplishment is browbeating witnesses, counsel, and the court itself, are neither few nor far between. — *Exchange.*

In the North Aisle of the Church of St. Dunstan in London, England, may be found upon a round tablet, without ornament, the following epitaph: —

To the Memory
of Hobson Judkin Esq.
late of Cliffords Inn,
The Honest Solicitor
who departed this life, Iune the 30, 1812

This tablet was erected by his Clients,
as a token of gratitude and respect for his
honest, faithful & friendly Conduct to them
thro' life
Go Reader and imitate
Hobson Judkin.

No better answer than the above can be found to the question which is just now agitating the public, "Can lawyers be honest?"

We give below a few odd names of cases, and, parenthetically, some thoughts suggested by them.

Cockson *v.* Cock, Cro. Jac. 125. (Very unfilial.)

Gold *v.* Death, Hobart, 927. (An ancient but futile struggle.)

Beak *v.* Beak, 2 Swand, 627. (A sharp encounter.)

Slack *v.* Sharp, 8 Ad. & E. 36. (Can plaintiff recover?)

Onions *v.* Cheese, Lutwyche, 530. (We should think they would disagree.)

Commonwealth *v.* 14 Hogs, 10 S. & R. 393. (Mean! Take one of your size.)

Succession of Beer, 12 La. Ann. 698. (Estate in liquidation?)

Gullett *v.* Gullett, 25 Ind. 337. (Naturally follows "Succession of Beer.")

Funk *v.* Venus & Ex'rs of Venus, 3 Pa. (We have heard of her, but never of them.)

Shirtz *v.* Shirtz, 5 Watts, 255. (This encounter was to be expected.)

Beer *v.* Hooper, 32 Miss. 246. (Defendant can restrain plaintiff.)

651 Chests of Tea *v.* United States, 1 Paine 499. (The worm will turn; was this the Boston tea?)

Estate of Physic, 2 Phill. Pa. 278. (Evidently needed administering.)

Matter of Pie, Abb. Pr. R. 409. (This estate must have cut up well.)

Happy's Will, 4 Bibb. 553. (We have heard that he "died happy," but never before that he left a will.)

Pancake *v.* Harris, 10 S. & R. 109. (There was probably nothing left of plaintiff at the end of this trial.)

IT may not be generally known that the late Gen. William T. Sherman was once a legal practitioner. The New York "Mail" gives the following account of his brief career as a lawyer.

After his graduation from West Point, cadets not being in immediate demand, William T. Sherman took up the study of law, and after being admitted to practice was taken into partnership by his cousin, Gen. Thomas Ewing, the first Chief-Justice of Kansas, who is now practising law in this city. This was at Leavenworth, Kansas. Soon after the formation of the new law firm, a little case in a justice's court came into the office, and Sherman was sent out to try it.

The trial was before a Justice of the Peace. Sherman's opponent was a pettifogger of the lowest type, with little knowledge of law or justice, but with a ready tongue, and an adept in the quips and technicalities of police-court practice. The result was that Sherman was badly beaten, when the facts and the law were all in his favor. Unspeakable disgust took possession of the young counsellor, and returning to the law office he left the following note on his partner's desk: —

THOMAS EWING:

DEAR SIR, — The law firm of Ewing & Sherman is this day dissolved. I am going into some other business.

W. T. SHERMAN.

THE Viestnik of Vilna reports that in one of the cities where Jews are permitted to live, a son of Israel, meeting the wife of the Governor, would not move out of her way. He was arrested on the spot, taken to the Governor's stables, and knouted so that he hardly reached his home alive. The next day his attorney, also a Jew, appeared before the Governor, asking for a copy of the judiciary "act" upon which his client had been condemned to personal chastisement.

"You desire a correct copy?" asked the Governor.

"Just so, your Excellency," answered the attorney.

"You will please address yourself to the Chief of Police," said the Governor. "I will order him to let you have it."

The lawyer went to the Chief of Police the next day, but instead of the papers he received the same number of blows which his client had received.

"THE Jones County Calf Case" is the title of a legal action which will pass into the history of Iowa jurisprudence as one of its most celebrated causes. The calves involved were not more than ordinary calves, born in a very common manger, nourished with the usual lacteal fluid, and turned out to grass as soon as they were able to work their grinders successfully. The calves that were, if alive, must be gray and decrepit cows. Twenty years ago the action was begun. It has been in the lower courts several times, and has graced the Supreme Court with its presence on more than one occasion. The attorneys have waxed fat and rich over it. The original parties to the suit have spent all their money prosecuting it. The young bovines may have been worth $45 when the fun began. The total cost of the case amounts to about $20,000.

IN the Farmington, Maine, Municipal Court, Judge Chandler recently rendered an interesting decision on the unique question of whether "baby-carriages" can be classed, within the meaning of the Maine Statutes, as "necessaries."

The action was brought against a trustee to recover the amount in their hands to the credit of a defendant against whom judgment had been given in a suit brought for $13.26 for a baby-carriage which he had purchased of plaintiff. The disclosure of the trustee showed that the amount due the defendant was for his personal services rendered within thirty days last before the service of the writ, and did not exceed twenty dollars, and consequently would be exempt from attachment unless the amount sued were for necessaries, "which was the issue tried." Is a baby-carriage a necessity, was the point decided.

Judge Chandler's decision was as follows: "The laws of necessity, early given and never repealed, en-

join upon the human race the duty to increase and multiply. And while 'He setteth the solitary in families,' 'what is home without a mother' is a significant inquiry, since in order to have mothers, babies are necessary, and if babies are necessary why not baby-carriages? The term 'necessaries' as used in the statute can hardly be limited to things absolutely indispensable, but is used with considerable latitude, depending upon the circumstances of each case as they may present themselves.

"What might be a necessity in a given state or condition of civilization would be of no use in a primeval or semi-civilized state. Lo's loving squaw has no use for a baby-carriage for her dear pappoose. The board upon her back to which the little one is strapped suits her convenience for her long and trackless journeys, and even in the early days of our fathers, when mothers were strong and fathers were not ashamed to bear their share of the burdens of parentage, the generation now passing off of the stage were very properly conveyed from place to place in loving arms. But those times are in the rear. We are soon to reach the twentieth century. If the present generation is weaker, it may be allowed that it is wiser also.

"Many improvements which have been found convenient in bearing the burdens of life have become necessities. Our reminiscent poetry which most touches the heart is of the garret, trundle-bed, and cradle. But the muse of the future is to attune her harp to the rhythm of the baby-jumper and the baby-carriage; and woe betide the antiquated judge who dare in the face of thousands of actual and prospective young American mothers to decide that they are but necessaries. What insurance company would take the risk of his periwig and ermine."

Judgment is given the plaintiff on the ground that baby-carriages are necessaries.

JUDGE MADDOX, of Georgia, seems to be the right kind of man to preside at a trial where lawyers and witnesses are disposed to resort to personal acts of violence in the court-room to obtain revenge for insults. In a recent murder trial before him, one of the lawyers severely cross-examined a woman witness, whose brothers threatened to shoot the lawyer if he should not apologize. Judge Maddox, having read the announcement in the papers, made a little speech from the bench, which was at least plain in its terms, and effective. He said that the court would have stopped the lawyer if he had gone outside of the testimony during his cross-examination, and that if any apology was to be made it would have to be made to the court. He then added: "There are some other things I want to say. If any man is detected in this court-room with a weapon on his person, either concealed or exposed, it will cost him just $1000, twelve months in the penitentiary, and six months in the chain gang. If any man in this court-room knows of any one who has a weapon, he can now step forward and make affidavit to that effect, and we will suspend this case right here and try the man who has the pistol the first thing we do. I want to say, further, that if any member of this bar is interfered with in any other way, it will cost the person who interferes with him $200 and costs and twenty days in the chain gang. That 's all I have to say, and now let anybody who wants to interfere with this court begin right now." Nobody wanted to interfere, and the trial proceeded in peace.

Recent Deaths.

ELIAS MERWIN, a prominent member of the Suffolk Bar and resident of Boston, died on March 27. He was born in New Haven, the son of a Methodist clergyman, and received his collegiate education at the Wesleyan University at Middletown. He studied law with Judge Tucker of Lenox and afterward at the Harvard Law School, and on his admission to the bar established himself in Pittsfield, Mass., for the practice of the law. So quickly did he manifest his fine professional capacity, that when he had been not more than two or three years at the bar, he was invited by Hon. Benjamin R. Curtis, then in full practice, to become his partner, and removed to Boston for that purpose. But in the same year Mr. Curtis was appointed and took his seat as justice of the United States Supreme Court. Mr. Merwin determined nevertheless to remain in Boston, and here he continued the practice of law until less than a year ago, when the illness set in, which, after long and wearisome confinement and much suffering, borne with rare fortitude and patience, terminated his life. Among his brethren of the bar he was from the

beginning a man of mark, and as time went on he grew constantly in their confidence and esteem as an accurate and learned lawyer, a wise adviser, and a man of integrity and honor. The high consideration in which the bar held him was well manifested by the fact that upon the retirement of Judge Lowell from the office of United States Circuit Judge for the first circuit, seven years ago, Mr. Merwin received the practically unanimous recommendation of the members of the bar in Massachusetts practising in the Federal courts, for appointment as his successor. With his clear and quick apprehension and sound judgment, his solid professional knowledge, his calm and intrepid habit of mind, his strong sense of justice, and his elevation of character, he would doubtless have justified their choice. He was a man of superior cultivation, fond of his library, and a discriminating and critical student of the best literature. The fruits of such reading, stored in an ingenious and vigorous mind, with lively wit and a keen sense of humor, with exceeding refinement of character and conduct, and unfailing courtesy, made him a very interesting and attractive companion.

Andrew K. Syester, Associate Judge of the Fourth Judicial District of Maryland, died at Hagerstown March 19, in the sixty-fifth year of his age. Judge Syester was born on March 11, 1827, in Berkeley County, Va. He graduated from Franklin-Marshall College at Mercersburg, Penn., in 1849, and the next year went to Hagerstown, where he studied law and was admitted to the bar in January, 1852. In 1853 he was elected to the House of Delegates, and in 1854 was elected State's Attorney. He held this office until 1859. After the war he was a member of the Constitutional Convention, and five years later, in 1872, was elected Attorney-General for Maryland. He was prominent in the trial at Annapolis of Mrs. Wharton for the murder by poisoning of General Ketchum at her home in Baltimore, and also took part in the murder cases of Plates and Lynn in Dorchester and Carroll Counties. He was elected in 1882 as Associate Judge of the Fourth Judicial Circuit, succeeding Judge Motter.

I. Nevett Steele, a lawyer of national reputation, and one of the most prominent men in Maryland, died at his home in Baltimore April 11. Mr. Steele was born in Cambridge, Md., in 1809, was educated at St. John's College, Annapolis, and afterward at Trinity College in Connecticut. Owing to ill health, he was unable to stay to take his degree. In his eighteenth year he began studying law, and in 1830 he was admitted to practice. In 1839 he was appointed by Attorney-General Josiah Bailey his deputy for Baltimore County, and was continued in that capacity until 1849. In 1849 President Taylor appointed him Chargé d'Affaires in Venezuela. He succeeded in securing the settlement of heavy claims of citizens of the United States against Venezuela, and thereby gained considerable reputation. In 1853 Mr. Steele returned home, and engaged in the active practice of his profession.

Judge David Taylor, of the Wisconsin Supreme Court, died in Milwaukee April 3. He was born in Carlisle, N. Y., in March, 1818, went to Wisconsin in 1846, and was elected to his position on the Supreme Bench in 1876.

Judge Henry J. Stites, of Kentucky, died on April 3. He was born in Scott County, Ky., in 1816. He was admitted to the bar in 1841, and in a short time found himself in the enjoyment of a lucrative practice. In 1848, though but little over thirty years of age, Judge Stites was nominated as Presidential Elector on the Cass and Butler ticket, and made a vigorous canvass. In May, 1851, the present Constitution went into effect, and there was an election for ministerial and judicial officers. Judge Stites was elected, by a handsome majority, Circuit Judge of the Second Judicial District. There was a political majority against him, but political questions were to a great extent ignored. In 1854 the term of Chief-Justice Elijah Hise expired, and, declining to be again a candidate, Judge Stites was urged by friends of both political parties to become a candidate for the vacancy. He was elected by a large majority, and took his seat on the Appellate Bench in September, 1854. He served out his term, and was Chief-Justice in the troublous times of 1862, in the midst of the Civil War. He was urged to become a candidate for re-election, but declined. Being a State's rights Democrat and a Union man, though opposed to the war, he suffered at the hands of the military on both sides. To avoid proscription and

the persecution of the soldiery who overran the southern part of the State, Judge Stites was advised by his friends to leave. This he did, and went to Canada, where he remained with his wife until the war was over. On his return to Kentucky, in January, 1866, he located in Louisville and resumed the practice of his profession, in conjunction with the Hon. Joshua F. Bullitt, with whom he had been associated in the Court of Appeals. While pursuing his profession a vacancy occurred in the office of Judge of the Court of Common Pleas by the resignation of Judge Muir. To this place Judge Stites was appointed on the unanimous recommendation of the Louisville Bar, by Governor Stevenson, in October, 1867. In August, 1868, the people elected him to the same office without opposition, and again in 1874 and 1880.

Hon. Augustus R. Wright, an eminent member of the Georgia Bar, died on March 31. He was born at Wrightsboro, Ga., June 16, 1813. He was admitted to the bar in 1833, and opened an office at Crawfordville. The following year he removed to Cherokee County, and located at Cassville. He at once shared the emoluments and honors of the practice with the best talents of the Cherokee Bar, — at that time distinguished by the names of Underwood, Shackelford, Trippe, and others. In the twenty-ninth year of his age, and eighth of his practice, he was elected by the Legislature Judge of the Superior Court of the Cherokee Circuit; and after continuing in office seven years, he resigned his position and returned to the bar.

Hon. Wm. B. Wood, for many years Judge of the Northern Circuit of Alabama, died in Florence, Ala., on April 5. Judge Wood was born in Nashville, Tenn., Oct. 31, 1820. He represented one of the purest lines of Southern blood; his grandfather was the Secretary of Alexander Hamilton; his father, Alexander Hamilton Wood, was born in Virginia; his mother, Mary Evans Wood, was a native of England. His father was an officer in the War of 1812.

Ex-Judge Henry Chapman died April 11, at his residence near Doylestown, Penn., at the age of eighty-eight. He was born Feb. 4, 1804, at Newtown, Bucks County, Penn. In 1843 he was elected to the State Senate. In 1845 Mr. Chapman was appointed Judge of the Chester-Delaware Judicial District by Governor Shunk, and continued in that capacity for four years. In 1856 he was elected to Congress. In 1861 he was elected Judge of the Bucks County Court, and served with marked ability until 1871, when he declined a re-nomination and retired to private life. For many years past Judge Chapman had lived in retirement at his country-seat near Doylestown.

Divie Bethune Duffield, who died at Detroit, March 11, 1891, was one of a family that has constituted in Michigan a sort of dynasty, much like that of the Adamses, the Beechers, or the Fields. His father was a well-known Presbyterian divine, whose children have all been conspicuous, whether in peace or war, in the professions of law, medicine, and divinity, in literature and the humanities. His mother was a sister of George Washington Bethune; his grandmother was the famous Isabella Graham; his father, a rigid Calvinist, yet so liberal in his time as to have been put on trial for his opinions, was stricken with paralysis while in the pulpit; his great-grandfather was chaplain to the Continental Congress; of his brothers, George was a D.D., a Regent of the University of Michigan, and, like himself, a poet; William W. was a Union Brigadier; Samuel P. a chemical expert, and at present Health Officer of Detroit; Henry M. a soldier, a leader in Michigan politics, and formerly City Counsellor for Detroit; one of his nephews was that brilliant and promising poet and divine, Samuel Willoughby Duffield.

D. Bethune Duffield was born at Carlisle, Penn., August 21, 1821; as a child he was a favorite with old Chief-Justice Gibson, who used to hold him on his knee; he was ready to enter Dickinson College at twelve, and did enter the class of 1840 at Yale, which gave him her diploma, though he left before graduation. In 1844 he went into partnership at Detroit with G. V. N. Lothrop, since Minister to Russia; he was secretary of the Detroit Bar Association for twenty years; City Attorney and Commissioner of the United States Court; and for about a dozen years a member of the Board of Education, of which body he was

President when the High School was established. He is known in Detroit to this day as the "Father of the High School," and one of the large Union schools is named for him. As a youth he was a contributor to "Knickerbocker's Magazine," and as much as thirty years ago he was recognized as fit to be counted among the poets. Toward the close of his life he published a modest volume of poems under the title of "Stray Songs of Life." When the red-ribbon movement overran the country ten years ago, he became identified with it; but as a matter of social polity he advocated a liquor tax as against prohibition, and with such force that legislatures have listened with attention to his advice on that subject. He was a pleasing speaker on public occasions, and a man of recognized scholarship.

Mr. Duffield presided at the bar meeting held in memory of William P. Wells, who died suddenly in the court-room on the 4th of March; and although the weather was bitterly bleak, he went to the grave with the mourners. It had been his proposition that the bar should march in procession, not only to the city limits, as used to be a custom, but to the cemetery. The day was too unpleasant for that; but Mr. Duffield went in a carriage with Postmaster-General Dickinson, who was himself indisposed. He caught a cold which settled in his kidneys and was followed by uræmic poisoning, of which he died in less than a week.

REVIEWS.

THE AMERICAN LAW REVIEW for March-April presents an interesting table of contents. The leading article is an address delivered by Hon. Charles C. Bonney before the Illinois State Bar Association on "The Relation of the Police Power of the States to the Commerce Power of the Nation." "The Police Power and the Public Health," is discussed by H. Campbell Black; and Samuel Williston contributes an able paper, "Can an Insolvent Debtor insure his Life for the Benefit of his Wife?" The question of the true method of legal education is dealt with by W. L. Penfield in an essay on "Text-Books *v.* Leading Cases." An excellent portrait of James B. Bradwell is given as a frontispiece.

THE LAW QUARTERLY REVIEW for April contains two articles which will especially interest American readers; namely, "The Behring Sea Question," by T. B. Browning; and "Patent Right in England and the United States," by A. Wood Renton. The other contents are, "On Private International Law as a Branch of the Law of England," by A. V. Dicey; "The Privileges of the Press in relation to the Law of Libel," by Hugh Fraser; "A New Point on Villein Tenure," by F. W. Mailland; "A Poor Man's Lawyer in Denmark," by A. H. Jessel; and "Registration of Title in Ireland," by C. Fortescue-Brickdale.

"THE French Army," by General Lewal, is the opening article in the April HARPER'S. It is finely illustrated. "The State of Wisconsin" contains a gallery of portraits of her leading men. "Glimpses of Bacteria" shows these active beings in various stages of development. Dr. Charles Waldstein gives an interesting account of "The Court Theatre of Meiningen," embellished with numerous illustrations. "The Behring Sea Controversy," by ex-Minister Phelps, has created so much discussion and controversy in political circles that it will be read with deep interest. Theodore Child contributes a delightful paper entitled "Argentine Provincial Sketches;" and Margaret Crosby a very readable story which she calls "Don Carlos."

ONE of the most famous pictures of the world has been engraved by Mr. Cole for the frontispiece of the April CENTURY,— the Mona Lisa of Leonardo da Vinci. This is in the CENTURY'S series of old masters, engraved immediately from the originals in the galleries of Europe. Two other examples of Leonardo accompany Mr. Stillman's article on this master. In the California series Mr. Julius H. Pratt gives a graphic description of the emigration to California by way of Panama in '49. The pictures are very striking, having been drawn by Gilbert Gaul, after originals made from life by an artist in 1850. In this connection is a paper of great historical value by the late Gen. J. C. Frémont on his own part in the "Conquest of California." Mrs. Amelia Gere Mason's papers on the "Women of the French Salons" are supplemented in this number by an account of the "Salons of the Revolution and Empire." "Fetichism in Congo

Land" is an interesting contribution to a great subject by Mr. E. J. Glave, one of Stanley's pioneer officers. "The Wordsworths and De Quincey" is the title of a very interesting paper of literary biography containing unpublished letters of the poet and of the opium-eater. In a paper on "Washington and Frederick the Great," Mr. Moncure D. Conway does away with the century-old myth concerning the alleged relations between the two great commanders. The fiction of the number is very diversified, including a new instalment of Dr. Eggleston's "Faith Doctor;" a story, "There were Ninety and Nine," by Richard Harding Davis; the conclusion of Hopkinson Smith's "Colonel Carter of Cartersville;" a timely and novel story by Dr. Allan McLane Hamilton, entitled "Herr von Striempfell's Experiment;" and "A Race Romance," by Maurice Thompson.

SCRIBNER'S MAGAZINE for April marks the beginning of the richly illustrated series on "Ocean Steamships." Original drawings by skilful artists (who have been granted special privileges for study by the various steamship companies) will illustrate each paper. Articles of travel and adventure are represented in this issue by Mr. Jephson's second paper on his perilous journey to relieve Captain Nelson at Starvation Camp; Robert Gordon Butler's account of the cruise of the United States steamer "Thetis" to the Arctic regions; and Birge Harrison's description of a kangaroo hunt,—a kind of sport which is now almost as rare in Australia as a buffalo-hunt on the Plains. The recent Sioux Indian outbreak and the causes which produced it are clearly and dispassionately set forth by Herbert Welsh; and the Rev. Willard Parsons, its founder, tells the story of the Fresh-Air Fund, which is entering upon its fifteenth year. Other articles on Practical Charity are promised. The first of living Spanish poets is the subject of another article (with a portrait), and "What is Right-Handedness?" is discussed by Prof. Thomas Dwight, of the Harvard Medical School.

THE two most striking features in the ARENA for April are the articles on "Hypnotism," by R. Mason Osgood, M.D., and "Buddhism in the New Testament," by Prof. James T. Bixby. Arthur Dudley Vinton contributes a thoughtful paper on "Morality and Environment;" E. P. Powell writes on Alexander Hamilton as a popular leader. Prof. Jos. Rodes Buchanan concludes his remarkable essay on "Nationalization of the Land," as first presented. The "No-Name Paper," written by a prominent nationalist, is a reply to Mr. Garland's "New Declaration of Rights," which appeared in the January ARENA. Gerald Massey contributes a poem on "The Burial of Charles Bradlaugh." Will Allen Dromgoole writes the story for this number; it is entitled "The Heart of Old Hickory," and is one of the most fascinating pieces of fiction that has appeared in many months. Short papers are contributed by Rev. W. H. Savage, G. W. Weippiert, and A. G. Emery.

THE complete novel in LIPPINCOTT'S MAGAZINE for April is entitled "Maidens Choosing;" and its author is Mrs. Ellen Olney Kirk, who under the pen-name of Henry Hayes wrote the widely successful novel "The Story of Margaret Kent." The second instalment of "Some Familiar Letters by Horace Greeley," edited by Joel Benton, appears in this number. The letters grow in interest and value, and as a revelation of certain sides of Greeley's character will doubtless be of great advantage to the future biographer or historian. "The Elizabethan Drama and the Victorian Novel," an article by T. D. Robb, institutes a comparison between the Elizabethan and the Victorian views of life and art. In "Yarns about Diamonds," David Graham Adee relates some interesting facts about diamonds in general, and tells many curious stories relating to the discovery and history of some of the most famous of these gems, such as the "Great Mogul," the "Braganza," the "Regent," the "Crown of the Moon," the "Star of South Africa," and many others. Charles Morris in an article entitled "New Africa," tells how nearly the whole African continent has been taken up by European nations. Other articles of interest are "Brevity in Fiction," a plea for short novels, by Frederic M. Bird; and "A Plea for the Ugly Girls," an amusing skit, by E. F. Andrews.

"THE Brazen Android" is the curious title of a story in two parts, by the late William Douglas O'Connor, which has the place of honor in the ATLANTIC for April. It is a story of old London,

and its ancient life is wonderfully reconstructed by the vivid imagination of the author. Mr. Stockton's "House of Martha" continues in its usual rollicking fashion for three more chapters; and Mr. Lowell's traveller pursues his way through "Noto: An Unexplored Corner of Japan." Francis Parkman's second paper on "The Capture of Louisbourg by the New England Militia" is marked by the skill and care which Mr. Parkman devotes to everything which he writes. One of the most important papers in the number is "Prehistoric Man on the Pacific Coast," by Prof. George Frederick Wright, of Oberlin, in which he gives us the results of his investigations on the subject of the Nampa Image. The Hon. S. G. W. Benjamin, for some years United States Minister to Persia, has a timely consideration of "The Armenians and the Porte."

THE April COSMOPOLITAN will attract especial attention for the profuseness of its illustrations and the interesting subjects they depict. The frontispiece is an admirable likeness of the late General Sherman. The contents of this number cover a wide range. Elizabeth Bisland contributes an article on "The Eldest of the Arts;" "The President's Office and Home," are described by George Grantham Bain; and "The Japanese Theatre," by Eliza R. Scidmore. Other interesting articles are "The Master of Genre," by George E. Montgomery; "The Nicaragua Canal," by Charles T. Harvey; "The Story of a War Correspondent's Life," by Frederic Villiers; and "Farm Life" (a prize essay), by Jennie E. Hooker. The fiction consists of a wild, sensational tale, entitled "The Mystery of the Studio," by Robert Howe Fletcher.

BOOK NOTICES.

A TREATISE ON THE LAW OF SALES OF PERSONAL PROPERTY, INCLUDING THE LAW OF CHATTEL MORTGAGES. By CHRISTOPHER G. TIEDEMAN. The F. H. Thomas Law Book Co., St. Louis, 1891. Law sheep, $6.00 *net.*

Considering the excellent works on both the subject of Sales and that of Chattel Mortgages with which the profession is already supplied, it requires no little courage on the part of a writer again to go over a field which has been so fully considered. Mr. Tiedeman, however, believing that a treatise of a distinctively American type is needed on the subject, has undertaken to furnish it. The result is a careful, painstaking production, which thoroughly covers the subjects treated, and will undoubtedly prove of value to the practitioner and also to the student. The treatise is constructed on the same plan as the author's works on "Real Property" and "Commercial Paper," Mr. Tiedeman's aim being to make the book valuable to the busy lawyer by the addition of extensive citations of authorities and clear differentiations of the legal points settled by them. The typographical work is excellent, and it is a pleasure to read from such clear and distinct pages.

THE LAW OF EXPERT TESTIMONY. By HENRY WADE ROGERS. Second edition, enlarged and revised. Central Law Journal Company, St. Louis, 1891. Law Sheep, $5.00.

The first edition of this admirable work appeared in 1883, and the profession will gladly welcome this new edition. Professor Rogers is widely known as one of the most able and efficient legal teachers in the country, and in this treatise has furnished to the practitioner a more extended presentation of the law relating to the testimony of experts than the works on Evidence afford. The subject is one of great importance, entering as it does, in some form or other, into almost every case involving weighty interests. A good work, therefore, on this subject must be of great assistance in a lawyer's general practice. A careful examination of Mr. Rogers's treatise demonstrates that he has covered his ground thoroughly and exhaustively. The present edition will prove of even greater value than the first. Many cases, some of great importance, have been added, and an additional chapter on the weight of expert testimony will be found to be helpful.

FORMS IN CONVEYANCING AND GENERAL LEGAL FORMS, comprising Precedents for ordinary use, and Clauses adapted to special and unusual cases, with Practical Notes. Second edition, revised. By LEONARD A. JONES. Houghton, Mifflin & Co., Boston, 1891. $6.00.

This volume displays the careful and conscientious work which characterizes all of Mr. Jones's legal writings; and the favor with which the first edition was received showed that the profession recognized

and appreciated the great value of this collection of legal forms. Numerous additions have been made in the present edition, and the selection of forms as they now stand is in every respect admirable. The practical notes which accompany them add greatly to their value. The vast field covered by this work may be seen from a list of the subjects treated, which is as follows: Acknowledgments, Agreements, Appointments, Apprenticeship, Arbitration, Assignments, Assignments for the Benefit of Creditors, Powers of Attorney, Auction Sale of Real Estate, Bills of Sale, Bonds, Building Contracts, Charter Party, Composition with Creditors, * Declarations of Trust, Deeds, Guaranty, Leases, Mortgages, Mortgages of Railroads, Notices, Partnership, Party-Wall Agreements, Patents, Pledges and Collateral Securities, * Protests, * Railroad Car Trust Agreements, Railroad Consolidation, Releases, Separation Deeds between Husband and Wife, Settlements, Trade-Marks, Wills. The starred topics are new with this edition, as are also notes, adapted to the several States, upon the subjects of Witnesses to Deeds, Seals, Dower and Curtesy, Homestead Exemptions, Dower and Homestead Releases, Competency of Testators as to Age, and Witnesses to Wills.

THE GENESIS OF THE UNITED STATES: A narrative of the movement in England, 1605–1616, which resulted in the plantation of North America by Englishmen, disclosing the contest between England and Spain for the possession of the soil now occupied by the United States of America; set forth through a series of historical manuscripts now first printed, together with a reissue of rare contemporaneous tracts, accompanied by biographical memoranda, notes, and brief biographies, collected, arranged, and edited by ALEXANDER BROWN, with one hundred portraits, maps, and plans. Two vols. Houghton, Mifflin & Co., Boston, 1891.

No work has been published in recent years of such historical interest and importance as these two volumes by Mr. Brown. The titlepage well describes its scope. The period covered is one concerning which but little has heretofore been written, and yet it was the eventful time during which the foundation of our national history was being laid, and without a knowledge of which one fails to comprehend and appreciate fully the status of the early colonies. Mr. Brown gives us not only a history of the movement in England, with biographies of those engaged in it, but he has, as far as possible, made the book a work of reference for all that pertains to the men and motives of the movement in England which gave birth to this nation. Years of labor and research have been spent by the author in gathering the material necessary for the work, and his unremitting efforts have been crowned with marvellous success. One is amazed at the vast amount of valuable information he has collected. Many of the manuscripts embodied in the work have never before been printed, and many are for the first time translated into the English language. Many old and rare maps and plans are reproduced, and the illustrations, including one hundred and ten portraits of the individuals instrumental in making the settlement in North America, are interesting in the extreme. The great value of the documents which form a large portion of the work cannot be overestimated. Their especial purpose is to convey to the reader as fully and as clearly as possible the ideas, motives, and general surroundings of the movement in England. The three leading objects of this movement were to spread the commerce, the Commonwealth, and the Church of England (or Protestantism). Among the documents not hitherto printed here are: —

First. A good many official publications and papers of His Majestie's Council for Virginia, which throw more valuable and authoritative light on all the motives, objects, etc., then obtaining in the matter than any other evidence whatever.

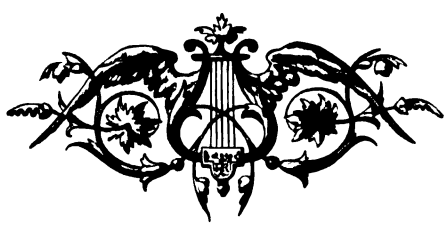
Second. Several sermons, discourses, &c., of the clergy never so fully reprinted or collected together before, which convey most important information regarding the objects of the Church.

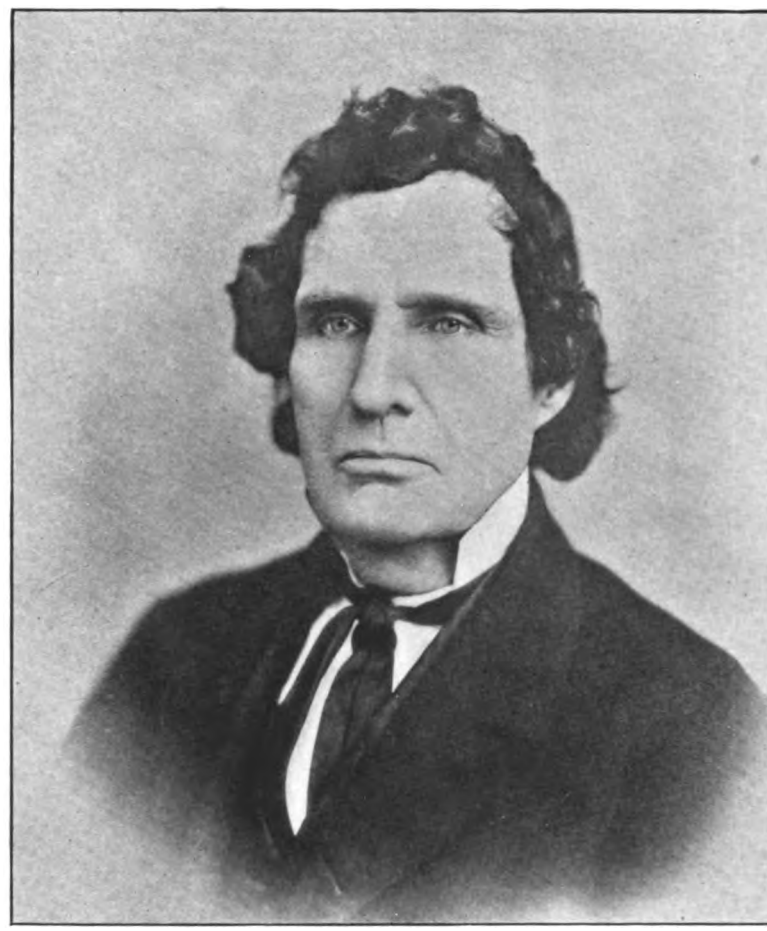
Third. The extracts from the records of the city companies of London. These meetings of the great guilds were among the most important events connected with the movement.

The spreading of the commerce of England was probably the leading object, and it was largely upheld by these merchants. In fact, the stationers and their press were instrumental in advancing all the objects. No class of men had a greater influence in shaping the destinies of the New World than the old merchants and business-men. The especial management of the Virginia enterprise was largely in their hands during the formative period.

Fourth. The enclosures in the Spanish papers are very important, and the papers proper show the part taken by the rulers and governments mostly interested *pro* and *con* in the commonwealth object. They give us for the first time correct ideas regarding the most important surroundings of the movement.

A feature which will at once attract the attention of, and commend itself to, all students of history is a collection of brief biographies filling some two hundred and fifty pages. These short biographical sketches form a treasure-house of valuable information, much of it entirely new and all of it of great importance. That "The Genesis of the United States" will take its place as one of the most valuable historical works ever written there can be no doubt, and Mr. Brown might well content himself to rest his fame upon this one contribution to the world's knowledge.





BOSTON PHOTOGRAVURE CO.

Thaddeus Stevens

The Green Bag.

VOL. III. No. 6. BOSTON. JUNE, 1891.

THADDEUS STEVENS.

BY CHARLES F. HAGER, JR.

AS Philadelphians rejoice in the memory of Benjamin Franklin of Boston, and the citizens of Kentucky delight in the name of Henry Clay of Virginia, so the people of Pennsylvania honor and revere the name and reputation of Thaddeus Stevens of Vermont. Coming from the Northeast, and betraying in the ruggedness of his countenance and in the force and vigor of his intellect all the marked characteristics of a sturdy New England parentage, he was nevertheless distinctively a Pennsylvanian. In her county courts as well as before her Supreme Bench, he won a distinguished reputation as a profound lawyer and shrewd practitioner during a professional career which covered half a century; and as the Representative from Lancaster County (which with a population of over one hundred thousand inhabitants, and an area of more than six hundred thousand acres of fertile agricultural soil, formed in itself a separate congressional district), he became the recognized leader of the most popular branch of the National Congress.

Thaddeus Stevens was born on the 4th day of April, 1792, at Danville, Caledonia County, Vermont, of parents whose means and position were on a level with the comparative barrenness of the surrounding country. But little is known of his ancestry. His father enlisted in the United States service in the War of 1812, and lost his life in that conflict. He was therefore loyal, coming from a section of the country which in those early days of the Republic was not in sympathy with the government or the war in which it was engaged; and in after years this spark of loyalty in the father blazed into a greater brilliancy in the son. His mother was a woman of great energy and strong will. Upon her devolved the care of rearing her fatherless family; and it was largely by reason of her industry and efforts that young Stevens was enabled to enjoy the benefits of a collegiate education. She was amply repaid for her motherly care and sacrifice. Stevens never forgot the debt of gratitude he owed her. His continued love and reverence for her were among the few softer and mellower features of his stern and aggressive life. Having provided for her declining years with comfort and abundance, he made this specific request in his will as a last act of filial care, — "That the sexton keep the grave in good order and repair, and plant roses and other cheerful flowers at each of the four corners of said grave each spring," and provided an annual fund to be used for that purpose. In the endowment of a charitable institution for the benefit of a religious denomination of which she was an earnest and active member, he pays this beautiful tribute to her worth: "I do this out of respect to the memory of my mother, to whom I owe whatever little of prosperity I have had on earth, which, small as it is, I desire emphatically to acknowledge." It was from his mother, therefore, that he derived the fearless spirit and fixity of purpose which were the chief forces in his character that insured his success in politics and at the bar.

Graduating at Dartmouth College in 1815,

Stevens read law for some months with Judge Mattocks at Peacham. In the latter part of the same year he removed to York, Pennsylvania, where he pursued his legal studies, teaching at the same time in an academy for his maintenance. About this time the Bar of York County adopted a rule that no student should be admitted to the practice of the court unless he had read, for at least one year previous to examination, exclusively in an attorney's office. If, as some authorities declare, this rule was intended to exclude an unknown and friendless stranger from the ranks of the profession, these legal aristocrats were far from gauging the calibre of the man they sought to suppress. Stevens went to Bel Air, Maryland, and having gained admission to the bar in 1816, he at once returned to Pennsylvania, locating in Gettysburg, Adams County, a quiet country town, since become famous as the site of the desperate three days' encounter which formed the turning-point in the late Civil War. Here he opened a law-office and began the practice of his profession. It seems that he was not compelled to undergo that long period of initiatory inactivity which is the almost uniform experience of young attorneys without influential friends to push them to the front. He rose to prominence by the third of the four methods which Lord Campbell declared to be "the only way in which a young man could get at the bar;" namely, by quarter sessions. A case was on the trial list so desperate in its nature that the older lawyers were not disposed to defend the prisoner. As a last resort, Stevens was retained. He conducted the trial with such consummate ability, and his arguments were so clear, concise, and far-reaching, that his reputation was by this single effort established, his name was before the people, and he soon acquired a large and lucrative practice in the southern section of the State.

But the comparative quiet of the legal profession did not afford the same scope for his restless and combative spirit which he saw awaiting him in the field of politics. He entered that field at a time when the country was keenly alive to the merits of a statesman, when political opinions and beliefs formed no small proportion of the every-day thought and life of the people. Stevens was elected to the State Legislature in 1831, and continued a member of that body until 1840, with the exception, perhaps, of a single term. In that decade the Legislature was more prolific in the enactment of public laws and legal reforms than in any similar period of the history of the State. The revision and establishment of the intestate laws, of procedure in decedent estates, foreign and domestic attachment, road laws, and the provision of an Equity jurisdiction in the Court of Common Pleas, are a few of the public statutes then adopted, which remain to-day a part of the organic law of the Commonwealth of Pennsylvania. In 1834 an act was passed providing for the establishment of the Public School system of Pennsylvania. The following year a movement was set on foot by the demagogues of both parties to repeal the act. Their battle-cry was "increased taxation," and they seemed to have a majority secured, when Stevens threw his whole strength and energy into the fight, and by a single oratorical effort whipped into line the wavering friends of free education, and established the principle that the State is in duty bound to provide for the education of all its inhabitants. Says a late Superintendent of Public Instruction in Pennsylvania: "Competent judges of all parties who witnessed the fight agree, that had he not stood firm as a rock, furnishing shelter and imparting strength to the free-school combatants, bidding defiance to the fiercest of those who would have struck them down, the law of 1834 would have been swept from the statute books, or have been saved only by a veto from the Governor, and the day of universal education in Pennsylvania might have been indefinitely postponed." Stevens himself always considered his speech on this occasion the most telling and effective of his life.

An incident occurring during this period of his legislative service illustrates the quickness of his parliamentary methods, his stinging irony, and the brevity of his epigrammatic style. A bill to convert the United States National Bank into a Pennsylvania institution was pending in the House, when a representative from Schuylkill County spread reports concerning certain members, questioning their integrity in the matter. The House feeling that its dignity had been insulted appointed a committee of investigation. Stevens, as chairman of the committee, well knew that however guilty the representative from Schuylkill might be, expulsion meant certain re-election. In a powerful and vindictive report Stevens recommended that the member be publicly reprimanded by the Speaker. He ended with this striking epigram: "In either event, Mr. Chairman, he has won for himself an immortality of infamy." The member, however, objected to the report, and requested permission to be heard by counsel. He employed Ovid F. Johnson, afterward Attorney-General, for his defence. Stevens was to reply in behalf of the report, and the house was filled with his admirers, anxious to hear him annihilate the attorney for the defence. Johnson spoke some two and a half hours, when Stevens rose and said, "Mr. Speaker, I hope the vote will be taken. I do not think that anything the gentleman has said will change the character of the vote." The vote was taken, the report confirmed, and the representative from Schuylkill County duly reprimanded.

The year of 1842 found his finances at a low ebb. He had suffered heavy losses by unfortunate and premature operations in iron and coal, and from liabilities incurred upon indorsements for the accommodation of friends. His extensive practice had also been sacrificed to the demands made upon him as leader of the State Legislature. With characteristic promptness and determination he forsook the more alluring field of politics and returned to the practice of his profession. When he cast his eyes about him to find a suitable location for the prosecution of his legal occupation, no blind chance or happy accident prompted him to go to Lancaster, but a clear conception and ready appreciation of the advantages offered at the county-seat of a populous and wealthy community. The Lancaster Bar was then known to the profession as one of the most learned and brilliant in the State. Stevens's reputation as an advocate was already well and favorably known, and he soon proved the superiority of his intellect, the solidity of his legal training and knowledge. He was enabled by the returns of a large and wealthy clientage to establish his credit, meet his obligations in full, and amass a considerable fortune.

In 1848 and 1850 Stevens was elected to Congress from Lancaster County. He declined further nomination until 1858, when he was again returned to Congress, and was re-elected by large majorities at each succeeding term until death put an end to his activity. He became the acknowledged head of the Antislavery branch of the Whig or Republican party in the House, and his untiring efforts there for the abolition of slavery may be compared with those of Charles Sumner in the Senate. As Chairman of the Ways and Means Committee, his leadership was able and efficient, notably in the measures which he introduced for the establishment of a sound and permanent national currency, to which he rightly attached the greatest importance as a factor of the nation's prosperity. His support of the Lincoln administration in its periods of unforeseen difficulties and gravest peril was unwavering and fearless. In his report as Chairman of the Reconstruction Committee he favored a more severe and unrelenting policy than the sentiment of his party, perhaps, demanded; but he was honest and true to his convictions. In a characteristic speech in defence of these resolutions, he says: "There is a morbid sensibility sometimes called mercy, which affects a few of all classes from the priest to the clown, which has more sympa-

thy for the murderer on the gallows than for his victim. I hope I have a heart as capable for the feeling of human woe as others. I have long since wished that capital punishment were abolished. But I never dreamed that all punishment could be dispensed with in human society. Anarchy, treason, and violence would reign triumphant. The punishment now prescribed is the mildest ever inflicted upon traitors."

His dying efforts were spent in conducting with admirable legal ability the impeachment and trial of Andrew Johnson, but without the vigor and zeal which characterized his earlier strictures upon Lincoln's successor. He was opposed to the trial from its inception, not because he thought it unmerited, but his keen foresight convinced him that it would be a "vain and futile thing." These services won for him the well-deserved appellation of the "Great Commoner," and enter into and form no unimportant part of American history at a time when the existence of the Union was imperilled, and when as never before or since in her history there was a necessity and a call for men of unquestioned courage, invincible, and fearless in their convictions.

Thaddeus Stevens will therefore take his place in American biography as a great statesman. But he was no less brilliant and able as a lawyer. In Congress his speeches evidence a profound and scientific knowledge of the fundamental principles of jurisprudence as well as a ready acquaintance with parliamentary laws. Had he not when at Washington exerted his persuasive eloquence and powerful logic wholly in the representation of his constituents, and in the defence and furtherance of those truths and rights which he believed in and held to be of fundamental importance, he would beyond question have attained the same pre-eminence and reputation in the Federal Courts which he enjoyed in the Supreme and County Courts of his own State; and notwithstanding the fact that he did so devote the best energies of his life in adherence to party and principle, he stood in the foremost ranks among his contemporaries at the Pennsylvania Bar, the peer of any in intellectual strength and forensic ability. Says Judge Jeremiah S. Black, a man of profound legal lore and no less a judge of human character than of law: "When he died, as a lawyer he had no equal in this country." And it is recorded of him by Secretary Blaine, in his admirable exposition of the workings of Congress during that period when Stevens was most prominent, that "he was learned in the law, and for half a century held a high rank at the bar of a State distinguished for great lawyers. He spoke with ease and readiness, using a style somewhat resembling the crisp sententiousness of Dean Swift. Seldom, even in a careless moment, did a sentence escape his lips that would not bear the test of grammatical and rhetorical criticism. He had characteristics which seemed contradictory, but which combined to make one of the memorable figures in the parliamentary history of the United States,—a man who had the courage to meet any opponent, and who was never overmatched in an intellectual conflict."

Stevens's reputation as an advocate spread far and wide throughout the State. He was concerned in almost all of the leading cases in Lancaster and adjoining counties, many of which were taken up to the Supreme Court, where he attained a marked success. His practice was not confined to any one branch of the law, but was alike extensive in the Common Law and Equity departments of the Court of Common Pleas and in Quarter Sessions. The minute detail of an Orphans' Court practice, however, was not in accord with his more active temperament, and was distasteful to him. He also tried many causes in the Federal District Courts, notably those in which the rights of fugitive slaves or freedmen and their owners were contested; in which cases he always appeared in behalf of the former, often without compensation.

He was equally effective in argument be-

fore judge or jury, or in conducting a case. His oratory was of a caustic and trenchant style, abounding in keen thrusts and parries and sharp wit. He seized the salient points in a case, and hammered them in. He had a profound contempt for loquacious and ornamental declamation, which he made no effort to conceal. He was fond of telling the following incident as illustrating the verbosity of one of his associates at the Lancaster Bar. The case for argument involved the question as to whether $87.50 should be paid to his client personally or to his assignee. Stevens opened the argument with a fifteen-minute speech. "Then," he would say, "Mr. —— began. I went up to Harrisburg and tried the McCook bribery case [a famous case of that day], and got back in time to hear him sum up the case to the judge." In jury trials he was armed at all points. His quick perception and analysis gave him the faculty of darting in a moment upon a latent truth or falsehood, often frightening carefully concealed evidence from unwilling witnesses by the rapidity and virulence of his searching cross-examinations. He took few notes, often none at all, sometimes having in his hand a small oblong piece of paper about six by three inches on which he scrawled a few leading points, — for he was a wonderfully bad though rapid penman, and his writing was an unsolvable enigma to his clients, who were often forced to return his letters unread, and Stevens himself was often compelled to inquire the nature of the transaction before he could decipher his own handwriting.

His readiness to seize upon an unexpected event and use it in the furtherance of his own ends is aptly shown in the following anecdote locally known as the "firebrand in the convention." Early in the thirties a convention was called at Harrisburg by the anti-abolitionist element of Pennsylvania "to preserve the integrity of the Union." Stevens, whose antislavery ideas were already deeply rooted, procured his election as delegate from Adams County by some half-dozen men about the hotel at which he boarded, and went to Harrisburg with the secret intention of breaking up the convention if possible. Organization was scarcely effected when he arose and moved to adjourn. The Speaker, a prominent delegate from Pittsburg, said, "Mr. Stevens, I hope you will not attempt to introduce a firebrand into this convention." It happened that the delegate next to Stevens was a lawyer from Franklin County, with fiery red hair and irascible temper. Stevens saw his chance. He said he hoped the chairman did not intend any personal insult to his friend from Franklin County, that he certainly was not to be blamed for his personal appearance. The lawyer was on his feet in an instant, and began an abusive attack upon the Speaker. The misunderstanding was complete. A general uproar followed, the Speaker lost his head and his temper, and the delegates, leaving the convention in disgust, could not be reassembled.

In his dealings with his clients Stevens was brusque and inclined to be impatient. The evolutions of his mind were too rapid for them to follow; grasping conclusions before their cases were fairly stated, and interjecting opinions which they did not comprehend and which he did not see fit to explain. But he was none the less popular on that account. He enjoyed the respect and entire confidence of his clients, and he was deserving of it. His integrity cannot be questioned, although more or less openly assailed during his life by political enemies animated by party prejudice and passion. Moreover he possessed a nice sense of exact justice which would not allow him to take advantage of a merely legal excuse for the non-payment of just debts. For some of the indorsements which brought about his financial embarrassment in 1842 he had a perfect defence in the bar of the Statute of Limitations, which he refused to plead, but turned over his estate to his creditors, and as we have seen left the more fascinating and congenial field of politics, and by hard work and continued

practice met his indebtedness in full. His aversion to sharp practice under the guise of legal proceedings appears from this clause in the codicil annexed to his will: "I bought Mr. Shertz's property at sheriff's sale at much below its value. I only want my own, — all except three hundred dollars of the proceeds of it and the interest, I direct shall be returned to the estate."

In private life Stevens led a bachelor's existence, solitary and alone. He had no wife to grace his board, nor children to brighten his home. His social qualities were not marked. He was essentially a man of brains, not of the heart. Says Mr. Blaine: "He was disposed to be taciturn. A brilliant talker, he did not relish idle conversation. He was much given to reading, study, and reflection, and to the retirement which enabled him to gratify his tastes. As was said of Mr. Emerson, Mr. Stevens loved solitude and understood its uses." Nevertheless among his associates at the bar and in politics, his society was much sought after and enjoyed. His witty sarcasm and stinging ridicule gave a zest and pungency to his observations and criticisms upon contemporaneous men and events that made them irresistible. "He possessed the keenest wit, and was unmerciful in its use toward those whom he did not like. He illustrated in concrete form the difference between wit and humor. He did not indulge in the latter. He did not enjoy a laugh. When his sharp sallies would set the entire house in an uproar, he was impassive, his grim visage as solemn as if he were pronouncing a funeral oration." His distinctive individuality impressed itself deeply upon the community and at the bar, where traces of his manners might still be recognized in others long after his death. His office was naturally sought by law students, attracted by his brilliance and the success attending his legal practice. In his demeanor toward younger men he was kind and generous. He encouraged and aided them. Charitable appeals of any kind found in him a generous and sympathetic assistance. But even his kindness was masked by his short answers and brusqueness of manner. One aspirant for legal honors, afterward president judge of Lancaster County, wrote to Stevens with a view of locating in his office, inquiring terms, etc. He received the following laconic and characteristic letter in reply: —

DEAR SIR, — Have room; take students; terms, $200. Some pay; some don't.

THADDEUS STEVENS.

Stevens had the culture and refinement which an intelligent course at an academical institution insures. He was a good classical scholar, well versed in ancient and modern literature and history. In his later years, however, he read few books. In Shakspeare, Dante, Homer, and Milton, and in the Scriptures he found ample supplies for the gratification of his literary tastes. He kept copies of these works constantly in his sleeping-room, where it was his habit to read in bed.

Stevens's personal appearance, notwithstanding the misfortune of a crippled foot, was impressive. His stature was of fine proportion. His large head, with sharply chiselled features; the small, deeply sunken eyes; the wide, firm mouth, and square, massive jaws, — all gave abundant evidence of his able, stern, and fearless character. In court his stalwart form and grim countenance were the central figure of a scene always more or less picturesque. Those who have witnessed such a scene must retain their impression of it forever. The words descriptive of Buonarotti's statue of the "Great Lawgiver of the Israelites," although rather intense, do not seem unfitting as applied to the Great Commoner: "There is a grandeur, a self-consciousness, a feeling as if the thunder of heaven were at his disposal; yet he brings himself into subjection before he would unchain it; waiting to see whether the foes whom he intends to annihilate will venture to attack him. Such a man could

well subdue a rebellious people." He was strong and enjoyed his strength, and despite his lameness was in his younger days interested and active in athletic sports. He was a good horseman, and fond of the chase. He was simple and temperate in his habits, seldom using stimulants except upon prescription from his medical adviser. His wonderful energy and activity endured through a long career of seventy-six years.

It is much to be regretted that Mr. Edward MacPherson, Clerk of the House of Representatives, has not published his long-promised biography of Thaddeus Stevens. He was a warm personal friend of Stevens, and one of the executors of his will, and it is eminently fitting that such a work should come from his pen. However much a history may acquire from having been written in the more critical and impartial light of succeeding ages, a biography, unless it follows close upon the life of its subject, necessarily loses many interesting personal reminiscences, which give a warmth and color to the lives of all great men; and the men who were in touch and sympathy with this great lawyer and statesman will soon, like him, have found a more quiet abode.

Thaddeus Stevens died at Lancaster on the 11th day of August, 1868 That city, within whose limits repose the remains of President James Buchanan, Generals Edward Hand and John F. Reynolds, and others of like eminence, never beheld a more distinguished body of men than those who followed the body of Stevens to its burial in a private cemetery selected by himself. In this selection he wished to evidence his supreme devotion to the great object of his life's work, — the destruction of slavery and the elevation of the slave, as is set forth by the inscription on his tomb, which was prepared by his own hand and needs no further comment, —

"I repose in this quiet and secluded spot, not from any natural preference for solitude; but finding other cemeteries limited by charter rules as to race, I have chosen it, that I might be enabled to illustrate by my death the principle I have advocated through a long life, — equality of man before his Creator."

A MORE PARTICULAR DESCRIPTION.

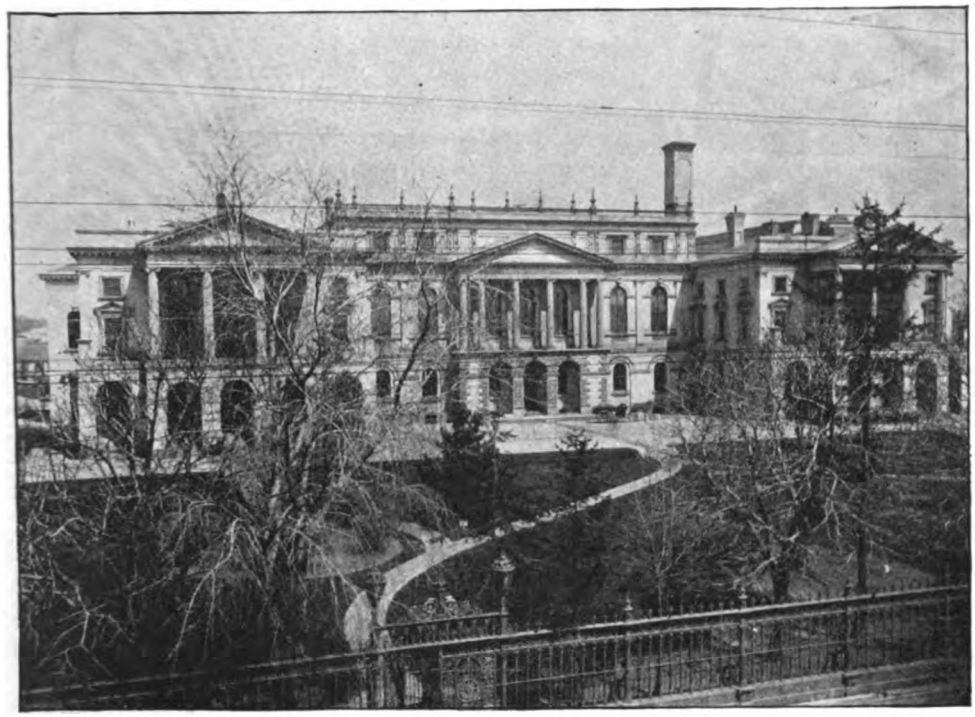
By Wendell P. Stafford.

THE lawyer, intent at his table, held Chitty apart by a leaf,
While his quill ran creaking and straining down the driest page of his brief.
A footfall — the rickety stairway groaning each step like sin —
A silence of hesitation — and his visitor ventured in.

"I 've bargained my woodland, lawyer, and want the deed made out;
I fetched the old one with me; it tells ye all 't 's about."
The squire took up the paper and read, in hurried tones,
"Beginning, for a corner, at a stake in a pile of stones,
Thence northward (rods so many), thence east (so many more),
Thence south to a brook called Miller's, and back along the shore" —
Then he rose and went to the window, rubbing his glasses hard,
And stared at the mating robins in the elms across the yard.

"Ahem! I know this woodland, — it 's many and many a year, —
Perambulated it, in fact (this old deed is n't clear).
I saw it last the summer before I was twenty-one;
But I can tell to-day, sir, how those boundaries ought to run:
Beginning in the shadow of a low-boughed maple-tree,
Thence winding up a thicket as far as you can see;
Turn at the leaning bar-way, follow a lane of flowers
To a corner kept by squirrels, where the sun sleeps hours and hours;
Then take the mossy foot-path adown the alder dale,
Hung over by the birches, crossed by the rabbits' trail, —
Beside the brook that lingers along a dusky glen
With here and there a whisper, and a trout-leap now and then, —
As far as two may wander in the twilight, heart in heart, —
And back to the bound begun at for a place to kiss and part."

He stood and watched the robins, and one particular pair
That seemed to be having a quarrel in the elm-trees over there.
But the farmer had gone; and his neighbors that took the farmer's say
Debated the squire's insanity for a twelvemonth and a day.



OSGOODE HALL.

THE LAW SCHOOL OF OSGOODE HALL, TORONTO.

By D. B. Read, Q. C.

EVER since Upper Canada, now Ontario, was made a separate province by the Imperial Act of 1791, the subject of the education of professional men has entered largely into the scheme of government. As early as the year 1797 the representatives of the people, in Parliament assembled, took the matter of the education of persons destined for the profession of the Law into their serious consideration. On the 3d of July in the year last named, the Provincial Legislature passed an Act "for the better regulating the practice of the Law," by which it was enacted "that it shall and may be lawful for the persons now admitted to practise in the Law, and practising at the Bar of any of His Majesty's Courts of the Province, to form themselves into a Society, to be called the Law Society of Upper Canada, as well for the establishing of Order among themselves, as for the purpose of securing to the Province and the profession *a learned* and *honorable body* to assist their fellow subjects as occasion may require, and to support and maintain the Constitution of the Province."

The second section of this Act authorized the Law Society to form a body of rules and regulations for its own government, under the inspection of the judges of the Province for the time being, as visitors of the Society, and to appoint the senior six or more of the then present practitioners and the six or more senior members for the time being in all time to come (whereof his Majesty's Attorney-General and Solicitor-General for the

time being should be, and be considered as two) as Governors or Benchers, and also to appoint a Librarian and Treasurer.

The third section of the Act provided "that it should and might be lawful for the said Practitioners, or as many as could be called together (whereof His Majesty's Attorney and Solicitor-General should be two), to assemble at the Town of Newark, in the County of Lincoln, on the 17th July then next ensuing the passing of the Act, for the purpose of passing and adopting such rules and regulations as might be necessary for the immediate establishment of the said Society and its future welfare; and such rules and regulations as should then and there be adopted should be openly read and entered in a book, to be for that purpose provided, and having received the approbation of the said Judges as visitors as aforesaid should be, and be considered to be, the binding constitution of the Law Society, and binding upon all its members."

Power was given to the Society to add rules from time to time.

Every person then practising at the bar was authorized to take one pupil or clerk for the purpose of instructing him in the knowledge of the law; and then the fifth section of the Act provided "that no person other than the then present Practitioners and those hereafter mentioned shall be permitted to practise at the Bar of His Majesty's Courts in the Province, unless such person shall have been previously entered of and admitted into the said Society as a student of the Laws, and shall have been standing on the books of the Society for and during the space of five years, and shall have conformed himself to the rules and regulations of the Society, and shall have been duly called and admitted to the practice of the Law as a Barrister according to the constitution and establishment thereof."

This legislation practically placed the good name and fame of the bar, its education, and future welfare in the hands of the members of the bar themselves. To them was intrusted the securing to the Province and the profession a learned and honorable body to assist in the administration of justice and in the maintenance of the Constitution. Nor were the members of the bar slow to avail themselves of the privileges accorded to them and the Trust imposed on them by the Act of Parliament.

On the 17th July, 1797, named in the Act, at a meeting of the Law Society in the town of Newark — present: John White, Attorney-General, Robert D. Gray, Solicitor-General, Angus Macdonell, James Clarke, Nicholas Hagpuerman, Christopher Robinson, Allan McLean, William D. Powell, Alexander Stuart, and Bartholomew Beardsley, — it was resolved "that the two Crown Officers be nominated Benchers of the Law Society, together with the four senior Barristers; and that the Benchers, according to seniority, take upon themselves the treasurership of the said Society annually."

This resolution was signed and approved by J. Elmsley, Chief-Justice; William Dummer Powell, Judge; and H. Alcock, Judge.

At this meeting other rules were made, and at other meetings of the Society still other rules, down to 59 Geo. III., A.D. 1818, — in all, seventeen rules. In this latter year, in Hilary Term, was passed the following rule: "Whereas the present state of this Province affords the means of obtaining that education which is necessary to the liberal study and practice of the profession of the Law, and which will secure to the Province a learned and honorable body to assist their fellow subjects as occasion may require, and to support and maintain the constitution of the Province; which valuable objects the Law Society of Upper Canada was expressly formed to secure: It is resolved by the Society that after this term all persons proposing themselves to the Society for their approbation previous to their admission upon their books, shall be required to give a written translation, in the presence of the Benchers of the Society, of a portion of one of Cicero's Orations, or perform such other

exercise as may satisfy the Society of his acquaintance with Latin and English Composition; and that no person who cannot give these proofs of a liberal education shall hereafter be admitted upon their books."

This was not a very severe curriculum, but was sufficient for the time. In the year 1818 the educational advantages in the Province were not very great. The Benchers of the Law Society were not disposed to give the student more intellectual food than the means at his disposal would enable him to digest. We shall see, as we get further on, that the Benchers have throughout kept to one principle, and that has been that the student should have a liberal education before entering upon the study of the law, and that the course of study has always been shaped by the opportunities afforded for a complete primary equipment. As time went on, the benchers, barristers, and students alike were alive to the necessity of the students having some kind of exercise in legal discussions. To this end, in the year 1822, a voluntary association called the Advocates' Society was formed, which seems to have been a combination society, made up of barristers and students alike. In imitation of the Law Society, they elected one of their number to be Bencher, — who was not necessarily a Bencher of the Law Society, — a Treasurer, Secretary, Librarian, and other officials. There was a book kept of their proceedings, which has been preserved and presented to the Law Society by Sir Adam Wilson, Ex-Chief-Justice of the Queen's Bench Division of the High Court of Justice. I find recorded in this book that this Advocates' Society (which was in effect a Law School or *quasi* Law School) met on the 20th January, 1823; that the journals were read and the Bencher made the following report from the Legal Sitting: "On this day three several cases were argued: (1) A demurrer in an action on a bail bond. (2) Case, — verdict subject to the opinion of the court in an action of slander. (3) Practice, — case as to service of process." The conclusion of the last case is, "After hearing counsel, held the rule be discharged. A. Chewett, Bencher."

HON. EDWARD BLAKE, Q.C.

The counsel engaged in the above cases were Robert Baldwin, afterward the Hon. Robert Baldwin, Attorney-General, Premier of Canada, and the distinguished leader of the Reform Party of his day; Mr. Notman, and Mr. Richardson (of Messrs. Smith and Richardson).

On the 30th January, Mr. Bencher Chewett's address to this Society was reported and submitted to the body at large. This address will well bear perusal in its entirety. The whole address will be found at page 451 of the "Lives of the Judges." It is too long to be given in this paper, but I will venture some extracts from it, as I think the address shows what a lively interest was taken at the time (1823) in the legal education of the students.

Mr. Chewett commenced his address as follows: —

"GENTLEMEN, — Mr. Dawes in his address to the students of the law makes the following observations: 'Of all the liberal professions there is not any so difficult to study as that of the law. Those young gentlemen who are intended for it, after they have quitted an university or academy, are either impeded in their researches for want of a proper instructor, or they are affrighted from them by the glowing appearance of a black-letter folio. Resolution and industry may have overcome many disadvantages, and time with perseverance may have produced good lawyers; but the greater number of students feel their weakness, and forbear a profession in which with the assistance of a tutor they might have shone with lustre and gained honor and emolument. Many men who have travelled the wilds of law without a guide to direct them, have been called to the bar in hope of business, and there experienced truth, that serious truth, 'that many are called, but few are chosen.' What they have acquired is perhaps undigested and without system. They have either accustomed themselves to use less oratory and become speakers of infinite nothing, or they have turned over the pages of an experienced commentator before they have read an elementary writer, and, lost in the mazes of legal knowledge, they have raised a barrier against it, which even after they are unable to pass; while on the contrary, had they trodden the paths which a preceptor would have marked out for them, they might have come forward and made themselves useful."

The burden of Mr. Chewett's address was advice to the students to study first principles; he said: "when young men without any guide plunge into the midst of abstruse cases without having a competent knowledge of first principles, they must make use of fallacious reasoning, and consequently run into error."

Mr. Chewett in his address endorsed the opinion of Mr. Dawes, that for a student successfully to combat the intricacies of the law with which he has to battle, he should have an instructor to assist him in the habit of arranging his ideas on points of law, speaking in public and making them useful.

The quotations I have made sufficiently demonstrate that in the early part of the century the Law School idea was firmly fixed in the minds of those engaged in the practice of the law. The cases argued and questions discussed by the students — members of the Advocates' Society, with a Bencher to supervise and control — gave their proceedings all the appearance of a Moot Court and judicial deliberation.

Turning now again to the requirements of the Law Society in regard to candidates for admission to the Society as students, and the knowledge they were expected to possess before entering upon the study of the Law, I find that on the 1st July, 1825, the Convocation of Benchers passed this resolution: "Whereas no small injury may be done to the education of that portion of the youth of the country intended for the profession of the Law, by confining the examinations to Cicero's Orations, and it is advisable further to promote the object of the 16th rule of this Society, passed and approved of in Hilary Term, 60 Geo. III: it is unanimously resolved that in future the student on his examination will be expected to exhibit a general knowledge of English, Grecian, and Roman History, a becoming acquaintance with one of the ancient Latin Poets, as Virgil, Horace, or Juvenal, and the like acquaintance with some of the celebrated prose works of the ancients, such as Sallust or Cicero, *De Officiis* as well as his Orations, or any author of equal celebrity which may be adopted as the standard books of the several district schools; and it is also expected that the student will show the Society that he has had some reasonable proportion of mathematical instruction." Up to this period of our legal history, attention had been paid more to the preparatory and initiatory exercises than to the study of law itself. True there had been the "Advocates' Society;" but it had not a long existence, and seems to have expired altogether before the beginning of the year 1825. Students were left to grope the best way they could through the labyrinths of the law, with

such aid as they could get from willing or unwilling masters in whose offices they might chance to be. There were no regular instructors of the law; every student was expected to look out for himself, and fight his way through the ordeal of an examination before the Benchers of the Law Society as best he could.

In some places more attention was given to instructing the students than in others. In Toronto, the seat of the courts, there were not wanting barristers who gave to their students instruction in the science and principles of the law, and sometimes in its practice also.

CHARLES MOSS, Q. C.

I can well recollect when about the year 1853 the late John Hillyard Cameron, and Sir Adam Wilson, Ex-Chief-Justice, gave to their pupils lessons in law, the remembrance of which is cherished by their ex-students, many of whom have become distinguished members of the bar. I go back and remember how in the year 1848 (after I had been called to the bar) I attended the lectures of the late Hon. William Hume Blake, then Professor of the Law in King's College, Toronto, afterward Chancellor of Upper Canada,—lectures which I may say in point of matter and manner of delivery were not surpassed by the lectures of a Story or a Kent. There are living witnesses who will bear out this assertion. I am indebted to the courtesy of Æmilius Irving, Esq., Queen's Counsel, for showing me his book of notes which he took of those lectures while on the same bench with myself. At this time Mr. Irving had not been called to the bar, and therefore took fuller notes than I did; a perusal of those notes reminds me with what attention we listened to those lectures, which rather bore the character of critical examination of decided cases and the principles which should govern, than the deliverances of text-writers on any subject presented. Mr. Blake was a fearless dissector of decided cases, and never failed to illustrate a proposition by the highest principles of philosophic truth. Mr. Irving's note-book is a standing proof of the ability and industry of Mr. Blake as a lecturer, and of the excellence of the lecturers themselves. I turn now again to the students in their character of candidates for admission to a membership of the Law Society,—in other words, as candidates for the privilege of studying law. We have referred to the first and second curricula; we now come to the third curriculum, which was a still further advance in the requirements and acquirements of students before being permitted to enter the portals of the law. At a Convocation of Benchers held in Trinity Term, 23 Vic. 31st August, 1859, it was resolved that the examinations for students-at-law should be divided into three classes, to be called (1) the University Class, (2) the Senior Class, (3) The Junior Class; that candidates for the University Class should be graduates of a university entitled to confer degrees and established in some part of Her Majesty's dominions, and should be examined

separately from other candidates in one or more of the following books:—

Homer, — Book I. of Iliad.
Lucian (Charon, Life or Dream of Lucian and Timon).
The Odes of Horace.
Mathematics or Metaphysics — at the option of the candidate, according to the following courses, respectively: —
Mathematics, — Euclid, Books I., II., III., IV., and VI.; or Legendre's Géometrie, Books I., II., III., and IV.
Hinds' Algebra, — to the end of Simultaneous Equations.
Herschell's Astronomy, Chapters I., III., IV., and V.
Ancient and Modern Geography and History, — such works as the Candidate may have read.

Candidates for admission to the Senior class were to be examined in the same books and subjects as for the University, and candidates for the Junior class in the following subjects:—

Horace, — Books I. and III. of the Odes.
Mathematics, — Euclid, Books I., II., and III.; or Legendre's Géometrie by Davies, Books I. and III. with problems.
English History and Modern Geography, — such works as the student may have read.

The curriculum of 1859 was somewhat liberalized in 1875. In that year the Benchers in Convocation came to the conclusion that university graduates should not be subject to any preliminary examination. It was therefore resolved "that graduates in the faculty of arts in any university of Her Majesty's dominions should be entitled to be admitted a student of the laws upon giving six weeks' notice, paying the prescribed fees, and presenting to Convocation his diploma or a paper certificate of his having received his degree. All other candidates to pass a satisfactory examination in the following subjects:—

Horace, — Book III. of the Odes.
Virgil's Æneid, Book VI.
Cæsar's Commentaries, Books V. and VI.
Cicero, — Pro Milone.
Mathematics.
Arithmetic.
Euclid, Books I., II., and III.
Algebra to end of Quadratic Equations.
English History.
Outlines of Modern Geography.
English Grammar and Composition."

The students who had entered the Law Society under this curriculum having a fair chance and no favor, were able to make their way with such means of instruction in the law as they had in 1859. The Benchers and Governors of the Law Society, however, conscious of the duty imposed upon them by the original constitution of the Society, were anxious to afford the students still better opportunities for advancement. It was not, however, till some years after this that a Bencher more advanced than others in his conception of what a true legal education ought to be, took it in hand to accelerate the wheels of progress, and urge the establishment of a Law School within the precincts of Osgoode Hall (Toronto), the seat of the courts and the home of the Benchers, the rendezvous of students and of those who had taken their degree of Barristers. The Bencher to whom I refer was the late Thomas Moss, Q. C., afterward Chief-Justice of Ontario. He was a most distinguished graduate of the University of Toronto, and at one time Vice-Chancellor of the University. He could not see why a student of law should not be afforded as much opportunity of obtaining a good education in the law as students of the University had for obtaining the best education in the arts and sciences. The late John Hillyard Cameron, Q. C., was in 1873 the Treasurer of the Law Society — which office, it may be explained, is that of President of the Convocation of Benchers — and Chancellor of Trinity College. He was fully in accord with Mr. Moss in his opinion of what was due to the students in the matter of legal education. To these two gentlemen

is mainly due the establishment of the first regular Law School in the Province. In Hilary Term, 1873, on the report of the Legal Education Committee, of which Mr. Moss was chairman, the Law Society in Convocation enacted:—

1. "That a Law School be established.

2. "That there shall be a regular staff of four lecturers, who shall be barristers, to hold office for three years, and one of them to be President of the Law School.

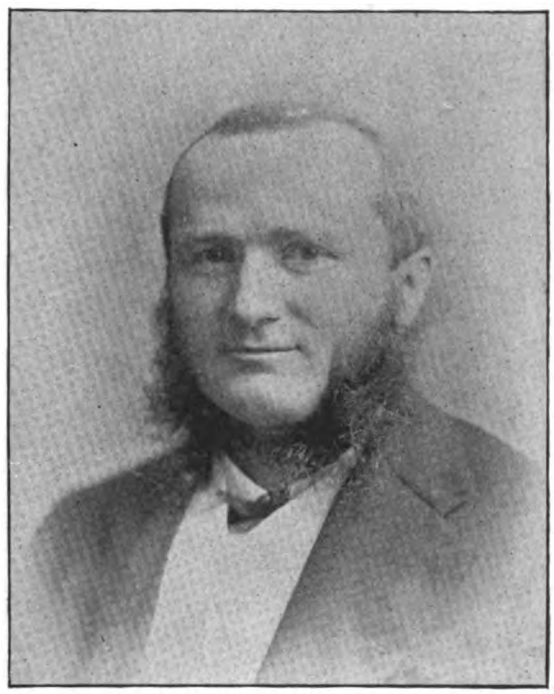
3. "That the lectures shall be styled 'General Jurisprudence,' 'Real Property,' 'Commercial Law,' and 'Equity.'

4. "That the course in the Law School shall consist of lectures, discussions, and examinations, between the 1st of November and the 1st of May.

5. "That attendance in the school shall be voluntary.

6. "That there shall be intermediate and scholarship examinations for special honors, and call to the bar to be conducted in term or vacation in presence of three Benchers.

7. "That it shall be the duty of the lecturers to deliver *vivâ voce* lectures; to prepare all questions for the examinations, whether oral or written; to select all questions for discussion; to attend all examinations and discussions; and all questions for examination and discussion shall be approved by the President of the School."



EDWARD MARTIN, Q. C.

These were the principal enactments of the Law Society in establishing the school. The school commenced with good prospect of success. Senior barristers of acknowledged ability — namely, Charles Moss, James Bethune, Z. A. Lash, and A. Leith, Q. C. — were appointed lecturers in the school. Mr. Leith, who had gained a wide reputation for his able work on Real Property ("Leith's Blackstone"), and his associates did their part in promoting the success of the school as an educational institution in the law. In the "Canada Law Journal" of January, 1873, is contained this reference to the school: "We understand that the opening lecture will be delivered at Osgoode Hall, on Monday evening, the 3d February, at eight o'clock, by the Treasurer of the Law Society, the Hon. J. H. Cameron, to whom the profession is so largely indebted for his exertions in this and all other matters affecting their welfare."

Mr. Cameron, on the evening named, opened the school with a brilliant address to the students. His long experience at the bar as an advocate, and in his first years an educator in training his students by a systematic course of lectures, enabled him to gain the ear of his audience in a marked degree. In the course of his remarks he said: "In the position which the Law Society has been obliged to assume, it has been my desire, during a practice extending over thirty-four years, as far as lay in my power to afford every facility to men to enter the profession with every possible educational advantage. There is no higher duty than that of training young men; and their duty is best discharged in carrying out that purpose. For years past they had endeavored to accomplish this object, and it is only now that they had acquired the power of giving the

men who by earnest study had acquired the necessary education through the profession itself, the advantages which they might have acquired by a University course, and to give to these men the same privileges in shortening their legal course that were enjoyed by those who had taken a University degree. Since the Law Society had determined on this course, I have had many letters from the country from men claiming that non-residence should not debar them from these privileges. But the plea these gentlemen put forth was not a tenable one, because they might qualify themselves for the examination by cramming; whereas the object the Society had in view was to impart a groundwork of knowledge, and they might be assured that any time or money that might be devoted to residence there and attendance on the Law Society lectures would redound to their advantage. The object of the Society could only be successfully carried out by the plan decided on. They had adopted this system before it was adopted in any other part of the Dominions of Great Britain, and I have received letters from eminent men in the old country with reference to its working."

W. A. REEVE, Q. C.

The school was opened for practical work in October, 1873. Students who attended, sometimes numbering as many as one hundred or one hundred and twenty, acknowledged the benefit derived from the teaching in the school. Notwithstanding this, the first law school came to an early end. Its demise was announced in the "Canada Law Journal" of March, 1878. In giving a synopsis of the proceedings of the Benchers, the "Journal" said: "The consideration of the report of the Law School was taken up. Moved, that the Law School be abolished, and cease from and after the first day of Easter Term next. Adopted."

No reason is given for the adoption of this resolution. I have obtained it from Mr. Charles Moss, who so ably fills the chair of the Committee on Legal Education, and who is familiar with the operating cause in the demise of the school. He says: "The real cause of the downfall of the first Law School was that it was too popular with the students. Among the provisions of the rules establishing the school was one for shortening, for periods of from six to eighteen months according to proficiency, the term of service of students who attended the lectures and passed the examinations. This provision was a great inducement to students to attend the Law School, and tended to draw them away from the outside places to Toronto, and thus empty the offices of the country practitioners. It was against this that the outside Benchers fought; and the provision for shortening time ultimately led to the proposition to abolish the school, which was carried." The demise of this school was mourned over by many, both townsmen and gownsmen. A member of the bar in 1880 contributed to the "Canadian Monthly" an article from which I will make some quotations. He wrote: "The

enlightened Province of Ontario in the study of the law is at a standstill. Look at the neighboring Republic, the decisions of whose courts are beginning to have weight in our own; whose schools — and none more than those of law — are sending forth men who guide the counsels of half a world, who are able to contend in diplomacy with the sages of Europe; whose suggestions are no longer lightly considered in the social and political countries of Christendom. It is a common failing among Englishmen — a failing reproduced in Canadians — to laugh at the American Republic and her institutions while young. She has now reached her majority, though at an early age her efforts were no doubt feeble, and, like those of the schoolboy, did not compare favorably with those of the graduate. But we need only turn our attention to the Law School of Columbia College in New York City, and the departments of Law in the universities of Harvard, Yale, and Michigan, to find institutions worthy of our consideration and challenging our imitation, if we are only wise.

E. DOUGLAS ARMOUR, Q. C.

"The Albany School is such an institution as could be established by the Law Society of Ontario, which should have, to quote from the curriculum of that school, 'a higher aim than simply teaching young men the law.' It should use its best endeavors to teach those who are intending to enter the profession to be lawyers. This is an arduous and difficult task. It is giving it a power over its own resources, and enabling it to avail itself of its own stores of knowledge. To quote again from the Albany Law School circular: 'The students of medicine and surgery can resort to schools in which he can be thoroughly instructed in all the principal branches of his profession; while the student-at-law enjoys few opportunities of more than he is entitled to obtain by reading in a lawyer's office.'"

The writer in the "Canadian Monthly" did no more than justice to the American Law Schools. Canadian lawyers take as much pride in the American Law Schools as the Americans themselves. It is moreover a matter of pride with them that Marshall S. Bidwell — described by the writer in the "Green Bag" in the article on the Columbia College Law School as "a lawyer of most extensive and varied legal training, educated by English methods, and possessing a constant and unwearied interest in the promotion of education" — was a member of the Canadian Bar, and one of the trustees of the Columbia College Law School. The United States have not much if any advantage of the Canadians in the race for legal learning. The first Law School established in the New England States was that of Harvard, 1817, — in point of time only five years before the organization of "The Advocates' Society" in York (Toronto), to which I have referred in a previous part of this paper. Yale does not claim to have had a Law School previous to 1824, when Mr. Staples's private school became in some way affiliated with the University.

The Litchfield school, which opened in 1783, was not a Law School in the proper sense of the term, nor did the appointment of the Professor of Law in William and Mary College, in 1782, make that college a law school. The able writer of the article in the "Green Bag" on the Harvard Law School, referring to the Harvard School and to the William and Mary College professorship, says: "These early professorships cannot be considered in any sense establishing law schools or separate departments of universities. Besides, like the Law Schools at Litchfield, Connecticut, and Northampton, Massachusetts, the early competitors of the Harvard Law School, they were soon abandoned;" again, writing of the Litchfield school, he says: "It was what might be called a private school, for it was unincorporated, had no power to confer degrees, and was managed by the instructors." It may fairly be admitted that though Harvard may have been and really was the first to establish a law school in 1817, the system of preparatory education for entrance to the school was not so perfect at that time at Harvard or anywhere else in the United States as in Upper Canada. Indeed, at the present time the Canadian system of preparatory education for the school seems to be in advance of that in the United States.

A. H. MARSH, Q. C.

I come now to the consideration of the present Law School,—its rise and progress. When the first Law School was abolished in 1878, there did not seem to be any prospect of a revival of this educational adjunct of Osgoode Hall. Opinions were so divergent on the subject of the necessity of a law school, that it seemed hopeless to expect such a union of sentiment as would lead to its re-establishment. Darkness, however, gave way to light, and in 1881 the school was re-established.

The school of 1881 had in its first term four lecturers: they were Thomas Hodgins, now Master in Ordinary of the Supreme Court of Judicature; T. D. Delamere; Joseph Macdougall, now Judge of the County Court of the County of York; and J. S. Ewart. The lecturers for the second term were E. Douglas Armour, A. H. Marsh, T. D. Delamere, and W. A. Reeve. Messrs. Marsh and Delamere resigned, and were succeeded by R. E. Kingsford and P. H. Drayton. The distinguishing feature of this school, comparing it with the first school that was abolished in 1877, was that it did not possess the attraction of shortening the time for the students, and was consequently not so well attended as the first school. In 1889 it was thought expedient to remodel the school, and to make the attendance compulsory. The subject of compulsory and voluntary attendance agitated the Benchers for a considerable time. Finally, conflicting opinions were reconciled, and the school was established on the compulsory basis. In Easter Term, 1889, Convocation passed a rule "that the Law School be established upon the basis established by these rules."

Convocation then goes on to enact "that the staff of the Law School shall consist of a principal who shall be a barrister of not less than ten years' standing; not less than two lecturers; two examiners."

There are many rules for the good government of the school which it is not necessary to mention. I will however give the rules which direct the methods to be observed in the education of students. The 151st Rule provides "that the duties of the lecturers shall be to deliver *vivâ voce* lectures, to superintend classes, prepare questions for classes, and under the superintendence of the principal to perform such other duties as may be assigned to them by the principal."

Rule 153: "The course in the school shall be a three years' course, and shall consist of lectures, discussions, and examinations."

Rule 156: "Subject to the special provisions hereinafter contained respecting students-at-law . . . now on the books, the attendance in the school shall be compulsory," etc.

Rule 158: "The school term, if duly attended by the student-at-law . . . shall be allowed as part of the term of attendance in chambers or service under articles."

After the Law Society had passed these rules, they without delay proceeded to appoint the officers of the Law School, and to settle upon the curriculum for the school. The officers appointed were: Principal, W. A. Reeve, Q. C.; Lecturers, E. D. Armour, Q. C.; A. H. Marsh, LL.B., Q. C.; Examiners, R. E. Kingsford, M. A., LL.B.; P. H. Drayton.

After one year's trial it was found that more lecturers were required, in order to perform even fairly the work called for by the rules; and in Easter Term, 1890, Convocation resolved that it was expedient to appoint two more lecturers in the Law School, and appointed Messrs. R. E. Kingsford and P. H. Drayton to that office, and subsequently appointed F. J. Joseph, A. W. Aytoun-Finlay, B.A., and M. G. Cameron as Examiners. The Law School rules answer all the requirements of the Law Society establishing the school. The course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of Moot Courts under the supervision of the principal and lecturers. The primary examination of the Law School for a student-at-law, as it at present exists, is as follows: —

BOOKS AND SUBJECTS PRESCRIBED FOR THE EXAMINATIONS,

To be passed by Students and Clerks in order to entitle them to admission to the Society.

CLASSICS.

1891	XENOPHON, Anabasis, III. HOMER, Iliad, VI.	VIRGIL, Æneid, V. CÆSAR, Bellum Gallicum, I., II.
1892	XENOPHON, Anabasis, III. HOMER, Iliad, I.	VIRGIL, Æneid, I. CÆSAR, Bellum Gallicum, I., II.
1893	XENOPHON, Anabasis, IV. HOMER, Iliad, VI.	VIRGIL, Æneid, I. CÆSAR, Bellum Gallicum, III., IV.
1894	XENOPHON, Anabasis, IV. HOMER, Iliad, VI.	VIRGIL, Æneid, II. CÆSAR, Bellum Gallicum, III., IV.
1895	XENOPHON, Anabasis, V. HOMER, Iliad, VI.	VIRGIL, Æneid, II. CÆSAR, Bellum Gallicum, V., VI.

Translation from English into Latin prose, involving a knowledge of Bradley's Arnold's, Exercises 1–24 and 49–65 inclusive.

Translation from English into Greek prose, involving a knowledge of the first fifteen exercises in Abbott's Arnold's Greek Prose Composition.

Translation at sight, with aid of vocabularies, of easy passages from Latin and Greek authors.

A paper on Latin and Greek grammar.

For practice in writing continuous Latin prose, candidates are recommended to study Simpson's Latin Prose (Part I.).

MATHEMATICS.

Arithmetic.

Algebra: Elementary rules; easy factoring; highest common measure; lowest common multiple; square root; fractions; ratio; simple equations of one, two, and three unknown quantities; indices; surds; easy quadratic equations of one and two unknown quantities.

Euclid, Books I., II., III.

ENGLISH.

1. Composition.

1891.	SCOTT, Ivanhoe. MACAULAY, Warren Hastings.
1892.	SCOTT, Waverley. RUSKIN, Sesame and Lilies.
1893.	SCOTT, The Talisman. IRVING, The Sketch Book.
1894.	SCOTT, Quentin Durward. BLACK, Goldsmith (English Men of Letters Series.)

1895. { SCOTT, Kenilworth. GOLDWIN SMITH, Cowper (English Men of Letters Series).

2. Grammar and Rhetoric.

3. Poetical Literature.

1891. LONGFELLOW: Hymn to the Night, A Psalm of Life, The Day is Done, Evangeline, Resignation, The Builders, The Ladder of St. Augustine, The Warden of the Cinque Ports, The Fiftieth Birthday of Agassiz, The Village Blacksmith, The Arsenal at Springfield, The Bridge, King Robert of Sicily, The Birds of Killingworth, The Bell of Atri, From my Armchair, Auf Wiedersehen.

1892. TENNYSON: The May Queen, "You ask me Why," "Of Old Sat Freedom," "Love Thou Thy Land," Locksley Hall, Ulysses, St. Agnes, Sir Galahad, Enid, The Revenge, In the Children's Hospital.

1893. WORDSWORTH (Arnold's Selections): Reverie of Poor Susan, We are Seven, Tinturn Abbey, Lucy Gray, The Fountain, Michael, Heart-Leap Well, To the Daisy, To a Highland Girl, Stepping Westward, The Solitary Reaper, At the Grave of Burns, At the Residence of Burns, To the Cuckoo, Fidelity, Peel Castle, French Revolution, Ode to Duty, Imitations of Immortality, The Happy Warrior, Resolution and Independence, Yarrow Visited, To a Skylark, A Poet's Epitaph, and Sonnets 3, 6, 17, 19, 20, 23, 24, 25, 26, 29.

1894. SCOTT: Lady of the Lake.

1895. TENNYSON: Recollections of the Arabian Nights, The Poet, The Lady of Shalott, The Lotus-Eaters, Morte d'Arthur, The Day-Dream, The Brook, The Voyage, The Holy Grail.

HISTORY AND GEOGRAPHY.

Great Britain and her colonies from the revolution of 1688 to the peace of 1815, and the Geography relating thereto.

Outlines of Roman history to the death of Augustus, and Geography relating thereto.

Outlines of Greek history to the battle of Chaeronea, and the Geography relating thereto.

OPTIONAL SUBJECTS INSTEAD OF GREEK.

(*a*) French and German.

Or (*b*) French, and either Physics or Chemistry.

Or (*c*) German, and either Physics or Chemistry, as follows: --

PHYSICS.

An Experimental course in (*a*) Dynamics, (*b*) Heat, (*c*) Electricity, including an acquaintance with the Metric System of Units. The courses are defined as follows:

Dynamics: Definitions of velocity, acceleration, mass, momentum, force, moment, couple, energy, work, centre of inertia; statement of Newton's laws of motion; composition and resolution of forces; conditions for equilibrium of forces in one plane.

Definitions of a fluid, fluid pressure at a point, transmission of fluid pressure, resultant fluid pressure, specific gravity, Boyle's law, the barometer, air-pump, water-pump, siphon.

Heat: Effects of heat; temperature; diffusion of heat; specific heat; latent heat; law of Charles.

Electricity: Voltaic cells; chemical action in the cell; magnetic effect of the current; chemical effect of the current; galvanometer; voltameter; Ohm's law; heating effect of the current; electric light; current induction; dynamo and motor; electric bell; telegraph; telephone.

CHEMISTRY.

Definition of the object of the science, relations of the physical sciences to Biology, and of Chemistry to Physics. Chemical change, elementary composition of matter. Laws of combination of the elements, atomic theory, molecules, Avagadro's law. The determination of atomic weight, specific heat, atomic heat, nomenclature, classification. The preparation, characteristic properties, and principal compounds of the following elements: Hydrogen, Chlorine, Bromine, Iodine, Oxygen, Sulphur, Nitrogen, Phosphorus, Carbon, Silicon.

FRENCH.

Grammar.

Composition: (*a*) Translation into French of short English sentences as a test of the candidates' knowledge of grammatical forms and structure, and the formation in French of sentences of similar character; and (*b*) translation of easy passages from English into French.

Translation of unspecified passages from easy French authors.

An examination on the following texts:

1891. { ENAULT, Le Chien du Capitaine. DAUDET, La Belle Nivernaise

1892. { SARDOU, La Perle moire (the romance). DE MAISTRE, Voyage autour de ma chambre.

1893. { DE PEYREBRUNE, Les Frères Colombe. FEUILLET, La Fée (the comedy).

1894. { ENAULT, Le Chien du Capitaine. DAUDET, La Belle Nivernaise.

1895. { SARDOU, La Perle moire (the romance). DE MAISTRE, Voyage autour de ma chambre.

GERMAN.

Grammar.

Composition: (*a*) Translation into German of short English sentences as a test of the candidate's knowledge of grammatical forms and structure, and the formation in German of sentences of similar character; and (*b*) translation of easy passages from English into German.

Translation of unspecified passages from easy German authors.

An examination on the following texts: —

1891. RIEHL, Culturgeschichtliche Novellen; Der stumme Ratsherr; Der Dachs auf Lichtmess; Der Leibmedicus.
SCHILLER, Der Taucher.

1892. HAUF, Das kalte Herz; Khalif Storch.
SCHILLER, Die Bürgschaft.

1893. RIEHL, Culturgeschichtliche Novellen: Der stumme Ratsherr: Der Dachs auf Lichtmess; Der Leibmedicus.
SCHILLER, Der Taucher.

1894. HAUF, Das kalte Herz; Khalif Storch.
SCHILLER, Die Bürgschaft.

1895. RIEHL, Culturgeschichtliche Novellen: Der stumme Ratsherr; Der Dachs auf Lichtmess; Der Leibmedicus.
SCHILLER, Der Taucher.

The subjects and text-books for lectures and examinations in law are those set forth in the following

CURRICULUM.

FIRST YEAR.

Contracts. Smith on Contracts, Ansón on Contracts.

Real Property. Williams on Real Property, Leith's edition.

Common Law. Broom's Common Law. Kerr's Student's Blackstone, Books I. and III.

Equity. Snell's Principles of Equity.

Statute Law. Such acts and parts of acts relating to each of the above subjects as shall be prescribed by the principal.

SECOND YEAR.

Criminal Law. Kerr's Student's Blackstone, Book IV. Harris's Principles of Law.

Real Property. Kerr's Student's Blackstone, Book II. Leith and Smith's Blackstone. Dean's Principles of Conveyancing.

Personal Property. Williams' Personal Property.

Contracts and Torts. Leake on Contracts, Bigelow on Torts — English Edition.

Equity. H. A. Smith's Principles of Equity.

Evidence. Powell on Evidence.

Canadian Constitutional History and Law. Bourmot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure. Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Such acts and parts of acts relating to the above subjects as shall be prescribed by the principal.

THIRD YEAR.

Contracts. Leake on Contracts.

Real Property. Dart on Vendors and Purchasers. Hawkins on Wills. Armour on Titles.

Criminal Law. Harris's Principles of Criminal Law. Criminal Statutes of Canada.

Equity. Lewin on Trusts.

Torts. Pollock on Torts. Smith on Negligence, 2d ed.

Evidence. Best on Evidence.

Commercial Law. Benjamin on Sales. Smith's Mercantile Law. Chalmers on Bills.

Private International Law. Westlake's Private International Law.

Construction and Operation of Statutes. Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law. British North American Act and cases thereunder.

Practice and Procedure. Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law. Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

The curriculum and rules of the Law School show with what faithfulness the Benchers of the Law Society and officers of the Law School are performing their trust. Acting under the authority of Convocation, Charles Moss, Q. C., chairman of the Legal Education Committee of the Law Society; Edward Martin, Q. C., chairman of the Special Committee, on whose report the Law School was established; and Mr. Reeve, Q. C., Principal of the Law School, in the vacation of 1889, visited Harvard, Boston, Yale, and Columbia College Law Schools. They were much impressed with the opportunity afforded by those schools for a complete education in the law. Besides being received by professors and educationists in the most friendly manner, they had imparted to them much information which will be very useful in the development of the Law School of Osgoode Hall, — a school which it is hoped is now founded on a solid and enduring basis.

SIR RICHARD WEBSTER.

THE ENGLISH BENCH AND BAR OF TO-DAY.

II.

THE ATTORNEY-GENERAL.

RICHARD EVERARD WEBSTER, Queen's Counsel, Knight, Member of Parliament for the Isle of Wight, and Attorney-General of England, was born in 1842; and was educated at the Charterhouse, London, and afterward at King's College, London, and Trinity College, Cambridge, whence he carried away a Bachelor of Arts degree, third-class honors in classics, a fair knowledge of mathematics (he was thirty-fifth wrangler), the reputation of being the best long-distance foot-racer in the University, and the good-will of everybody who had come in contact with him.

His father, the late Thomas Webster, Q.C., had been one of the most eminent patent-barristers of his day: the Patent Law Amendment Act of 1852 was practically his workmanship; his treatise on the Law of Patents is still to be found in every good legal library in England, and his "Reports" of cases are well known on both sides of the Atlantic.

With such antecedents, Richard Webster naturally joined the legal profession. He was admitted to the Honorable Society of Lincoln's Inn in 1865, and was duly called to the bar in 1868. His professional success was rapid and almost unprecedented. If the gossip of the Temple can be relied upon, he made three hundred guineas in the first, and one thousand guineas in the second, year after his call to the bar. Various explanations of his good fortune are forthcoming to sat-

isfy that portion of the public which hungers for and requires the appearance of some *deus ex machina* in every legal biography. According to one set of story-tellers, Webster was apprenticed to a firm of solicitors who, turning his athletic powers to account, used him as a confidential messenger to other firms of attorneys, and thus gave him an opportunity, of which he promptly and properly availed himself, of forming a wide legal connection both within and without the city of London; others report that the absence of his leader in a heavy railway case and the remarkable ability and pertinacity which he displayed under this trying circumstance gave the necessary impetus to the future Attorney-General's career. Both anecdotes, and especially the latter, which bears a curious resemblance to a story told of John Scott, afterward Lord Eldon, should be received with becoming hesitation.

Sir Richard Webster's success is readily explained by his father's reputation and his own gifts and graces. Circumstances must of course have furnished the occasion; but these were undoubtedly the causes of his early and rapid victory over the difficulties of the most arduous profession into which any man can enter. Learned, persevering, steadfastly faithful in his day of small things, and pertinacious in court beyond all his rivals, he drew around him, not merely the patent agents who remembered his father, but a constantly increasing circle of first-class solicitors, who had heavy work to dispose of, and were thankful to find so honest and competent a workman. Richard Webster was soon known for his own sake, among those in whose favor is life to a junior barrister, as a safe and acceptable advocate; and a tide of practice — patent, common law, privy council, and House of Lords — flowed in upon him, bearing guineas and reputation with it.

In 1878, ten years after his call to the bar, he assumed the silk robe of the Queen's Counsel; and in 1885, when the Marquis of Salisbury became for the first time Prime Minister of England, Webster was raised to knighthood and the Attorney-Generalship. The appointment to this high office, with its wide patronage and its administrative and judicial functions, of a young man only forty-three years of age, who had no intimate practical acquaintance with the criminal law, and who had appeared in no *cause célèbre* except the Belt libel action, brought down upon the head of the responsible minister a perfect storm of public and, it must be admitted, professional criticism. But Sir Richard Webster adapted himself to his new duties easily and at once. He conducted the prosecution of Mr. Stead for his well-meant but foolish abduction of Eliza Armstrong, with a fairness and an ability which surprised the Old Bailey Bar. He has kept the Law Officer's decisions in patent appeals up to the high level which they attained under Roundell Palmer, Cairns, and Herschell; and although far inferior in parliamentary ability to the Solicitor-General, Sir Edward Clarke, he has done henchman's service to the Government in several critical debates. During one of the famous Irish nights, Sir Richard Webster compelled Mr. Gladstone (among whose great gifts patient tolerance of criticism is not included) to hear him in silence; and there were passages of exceptional power in his reply to Sir William Harcourt's onslaught upon his conduct before the Parnell Commission.

No account of the Attorney-General's public life would be complete without a somewhat detailed criticism of his appearance before that august tribunal. That he was strictly entitled to accept a brief for the "Times" cannot for one moment be disputed. The Attorney-General of England holds office only during the lifetime of the Ministry which appoints him, and the salary at present attached to his position, although eminently substantial, is not large enough to induce any of the leaders of the bar to abandon private practice, even although a goodly measure of influence and honor and a reversionary interest in the Lord-Chancellor-

ship be thrown into the balance. Besides, it has been the invariable and unquestioned custom of the Law Officers of the Crown for generations past to retain and, if possible, increase their *clientela*. Even party rancor is unable to deny that in defending the house of Walter before Sir James Hannen and his colleagues, Sir Richard Webster conformed to the most literal interpretation of the rules of professional etiquette. But there are two observations which have been made, and which in our opinion may be made without unfairness, upon the conduct of the Attorney-General in regard to the Parnell Commission. It may well be doubted how far it was prudent of the first Law Officer of the Crown to identify himself, and in the imagination of the public, not only himself but the Unionist Government and the Unionist cause, with a deliberate and most damaging attack upon the fame of his political adversaries. It may also be regretted that Sir Richard Webster did not entirely abandon private practice during the progress of the trial. That he must have greatly reduced the list of causes in which he was engaged is extremely probable, and that he honestly mastered his brief no one who knows his history and character will question for an instant. But those who honor and cherish his professional reputation most highly will never believe that, with an entire abstraction from other work, the Attorney-General could not have opened the case with at least as much ability as Sir Henry James displayed in closing it. The course which we venture to think Sir Richard Webster might with advantage have adopted, was not altogether without a parallel.

In 1856 William Palmer, nominally a surgeon, but in reality a racing and betting blackleg, at Rugeley,[1] in Staffordshire, was brought to trial at the Central Criminal Court for having poisoned his friend and patient, John Parsons Cook, with strychnia. That deadly alkaloid, although probably the instrument with which Wainewright had compassed the death of Miss Abercrombie, was then practically unknown in England; and the medical profession was sharply divided both as to the symptoms which accompany and the appearances which follow its administration. Sir Alexander Cockburn was Attorney-General, and was therefore responsible for the prosecution. He is alleged to have returned all his briefs when the Palmer case came into his hands, and to have spent the greater part of his time in studying the chemistry of strychnia in the laboratory of Dr. Swaine Taylor, whose treatise on Medical Jurisprudence is a standard work in all countries. The result amply justified the course which Cockburn is understood to have taken. The prisoner was defended by Mr. Sergeant Shee, perhaps the foremost criminal lawyer of his day, and Mr. Grove, Q. C., an eminent man of science, now a Privy Councillor, aided by an army of medical advocates of the approved type. A determined and most ingenious effort was made to show that the tetanus produced by strychnia, traumatic tetanus, idiopathic or constitutional tetanus, epilepsy, and "general convulsions" could not be distinguished with sufficient clearness to warrant the jury in finding a verdict against the prisoner at the bar; but the Attorney-General's victory was complete. His opening speech "will live forever," at least in legal literature; he completely destroyed in cross-examination the expert evidence for the defence, and his reply secured the conviction of the prisoner. When the jury returned their verdict of guilty, the convict threw over the dock-rail to his solicitor a scrap of paper on which he had written, in the language of the turf, "The

[1] The feeling against the prisoner in his own county was so strong that an act was passed (19 Vict. c. 16) in order to enable the trial to be removed to London. It is said that a deputation from Rugeley waited on Lord Palmerston, and urged that the name of the village to which the poisoner's career had given such an unpleasant notoriety, should be changed, when the Minister suggested the substitution of his own name, *Palmerston*.

riding has done it." One cannot but feel that Sir Richard Webster might, with advantage, have borrowed a hint from the example of Sir Alexander Cockburn. Our readers must not, however, suppose that the Attorney-General's appearance before the Parnell Commission was, in any sense of the term, a failure. His cross-examination of Mr. Parnell, extending over a period of three or four days, was well worthy of the traditions of his office, and in nearly every essential point has received the *imprimatur* of the judges. Those portions of it which relate to Mr. Parnell's alleged opinion that crime in Ireland was the work of "secret societies," and to the purchase of the "Irishman," deserve not only to be studied by novices in the art of cross-examining, but to find a place in the State trials beside the masterpieces of Erskine. Moreover, the following passages in Sir Henry James's reply throw some light upon the disjointed character of the Attorney-General's opening address: "To tell you all the difficulty that the Attorney-General had to encounter when opening this case, is impossible. If one refers or recurs to the experience of any counsel who has had to make a statement of a case he is about to prove, whether it be one of magnitude or one of slight dimensions, every one will know that it is impossible for counsel to vouch the certainty of proving all that he is instructed to lay before the tribunal that is to hear the case; and we have, all of us, felt, time after time, however careful we have been to speak with that moderation which is one of the attributes of success in advocacy, how impossible it is to fulfil each obligation that counsel undertakes to the tribunal he addresses. If that be the difficulty in an ordinary case, perhaps you may have gathered enough in this case to know how that difficulty became multiplied and exaggerated. . . . From first to last there have been obstacles placed in the way of this case being brought before you completely and directly which probably no one can understand." The learned gentleman then proceeded to point out at least two deliberate attempts, disclosed by the evidence, to mislead the representatives of the "Times," and argued that such conduct on the part of witnesses vastly increased Sir Richard Webster's difficulty in discriminating between what was worthy and what unworthy to be laid before the Commissioners. The magnificent ovation which he received at the annual meeting of the Bar Committee, from counsel of all shades of political opinion gave unmistakable expression to the conviction of his professional brethren that the Attorney-General had done nothing derogatory to the traditions of his office, as advocate for the "Times." Perhaps the highest tribute to their importance of this vote of confidence may be found in the fact that the "Daily News," which had pursued Sir Richard Webster with unrelenting hostility and had declared that his reputation was blasted, omitted to report it.

The Attorney-General is not only one of the most successful, he is also one of the most hard-working, men at the bar. Before other counsel are abroad, he may be found in his chambers in the Temple preparing for the contests of the day. He has a private room in the House of Commons, where he masters briefs in the intervals between parliamentary divisions, sustained by no stronger stimulant than tea. He finds time, nevertheless, to attend to the interest of his constituents, to preside at the annual meetings of athletic or charitable societies, and to indulge his fine musical tastes. In private as in professional life, he is a very perfect, gentle knight, *sans peur et sans reproche.* — LEX.

A STUDY IN ANCIENT LAW.

By Gustave Ravené.

I.

A LEARNED institutional writer, in speaking of the origin and development of Positive Law, states that, —

"Positive Law, as one side of the general culture of a nation, is developed both in it and with it, in conformity with intellectual and moral conditions, and with the co-operation of that people's special external relations, and is also dependent upon the nature, the geographical position and character of the country it inhabits. The source from which Law springs is the intellectual individuality of the people, or the popular consciousness; hence its national character."

Following the above definition, we have to consider the history of the nation, its existence in space and time, its general culture and intellectual development, if we wish to study the history of its laws.

The study of the law in its origin, early history, and development is that part of Psychology known as Anthropology; and here again it is classed in the subdivision Sociology.

Anthropology studies the history of civilization. Considering at first the physical structure of man, then the conditions of his physical and intellectual development, anthropology investigates the early social organization, and traces step by step the evolution of institutions.

To study the development of law, other materials are needed besides historical data concerning judicial decisions and legislative enactments. We have to study the early condition of mankind, the races of man, their distribution and history, especially that of the Aryan race; then investigate the laws of the Ancients, as revealed to us by tradition, record, and contemporaneous literature; collect the known laws of primitive races, examining their history by the light of anthropological research; then trace out the relations of those early and primitive institutions to the intellectual development of the nation; and finally, arrange the laws in accordance with the then prevalent modes of thought.

The days when history was biographical and chronological narrative, and historians stated the facts of social growth in the form of chronological sequence, belong to the past. To-day the writers on history, and especially the philosophers whose attention is directed to the study of social phenomena, have to devote deep and persevering research, not only to the accumulation of data, the arrangement of historical facts, but principally to the discovery and exposition of the fundamental underlying laws and prevailing conditions to which the political existence and development of mankind is due.

Society is an organism; and its functions, however complex, are under the dominion of an unchanging law of development Society, like man and all animal creation, passes through the successive stages of life, — birth, maturity, and death; and its phenomena, like those of animal existence, are the results of the conditions under which the social life exists, and its law of evolution.

Man has attained to his present physical, intellectual, and moral standing, after passing through successive phases of evolution. So has society. The results of anthropological studies point to the passing of periods in which society was successively a savage, then a barbarian, and finally a civilized organization. Through many thousands of years man has struggled to reach a higher level of existence, through ages he has adapted his social structure to his altered forms of life; and when he reached the plane of civilization his social organization was the product of the accumulated experience of the past, moulded in the furnace of necessity.

The institutions of modern societies have preserved many of their ancient characteristics. As the wants of man increased or changed, the laws of the community were enlarged or modified to meet the requirements of a novel status. And from age to age, from the birth of society to its maturity, its laws have been evolved through many stages of evolution, from the fundamental rules of conduct to their present complexity, retaining in their structure the debris of ancient institutions.

Historical Jurisprudence studies the history of laws in a certain community. *Ethnological Jurisprudence* studies the development of institutions throughout the entire evolution of civilization. While Historical Jurisprudence contemplates the sequence of laws, and but incidentally considers the social requirements to which they owe their existence, Ethnological Jurisprudence collects the institutions of all races of men, investigates their history, takes account of the physical, intellectual, and moral condition of the race or nation, and its existence in space and time, and finally arranges the history of the laws so studied, not only in the order of time, but also according to the modes of thought which gave birth to them.

The English law is remarkable for its originality of development, the comparative freedom from foreign influences. The mass of custom crystallized into what is generally called the *Common Law* is mainly Teutonic, derived from the Anglo-Saxon customary laws, with, perhaps, a survival of archaic Celtic institutions; and only in its later stages of growth does the Common Law show the influence of the Roman Law.

To what extent, in quantity and in quality, the Common Law is indebted to purely Teutonic institutions on the one hand, and the Roman Law on the other, is a question still awaiting an answer. The history of the Common Law has yet to be written, and the words of Sir Henry Spelman are as true to-day as they were in his time: —

"I wish some worthy lawyer would read the law diligently, and show the several heads from which these laws of ours are taken. They beyond the seas are not only diligent, but very curious in this kind; but we are all for profit and *Lucrando pane*, taking what we find at market without enquiring whence it comes."

The Common Law is said to be founded on "legal principles, illustrated by decided cases."

These cases refer us to earlier authorities, the Year Books and the early treatises; and when we have reached this stage, we look upon a chaos of authoritative statement, the reason for which has to be searched for among primitive customs, the influence of State and Church, the adoption of legal rules from foreign sources, and, in general, the intellectual, social, and moral condition of the age.

On reaching what may be termed the authoritative period in the history of the Law of England, as marked by the treatises of Granvil and Bracton, the works known as Fleta and Britton, and the Year Books, our researches into the history of the Common Law branch out in two directions. In the one we have to follow out the influence of the Roman Law, its history and its sources; in the other the customary laws of the Teutonic races, the early English institutions, and their development or survival in our present laws.

At this stage the comparative study of the Common Law becomes the subject of researches in the field of Ethnological Jurisprudence.

To illustrate the method pursued in the study of Ethnological Jurisprudence, the following portions of an examination of a celebrated German collection of customary laws are given: —

THE SACHSENSPIEGEL.

In the collection of "Essays in Anglo-Saxon Law," Adams says: —

"Among all the German races none have clung with sturdier independence or more tenacious con-

servatism to their ancient customs, than the great Saxon confederation, which stamped its character so often and so deeply upon the history of Northern Europe. Of all productions of the German mind within the domain of law, the *Sachsenspiegel* was the purest and the greatest."

The period which gave birth to the *Sachsenspiegel*, the greatest German legal compilation, is a memorable one in the world's history. All over Europe an intense intellectual movement was felt. The tide of free thought had risen; the waves of intellectual liberty were dashing against the institutions of the Church of Rome, and slowly but surely they were sweeping away the fetters imposed by tyranny and superstition.

The *Sachsenspiegel* is the child of the thirteenth century,— a century which saw the dying of the age of faith and the beginning of the age of reason. It was the century which witnessed the struggle between the worldly and spiritual powers; it was the age which beheld the bulwarks of law, order, and liberty emerge from the chaos of lawlessness, strife, and slavery; and when expiring the thirteenth century sank back into the grave of time, the first rays of the sun of reason had burst through the clouds of ignorance and superstition, shedding light upon the gloomy pathway of humanity.

The *Sachsenspiegel* was written by Eicke von Repgow, a Saxon knight and judge (Schöffe), the period being between A. D. 1198 and A. D. 1235, probably about A. D. 1230. Of the author little is known beyond the name, only that he was a knight, a judge, and that he first wrote the *Sachsenspiegel* in Latin, but at the request of Count Hoyer von Falkenstein translated the book into the German language.

The *Sachsenspiegel* was only a private compilation; but it soon obtained popular and judicial recognition. It is even alleged that Frederick II. gave his imperial sanction to the Saxon code. Many editions appeared, and so numerous were the manuscript copies that a mediæval author states that five thousand of them were extant in his day.

The Mirror was also recognized as a source of law in many countries outside of Germany. One edition was in verse, — a not unusual feature in ancient law treatises: the Brehon law books, the various Hindu works, were in verse; and Cæsar informs us of the same fact having come to his notice in Gaul.

In the "Præfatio rhythmica" the author accounts for the title of the book in the following words: —

> ". . . mirror of the Saxons
> This book is to be called,
> Since Saxon law herein is made known
> As in a mirror the women
> Their faces do see."

The name "mirror" is a very common one in the literature of the Middle Ages. Thus we meet with the "Schwabenspiegel," Tengler's "Laienspiegel," Sebastian Brandt's "Klagspiegel," and Andrew Horne's "Mirrour of Justice."

In the great conflict between the empire and the papacy, the *Sachsenspiegel* takes a decided stand. The *Spiegler* says: —

> "Two swords gave God to protect Christendom: to the Pope the spiritual, to the Emperor the worldly."

By these words the *Sachsenspiegel* defines the positions of Pope and Emperor. The *Spiegler* also denies to the Church the right, by the introduction of the Canon Law, to supersede the law of the land. The Glossator in annotating this passage must have lost his temper, for he indulges in the words:

> "The Pope shall strengthen the Emperor and his laws with all his might. No man is to say: I am a priest; what do I care for the Emperor's laws? Fool, all *canones* may be interpreted by *leges*."

Of course such passages were sure to draw forth ecclesiastical fulminations, and in the year 1374 Pope Gregory XI. issued a bull against fourteen articles of the *Sachsenspiegel*. From the directions of the bull to the bishops of various cities we may form a conception of the wide-spread influence of

the *Sachsenspiegel*. The Pope himself admits the great influence of the work in the words:

"... scripta in Saxonica et nonnulles alliis partibus apud tam nobiles quam plebeios reperiuntur quæ iudices et incole a longis retro temporibus observarunt."

The thunders of the Vatican did not prevent the *Sachsenspiegel* from retaining and even extending the authority it had once acquired. Its spread and authority had always been a source of annoyance to the clergy, they had always looked upon the *Sachsenspiegel* with disfavor; but neither secret nor open hostilities on their part succeeded in impairing its hold on the people.

The rottenness of the clergy, the utter demoralization of the churchmen, and their tyrannical rule had stirred popular discontent. Attacks directed against the Church were openly made, and the songs of the "Minnesänger," and the expressions in the law books give a faithful picture of the then prevailing state of affairs. To say "as bad as a priest," or "I would rather be a monk," became so frequent that these words passed into common parlance.

Walther von der Vogelweide sings: —

"O Father in heaven, how long wilt thou sleep?
The lord of thy treasury is only a thief.
Thy shepherd 's a wolf who devoureth the sheep;
Thy judge is of robbers and murderers chief."

In the *Sachsenspiegel* we find regulations concerning the status of children of priests, and in several other law books, enactments which clearly show the contempt in which priests were held.

Similarly the many regulations on promises and debts, as also the sanguinary criminal code, throw a strong side on the moral condition of the age.

The *Sachsenspiegel* enjoins on every one the sacred duty of keeping promises. So strictly was this rule enforced, that when a debtor could not pay his debts, his body was to answer. Of the same law we are informed by Tacitus and the Leges Barbarorum.

But further on the *Sachsenspiegel* gives minute rules of conduct for the case that the promisor promises while under duress. An exactly similar provision is found in the old English law: —

"At the first we teach that it is most needful that every one warily keep his oath and his 'wed.' If any one be constrained to either of this wrongfully, either by treason against his lord or to any unlawful aid, then it is juster to belie than to fulfil."

The *Sachsenspiegel* has a very complete and strict criminal code.

Murder, robbery, stealing church property, arson, and graveyard desecration were punishable by breaking on the "Rad."

Highway robbery and theft subjected the offender to punishment by hanging.

Rape was punished by decapitation, the house in which rape was committed was to be torn down, and all living beings in it were to be destroyed. In the city of Nürnberg burying alive, in other cities impaling, were the punishments.

Burning at the stake was a punishment reserved for heretics, magicians, and poisoners.

II.

In the first stages of the existence of the human race, man lived in hordes, differing but little from the communities formed by the gregarious animals. In these hordes the social institutions of marriage and family, as we understand them, had no existence. The members of the horde were blood-relations, and the union of the sexes was "communal;" that is, the sexual intercourse was to a great extent promiscuous, regulated merely by mutual desire and the right of the stronger. Yet an "absolute" promiscuity, as assumed by Morgan, McLennan, and Bachofen, probably never existed. There must have been other social forces beside the mere right of the stronger. A society so organized could not possibly exist; it "would have broken up in a week, while in fact savage societies last for ages." Ob-

servations of savage communities and of the social life of the superior animals lead to the conclusion that promiscuity was checked by various conditions, especially the strong feeling of jealousy on the part of the male; and it is extremely improbable that man in his first attempt at an organization of society should have fallen below the level of sexual intercourse existing in the lower animal world.

At the present time we know of no race so low in the scale of culture as to occupy the level of the most "Primitive Man," the "Urmensch" of the German Anthropologist. Among the lowest types of man, now found, there exists an unwritten social code, a system of rules governing the union of the sexes. No existing type of man, however primitive, lives under the system of "promiscuous" marriage; and the statements of Herodotus, Dio Cassius, Strabo, Plinius, and Xenophon, that in their days "absolute" promiscuous sexual intercourse prevailed among various nations, have to be taken *cum grano salis.*

It appears, however, from various customs, that among several white races a system of communal marriage formerly obtained. The annual prostitution of Babylonian women in the temple of the goddess Mylitta, a similar custom among the girls of Cyprus, and allied usages existing in the Balearic Islands, in ancient Carthage and Greece and modern India, are instances.

The maternal instinct which secures the protection of the offspring, eventually led to that type of the family called the "Matriarchate," in which descent was traced through the mother. No political supremacy of the woman is to be implied from this organization. Considering the position of woman among savages, it is extremely unlikely that she ever asserted any powers over her lord and master. Whatever may have been the political position of woman, the custom of feminine filiation is an established fact. It is to-day a custom prevailing among various races, and we are informed by Herodotus that it was the family organization of the Lycians. According to a passage from Varro, quoted by Saint Augustine, it was the custom in ancient Athens for children to take their name from their mother. Recent researches by Dargun show that the "Matriarchate" was the basis of the Aryan family.

The constant warfare between the different hordes or tribes must have led to the capture of women from the neighboring tribes. The necessities of life, the difficulty of support also gave rise to a practice very common among savages,—of killing infants, especially girls; and the consequent scarcity of women contributed in a great measure to the custom of wife-capture, or "exogamy." On this practice the institution of "marrying out of the tribe" is mainly founded. Exogamy is very common at the present day, being found in many parts of the globe; and the quaint customs still observed among civilized races lead to the conclusion that at some period in their history they practised wife-capture.

The laws of Ménu mention wife-capture. The familiar legend of the rape of the Sabines is an example; and the Germans stole women. Olaus Magnus informs us that they waged war for the capture of women; "propter raptas virgines," etc.

In the course of time the forcible capture became a feigned rape, and in place of the wars which generally ensued to avenge the insult, compensation in property or wife-buying became the rule. Such is the common practice among the majority of savage and barbarous tribes, and its survival is seen, together with customs originating in wife-stealing in several of our laws and institutions.

All these forms of marriage permitted a plurality of wives; and the organization called the Patriarchate placed no obstacles in the way of polygamous marriages. Monogamy is a later stage in the history of the family. It is the result of necessity, and a conception of a settled family. As the number of men and women in the community approached

equality, the possession of several wives was only within the reach of the rich and powerful.

The consequences of wife capture and wife purchase were the supremacy of man and the slavery of woman. The effect of monogamous marriage was to elevate the social level of the wife. It "has drawn women from the severest and most humiliating servitude, has distributed the mass of the community into distinct families, has created a domestic magistracy, has formed citizens, has extended the views of men to the future through affection for the rising generation, has multiplied social sympathies." The wife acquired individual and proprietary rights, and the Roman Law accorded to married women privileges of which later legal systems have deprived her, and which she has never regained. The religious condition of the age also tended greatly to the organization of a settled family; but the Christian religion, while it elevated the ethical aspect of marriage, reduced woman to a condition of tutelage from which the higher civilization of a modern age has but partially succeeded in rescuing her.

In contemplation of law, marriage is in the nature of a civil contract, and viewed from the legal standpoint, no formalities of any kind are necessary to constitute a binding marriage;[1] but man, looking upon the matrimonial status from a religious point of view, and influenced by tradition and custom, has followed a diversity of usages and ceremonies in the celebration of marriage. Many of these ceremonies have their origin in the ancient forms of marriage by capture and purchase.

At the time of the *Sachsenspiegel* the maxim *Consensus facit matrimonium* was generally recognized and followed; but local custom prescribed various forms of celebration. The *Sachsenspiegel* does not mention any particular ceremony; it merely states that by cohabitation the wife acquires her rights:—

"She is his companion and steps into his right when she enters his bed."

Among the many ceremonies in use among the Germans were the gift of a ring, for ages the recognized mode of betrothal; the belting mentioned by Tacitus; and the Anglo-Saxon custom of tying the hands of the parties with cords or ribbons,—a proceeding known as "maeden fettan." It was also customary to place a shoe on the bridal bed, and for the bride to step into the groom's shoes,—a usage still observed.

The custom of buying wives in its various forms prevailed in the older period of the German law. The price was generally equal to the weregeld of the woman, the amount paid being, among the Anglo-Saxons, sixty shillings; the Alamanni paid forty shillings; the Salic Franks placed the amount at sixty-two and a half shillings; the Ripuarians at fifty shillings, and the Saxons assessed the value of a wife at three hundred shillings. The name given to the purchase money was "arrha," "pretium puellæ;" the Anglo-Saxons calling it "witeme," "scat," "meta," "messio."

The *Sachsenspiegel* has no reference to the old custom of buying wives. The buying has given way to a settlement, on the wife herself, of personal property (fahrende Habe). Such a settlement was known as the "Morgengabe," "Morgengifu," taking its name

[1] Definitions of marriage are numerous. By some it is defined as "a contract made in due form of law, by which a man and women reciprocally engage to live with each other during their joint lives, and to discharge towards each other the duties imposed by law on the relation of husband and wife;" Modestinus defines it as "Coniunctio maris et feminæ et consortium omnis vitæ, divini et humani iuris communicatio;" and Kant says that it is "die Verbindung zweier personen verschiedenen Geschlechts zum lebenswierigen wechselseitigen Besitz ihrer Geschlechtseigenschaften." I would suggest the definition of marriage to be descriptive like Bispham's definition of equity as the system of jurisprudence administered by the Court of Chancery. A definition of marriage can only be descriptive, as the institution has varied with different forms of civilizations. In my opinion Holland's view, that "the modern form of marriage, possible only when the individuality of the woman has received recognition, is that of a mutual and voluntary conveyance, or dedication, of the one to the other" (Jurisprudence, 4th ed. p. 148), is the best one in keeping with modern thought.

from the circumstance of the donation being made on the first morning after the consummation of the marriage.

The wife's interest in her husband's property was generally held to be liable for the payment of his debts; and her separate property could be made subject to such liens, when the wife consented.

The influence of the Roman law is traceable in at least one passage of the *Sachsenspiegel*, referring to gifts between husband and wife. While such gifts were valid in more ancient times, they were declared void by the *Sachsenspiegel;* and the same rule, borrowed from the Law of Rome, is found in the English Law. Bracton states that such gifts were void; so does the writer of Fleta; and it is only since the case of Mitchell *v.* Mitchell, decided in 1712, that such gifts were held to be good in equity.

THE SCIENTIFIC DETECTION OF CRIME.

OF late years science has aided us to such an extent that the escape of a criminal now-a-days is made a much less easy matter than it was half a century ago. Chemistry, the microscope and spectroscope are generally unerring detectives, and supply the authorities in a wonderful way with damning proofs for conviction. So accurately do they perform their work that the merest traces of the organic fluids are discovered; and the spectroscope, if supplied even with an almost inappreciable amount of poison or blood, will furnish sufficient evidence to hang a guilty man. It would be strange if the advancement were all on one side, and it is not. A comparison of the criminal records of ten years ago and those of to-day will show frequently that poisons which are the most difficult of detection and of the most recent discovery are chosen by poisoners, and that alterations in personal appearance are effected by appropriate chemical reagents, suggesting that the professional criminal has generally some knowledge of the advance of chemistry.

To consider the subject most systematically, it is necessary that we should bear two points in view, — first, the apprehension of the criminal; and, secondly, his conviction. Certain peculiarities often render identification a comparatively easy matter; but when these marks are obliterated, and the appearance of the individual is changed to a great extent, the affair becomes more serious for the detectives. As a general thing, they are furnished only with a photograph, and with this they are to pick out of hundreds of criminals the one they are in search of. A very accurate description also accompanies the picture. So easy is it for the criminal to alter his entire appearance that in a short time a complete metamorphosis is effected. Criminals have gone so far as to cut off a finger, or have pulled out several front teeth, to conceal their identity. Of all disguises the most effectual are produced by the use of washes and dyes to alter the color of the hair. Some years ago this method of disguise was considered out of the question, and it was not till Orfila, the renowned chemist, testified to the contrary, that it was believed practicable.

The first case of this kind where identity was doubted occurred in Paris, where a murder had been committed. One witness swore that he had seen the suspected person at ten o'clock in the morning at Paris, and affirmed that his hair was black; while others testified that they had seen him in *Versailles*, with *fair* hair, at five or six o'clock of the same evening. The man's hair was naturally jet black, and it does not appear that he wore a wig. The question in consequence proposed to Orfila by

the law authorities was, whether black hair could be dyed fair. One of the first hair-dressers of Paris, who was consulted, declared that it was impossible; but Orfila stated that it was not only possible, but that it had been done twenty-six years before by Vauquelin, by means of chlorine. Since that time it is commonly done, and, in the greater number of instances, the hair of the criminal is red, sandy, or brown, and it is dyed black by preparations of silver, lead, bismuth, or sulphur, first washing the hair with some alkali. To bleach it, chlorine water or peroxide of hydrogen is chosen. In spite of these ingenious measures, however, the chemical expert is ahead of them; for at his disposal he has reagents to detect the metal, which is readily found, or by close inspection he can, at the end of a day or two, see the difference in color between the dyed portion and the natural hair. In speaking of the obliteration of certain scars and India-ink marks, it is stated, in opposition to the popular idea, that these stainings are not indelible. Caspar and Hutin have devoted themselves to the investigation of the subject, and found in many cases that scars could be removed. In regard to India-ink and other pigments which have been pricked into the skin, we have an admirable article by Tardieu in the "Annales d'Hygiène Publique," vol. iii. p. 171. One prisoner seen by him removed the India-ink tattooing very rapidly by a paste containing acetic acid and other substances. In a few days a crumb dropped from the skin, leaving a clean surface. Questions of identity based upon striking peculiarities of the individual are often cleared up by the merest chance; for example, a man was found murdered, and from the direction of the knife-wound it was strongly suggested that the murderer was left-handed. After vain attempts to solve the difficulty, he was told to hold up his right hand; thrown off his guard, he immediately held up his *left*.

The slightest trifles will be seized upon by the watchful detective, and often secure conviction. No better example can be given than that cited by Best. The criminal was detected by a certain malformation of his teeth. A robbery had been committed, and in the morning some partially eaten fruit was found upon the table in one of the rooms. The attention of the police was called to peculiar teeth-marks upon the apples, indicating the absence of two front teeth from those of the eater. An individual with this dental defect had been seen lurking about the vicinity a few days before. When taxed with the crime, he promptly confessed it. So, too, are the footprints tell-tale witnesses in many cases, though this proof is not so valuable as it might be. A slipper or boot may often make a print which is really much larger than the foot, and which it does not subsequently fit. M. Hougolin has devoted himself to this branch of the study, and devised a plan which enables him to take impressions of feet in the soil for comparison with those of the suspected criminals. He raises the temperature of the impressed ground to 212° by placing over it a brazier of live charcoal. He then dusts pulverized stearine into the impressions, which, when cold, is removed, and he is enabled to preserve an exact mould of the footprint. A plaster-cast can afterward be made.

Chemistry comes to our aid in many ways in the detection of crime. On several occasions bodies have been so burnt or charred as to defy identification, and analysis is the only thing to fix the identity. A set of false teeth or even a button has escaped destruction, and has been secured to convict the criminal. In one instance the process of combustion had been so thorough that nothing was found except a small vitreous substance which, when examined by chemical experts, proved to be the mineral part of a set of false teeth. A mysterious murder was committed in a small French town a few years ago. The victim was the *curé*, and he was found dead with a ball through

his head, and another lodged in his brain. It was extracted and found to be cast from pewter. This was the only clew the police possessed. After a month or so, suspicion fell upon a shoemaker, who had borne ill-will toward the *curé*. On examining his house, a pistol and three bullets were found. Two chambers of the pistol had been discharged, and the balls obtained resembled that extracted from the brain of the murdered man. The shoemaker was arrested and tried, and the bullets presented, but they were not considered sufficient to convict him, they being the only evidence. He would have escaped, had it not been for a young chemist who begged to be allowed to make an analysis. He received and weighed the balls, and found all weighed the same, although that extracted from the head of the *curé* was somewhat battered out of shape. Chemical analysis demonstrated that they were exactly alike in chemical constitution, — even when subjected to the most delicate analysis, — and that they differed markedly from twenty or thirty other pieces of pewter. The conclusion arrived at was that no two specimens of pewter are alike, as this metal is not made in the same way at different times, the proportion of its ingredients varying considerably.

Chemistry undoubtedly helps us more effectually in the examination for poisons than in any other way. We may imagine how difficult the task must be when we take into account the small amount of some poisons that is required to destroy life. Taylor says: "This may be tested by the smallest fatal doses of some well-known substances. In one well-observed case, two grains of arsenic, given over a period of five days, destroyed the life of an adult. Supposing the whole of this quantity had entered into and remained in the blood, it would have formed only the ninety-eight thousandth part by weight of that liquid; but as elimination and deposition go on simultaneously, the proportion in the blood at any given time must have been much less than this; and yet there can be no doubt that the poison destroyed life by its action on the blood!" Of course analysis of this fluid is a difficult and delicate matter, and we are occasionally obliged to resort to the spectroscope. Preyer, of Jena, has done more with this instrument than almost any one else. *Prussic acid* spectra present two well-marked absorption bands, which in size and position differ but little from those of normal blood. *Oxalic acid* gives one band in the orange on the left of the sodium line, and a complete absorption of the violet, indigo, blue, green, and most of the red rays. Some poisons, however, are eliminated very quickly from the system, and we are unable to detect their presence. Among these are the organic poisons which often defy detection. The color of the blood is sometimes markedly changed by poisons, becoming either purple, black, etc.

Many notable cases figure in the annals of medical jurisprudence, demonstrating the difficulty of making distinction between accidental and intentional poisoning. With Wilkie Collins's admirable theory of the "Law and the Lady" in view, we call to mind the really ingeniously constructed poisoning case. This fictitious case, like many real ones, suggests the fact that often the use of arsenic as a beautifier by vain women, or as a remedy by patients with cutaneous affections, sometimes produces the death of the user, and occasionally suggests criminal action on the part of relatives or friends. An example is quoted by Taylor: "A girl, nine years old, died after a short illness with obscure symptoms suggesting criminal poisoning. It afterward transpired that her step-mother, who was suspected, had used it in an ointment that had been applied to the scalp. *Post-mortem* examination revealed traces of poison in the internal organs; and the question arose, whether arsenic had been administered in the food intentionally, the step-mother being known to have maltreated the child. As

death occurred at the end of nine days, — a long time, — and as the presence of arsenic in the stomach and intestines was simply the result of absorption and preparatory elimination, the woman was acquitted.

When we devote ourselves to the examination of blood found on the body of the suspected person, the furniture of the room, or the textile fabric, the microscope is of invaluable service. We have several points to consider, and various questions of interest arise: 1. Is the substance found blood, and is it human blood? 2. Was it accidentally deposited upon the person or not? This first piece of information is often difficult to obtain, as there are many things which closely resemble blood, — among these the iron salts, and various dyes. We have to be very careful, in removing stains from knife-blades, to avoid removing rust as well. After we dispose of these doubts, and when we decide the spot to be blood, we have to determine whether it is human blood or not. There has been much discussion in regard to this matter, and though some writers say that there is marked difference between the size of the blood-corpuscles of man and the other mammalia, it has been the general opinion of able investigators that there is none.

There are certain grand distinctions, however, where there is an absolute certainty in telling whether the blood is from mammalia, birds, fish, or reptiles. The corpuscles of the three latter are all elliptical, while the former are circular. It occasionally happens that the criminal becomes caught by his own attempts to explain away the appearance of blood upon his clothing. A man who was suspected of murder was arrested, and, when questioned in regard to some bloody spots upon his coat, attempted to account for them by saying that he had been cleaning fish. The microscope revealed the fact that the corpuscles were round and not oval. All blood-corpuscles become smaller in dried blood, and this should be taken into account when an examination is made. This question of difference in the size of the corpuscles has been such a perplexing one that various other tests have been thought of. Numerous German investigators have attempted to solve the problem, and have advanced the theory that a certain coloring substance of blood, *hæmoglobine*, from different animals, will crystallize in a different way. This test is not so exact as it was originally thought to be, and we are again in want of a new plan. An infallible test, however, is obtained by the spectroscope, that most valuable of instruments. It is competent to detect the *smallest* trace of blood, even after clothing has been washed. Sorby believes that even the one-thousandth part of a grain of blood can be recognized. Surely, with such an instrument as this at our disposal, the chances for the suspected person are very small. With the new discoveries that are being made every day, and the valuable agents already in our hands, the statistics of crime and the certainty of arrest will be greatly increased in the future. — ALLAN M. L. HAMILTON, M.D., *Appleton's Journal.*

PRISONS AND PRISONERS.

THE condition of prisoners has been in all ages so wretched as to call for the prayers and the labors of the benevolent; but it is only in recent years that the treatment of this unhappy class has become the subject of scientific study. John Howard and his followers compelled recognition of the fact that convicts were men, and therefore entitled to humane treatment; and though their aim was not to establish a science of penology, their agitation was the remote cause of that result. Recent as this science is, it has attained an unusual degree of perfection, and its principles have been already to a considerable extent adopted in practice. These principles are set forth with admirable clearness and succinctness in an essay by Mr. Eugene Smith, long Secretary of the Prison Association of New York, which is just published by the Society for Political Education.

Mr. Smith points out that the vindictive theory of punishment has been superseded by the view that the sole end of a penal system is the protection of society. This end, however, is not secured by the temporary incarceration of criminals, because it has been found by experience that after their discharge they may be more dangerous than before. The management of many prisons is such as to stimulate the criminal tendencies of their inmates. After some misunderstanding a substantial agreement has been reached upon the proposition that the reformation of the prisoner is the controlling aim of prison discipline. This is not upon any theory of paternalism or charitable agency, but because it is the best way of protecting society. The criminal is not to be reformed for his own sake, but for the sake of others. He has no special claim upon the government; but by treating him as if he had, the common safety is promoted.

The term "reformation," however, as applied to criminals, has a technical meaning. It does not mean, as most people not unnaturally suppose, a regeneration of the spiritual nature of the criminal. He may be as bad a man after he is reformed as before, but he is changed in one important respect, — he will not violate the law. A story from the Elmira Reformatory throws more light upon the meaning of this term, as well as upon the nature of the criminal, than will be derived from much explanation. At an examination of the class in "Practical Ethics," the question was put, "Is it better to beg or to steal?" One prisoner replied: "A hundred years ago the question presented no difficulty; it would have been better then to beg than to steal. But *now*, when such great progress has been made in prison reform, it would be better to steal than to beg; for the thief, being imprisoned, would enjoy all the benefits of a reformatory training, which would enable him on his discharge to take care of himself so well that he would never afterward have occasion either to beg or to steal."

On account of the existence of this distorted and morbid standard of morality among criminals, it is indispensable that the prison regimen should be severe. The disgrace of imprisonment is a sufficient deterrent to most men; but for the typical criminal this is not sufficient, and a painful discipline must be added. The convict must be made to dread the thought of a renewal of his sentence. Subject to this fundamental requirement, the general principle governing the treatment of convicts is laid down by Mr. Smith as follows: "Those methods of prison management are the best calculated to reform the prisoner which assimilate his condition to that of the free workman outside, which cultivate in him the same habits, appeal to the same motives, awaken the same ambitions, develop the same views of life, and subject him to the same temptations that belong to the free community of which he is fitted to become a member."

The convict, therefore, ought to be made to feel, with the honest man, that he must earn his living. The Government deprives him of his liberty, and it must therefore furnish him with the opportunity of labor. Only in this sense does it owe him any support. The convict, therefore, should be paid wages, — low wages, if his labor is of little value; high wages, if his labor justifies them. Out of these wages he should pay for his living; and if he earns more than will pay for the scanty fare of the prison, he should be permitted to accumulate the surplus. In this way the habit of industry and the habit of self-support are formed; and the fundamental maxim of political economy, that capital is the result of saving, is inculcated. Upon this point the generally admirable statute of the State of New York known as the Fassett Act is obnoxious to some criticism. That act provides that meritorious prisoners may receive ten per cent of the earnings of the prison as compensation, — compensation, apparently, for good behavior. While good conduct deserves recognition, it is undesirable that it should be paid for in money. Pecuniary recompense should be reserved for labor alone.

Another fundamental principle of prison science is "the individual treatment of convicts." The inmates of a prison cannot be reformed *en masse* by the application of the same influences. "As well might the patients in a general hospital, afflicted with divers diseases, be all cured by one universal and unbending regimen." It is obvious that this system of treatment implies a high order of ability on the part of the governors of prisons; no legislation will avail against weakness here. "The whole administration must be pervaded by the *personality* of a warden who shall possess keen insight, broad human sympathies, and a strong and masterful nature; and that personality must be brought into separate and direct contact with each prisoner."

If it be once admitted that a criminal should not be discharged from prison unless he is reformed, that is, unless a reasonable probability exists that upon his regaining liberty he will not violate the law, the indeterminate sentence is a logical necessity. It is absurd to turn loose upon society a man who will immediately renew his attacks upon it. "It is just as irrational," Mr. Smith observes, to send a lunatic to an insane asylum for the predetermined period of two years as it is to sentence a felon to two years' imprisonment, decreeing in advance that when the two years are up both shall go scot-free. Both should be confined until they have become so far *cured* that they may be set at large without danger to the community." Theoretically, therefore, there should be no predetermined limit to imprisonment for crime. But practically the New York statute goes as far as is at present desirable in providing that the imprisonment shall not be shorter than the minimum term, nor longer than the maximum term for which under existing laws the convict may be sentenced.

It is not encouraging, although under our system of nominating the judiciary by "halls" and party conventions not surprising, that no judge has yet prononnced an indeterminate sentence. On the other hand, it is very encouraging that the efforts of a small body of disinterested citizens to reform our prison system should in the face of tremendous opposition have attained so great success as is marked by the enactment of the Fassett bill. This result is enough to convince all sincere reformers that no good cause is hopeless. Those who desire to learn how reason and experience may triumph over prejudice and ignorance can do no better than study Mr. Smith's little tract. — *New York Evening Post.*

CAPITAL PUNISHMENT AMONG THE JEWS.

IN a work on the "Criminal Code of the Jews," Mr. Benny gives an interesting account of the various modes of punishment of those convicted under the Hebrew Law of capital offences. In accordance with the Mosaic code four kinds of death were inflicted, each appropriate to a distinct series of crimes. These were stoning, strangling, burning, and decapitation. Nothing can be more absurd, says the author, than the notions generally current respecting the manner in which these punishments were carried out among the Jews. The stoning of the Bible and of the Talmud was not, as commonly supposed, a pell-mell casting of stones at a criminal; the burning had nothing whatever in common with the process of consuming by fire a living person as practised by the Churchman of the Middle Ages; nor did the strangling bear any resemblance to the English method of putting criminals to death.

The stoning to death of the Talmud was performed as follows: The criminal was conducted to an elevated place, divested of his attire if a man, and then hurled to the ground below. The height of the eminence from which he was thrown was always more than fifteen feet; the higher, within certain limits, the better. The violence of the concussion caused death by dislocating the spinal cord. The elevation was not, however, to be so high as to greatly disfigure the body. This was a tender point with the Jews; man was created in God's image, and it was not permitted to desecrate the temple shaped by Heaven's own hand. The first of the witnesses who had testified against the condemned man acted as executioner, in accordance with Deut. xvii. 7. If the convict fell face downward, he was turned on his back. If he was not quite dead, a stone, so heavy as to require two persons to carry it, was taken to the top of the eminence whence he had been thrown; the second of the witnesses then hurled the stone so as to fall upon the culprit below. This process, however, was seldom necessary; the semi-stupefied condition of the condemned, and the height from which he was cast insuring, in the generality of cases, instant death.

It may be well to mention, in this connection, that previous to the carrying into effect a sentence of death, a death-draught, as it was called, was administered to the unfortunate victim. This beverage was composed of myrrh and frankincense (*lebana*) in a cup of vinegar or light wine. It produced a kind of stupefaction, a semi-conscious condition of mind and body, rendering the convict indifferent to his fate and scarcely sensible to pain. As soon as the culprit had partaken of the stupefying draught the execution took place.

A criminal sentenced to death by burning was executed in the following manner. A shallow pit some two feet deep was dug in the ground. In this the culprit was placed, standing upright. Around his legs earth was shovelled and battered firmly down until he was fixed up to his knees in the soil. Movement on the part of the condemned person was of course impossible; but care was taken that the limbs should not be painfully constrained. A strong cord was now brought, and a very soft cloth wrapped around it. This was passed once round the offender's neck. Two men then came forward; each grasped an end of the rope and pulled hard. Suffocation was immediate. As the condemned man felt the strain of the cord, and insensibility supervened, the lower jaw dropped. Into the mouth thus opened a lighted wick was quickly thrown. This constituted the burning.

Decapitation was performed by the Jews after the fashion of the surrounding nations. It was considered the most humiliating, the most ignominious and degrading death that any man could suffer. It was the penalty in cases of assassination and deliberate mur-

der. It was incurred by those who wilfully and wantonly slew a fellow-man with a stone or with an implement of stone or iron. It was likewise the punishment meted out to all persons who resided in a town the inhabitants of which had allowed themselves to be seduced to idolatry and paganism.

Strangulation was a form of death by suffocation. It was effected as in burning. The culprit stood up to his knees in loose earth. A soft cloth containing a cord was wound once round his neck. The ends being pulled in opposite directions, life was soon extinct. This mode of death was the punishment of one who struck his father or his mother; of any one stealing a fellow Israelite; of a false prophet; of an elder or provincial judge who taught or acted contrary to the decision of the Great Synhedrin of Jerusalem; and of some other crimes against public morals.

These four deaths, as above described, were the only modes of execution in accordance with Hebrew Law.

BROWBEATING AND VITUPERATION.

AN English writer, commenting upon the conduct of counsel, says: —

"The practice of browbeating witnesses and vituperating the opposite parties in a cause is carried to a most unseemly length in our courts of law. I have often wondered that the presiding judges should sit silently on the bench while so scandalous a scene is passing before their eyes. In the case of the parties who are vituperated, there is no redress. They are not allowed to defend themselves in court; nor can they, however coarse and libellous the attack, proceed by an action at law against their traducer. It is, therefore, to say the least on the subject, unmanly on the part of counsel to go out of their way to vituperate and vilify parties whose mouths are shut and whose hands are tied; and it is wrong in the presiding judge to suffer such unbecoming things to be done in court. As regards the browbeating of witnesses, there can be no question that, instead of promoting the ends of justice, such a course often defeats them."

It would appear that the abusive and browbeating system is by no means a novelty in the profession. It seems to have flourished in great vigor so far back as the days of Sir Walter Raleigh. D'Israeli, in the second series of his "Curiosities of Literature," gives an account of the way in which that distinguished man was abused and traduced by no less a personage than Sir Edward Coke himself, who was, at the time of Sir Walter's trial, Attorney-General. The remarks with which D'Israeli prefaces his specimens of Coke's abuse of Sir Walter are worthy of quotation, as well as the specimens themselves. He says, speaking of Coke: —

"This great lawyer, perhaps, set the example of that style of raillery and invective at our bar which the egotism and craven insolence of some of our lawyers include in their practice at the bar. It may be useful to bring to recollection Coke's vituperative style in the following dialogue, so beautiful in its contrast with that of the great victim before him. The Attorney-General had not sufficient evidence to bring the obscure conspiracy home to Raleigh; but Coke well knew that James the First had reason to dislike the hero of his age, who was early engaged against the Scottish interests, and betrayed by the ambidexterous Cecil. Coke struck at Raleigh as a sacrifice to his own political ambition; but his personal hatred was now sharpened by the fine genius and elegant literature of the man, — faculties and acquisitions the lawyer so heartily contemned."

D'Israeli, after these prefatory observations, proceeds to give some specimens of the vituperation which Coke heaped upon Raleigh, in the following dialogue between

the parties. Coke having previously observed to the court that he knew with whom he had to deal, — that he had "to deal today with a man of wit, — turned himself toward Sir Walter, and said, 'Thou art the most vile and execrable traitor that ever lived.'

"RALEIGH. You speak indiscreetly, barbarously, and uncivilly.

"COKE. I want words sufficiently to express thy viperous treason.

"RALEIGH. I think you want words indeed; for you have spoken one thing half-a-dozen times.

"COKE. Thou art an odious fellow; thy name is hateful to all the realm of England for thy pride.

"RALEIGH. It will go near to prove a measuring cast between you and me, Mr. Attorney.

"COKE. Well, I will now make it appear to the world that there never lived a viler viper upon the face of the earth than thou. Thou art a monster; thou hast an English face, but a Spanish heart. Thou viper! for I *thou* thee, thou traitor! Have I angered you?"

"Raleigh," observes D'Israeli, replied, — what his dauntless conduct proved, — "I am in no case to be angry."

But Raleigh was not the only great man who was thus abused by Coke. The Earl of Sussex was subjected to similar treatment at his hands. So also was no less a man than the illustrious Lord Bacon himself. That the vituperation which Coke heaped on Bacon must have been of the worst and coarsest kind may be inferred from the fact that Bacon left among his memoranda one in the following terms: "Of the abuse received of Mr. Attorney-General publicly in the Court of Exchequer."

Smollett, the celebrated novelist, was also subjected to the virulent vituperation of one Mr. Hume Campbell, who acted as counsel for the plaintiff in a suit in which Smollett was the defendant. Smarting under the insults he had received, the novelist wrote a scathing letter to Campbell, from which we make a few extracts: —

"The business of a counsellor is, I apprehend, to investigate the truth in behalf of his client; but surely he has no privilege to blacken and asperse the character of the other party, without any regard to veracity or decorum. That you assumed this unwarrantable privilege in commenting upon your brief, I believe you will not pretend to deny. . . . The petulance, license, and buffoonery of some lawyers in the exercise of their functions is a reproach upon decency and a scandal to the nation; and it is surprising that the judge, who represents his Majesty's person, should suffer such insults upon the dignity of the place. . . . You will take upon you to divert the audience at the expense of a witness, by impertinent allusions to some parts of his private character and affairs; but if he pretends to retort the joke, you insult, abuse, and bellow against him as an impudent fellow who fails in his respect to the court. . . . Sir, a witness has as good title as you have to the protection of the court, and ought to have more; because evidence is absolutely necessary for the investigation of truth, whereas the aim of a lawyer is often to involve it in doubt and obscurity."

Great as is the extent to which the browbeating system is still carried on in our courts of law, we are not so bad in this respect as our ancestors were. No counsel, we believe, even if he had the disposition, would be suffered to apostrophize any party to a trial in the terms in which Coke addressed Sir Walter Raleigh. It is but justice, also, to a very considerable portion of the profession to say, that they not only disclaim in words the browbeating practice, but that they also discountenance it in their conduct of a cause; and we have no doubt that in the course of time it will be abandoned altogether.

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 series of articles on the Supreme Courts of the several States will be resumed in our July number. The sketch of the "Osgoode Hall Law School," given in this number, cannot fail to interest our readers, giving as it does an excellent insight into the methods of legal instruction on the other side of the line.

FROM an Ohio correspondent comes the following hint on the "Art of Examining Witnesses":

SPRINGFIELD, OHIO, April 17, 1891.

Editor of the "Green Bag":

DEAR SIR, — I relate the following amusing incident, hoping that it may prove of value to some brother attorney in a future action of similar kind.

Some years since, in the city of Cincinnati, an action came to trial, the plaintiff alleging that while in the employ of the defendant, and by reason of certain defects in the machinery, his right hand had been permanently injured, so that it could only be opened to a very slight extent. The plaintiff had rested his case, and the defence placed Dr. Blank, an eminent surgeon, on the stand. He was asked to examine the injured hand, which was extended to him with the fist tightly closed. After examining it closely for a minute, he said, —

"Please open your hand as far as possible."

The man, with great contortions of the face, opened the injured member the small fraction of an inch.

"You say that you cannot open your hand any farther?"

"No, sir."

The doctor looked the man directly in the eyes for a few seconds; then, without any warning, springing at him, grasping his neck in his right hand and the injured hand in his left, thundered, —

"Open that hand, d—n you, or I will knock you down!"

The hand flew open. Verdict for defendant.

THE following list of distinguished alumni of the Law School of Columbia College has been kindly furnished by Judge Murray Edward Poole, of Ithaca, N. Y.: —

Assemblymen: Edward Mitchell, Thomas E. C. Ecclesine, Robert Ray Hamilton, Charles A. Peabody, New York; James L. Onderdonk, Idaho.

Assistant Secretary of State, U. S: George L Rives.

Authors: Josiah C. Pumpelly: S. Whitney Phœnix; Eugene Schuyler, author of "Peter the Great," "Turkistan;" George Chase.

Consul: Frank G. Haugwout, Naples.

Editor: Charles P. Taft.

Financier: S. Whitney Phœnix.

Foreign Ministers: William Walter Phelps, Germany, Austria; Perry Belmont, Spain; Eugene Schuyler, Roumania, Servia, Greece; Oscar S. Straus, Turkey.

Judge U. S. Circuit Court: Emile H. Lacombe.

Judge U. S. District Court: Le Baron B. Colt, Rhode Island.

Judge State Supreme Court: Thomas C. Bach, Montana.

Judges State Superior Court: George L. Ingraham, New York City; Le Baron B. Colt, Rhode Island; Philip H. Dugro, New York City.

Judge State District Court: Daniel P. Baldwin, Indiana.

Judge County Court: Stephen D. Stephens, Richmond Co., New York.

Lawyers: Henry R. Beekman, Counsel to Corporation, New York City; Walter Howe, New York City.

Members of Congress: Perry Belmont, William Walter Phelps, Philip H. Dugro.

Political Leader: Hamilton Fish, Jr., New York.

Professors in Colleges: George Chase, Law, Columbia; Edmund M. Smith, History, and Lecturer Roman Law, Columbia; Edwin R. A. Seligman, Political Economy, Columbia; Jasper T. Goodwin, Columbia.

State Senators: Thomas C. E. Ecclesine, Lispenard Stewart, New York.

State Comptroller: James L. Onderdonk, Idaho.

State Superintendent of Schools: James L. Onderdonk, Idaho.

Surrogate: Robert C. Hutchings, New York City.

LEGAL ANTIQUITIES.

As a proof of the strict severity with which any malpractices on the part of the members of the Court of Parliament in France were punished, we read that in 1348 one of the judges, named Alain de Ourdery, *Chevalier Conseiller du Roy*, was hanged by order of the Parliament, for having falsified some depositions in a case which came before him. And another signal instance of the same impartial justice occurred in 1496, when Claude de Chamoreux, a clerk and councillor, was convicted of having made a false report regarding some matters which had been referred to him. An attempt was made by the Church to save her son, and the Bishop of Paris claimed cognizance of the case. But the parliament stood firm, and refused to allow the guilty judge to escape. He was deprived of his office, and openly stripped of his scarlet gown and furred cap; and then, with naked feet and bare head, and holding in his hand a lighted torch, he fell upon his knees on the floor, and begged aloud for mercy from God, and the King, and justice, and the parties whom he had injured. The report which he had falsified was then torn to pieces by an officer of the court, and the culprit was conducted to the quadrangle of the Palais de Justice, and, being consigned over to the public executioner, was forced to mount upon a cart, and conducted to the pillory, where he stood for three hours. He was afterward branded on the forehead by a hot iron with a *fleur-de-lis*, and banished forever from the realm.

In the thirty-eight years during which Henry VIII. was upon the throne of England, no less than seventy-two thousand criminals were executed.

FACETIÆ.

A literary man stood up in the police-court to answer to the charge of vagrancy.

"I object, your honor," he said with dignity, "to this prosecution of gentlemen who follow the profession of letters, and—"

"I understand," interrupted the magistrate, "that you were found sleeping on a doorstep, that you have no visible means of support, and that you have been seen under the influence of liquor."

"What of it?" cried the prisoner. "Though I am as poor as Richard Savage when he made his bed in the ashes of a glass-factory, as drunken as Dick Steele, as ragged as Goldsmith when he was on his fiddling-tour, as dirty as Sam Johnson, as—"

"There, there!" cried the magistrate, impatiently, "I have no doubt that your associates are a disreputable lot, and I shall deal with you in such a manner as to cause them to give this town a wide berth. Seven days with hard labor. Mr. Clerk, furnish the constable with the names of the vagabonds mentioned by the prisoner."

During a trial, many interruptions having taken place, the judge at last, using his authority, said he would commit anybody who was guilty of such a want of respect to the court. This threat was followed by a dead silence for a time, which was finally interrupted by two men conversing in a loud tone. The judge, observing it, said,—

"I see that you two men are still determined to set my authority at naught, and I shall commit you."

"Your honor," replied one of the two, "this man, against my will, keeps on talking to me."

"What was he talking about or saying to you?" asked the judge.

"Why, he said your honor was a d——d fool!"

Instantly the other got up and exclaimed. "Your honor, I said it in perfect confidence."

NOTES.

The following is one of the head-notes to the case of Abbe *v* Rood, 6 McLean, 107: "A witness who swears that a certain thing was said or done is entitled to greater weight than a witness who said that he did not hear the remark or witness the act."

At Enfield Petty Sessions, a little time ago, Mr. Bassett, of Fore Street, Upper Edmonton, was fined for having his wife and child with him in

his trade-cart. The following remarkable conversation took place: —

DEFENDANT. I have taken out a license since.

MR. BOWLES (Chairman of the Bench). Even if you had had a license when the officer saw you driving, you had no right to have a female and child with you.

DEFENDANT. The female is my wife, and the child is ours.

MR. BOWLES. That does n't matter. You must not have anything in your cart but your trade-goods.

DEFENDANT. Not even my wife?

MR. BOWLES. No.

DEFENDANT. I was going to Waltham Market to sell things, and took my wife with me to mind the pony. What harm is there in that?

MR. BOWLES. Well, it is opposed to the law. A tradesman is only allowed to convey the goods in which he deals in his cart.

DEFENDANT. Well, I always understood that a man and his wife were one, and that there could be no harm in their riding out together.

MR. BOWLES. In this instance the law will not permit it. You must not drive your wife or children about in your trade-cart. You can only take with you a person to deliver your goods.

DEFENDANT. It seems a strange law.

MR. BOWLES. We cannot help that. You have broken it, and must pay 5*s*. and costs, or go to prison.

The money was paid.

Recent Deaths.

STEPHEN V. R. TROWBRIDGE, ex-Attorney-General of Michigan, died at Birmingham, in that State, on April 19. He was born Jan. 1, 1855, near Birmingham, Oakland County, and had always been a resident of the State. His early education was gained in the schools at Birmingham, and he entered the literary department of the University at Ann Arbor, with the class of '76, of which class he was elected orator in his senior year. In 1879 he entered the law office of Hon. A. B. Morse, of Ionia, and in 1881 was admitted to the bar and also to a membership in the law firm of Morse, Wilson, & Trowbridge. For seven years he continued the practice of law in Ionia, taking an active interest in politics, and soon became known as one of the most promising of the younger members of the bar in the State. In recognition of this fact he was nominated by the Republican State Convention of 1888 for the office of Attorney-General, and was elected by a large majority. He assumed the duties of his new position; but after some months, failing health compelled him to resign and also to retire from the active practice of his profession.

JUDGE M. H. OWSLEY, one of the most prominent lawyers in Kentucky, died on May 4. Judge Owsley was born in Burksville, Cumberland County, Ky., and was a son of Dr. Joel and Mary A. Owsley. His ancestors were prominent people, and came from Virginia. He was a graduate of Centre College, Danville, Ky., in the famous class of 1854. He began the study of law, attended lectures in Lexington and Louisville, and graduated from the law department of the University of Louisville in 1856. He located at Burksville and commenced the practice of his profession, and soon became a leading member of the bar of Southern Kentucky and won a large and lucrative practice. In 1861 he entered the Federal army as Captain of Company I, First Kentucky Cavalry, remaining with that regiment for four months, after which he was transferred to the Fifth Kentucky Cavalry and promoted to Major. He was in numerous engagements in Kentucky, Tennessee, and Alabama. Major Owsley retired from the service in 1862 to take the office of Commonwealth's Attorney in this judicial district to which he had been elected. He was re-elected in 1868 without opposition, was elected Circuit Judge in 1874, and in 1880 was re-elected.

ALGERNON SIDNEY HUBBELL, the oldest lawyer in New Jersey, died at his home in Newark, N. J., April 19, at the age of ninety-one years. He was born in Lanesboro, Berkshire County, Mass. His father was Wolcott Hubbell, who fought at the battle of Bennington in the Revolution, and was afterward a State Senator of Massachusetts and Judge of the County Court. Mr. Hubbell studied law at Troy, N. Y., and was admitted to the Massachusetts Bar in 1824. He became associated with George N. Briggs, afterward Governor of the State. He was also elected a member of the Massachusetts Legislature. In 1836 he re-

moved to Newark, where he established the law firm of Armstrong & Hubbell. He was a member of the New Jersey Legislature in 1847–1848, and in 1873 was appointed by the Governor one of the Commissioners to revise the Constitution of the State.

Hon. Homer E. Royce, ex-Chief-Justice of Vermont, died in St. Albans, April 24. Judge Royce was born in Berkshire, Vt., June 14, 1820. He received an education in the district schools, supplemented by study at St. Albans and Enosburgh Academies; began the study of law in 1842, and was admitted to the bar in 1844, and with the exception of five or six years had practised on his individual account. During his early practice Mr. Royce resided in East Berkshire, and while there won an enviable legal reputation by his successful defence of Goff, indicted for killing one Harris. In 1846 and in 1847 he was State attorney. He represented Berkshire in the Legislature, served the county as State Senator several years, and represented his State in the Thirty-fifth and Thirty-sixth Congress. In 1870 he was chosen Associate Justice of the Supreme Court of Vermont, which position he retained till 1882, when he was appointed Chief-Justice by Governor Farnham, on the death of Judge Pierpoint. To this important position Judge Royce was successively elected by the Legislature, resigning on account of impaired health just previous to the time set for the choice of judges by the Legislature in 1890. In 1882 the degree of LL.D. was conferred on him by the University of Vermont. Judge Royce was one of the ablest jurists who ever occupied the bench in Vermont, and rendered numerous noteworthy decisions which have often since been quoted.

The death of Homer A. Nelson, of Poughkeepsie, N. Y., which occurred April 25, has caused a vacant place in the legal profession in his native State that it will be difficult to fill. Judge Nelson was born August 31, 1829. At the age of sixteen he entered the law office of Tallman & Dean, of Poughkeepsie; the latter afterward becoming one of the Justices of the Supreme Court.

At once he began the trial of cases in the Court of the Justice of the Peace; and his tact, ready wit, and rugged oratory soon gained him a reputation as a lawyer in his county. In 1855, when but twenty-six years of age, he was elected County Judge and held that office for two terms, until 1863, when he resigned, having been in 1862 elected to Congress. On the bench he was firm and fair, and showed an ability equal to that of the older and more prominent members of the bar.

In 1862 he raised the 167th N. Y. S. V., and was commissioned as its colonel; but he resigned in order to take his seat in Congress.

It was while in the House of Representatives that Judge Nelson's patriotism and strength of character were clearly brought out. Although he was and always had been a Democrat, he voted and acted with those half-dozen members of his own party who joined with their political opponents in upholding the noble and lamented Lincoln, when he requested and obtained legislation which culminated in the Emancipation Proclamation.

The writer of this article has heard from the lips of the subject of this sketch, how subtle and powerful were the temptations which were offered to cause him to swerve from the course of justice to man, though he was black, which he had laid down for himself to follow; and even afterward, so great was his desire to prevent even a suspicion that he had been actuated by motives other than those which arose from his own sense of justice and right, that he refused the appointment of minister to Russia, which President Lincoln subsequently offered him.

In 1867 he was a member of the Constitutional Convention in New York; and so marked was his ability and honesty of purpose, and his extreme popularity, that he readily received from his party the nomination for the office of Secretary of State, to which he was elected, and to which he was two years later re-elected by the largest majority up to that time ever given to any Democrat for a State office in New York State.

By virtue of his office he was a member of various State Boards, — canals, and the like, — and although he was surrounded by men such as Tweed, and exposed to constant temptation, he transacted the business of his office with a firm consciousness of right, and retired from his duties with clear hands and free from political or other entanglements. In 1881 he was, much against his own desires, nominated to represent his district in the New York Senate, and was elected by a majority of three hundred and eighteen in a district

which had never elected a Democrat before, and but once since. Here he was chairman of the Judiciary Committee; and the criminal code of the State, to a very large extent, is the result of his work. So great was his care and skill in the preparation and examination of the numerous bills that came to his Committee, that so far as the writer of this has knowledge, the constitutionality of the same has never been questioned.

When Mr. Cleveland received the nomination for Governor in 1882, Judge Nelson on the first ballot received almost as many votes. A serious misunderstanding among his friends made his nomination impossible. Had he been nominated he surely would have been elected, and the political history of the State of New York and of the United States would have been different.

In 1890 he was a member of the Commission to revise the Judiciary article of the Constitution, and a member of the sub-committee of five, who put into words and form for legislation the mass of resolutions and propositions which had been adopted by the whole commission at their numerous meetings.

During all his political life he never gave up the practice of his profession. While he never had an extensive Court practice, he was constantly appearing in the trial of cases, as counsel, at Circuit and at General Term both in the Second Department, where he had his home, and in New York City, where since 1872 he had had offices. He kept his clients from litigation as much as he could, without sacrificing their rights to too great an extent, or violating law principles to any significant degree. His motto was, "Settle if you can."

But it was before the Court of Appeals that the real strength of his legal ability manifested itself. Nearly every volume of the New York State Reports contains one or more cases argued by him. In a very large proportion of these cases he was successful. If the subject were a new one, he brought to the argument an industry and research, a legal skill and acumen, which in cases like Wood *v.* Fisk, 63 N. Y. 245, Johnson *v.* Lawrence, 95 N. Y. 154; Thorn *v.* Garner, 113 N. Y. 198; and in the Vassar Will case, decided in April of this year (not yet reported), the first three being appeals taken by him, established new principles in law and equity not only in his own State, but quite generally in the other States.

Judge Nelson cared little for so-called social life, — evening companies, receptions, and the like, — but he delighted in the society of those whom he called his friends. He was a man who seldom lost his temper, and always sorry if his zeal and earnestness had carried him too far He was fond of his home, and he never would allow business or pleasure, except when away on his vacations, to keep him from his home at Poughkeepsie on Saturdays and Sundays. On these days he would have with him many of his friends, to whom he would point out all the beauties of his beautiful place; showing where every bird had its nest, every squirrel its tree; telling the kind of fruit each tree bore, the flower each plant or shrub put forth. There the lawyer was lost in the husbandman, the politician in the kind and gentle naturalist, and the busy man of the world in the loving husband, brother, and friend. In the daily walk about his city he had a pleasant word and smile for all alike. To all he gave freely of his advice, in the street, in the public conveyance, alike as in his office. He was charitable in his giving, a friend to everybody, and an enemy to no man. To the young lawyer was he peculiarly kind. He seemed to take pleasure in having such come to him with their cases whenever they would meet with some difficult point. If the question involved old ideas, he would freely explain; and if the matter brought out new principles, he would lend the vigor and skill of his mind to help the young practitioner to carry his case to a successful issue.

The State of New York has sustained a loss in Judge Nelson's death. His friends appreciate him more than ever now since he has gone. His family mourn and revere his memory. As Judge B——, Chief-Justice of the Supreme Court in the Second Department, and one of his closest friends, remarked when informed of his death, "It is getting lonely here now."

William S. Ladd, of Lancaster, N. H., died on May 12. He was born in Dalton in 1830, and graduated from Dartmouth College in 1855, in the class with Judge Walbridge A. Field of Massachusetts, Judge Greenleaf Clark of Minnesota, and the Hon. Nelson Dingley of Maine. He studied law with the Hon. A. A. Abbott of Salem, Mass., and Burns & Fletcher of Lancaster, and was admitted to the Coos County Bar in 1859. He began practice at Colebrook, continuing there

until 1867, when he removed to Lancaster and formed a partnership with the Hon. Ossian Ray, which continued until his appointment to the bench of the Supreme Court in 1870. In 1874 he was made one of three judges of judicature, continuing on the bench until the Republican overturn in 1876, when the courts were again remodelled, and he retired to practise in Lancaster, forming a partnership with Gen. Everett Fletcher. In 1883 he was a representative of the Legislature, and in the fall of that year was made reporter of Supreme Court decisions. He held the latter office until his death. He received the degree of LL.D. from Dartmouth in 1887.

REVIEWS.

JOHNS HOPKINS UNIVERSITY STUDIES. Ninth Series, V.–VI.: "The Communes of Lombardy from the Sixth to the Ninth Century." In this interesting paper Mr. William Klapp Williams investigates the causes which led to the development of municipal unity among the Lombard Communes from the time of the conquest of Northern Italy by the Lombards under Alboin in 568.

WE have received from Walter B. Hill, Esq., Macon, Ga., a copy of "The Land Pirates," a narrative of the great conspiracy and murder case recently terminated in the Federal Court at Macon. The case is one of peculiar interest, not only in the facts as brought out at the trial, but in the question as to jurisdiction involved. Mr. Hill writes: "It seems to me that the proposition on which the prosecution was based is valid; namely, that a conspiracy to deter a non-resident from the exercise of his rights as a suitor in the Federal Courts by assassinating his local agents is a crime under the Federal Statute."

THE place of honor as the leading article in the May ARENA is given to "The Wheat Supply of Europe and America," by C. Wood Davis; but the reader will undoubtedly find a deeper interest in the perusal of Prof. Emil Blum's "Russia of To-day," in which the author gives a description of Russia and Russian conditions obtained from personal experience. Julian Hawthorne and Rev. Minot J. Savage discuss the question, "Is Spiritualism worth Investigating?" Max O'Rell contributes a paper on "The Anglo-Saxon 'Unco' Guid.'" The other contents are: "What is Judaism?" by Prof. Abram S. Isaacs; "The Survival of Faith," by Dr. Henry D. Chapin; "Thomas Jefferson," by E. P. Powell; "New Testament Inspiration," by Prof. J. W. McGarvey; "An Interesting Social Experiment," by Frank L. King; "The Family Tree of the Malungeons," by Will Allen Dromgoogle; "At a Patriarch's Ball" (No-name paper).

THE May CENTURY begins a new volume; and in it are begun several new features of what the CENTURY calls its "summer campaign." "The Squirrel Inn," by Frank R. Stockton, is one of the principal and most popular of these new features. The long promised papers (two in number) on the Court of the Czar Nicholas I. are now begun, the frontispiece of the magazine being a portrait of the Emperor Nicholas. These papers are by the late George Mifflin Dallas. "Pioneer Mining Life in California" is a description from personal experience of adventures and mining methods in 1849, on the tributaries of the Sacramento River and of the Trinity. Mrs. Amelia Gere Mason's articles on the "Salons of the Empire and Restoration" are concluded in the present number. Among the separate papers none is more striking than that of F. Hopkinson Smith, on "A Bulgarian Opera Bouffe." The first article in the number is a paper by C. F. Holder, entitled "Game-Fishes of the Florida Reef," strikingly illustrated after sketches by the author. Ex-Minister John Bigelow gives a chapter of secret history which he calls "The Confederate Diplomatists and their Shirt of Nessus." Other interesting papers are those on "Visible Sound" by the English singer, Mrs. Margaret Watts Hughes, with comment by Mrs. S. B. Herrick of the CENTURY staff. Besides the beginning of Mr. Stockton's story, the CENTURY includes further chapters of Dr. Eggleston's "Faith Doctor;" the story "Old Gus Lawson," by Richard Malcolm Johnston; and "In Beaver Cove," by Matt Crim.

HARPER'S MAGAZINE for May opens with the first of a series of attractive papers on "The Warwickshire Avon," by A. T. Quiller Couch, superbly illustrated by Alfred Parsons. The ven-

erable F. W. Farrar, Archdeacon of Westminster, contributes an impartial and appreciative sketch of the origin and work of "The Salvation Army." "Roman London" is the subject of an extremely interesting paper, written by Eugene Lawrence and illustrated by H. D. Nichols, describing the Roman remains recently discovered beneath the London pavements. Col. T. A. Dodge writes the first of a series of entertaining articles about "Some American Riders," his paper being beautifully illustrated from paintings by Frederic Remington. Apropos of the recent increased interest in the affairs of the Spanish-American republics, Bishop J. M. Walden contributes an account of "The Argentine People and their Religious and Educational Institutions." Theodore Child, continuing his series of South-American papers, gives a very complete description of the climate, people, and resources of "The Republic of Uruguay." This paper, like those which preceded it, is amply illustrated. Moncure D. Conway contributes an important article on "The English Ancestry of Washington." Other articles in this number of the magazine include a causerie, by Walter Besant, "Over Johnson's Grave;" short stories by A. B. Ward and Caroline Earl White; the continuation of the serials by Charles Egbert Craddock and Thomas Hardy; and poems by W. D. Howells and Robert Burns Wilson.

SCRIBNER'S MAGAZINE for May contains important articles in two notable illustrated series, — the first of "The Great Streets of the World," and the second of the "Ocean Steamship" articles. A. B. Frost has made eighteen drawings for the "Broadway" article; and skilful artists, like Metcalf, Zogbaum, Denman, Broughton, and Villiers make the steamship article very attractive and elaborate in illustration. The May number is noteworthy in fiction, containing the conclusion of the much-praised serial, "Jerry," and the first of a two-part story, "An Alabama Courtship," by F. J. Stimson ("J. S. of Dale"), the author of "Guerndale," and "First Harvests." In addition there are two complete short stories, — "A Fragment of a Play," by Mary Tappan Wright, who wrote that weird tale, "A Truce;" and "A Toledo Blade," by T. R. Sullivan, author of "The Lost Rembrandt" and other short stories which have appeared in this magazine. There are also a short illustrated article by E. H. House, on the "Japanese Temples of Ise," which for nearly two thousand years have been re-created, in every detail, at intervals of twenty years; and a carefully prepared paper on "Shakspeare as an Actor."

JULIEN GORDON, author of those popular works, "A Diplomat's Diary" and "A Successful Man," contributes the complete novel to the May number of LIPPINCOTT'S MAGAZINE. It is called "The Vampires," and tells the story of the struggle of a poor man to maintain an idle and luxurious and semi-invalid wife. One hears often of the women who work and slave for idle husbands, but here the case is reversed. There is but little plot to the story; but so lifelike are the characters, and so keen the discernment evinced of the comedy and tragedy of life, that the novel must stand as the author's masterpiece. The other contents of this number are: "The Experiences of a Photographer," by A. Bogardus; "Lost Treasures of Literature," by William Shepard; "Poems," by Charles Henry Lüders; "That Hound o' Joel Trout's," by M. G. McClelland; "Absence," by Owen Wister; "Some Familiar Letters by Horace Greeley, — III.," edited by Joel Benton; "A Successful Woman," by M. E. W. Sherwood; "A Blossom from the Hague," by William E. S. Fales; "Polly," by Patience Stapleton; "Aims of University Extension," by Sydney T. Skidmore; "By the Sea," by Clinton Scollard; "What Country Girls Can Do," by Grace H. Dodge; "Latent Force," by John Worrell Keely; "The Personality of the Prince of Wales," by Frank A. Burr; "The Moujik," by Julien Gordon; "Some Letters to Julien Gordon;" "John Dickinson," by Anne H. Wharton; "Literary Dynamics," by Francis Howard Williams; "Maidens Choosing," by Frederic M. Bird; "With the Wits" (illustrated by leading artists).

CERTAINLY there has been no story so extraordinary in its plot and so forcible in its vivid descriptions, as the late Douglas O'Connor's "Brazen Android," the concluding portion of which appears in the ATLANTIC MONTHLY for May. It is a relief to turn from the tension of "The Brazen Android" to the portion of a hitherto unpublished journal of Richard H. Dana, which describes a voyage on the Grand Canal of China. Mr. Dana's description of Su-Chau is immensely interesting, and it is

curious to compare it with Mr. Lowell's Japanese papers. Miss Jewett has never done anything better than her description of the return of the Hon. Joseph K. Laneway to his native town, Winby. Mr. Parkman contributes the concluding paper on the "Capture of Louisbourg by the New England Militia." Mr. H. C. Merwin's article on the "Ethics of Horse-Keeping" will interest lovers of that animal. Mr. William P. Andrews finishes a second paper on "Goethe's Key to Faust;" and the well-known historian, Mr. George E. Ellis, has a paper on "Jeremy Belknap." There are four chapters of Mr. Stockton's bright serial, "The House of Martha."

HJALMAR HJORTH BOYESEN'S "Elixir of Pain," which is begun in the May COSMOPOLITAN, is a story of unusual power and strange plot, and will doubtless attract wide attention and much comment. Of great interest are two real war stories, told by men who have been in the thick of the fight. One is by Archibald Forbes, the famous war correspondent, and the other by Albion W. Tourgee, author of "The Fool's Errand." The illustrations of all three are something unusual, — Boyesen's story, illustrated by Wenzell, so well known through the pages of "Life;" Forbes's story, by Frederic Villiers. another famous war correspondent and artist; and Tourgee's story by Zogbaum. In addition to its strong fiction, this number contains a beautifully illustrated article on the "Cleopatras of the Stage;" another on "New Philadelphia," for which the drawings were made by Harry Fenn. Some wonderful flash-light photographs illustrate the underground workings of a "Leadville Silver Mine." "Kennels and Kennel Clubs," and "Dr. Koch and his Lymph," by one who went to Berlin to study the subject, are two articles with numerous illustrations.

BOOK NOTICES.

WILLS AND INTESTATE SUCCESSION. A Manual of Practical Law, by JAMES WILLIAMS, B.C.L., M.A. Adam and Charles Black, London; Little, Brown & Co., Boston. Cloth, $1.50 net.

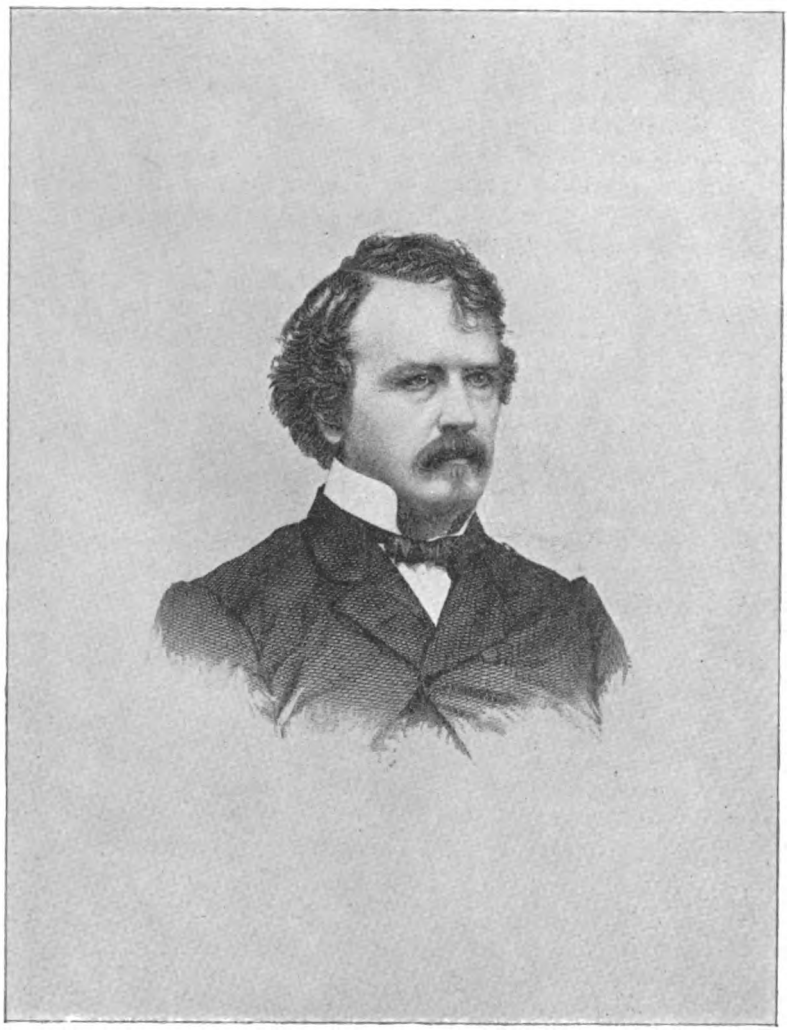
This is the first volume of a new series of law-books which will undoubtedly prove of great practical interest to the profession In the present work the author traces the history of the law of wills from the time of the Conquest down to the present day. The book is filled with much valuable information, and deals at once with the history and principles for which the student looks, and with the practical law essential to the practitioner. Although written with special reference to English law and statutes, the work will prove of much value to the profession in this country.

THE AMERICAN STATE REPORTS, containing the cases of general value and authority, subsequent to those contained in the "American Decisions" and the "American Reports," decided in the courts of last resort of the several States. Selected, Reported, and Annotated by A. C. FREEMAN. Vol. XVII. San Francisco, Bancroft Whitney Company, 1891. Law Sheep, $4.00 net.

In the present volume the Courts of the following States are represented in the decisions reported: California. Illinois, Indiana, Louisiana, Maine, Maryland, Missouri, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin. The selections are made with the usual care displayed by Mr. Freeman, and his annotations are as admirable as ever.

VESTED RIGHTS. Selected Cases and Notes on Retrospective and Arbitrary Legislation affecting Vested Rights of Property. By WILLIAM G. MYER. The Gilbert Book Company, St. Louis, 1891. Law sheep. $6.00.

This volume of Mr. Myer's is, we believe, the first work which has been published devoted exclusively to this important subject. In dealing with this branch of the law, the author has followed the method adopted in his admirable series of "Federal Decisions," and instead of a general treatise, he gives some fifty-five leading cases, on nearly as many distinct phases of the subject, each case being followed by full and exhaustive notes. In fact, the notes are so comprehensive that many of them constitute in themselves treatises on the particular point therein discussed. The work is excellently adapted for the every-day practice of the lawyer, every question likely to arise being at his immediate command, with all the authorities bearing thereon. Legislative action is so often challenged in regard to retrospective laws, or those which impair or divest rights acquired and vested prior to their enactment, that this volume cannot fail to be of great value not only to the profession, but to those to whom is intrusted the duty of framing laws.



Jas. T. Brady

The Green Bag.

VOL. III. No. 7. BOSTON. JULY, 1891.

JAMES TOPHAM BRADY.

BY JOHN FREEMAN BAKER.

MR. ADDISON, in the "Spectator," devotes a chapter to the three great professions, — divinity, law, and physic. He divides lawyers into two classes, the litigious and the peaceable. Under the first are comprehended "all those who are carried down in coachfuls to Westminster Hall every morning in term time." Martial describes this species of lawyers humorously: *Iras et verba locant*, — "men that hire out their words and anger," who "are more or less passionate according as they are paid for it, and allow their client a quantity of wrath proportionable to the fee which they receive from him."

A looker-on in the courts of our day may find food for the opinion that Addison's characterization of the litigious lawyers of nearly two hundred years ago is not entirely inapplicable to that "prodigious society of men" of to-day. However this may be, the fact remains that the lawyer who confines himself exclusively to the practice of his profession is circumscribed, and his reputation is ephemeral. Though he be known and respected by the people of his city or county whom he edifies in the court-room, when he dies he is usually forgotten within the lapse of a generation.

If a man would be remembered beyond the period that the bell rings and the widow weeps, says Shakspeare, he must erect his own tomb. If this be not an axiom, there is certainly philosophy in it. The most astute lawyers of the last generation are hardly heard of beyond the immediate precincts of the neighborhood in which they lived. Those who by patriotism and wise counsel have given the world a direction toward the good, may have their names inscribed on the bright page of history and be enduring.

It is always pleasant and elevating to dwell upon the character of men who have ennobled their calling, — who have struggled, perchance, against untoward fortune, and finally reached the goal for which they labored.

Although it is true in the general sense that a man is the architect of his own fortune, still there are occasionally fortuitous circumstances that largely conduce to a man's success. Most lawyers in active practice come to realize, sooner or later, the pain as well as the pleasure of adversity; for, as we read in "As You Like It,"—

> "Sweet are the uses of adversity,
> Which, like the toad, ugly and venomous,
> Wears yet a precious jewel in his head."

To rescue from forgetfulness and to cherish with just pride the names of lawyers who have elevated and ennobled their calling, ever tends to raise us to a higher level of thought and action. We recur with pleasurable recollection to a lawyer who did all that lay in his power — and his bounty was large — to alleviate the condition of the unfortunate, and to adorn the profession to which he was wedded, — James T. Brady. He was for many years the bright particular star, the Curran, of the New York Bar. In the social circle he was peculiarly attractive, possessing at the same time in a liberal degree the better and more generous amenities of our

nature. Genial, gentle, sympathetic, companionable, and noble, he was endowed with the spirit of love for his fellow-men; he was the delight of his auditory in the court-room and before a popular audience. A festive gathering, in many of which he figured delightfully, was considered quite incomplete, a play without a star, if he were not an actor; for he was,

> "From the charmed council to the festive board,
> Of human feelings the unbounded lord."

His education was fostered under the careful guidance of his father, Thomas S. Brady, who was a man of clever legal attainments and varied accomplishments, and who for several years kept a school where he fitted boys for college, and he afterward practised law with success in the city of New York. It was in that school that James might have been seen, — a large-headed little boy poring over his books and laggingly committing his lessons; for he was "slow of study," as were Webster and many others who in mature manhood became distinguished; neither did he display any positive marks or distinctive qualities of mind or genius in youth which foreshadowed eminence in coming years.

"I remember him," says ex-Chief Justice Daly of the Court of Common Pleas of New York, "and such of his schoolmates as survive remember him, as a warm-hearted little boy; exceedingly unselfish, most affectionate in his attachments to his young school companions, and exceedingly beloved by them, — qualities which in all his subsequent career, and the distinction that attended him, were never abated or extinguished, as every one will testify who ever knew him or came in personal contact with him."

James T. Brady was born on the 9th of April, 1815, in New York City.

Although he was a shy and retiring lad, his father, who knew his nature best, always regarded him as a self-reliant and promising boy, who would some day make a figure in the world. His earliest ambition was to be a lawyer, and he ever had an elevated opinion of the profession, considering that the beauties and honors of *Justitia* far outshone the wealth of "Ormus and of Ind." At the age of sixteen he had acquired a good knowledge of law, and at twenty-one was admitted to the bar. About the first case in which he distinguished himself was in releasing Sarah Coppin, a young English girl who on arriving in New York was robbed of her money, turned into the street, and afterward bound out by the authorities; she was liberated by young Brady. Of a Celtic origin, he partook largely of the fervid imagination and flowery style peculiar to that race. He possessed an unhesitating command of language and a felicity of classical illustration, which in his later efforts rendered him worthy to tread in the footsteps of such a man as Thomas Addis Emmet, and kindred lights of the bar.

The oratorical philosopher, Lord Bolingbroke, while declaring that the profession of the law is in its nature the noblest and most beneficial to mankind, with just enthusiasm says: "There have been lawyers that were orators, philosophers, historians; there have been Bacons, and Clarendons; there shall be none such any more, till in some better age men learn to prefer fame to pelf, and climb to the vantage-ground of general science." In this country there have been several advocates of national repute — Wirt, Pinkney, Choate, Legaré, Prentiss, of the last generation, and Hon. William M. Evarts, ex-Judge John F. Dillon, and some others of our day — who have blended the qualities of the lawyer with the attributes of genius. Two at least of those mentioned stand as chiefs at the bar, — *facile principes*, who united the qualities of the advocate-orator carried to higher excellence; and those were William Pinkney and Rufus Choate.

While Mr. Brady did not particularly delight in using "long-tailed words in *osity* and *ation*," he was exceedingly apt in putting the right word in the right place, emphasizing it, and carrying conviction to the mind of the jury. When Mr. Brady came to the

bar, such men as George Wood, Daniel Lord, David Graham, and Ogden Hoffman filled the higher places of the profession, and later on William Curtis Noyes, and other bright legal lights; but this self-reliant young knight was undaunted, and was ready to cope with the ablest, doubtless believing, with Webster, that there was "room enough upstairs." His influence over a jury was always potent, for he had a pleasing address and a remarkable magneticalness which often wins more than labored logic. These insinuating qualities, combined with much felicity of thought and expression which at times pierced like a Damascus blade, gave him a powerful lever to distinction. And thus it was that a gleam of light and beauty shone through everything that evolved from his mind, and made the subject or contested point stand out in radiant characters. But while his diction and eloquence were ever conceded to be commanding, his power of analysis, logic, and solid argument can but deeply impress the mind of any one who may take occasion to read and study his forensic addresses, and such of his briefs, legal pleas, and arguments as are preserved to us. It has well been said by one who knew him better, that in this regard "many of his noblest productions were not unlike the Corinthian pillar, in which the strength of the column is lost sight of in the symmetry of its proportions and the beauty of its decoration." While not insensible to his own merits, he was always generous and ready to accord a meed of praise to his associate, or even to his antagonist, where he deemed it deserving. For over twenty-five years the great advocate was engaged in most of the important cases in New York State.

In 1845 he became Corporation Attorney of the city of New York.

Although prior to 1860 he had identified himself with the Democratic party, during the administration of Mr. Lincoln he was a stanch supporter of all Union measures. Before the Seymour Association in 1862, he declared that "the South, in leaving us at the particular time she did, did so without the slightest pretext of justification or excuse."

It were idle to attempt to recall or review the various cases in which he figured; but some may be mentioned as they occur to us, remembering the impression made on us at the time of their occurrence. As one of the counsel in defence of the commander and crew of the privateer "Savannah" (during the Rebellion), who were arraigned for piracy, he displayed much astuteness. It will be remembered that the schooner "Savannah," a Confederate vessel, having captured the brig "Joseph," laden with sugar, was afterward taken by the United States brig-of-war "Perry," and brought into the port of New York, where a "true bill" for piracy was found. It may be mentioned in this connection that, a short time previous to this capture, the men of the privateer "Jefferson Davis" had been tried in Philadelphia and convicted of piracy, which was relied upon by the prosecution as a powerful precedent. Mr. Brady in the "Savannah" case threw his whole force into the defence, and as far as we have been able to learn, he acted without pecuniary reward. The peculiar pathos and emphasis with which his closing words in his plea to the jury in behalf of privateersmen were spoken, will not be forgotten by those who heard them. He said: "I do wish that it were within the power of men, invoking the Great Ruler of the universe, to bid these doors open and to let the Revolutionary sages to whom I have referred, and a Sumter, a Moultrie, a Greene, a Putnam, and the other distinguished men who fought for our privileges and rights in the days of old, march in here and look on this trial. There is not a man of them who would not say to you that you should remember in regard to each of these prisoners, as if you were his father, the history of Abraham, when he went to sacrifice his son Isaac on the mount,— the spirit of liberty, the principles of American jurisprudence and the dictates of humanity constituting themselves another angel of the Lord, and saying to you

when the immolation was threatened, 'Lay not your hand upon him!'"

In the celebrated Forrest divorce case he also figured conspicuously. In that case the cross-firing on the part of the litigants was kept up for several years, Forrest having set the ball in motion by an action for divorce; but his action finally resulted in Mrs. Forrest recovering judgment for her support from 1850 to 1860, which in the aggregate amounted to a large sum, — and thus, as it might well be said, "Birnam Wood had come to Dunsinane." In the several appeals taken, Mr. Brady acted, and achieved therein a wide reputation.

In December, 1868, although his health was considerably shattered, Mr. Brady, in the trial of Gen. George W. Cole for the murder of Hon. L. Harris Hiscock, at Albany, won bountiful laurels for the graceful and masterful manner in which he defended the prisoner, and which doubtless was most potent in persuading and enabling the jury to bring in a verdict of acquittal, although in saying this it is not intended to detract one jot from the astuteness and eloquence displayed by the accomplished counsel who was associated with him on that memorable occasion. The trial attracted quite as much attention, in pith and moment, as the Sickles-Key trial in Washington, years before. In his plea to the jury Mr. Brady graphically described the heroic services rendered to the nation by the prisoner; that after being decorated with badges of honor for his patriotism and heroism, he turned his footsteps homeward to share his glories with her for whom he would have laid down his life: "but," exclaimed Mr. Brady, in deepest pathos, "what found he there? Alas! that hearthstone was desecrated; the spoiler had been there. Where joy and brightness had reigned luxuriantly, were sorrow and gloom. That beautiful fabric of domestic love and tranquillity was overwhelmed in ruin, and the ravens of despair were croaking and gloating over the dark desolation. Gentlemen, what is home without its jewels, what is earth without its flowers, what is heaven without its stars?" He then made an apposite simile in referring to Cæsar being struck down in the senate-chamber by his best friend: "He also experienced the pangs of knowing that it was his most trusted friend that struck him to the heart:

> 'Ingratitude, more strong than traitors' arms,
> Quite vanquished him.'"

While it is perhaps true that Mr. Brady had on some former trial, when in the prime of health, been more powerful and eloquent, — for his effort here disappointed some, — yet, considering the fact that his constitution was then much weakened, we may justly accord a high encomium, believing that his influence over the jury was the result of a solemn pathos fortified with convincing logic.

Mr. Brady was liberal to a fault. He was ever willing to defend the ignorant, the weak, the worthy, without money and without price, — and the field for such labor in a great metropolis is boundless, — so that years before and at his death full many a poor, unfortunate man and woman whom he had befriended pronounced him blessed, and fain would have laid upon his bier offerings of adoration. Whether prosecuting or defending a case for pay or for charity, he was always faithful, — faithful to his abilities, to his client, and to himself.

In a well-remembered case, while addressing the jury with unwonted vigor and much gesticulation, a dog, a fond companion of a juror, which had been lying in blissful secrecy under the juror's chair, becoming alarmed at the vehement outburst of eloquence, suddenly appeared and barked at the orator. Quick as a flash, Mr. Brady turned upon the canine intruder, and with fitting gesture exclaimed, —

> "'I am Sir Oracle,
> And when I ope my lips let no dog bark!'"

It was supposed that this happy flight of fancy won the case for his client.

If he had turned his attention to public

life, it is thought that his peculiar abilities would have won for him a high place in the State; but he uniformly declined all political honors. The Attorney-Generalship of the United States was once offered him; but he did not accept it, preferring the pleasures of his independent course at the New York Bar.

The great advocate, having courted the jealous mistress of the law assiduously, passed on through life without having married. He never realized the comforts of "The Hanging of the Crane," so charmingly portrayed by Longfellow, in his poem under that title. Being of a sunny and mercurial nature, he floated on the bubbling tide of fawning and flattering society, in which his smiles were ever courted and ever welcome.

The Hon. John R. Brady,[1] an accomplished justice of the Supreme Court of New York City, is a brother of the subject of our sketch, — a man of eminent ability as a jurist, and one who is most highly respected and revered.

At the meeting of the members of the Bar of New York in memory of Hon. Daniel S. Dickinson, Mr. Brady pronounced a sentiment which most appositely illustrates his catholic spirit and his humane character: "Like you," he observed, with a high sense of regard for the opinion of his associates, "I honor greatness, genius, and achievements; but I honor more those qualities in a man's nature which show that while he holds a proper relation to the Deity, he has also a just estimate of his fellow-men, and a kindly feeling toward them. I would rather have it said of me after death, by my brethren of the bar, that they were sorry I had left their companionship, than to be spoken of in the highest strains of gifted panegyric." That sentence illustrates and bespeaks the nature of the man.

Although more than twenty years have rolled their onward course since James T. Brady was called from his beneficent sphere of usefulness (he died on the 9th of February, 1869), there are many in the profession in New York City at the present time who recall with grateful recollection and endearment his genial face and his noble character, knowing full well, in the words of tribute of Antony to Brutus, that —

> "His life was gentle, and the elements
> So mix'd in him that Nature might stand up
> And say to all the world, 'This was a man!'"

[1] Since this article was written, Judge Brady died, on the 16th of March, quite suddenly, of apoplexy.

THE ORDEAL IN ASIA.

NEITHER its scriptural justification, its antiquity, nor its simplicity has enabled the ordeal to keep the place it once held in European codes; but it still flourishes in Asia and Africa, as it flourished a thousand years ago, when a traveller wrote:

"In the Indies when a man accuses another man of a crime punishable with death, the custom is to ask the accused if he is willing to go through the trial by fire, and if he answers in the affirmative, they heat a piece of iron red-hot. This done, they bid him stretch forth his hand, and upon it they put seven leaves of a certain tree, and upon these leaves they put the red-hot iron, and in this condition he walks backward and forward for some time, and then throws off the iron. Immediately after this, they put his hand in a leathern bag which they seal with the prince's seal; and if at the end of three days he appears and declares he has suffered no hurt, they order him to take out his hand, when if no sign of fire is visible they declare him innocent, and his accuser is condemned to pay a sum of gold as a fine. Sometimes they boil water in a caldron till it is so hot that no one can touch it; then they throw an iron ring into it, and command the person accused to thrust his hand down and bring out the ring. I saw a man who did this and received no manner of hurt."

The Hindus acknowledge nine ordeals as orthodox (differing in danger according to the enormity of the offence or the caste of the criminal),—the trial by rice, by the cosha, by fire, by water, by boiling oil, by red-hot iron, by the balance, by poison, and by images. In cases of trivial theft, the rice ordeal is employed; in this the suspected thief has merely to chew some dry rice that has been weighed with the Salgram, or sacred stone, and spit it out upon pippal leaves, when, if he has been justly accused, the grain will appear stained with blood, or as dry as when he put it in his mouth.

In the trial by the Cosha, or image water, the criminal drinks three draughts of water in which certain sacred images have been washed; and if he lives through a fortnight afterwards without being visited by some dreadful calamity from the Act of the Deity or King, his innocence is considered established.

The ordeal of the balance is reserved for women and children; the aged, blind, lame, and sick, of the stronger sex, and the favored Brahmans. Previous to going through this ceremony it is necessary that both the accused and the officiating priest should fast for twenty-four hours. The former then bathes in holy water, prayers are offered up, and oblations presented to fire. The beam of the balance is then adjusted, the cord fixed, and the truth of the scales tested. The priests prostrate themselves before the balance, repeating sundry incantations while the accused is being carefully weighed. After the lapse of six minutes, the accusation, written on a piece of paper, is bound on the prisoner's head, and he invokes his senseless judge in the following terms: "Thou, O Balance, art the mansion of truth; thou wast anciently contrived by the deities; declare the truth therefore, O giver of success, and clear me from all suspicion. If I am guilty, O venerable as my own mother, then sink me down; but if innocent, raise me aloft!" A second weighing follows; and should he prove heavier than before, he is condemned as guilty,—a result following also upon any accident happening to the apparatus; but if tried in the balance and found wanting in weight, he goes forth a free and acquitted man.

The trial by fire consists in walking barefooted into a mass of burning pippal leaves; or, as in Siam, over a pit filled with burning coals; in that of boiling oil, the accused has to thrust his hand into a vessel of hot oil.

The hot-iron ordeal is of a more ceremonious character. Nine circles, sixteen fingers in diameter, and the same measurement be-

tween them, are drawn upon the ground. The hands of the accused are first rubbed with rice in the husk, and carefully examined to note any existing marks upon them; seven pippal leaves are then bound with seven threads upon each hand, and the priest gives him a red-hot iron ball to carry as he steps in turn from circle to circle, taking care one of his feet is always within one of them, until, on reaching the eighth circle, he gets rid of his hot encumbrance by throwing it into the last of the circles, so as to burn some grass left therein for the purpose. His hands are then examined, and if the iron has left no marks behind it, he is open to receive the congratulations of his friends.

More curious yet is the Hindu water ordeal. The accused stands in water reaching nearly to his waist, attended by a Brahman, staff in hand. A soldier shoots three arrows from a cane bow, and one man hurries to pick up the farthermost shaft; as he takes it from the ground, another runs toward him from the water's edge; at the same moment the accused grasps the Brahman's staff, and dives under the water, remaining there until the two arrow-fetchers return. If he raises his head or any part of his body above the surface of the water before the arrow is delivered to the Brahman, the accusation is considered proved, and he suffers accordingly. In Pegu, they simplify matters, merely driving a stake into the bed of the river, of which accused and accuser take hold, plunging together under water, and he who remains immersed the longer is held to have truth on his side.

There are two ways of administering the ordeal by poison; in the one, the accused eats a mixture of white arsenic and butter; in the other, a hooded snake is put into a deep earthen pot with a ring or coin, which the accused has to recover without receiving any injury from the potted reptile.

In the trial by images, no immediate danger is incurred. Two images — one of silver, called Dharma, or the genius of justice, and one of clay or iron, called Adharma — are placed in a jar; the drawing out of the first being equivalent to a verdict of not guilty. When the images are not procurable, pictures of them on white and black cloth, rolled in dirt, are substituted; and prove equally efficacious.

When disputes arise in Borneo, the Dyaks abide by the decision of their elders; and these, when the evidence is so conflicting as to render it difficult to decide upon which side the right lies, refer the disputants to the trial by ordeal, both complainant and defendant running equal risk. Sometimes two pieces of salt are placed in water, and the owner of the piece dissolving first loses the cause; or a couple of land-shells are placed on a plate, and lime-juice squeezed over them; the shell that moves first declaring the guilt or innocence of the person it represents, accordingly as motion or rest has been chosen to decide the knotty point. Sometimes each provides a wax taper of a certain size; the two tapers are lighted at the same moment, and whichever is extinguished first extinguishes the hopes of its owner. But the method most in favor with the Dyaks is the simple one of the disputants plunging their heads under water together; the first to put up his face to take breath losing the case thereby. — *Chambers' Journal.*

THE GOLDEN DAYS OF THE MARYLAND BAR.

By Eugene L. Didier.

WITHIN the memory of men still living, the bar of Maryland was adorned by a group of lawyers, some of whom acquired a national and others an international reputation. It is necessary only to mention William Pinkney, Roger B. Taney, William Wirt, Robert Goodloe Harper, Reverdy Johnson, and Francis Scott-Key.

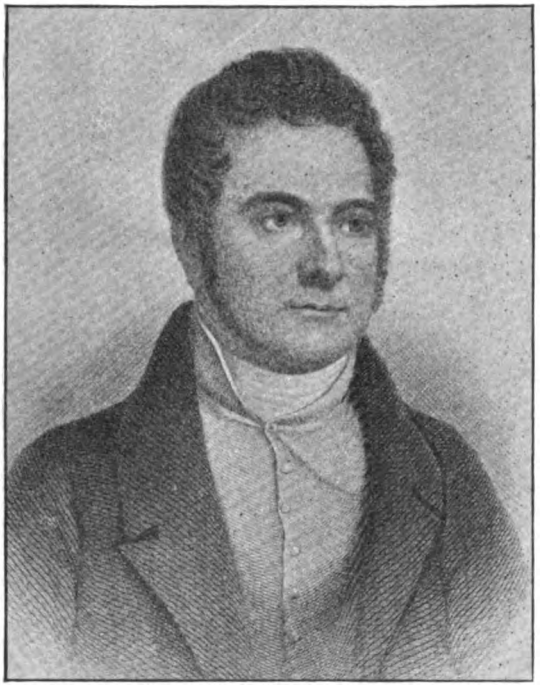
In this cluster of legal luminaries none shone more brilliantly than William Pinkney, orator, statesman, jurist, and diplomatist. Luther Martin had reached the zenith of his fame when Pinkney appeared upon the stage. There could not be a greater contrast than was shown by these great lawyers, both in their dress and address, in their private conversation and in their public speeches. Pinkney was elegant, polished, refined, fastidious; Martin was slovenly, careless, coarse, and sometimes vulgar.

William Pinkney was born at Annapolis, Maryland, on the 17th of March, 1764. His father was an Englishman, whose property was confiscated during the American Revolution, because of his stubborn adherence to the British Crown. Young Pinkney, on the contrary, was a zealous patriot from the time that he was old enough to have an opinion of his own upon the question of the dispute between the colonies and the mother country. His ambition was fired by the fame of three illustrious lawyers of Maryland, — Dulany, Martin, and Chase, — and at the proper age he became a student in the office of the last-mentioned gentleman. In 1786 he was admitted to the bar, and two years later he began his public career as a member of the Maryland Convention which ratified the Constitution of the United States. The same year he was elected a member of the Maryland Legislature. Here he gave the first promise of that eloquence which was to place him among the great orators of America. His rise was so rapid and brilliant that Washington, in 1796, appointed him a Commissioner of the United States, under Jay's treaty with Great Britain. He remained abroad eight years; returning to the United States in 1804, he resumed the practice of the law, and the next year was appointed Attorney-General of Maryland. In 1806 Jefferson appointed him to act with Mr. Monroe (then our minister at London) as minister extraordinary to treat with the British Government upon the subjects in dispute between the two countries. For five years he continued to urge the claims of his country for the redress of grievances, but without success; and seeing that war must be the result of England's policy, he asked to be recalled.

William Pinkney was one of the most accomplished men of his age, and except John Randolph, of Roanoke, the best read in general literature. We have the authority of a great lawyer and a greater orator for saying that an orator should know everything, — "ex rerum cognitione, efflorescat et redundent oratio." Pinkney's varied and extensive reading made him familiar with the beauties of English literature, from the sublimity of Milton to the lighter graces of Goldsmith and Scott. During his diplomatic missions abroad, he frequently heard the most famous orators of Great Britain, — Sheridan, Fox, Pitt, Erskine; and at the same time he constantly studied the great orators of the past, — Burke, Chatham, and Somers, — so that, as was beautifully said of him by a contemporaneous writer, like Achilles, although withdrawn for a time from the field, he was not wasting his energies in indolent repose. He not only heard the greatest of living orators, and studied those of the past, but he enriched his diction by mingling freely in the brilliant literary circles which at the

time adorned the British metropolis; for it was the golden age of Scott, Byron, Moore, Hazlitt, Coleridge, Southey, and Leigh Hunt.

Thus equipped, when William Pinkney resumed the practice of his profession upon his return from England in 1811, he astonished even those who had formed the most exalted opinion of his genius, and by universal consent he was placed at the head of the American bar. Soon after his return to America, President Madison appointed him Attorney-General of the United States, which office did not at that time require a residence at Washington, or the abandoning of private practice. But in 1814 Congress passed a law requiring the Attorney-General to reside at the seat of government, and Mr. Pinkney resigned his office, being unwilling to give up his large and lucrative practice. He was engaged in all the *nisi prius* cases in Maryland, in every important case in the Court of Appeals of that State and in the Supreme Court of the United States. In order to save time during his long journeys, he had his travelling-carriage fitted up with book-shelves, after the manner of Napoleon in his campaigns, and always carried with him a select legal library. He would enter his carriage in Baltimore, and while driving to Annapolis, prepare his case, and be ready to argue it before the Court of Appeals as soon as he arrived. Having finished his business at Annapolis, he would drive to Washington, studying all the way, and be ready to argue his case before the Supreme Court.

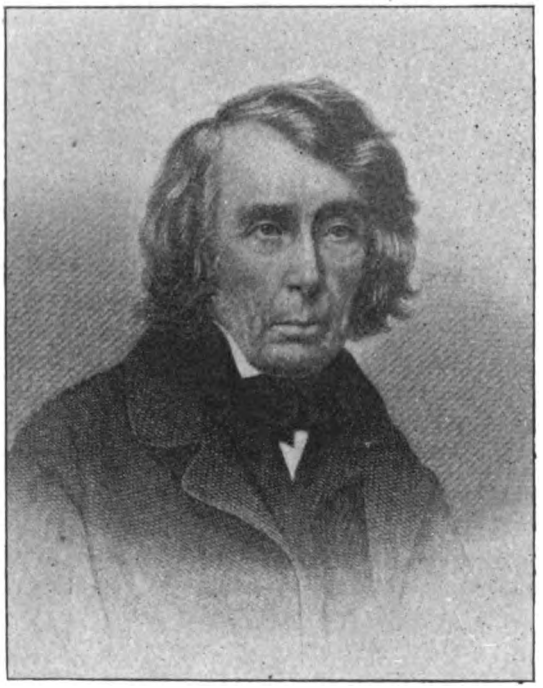


WILLIAM PINKNEY.

By these incessant labors he undermined his splendid constitution, and died prematurely in the midst of his dazzling career, struck down in the full glory of his matchless intellect. Little remains of his extraordinary genius but a traditional fame. He did not seem to care for posthumous renown; he enjoyed the glory which he won while living, heedless of future fame. But to win success at the bar, in the Senate, and in diplomacy, few men have ever followed more closely Cicero's advice to live laborious days. He was a hard student and a diligent reader all his life. Every effort was a contest for victory, and every victory a fresh inspiration to greater efforts. He never argued a case until he had mastered all its details. He sacrificed health, exercise, sleep, and society rather than endanger his great reputation by want of preparation.

The Supreme Court of the United States was the great field of Pinkney's glory. Here he shone with unrivalled splendor. As William Wirt said of him: "No man dared to grapple with him without the most perfect preparation, and the full possession of all his strength. He had a noble and fertile mind; he kept the bar on the alert, and every horse with his traces tight." It is among the traditions of the Supreme Court that the room was always crowded when William Pinkney spoke, for he threw a charm around the driest subject, and embellished the most abstruse legal arguments with the graces of a fascinating oratory. Rufus Choate pro-

nounced him the most consummate master of an exuberant English diction that he ever heard, and said he had "as fine a legal head as ever grew in America." Professor Ticknor, who saw him in the Supreme Court, describes him as eager for the fray, and springing into the arena like a lion that had been loosed by his keepers on the gladiator who awaited him. He was enthusiastically devoted to his profession, and ambitious of its highest honors. The bar of the Supreme Court was the place where he shone with the most brilliant lustre; there his greatest triumphs were won; and there it was, while making one of the greatest efforts of his life, that he was struck down, not by a rival, but by the ever victorious enemy of the human race, — death.



ROGER B. TANEY.

John Randolph, in announcing to the House of Representatives the death of William Pinkney, paid a glowing tribute to his genius as a lawyer, orator, and statesman, and declared him to be "the boast of Maryland, the pride of the United States, — the pride of us all, but, more particularly, the pride of his profession;" adding that a "loss had occurred to this nation, and a void created which can never be filled, — the loss of a man whose legal reputation transcended that of any other man in this country. I will not say that our loss is irreparable, because such a man as has existed may exist again. There has been a Homer, there has been a Shakspeare, there has been a Milton; there may then be another Pinkney, but there is none now." Chief-Justice Marshall said William Pinkney "was the greatest man he had ever seen in a court of justice." Henry Clay said that he "shed lustre upon letters, renown upon Congress, and glory upon the country." Walter Jones, an eminent lawyer of his time, said: "No such man has ever appeared in any country more than once in a century."

Upon two occasions William Pinkney delivered speeches which produced remarkable effects. One of these was on the Treaty-making Power in the House of Representatives during a debate upon a bill to carry into effect the British Convention of 1815. The other was made in the United States Senate on the 15th February, 1820, during the celebrated debate on the Missouri Compromise Measure. Mr. Pinkney appeared as the champion of the equality and sovereignty of the State when admitted into the Union, in opposition to Rufus King, of New York. Such was the marvellous power of Pinkney on this occasion, that Rufus King declared his speech "had enlarged his admiration of the capacity of the human mind." The scene was worthy of the greatest orator and the first deliberative body of the world. The business of the Lower House was suspended and its members crowded the floor of the Senate Chamber. The galleries were filled with the beauty and talent of the land, while hundreds were unable to get within sight or hearing of the eloquent speaker. The speech made a profound impression. Mr.

King did not answer it; but while Pinkney was speaking, he said he could not shake off the feeling that he (King) must be wrong. William Pinkney died on the 25th of February, 1822, falling, as was said, like a brilliant star, just as he had reached the zenith of his professional fame.

We have the high authority of Reverdy Johnson for saying that when the bar of Maryland was adorned by Luther Martin, William Pinkney, Robert Goodloe Harper, and others less known, but perhaps not less learned, — that, in those golden days of the Maryland Bar, Roger Brooke Taney was the equal of any and all of these. Although his only aim in life was in the line of his profession, he was called to important political positions before he was placed at the head of the American bar as Chief-Justice of the Supreme Court of the United States. At the beginning of his professional career, he was elected to the House of Delegates of Maryland, and afterward to the State Senate; later, he was appointed Attorney-General of Maryland by a governor, and confirmed by a council, opposed to him in politics, having been recommended by the entire bar of Baltimore for the position. Although that office was the stepping-stone to the highest judicial position in the country, he said he had no desire to hold any office but that of Attorney-General of Maryland.

WILLIAM WIRT.

During his professional career in Maryland he was employed in most of the important cases in the Court of Appeals of that State. He had essentially what is called "a legal mind," and relied upon the law of the case for success in every cause which he conducted. He used neither the flowers of rhetoric nor the graces of oratory, but his language was always chaste and classical. William Wirt said that "nothing he dreaded so much to encounter at the bar as Taney's apostolic simplicity." Before he had reached middle life, his reputation was so great that he was employed in every important case in every county of the State, and in the Maryland Court of Appeals. In this court of final resort he frequently encountered William Pinkney, whom Wirt called "the Maryland lion;" and the latter found the future Chief-Justice a worthy foeman.

The declining health of Martin and the death of Pinkney left a large opening at the bar of Baltimore, and Taney determined to remove from the little town of Frederick, Md., and establish himself in the leading city of the State. In 1823 he removed to Baltimore, where he at once took his position as the leading lawyer of its bar. Up to this time his fame had been confined almost exclusively to Maryland, but from this time his practice in the Supreme Court of the United States opened to him a field whereon he was to shine so long as its chief. His life of incessant study is an example to ambitious young lawyers who wish to enjoy the honors of their profession, but are unwilling to spend days and nights in hard work.

Contrary to his wishes and tastes, Mr. Taney was appointed Attorney-General of the United States, by President Jackson, in 1831. He reluctantly accepted the office; but he performed its duties with great satisfaction to the Administration, and with great distinction to himself. He was General Jackson's most trusted friend and confidential adviser in the war against the Bank of the United States; and in order to have Taney's entire services in this celebrated struggle, the President appointed him Secretary of the Treasury on the 23d of September, 1833, during a recess of the Senate. He entered upon his duties the next day, and on the 26th of the same month gave the famous order for the removal of the deposits from the Bank of the United States. Then began the famous fight between Nicholas Biddle, the President of the Bank, and Andrew Jackson, the President of the United States. The fight was long and fierce, and ended, as all students of American history know, in a complete victory for the latter. In the United States Senate Clay, Webster, and Calhoun bitterly denounced Jackson and Taney for their action in the affair of the Bank; and when the President sent to the Senate the nomination of Roger B. Taney as Secretary of the Treasury, he was rejected, it being the first time in the history of our Government that a cabinet officer had been so treated. The next day Mr. Taney resigned his office, and resumed the practice of the law in Baltimore, where a dinner and public reception was tendered to him in recognition of his services to the country.

FRANCIS SCOTT-KEY.

On the 28th of December, 1835, President Jackson sent to the Senate the name of Roger Brooke Taney to succeed John Marshall as Chief-Justice of the United States. The nomination was opposed by the Whig Senators, led by Clay and Webster; and it was not until the 15th of March, 1836, that the nomination was confirmed. He was well qualified for the high office, both as a lawyer and as a man. He did not take his seat on the bench of the Supreme Court until January, 1837. So great was the reputation that Chief-Justice Taney acquired as a judge that both Clay and Webster lived to regret their course in the matter of his nomination, and paid the highest tribute to his judicial ability. Webster often sought his counsel on important affairs of state.

It is not within the purpose of this article to enter into the history of Chief-Justice Taney on the Supreme Bench. His opinion on the Dred Scott case is said to have excited more rancorous hate than any other judgment of a court since man first submitted disputes to the arbitration of law. But that famous decision has been blotted from the statute-books by a deluge of blood.

Chief-Justice Taney was a close student all his life, as well as a constant reader of general literature; and to the end of his long career he kept himself in touch with all the literary as well as legal questions of

his time. He died on the 12th of October, 1864, in the eighty-eighth year of his age, having presided twenty-eight years over the Supreme Court of the United States.

William Wirt made his first appearance at the Maryland Bar in 1818. He was at that time the Attorney-General of the United States. He often encountered William Pinkney in the courts, and said he found pleasure in meeting that great advocate. "His reputation is so high," said Mr. Wirt, "that there is no disparagement in being foiled by him, and great glory in not being defeated by him. To foil him in fair fight, and in this his own chosen theatre too, would be a crown so imperishable that I feel a kind of youthful pleasure in the combat." But Wirt and Pinkney were not always on opposite sides. In one of the most celebrated cases of this period (McCulloh *vs.* The State of Maryland) Wirt, Pinkney, and Webster — a grand trio — were arrayed on the side of the plaintiff. The case was argued before the Supreme Court of the United States in 1819. It was during his splendid argument in this case that Pinkney spoke of our highest tribunal of justice as a "holy sanctuary" — a "more than Amphictyonic Council." His speech on this occasion was regarded by his contemporaries as one of the greatest of his life. Mr. Wirt's argument fully satisfied the public expectation, and, what is still more important, satisfied himself; for he was always his own most severe critic. His fame as an orator rests chiefly upon his celebrated speech in defence of Blennerhassett, during the trial of Aaron Burr. This speech was plentifully decorated with the flowers of fancy, and rich in sounding rhetoric; but the famous passage in which he described the home of Blennerhassett and his connection with Burr was a piece of romantic fiction. The present Attorney-General of Maryland, Hon. Wm. Pinkney Whyte, grandson of William Pinkney, recently said of William Wirt that "he was not only a lawyer, whose mind was stored with legal lore, but he was a man of the highest literary culture." His "British Spy," "Old Bachelor," and "Life of Patrick Henry" still live as proofs of his literary accomplishments.

REVERDY JOHNSON.

Francis Scott-Key, the author of "The Star-Spangled Banner," was born in Frederick County, Maryland, August 1, 1779. He studied law under Judge Jeremiah Townley Chase at Annapolis. He commenced his professional career in his native county, and acquired a large practice. In the Court of Appeals of Maryland, and the Supreme Court of the United States, he became conspicuous for the chaste elegance of his language and the polished grace of his manner. On the night of the 13th of September, 1814, while a prisoner on board of the British fleet which was bombarding Fort McHenry, in Baltimore harbor, Mr. Key wrote "The Star-Spangled Banner," which was first sung, a few days afterward, at the Holliday Street Theatre in Baltimore, and was at once

adopted as a national air. Key was an intimate personal and political friend of Andrew Jackson, by whom he was appointed United States District Attorney for the District of Columbia, on the 23d of June, 1833, re-appointed in 1837, and appointed a third time by President Van Buren. His poems were collected and published in 1857. Many of them are of a devotional character; his hymn, "Lord, with glowing heart I would praise Thee," is one of the most popular of the hymnal of the Protestant Episcopal Church, of which he was a zealous member. He died Jan. 12, 1843.

Reverdy Johnson was the youngest, but not the least distinguished of the lawyers who flourished in the golden days of the Maryland Bar. Like so many of the eminent men of that time, he was born at Annapolis, but removed to Baltimore soon after passing the bar, and was recognized as a young lawyer of unusual promise. In his twenty-fifth year he was elected to the Senate of Maryland, and after being elected for a second term, he resigned in order to devote himself exclusively to his profession. His success was remarkably brilliant, and before he was thirty-five years old, he had made a national reputation. In 1845 he was elected to the United States Senate as a Whig; and in 1849 President Taylor invited him to a seat in his cabinet as Attorney-General of the United States. Returning to the bar after the death of General Taylor, his fame as a lawyer greatly increased, and he was retained in many of the most important cases in the Supreme Court of the United States. In 1863 he resumed his seat in the United States Senate, and in 1868 President Johnson appointed him Minister to England, where he negotiated a treaty for the settlement of the Alabama claims. The majority of the Senate, being opposed to President Johnson's policy, refused to confirm the treaty, although Charles Sumner and other Republican Senators acknowledged privately that it secured all our Government had a right to ask, or reason to expect. While abroad Mr. Johnson received much attention from the English bar and people. Lord Clarendon, writing to a friend in America, said: "Mr. Johnson was the only diplomatic representative that had ever brought out the true fraternal feeling of the English people for the United States." Reverdy Johnson was one of the most conspicuous men that Maryland has ever produced,—conspicuous, not only as a lawyer, but as a statesman; and at the time of his death in 1876, he was without a peer at the American bar.

It is a remarkable fact that five of the leading lawyers of Maryland have been Attorney-Generals of the United States; namely, William Pinkney, Roger B. Taney, William Wirt, Reverdy Johnson, and John Nelson. The last was pronounced the fiery Templar of modern jurisprudence, whose eloquence, like a torrent, swept everything before it, and whose versatility of genius made him equally at home in the Cabinet of the nation or the courts of princes.

THE LAWYER'S HEREAFTER.

By E. W. Blake, Jr.

(*Read at a dinner of the Choate Chapter of Phi Delta Phi, March* 20, 1891.)

WHEN the legal fraternity, weary of breath,
Sought relief from terrestrial trials in death;
When they 'd all had enough of contentions and strife,
Then, longing for peace, they signed a release
Of the bodies whereof they 'd been tenants for life;
Whereupon, it is said, without further delay,
" Communis mors omnibus " took them away.
And when they were ready, each man in his place,
With a wild, ghostly cheer, they quitted this sphere,
And sailed through the star-sprinkled regions of space.
Never was seen such a motley throng,
With wigs so large, and with robes so long:
There were judges, solicitors, barons, and clerks,
Chief-Justices, authors of learned law works,
Reporters, attorneys of different degrees,
Lots of Q. C.'s, scores of C. B.'s,
And a numberless host of profound LL.B.'s.
Onward they sped with astonishing ease,
Till the earth and the moon looked the size of two peas.
But at last they emerged from the regions of night,
And splendor celestial burst full on their sight.
The omnibus stopped at the pearl-covered gate,
And all were well pleased — but I 'm sorry to state
That when they alighted, their hopes were all blighted
By being informed they had not been invited,
And had to go elsewhere, as sure as fate;
While right in the gateway a glittering sentry
Waved a fiery sword, to resist tortious entry.
What a commotion was caused by the news!
Bacon, L. C., had a fit of the blues;
Littleton swore they had not had their dues
In being regarded like Turks or like Jews:
Clamors were heard on every hand;
Some of the band with a good deal of sand
Claimed estates-tail in the heavenly land.
" I ' faith," exclaimed Coke, " this passeth a joke;
By my halidome, somebody's neck shall be broke!"
And he drew up a writ, just to make things completer,
Headed " Doe on demise of Lord Coke *vs.* Peter."
But when he walked up to the gate, it is said,
The guardian saint, as a means of restraint,
Just broke the sword " molliter " over his head.
Then the janitor poked his head out of the casement,
Exclaiming, " No room here: apply in the basement!"
And with mutterings loud, the grumbling crowd
Remounted the wagon, while every one vowed
That so gross an injustice should not be allowed.
Then Death, on the box, with a skeleton grin,
Drove them out by the very same way they 'd come in,
And putting the brakes on, for fear of a spill,
Whipped up his lean horses, and started down hill.
Straight downward they went, past the comets and stars,
Past Mercury, Jupiter, Venus, and Mars.
Lord Holt, with a frown, looking mournfully down,

Said to Hawkins, the author of "Pleas of the Crown,"
"Ne'er have you seen in your practice, I wis,
Such a case of descent by an heir-ship as this."
Soon, as they fell, a sulphurous smell
Announced their approach to the Devil's hotel;
They stopped at a door which presented this sign,—
"Apply at the office. Please get into line."
But ere they could even get down from the stage
A devil in red, with two horns on his head,
Delivered these sentiments, much to their rage:
"I 'm sorry to hinder your further progression,
But really I can't let you into possession:
I'm under strict orders to take in no boarders
Who've ever engaged in the legal profession.
The fact is, my friends, this hotel is too small;
What in hell do you think we could do with you all?"
They were silent and dazed, and greatly amazed,
For they 'd never expected the point would be raised.
Exclusion from heaven was certainly sad,
But this second repulse seemed a little too bad:
The Devil, they said, was evading in fact
Liability under the Inn-Keepers' Act.
But what should they do, and how should they begin it?
It was easy to see, by reflecting a minute,
As for heaven or hell, they were simply not in it.
At last they resolved, like the pigeon of old,
To find some retreat for the soles of their feet,
Paved neither with good resolutions nor gold.
So paying the driver the sum that they owed,
They promptly set out to secure an abode.
Whereabouts they discovered it, we do not know;
Nor how many years, mid hopes and fears,
They hunted the universe high and low:
But this is as certain as certain can be,
They at last became seised of a close in fee
Somewhere out in the distant sky;
And they dwell on high, as the years go by,
With never a care and never a sigh.
And oft at evening time, 't is said,
When the lamps are lit and the board is spread,
They cheer the hours with genial mirth,
Recalling the days that they spent on earth.
Such a banquet is spread on the table of law
As never a mortal attorney saw:
Slabs of law-calf instead of veal,
Juicy fat cases served up on appeal,
Actions of trover, remainders over,
And an excellent digest to settle the meal.
They drink the best wine that there is to be had,
In liv'ry of seisin the servants are clad.
The food is served up on folio plates;
They sit on reports from the different courts,
Especially those from the Western States.
Three ladies enliven the jovial scene,
Whose names are right well known, I ween,—
Bar-maids, whose characters might be cleaner,
Miss Feasance, Miss Joinder, and coy Miss Demeanor.
Ever they live in perpetual bliss;
What happier end could destiny send
To an honest and painstaking lawyer than this?
And ever since then, when a lawyer dies,
And his soul passes on beyond the skies,
Come he from near or come he from far,
He 's judged by the great immortal bar;
And if he is found without legal sin,
They open their circle and take him in;
But if he has lied, or even tried
To use false means to help his side,
He is cast adrift into empty space,
And never shall find a resting-place.

CAUSES CÉLÈBRES.

XXIV.

THOMAS DUN THE ROBBER.

FEW people are aware that that quiet, harmless, and industrious old market-town of Dunstable owes its foundation and name to the misdeeds of a notorious thief and robber; yet so, in all probability, it was. At the accession of King Henry I., not many years after the Conquest, England was beset, from north to south, by innumerable bands of highwaymen, bandits, rogues, and plunderers of all sorts. This, no doubt, arose from the general devastation and disorganization caused by the Norman invasion. The people had almost everywhere been driven from their homes and their possessions, to satisfy the rapacious demands of the followers, high and low, of the first William. The new king himself set the example; and his successor, William Rufus, who laid waste whole territories that he might hunt therein at his ease, gave fresh zest to this wholesale system of spoliation. The consequence was, that those Saxon subjects who lost all, sought aid from those disbanded Normans who could get nothing, and lived in thousands by a general retaliation of robbery and murder upon their aggressors. When Henry Beauclerc ascended the English throne, he found his kingdom a mere arena for plunderers and cut-throats to carry on a gainful and dreadful trade; but he was not the man to bear this. His vigorous policy at once grappled with the evil, and put it completely down. He stopped all spoliation, whether by Norman or by Saxon. His administration of justice was rapid and relentless. On one occasion his justiciary, Ralph Basset, held a court at Huncote, in Leicestershire, and no less than forty-four robbers perished on the scaffold before the judge left the place. The murder and rapine which prevailed in every province at the accession of Henry I. became so rare, before his death, that the Saxon chronicler of the time relates that whosoever bore his burden of gold and silver, no man durst say to him aught but good.

Among the robbers who were the terror of the nation when this king began his reign, Thomas Dun was the most known and dreaded. He was a Saxon, and was born in Bedfordshire. From his earliest youth he had associated with marauders and thieves, and in course of time, placing himself at the head of a numerous gang, he ravaged his native county and the adjacent country to a fearful extent. The king came to the rescue, and finding that the neighborhood from St. Albans to Towcester, through which passed a much-frequented road to the north, was infested by Thomas Dun and his followers, ordered the woods to be cut down and grubbed up; and having built a royal mansion for his own residence, called it Kingsburgh, and encouraged some of his subjects to settle near him, by granting them lands at a small rent, a market, and various liberties and privileges. Long after Dun and his gang were destroyed and forgotten, the success of the king's plan continued. Dunstable for centuries was the sojourn of royalty; monasteries and churches which there arose gave a sacred character to the place; and the great approach to London presented an aspect of double security from the power and the piety of those who dwelt in and about it. But, to return to Thomas Dun. Many are the stories that are handed down of his villany and daring. The following anecdotes are samples of them.

Among Dun's gang were many artists, who enabled him to pick locks, wrench bolts, and use deaf files with great effect. One day, having heard that some lawyers were to dine at a certain inn in Bedford, about an hour

before the appointed time he came running to the inn, and desired the landlord to hurry the dinner, and to have enough ready for ten or twelve. The company soon arrived; and the lawyers thought Dun a servant of the house, while those of the house supposed him an attendant of the lawyers. He bustled about, and the bill being called for, collected it; and having some change to return to the company, they waited till his return, but growing weary, rang the bell and inquired for their money, when they discovered him to be an impostor. With the assistance of his associates, he made off with a considerable booty of cloaks, hats, silver spoons, and everything of value upon which he could lay his hands.

After this adventure Dun and his associates went and put up at another inn. They rose in the night-time, insulted the landlord and landlady, then murdered them both, and pillaged the house of everything valuable. Dun had an animosity to lawyers, and he determined to play a rich one a trick. He waited upon him, and very abruptly demanded payment of a bond which he produced; and the gentleman found his name was so admirably forged that he could not swear it was not his handwriting. He assured Dun, however, that he had never borrowed the money, and would not pay the bond. Dun then left the lawyer, telling him he would give him some employment. A lawsuit was entered into, and several of Dun's comrades came forward and swore as to the debt being just; and he was about getting a decision in his favor, when the lawyer produced a forged receipt for the debt, which some of his clerks likewise swore to; upon which Dun was cast. He was in a passion at being outwitted, and swore "he never heard of such rogues as to swear that they paid him a sum that was never borrowed."

This is one of the few instances in which he did not display that barbarity of disposition which is evinced in all his other adventures. He became, however, of such terror to every one, that the Sheriff of Bedford sent a considerable force to attack him in his retreat. Finding upon a reconnoitre, however, that his force was equal, if not superior, to the sheriff's levy, he commenced the attack, and completely routed them, taking eleven prisoners, whom he hung upon trees round the wood to scare others by the example of their fate. The clothes of those they had hanged served them to accomplish their next adventure, which was a design to rob the castle of a nobleman in the neighborhood. They proceeded in the attire of the sheriff's men, and demanded entrance in the name of the king, to make search for Dun. After looking in every corner, they asked for the keys of the trunks to examine them, which, when they received, they loaded themselves with booty and departed. The nobleman complained to Parliament against the sheriff, when upon investigation the trick was discovered.

Nothing prevented Dun from accomplishing any object which he had in view, as he possessed the greatest share of temerity and cruelty that could fall to the lot of man. He would, under the disguise of a gentleman, wait upon wealthy people, and upon being shown into their rooms, murder them and carry away their money.

There was a rich knight in the neighborhood of Bedford from whom Dun wished to have a little money. Accordingly he went and knocked at his door. The maid opening it, he inquired if her master was at home; and being answered in the affirmative, he instantly went up-stairs and familiarly entered his room. Common compliments having been passed, he sat down in a chair and began a humorous discourse which attracted the attention of the knight. Dun then approached and demanded a word or two in his ear. "Sir," says he, "my necessities come pretty thick upon me at present, and I am obliged to keep even with my creditors, for fear of cracking my fame and fortune too. Now, having been directed to you by some of the heads of the parish, as a very considerable and liberal person, I am come

to petition you in a modest manner to lend me a thousand marks, which will answer all the demands upon me at present."

"A thousand marks!" answered the knight. "Why, man, that's a capital sum; and where's the inducement to lend you so much money who are a perfect stranger to me,— for to my eyes and knowledge I never saw you before all the days of my life?"

"Sir, you must be mistaken; I am the honest grocer at Bedford, who has so often shared your favors?"

"Really, friend, I do not know you, nor shall I part with my money but on a good bottom; pray, what security have you?"

"Why, this dagger," says Dun, pulling it out of his breast, "is my constant security; and unless you let me have a thousand marks instantly, I shall pierce your heart."

This terrible menace produced the intended effect, and *Dives* delivered the money.

Having lost his road in the country, Dun arrived at a house where he inquired if they could accommodate a benighted traveller with a bed. The gentleman of the mansion politely told him that all his house was occupied with friends and relations who had just arrived to be present at the celebration of his daughter's marriage, which was to take place next day, otherwise he would have been very welcome. When he was unwillingly departing, the gentleman informed him, if he was not superstitious or had courage enough, that there was one room in his house unoccupied, but that it was haunted. Dun was above all silly apprehensions of that nature, and after being well entertained retired to his room, the company all praying for his quiet rest. There was a good fire lighted in the room, and when all the house was at rest he lay anxiously expecting something to appear, when the chamber door opened and in came the bride, of whom he had taken particular notice at supper. He was first at a loss to know whether it was only a resemblance, but soon satisfied himself that it was really the lady; though whether she was walking in her sleep or not he could not say, but resolved to watch her motions. She seemed to look steadfastly upon his countenance, and then going round the bed, gently turned up the clothes and lay down by his side, where she had not rested long when she drew a rich diamond ring from her finger, then placed it on the pillow and left the room with the same silent step as she had entered it. Dun did not wish to disturb her retreat when she had left so good a prize behind her. He soon fell asleep and dreamed that the lady again appeared, said that she detested the person with whom she was going to be married, and entreated him to assist her in this conjuncture. Dun, however, had got what he wanted, and departed next morning without either satisfying the curiosity of the company or thanking the gentleman for his kindness.

By this time Dun had become formidable both to the rich and the poor; but one melancholy circumstance attended the depredations of this man, which was that almost in every instance, except those narrated, they were stained with blood. He continued his course for many years, the vicinity of the river Ouse in Yorkshire being ever the scene of many of his exploits. As he was attended with fifty armed men on horseback, the inhabitants of the country were afraid to seize him.

Nor was his last adventure less remarkable than those of his former life. His infamy daily increasing, the people of that district were determined no longer to suffer his depredations. Though Dun was informed of what was intended, yet he still continued his career. The country rising at last against him, he and his gang were so closely pursued that they were constrained to divide, each taking shelter where he possibly could, and Dun concealed himself in a small village; the general pursuit and search however lasting, he was discovered, and the house he was in surrounded. Two of the strongest posted themselves at the door; with irresistible courage, Dun seized his dagger, laid

them both dead, bridled his horse, and in the midst of the uproar forced his way. To the number of a hundred and fifty, armed with clubs, pitchforks, rakes, and whatever rustic weapons they could find, they pursued him, and drove him from his horse; but, to the astonishment of all, he again mounted, and with his sword cut his way through the crowd.

Multitudes flocking from all quarters, the pursuit was renewed. He was a second time dismounted, and now employing his feet, he ran for the space of two miles; but when he halted to breathe a little, three hundred were ready to oppose him. His courage and strength, however, still remaining unsubdued, he burst through them, fled over a valley, threw off his clothes, seized his sword in his teeth, and plunged into the river in order to gain the opposite bank.

To his sad surprise he perceived it covered with new opponents; he swam down the river, was pursued by several boats, until he took refuge on a small island. Determined to give him no time to recover from his fatigue, they attacked him there. Thus closely pressed, he plunged again into the river with his sword in his teeth; he was chased by the boats, and repeatedly struck by their oars, and after having received several strokes on his head he was at last vanquished.

He was conducted to a surgeon to have his wounds dressed, then led before a magistrate, who sent him to Bedford jail under a strong guard. Remaining there two weeks, until he was considerably recovered, a scaffold was erected in the market-place, and without a formal trial he was led forth to his execution, — a barbarous one, for he was literally hacked to pieces.

Thanks to what we have related of Henry I., and to the Crusades which cleared the country of so many idlers and marauders, England for near a hundred years after Dun's death remained secure from domestic robbery and murder; and ever afterward the bandits that now and then in troubled times appeared, committed their iniquities on a minor scale. The Robin Hood and his outlaws of the next century, the robbers of Cromwell's time, and the highwaymen of a still later period were but puny successors of Dun, and had such a strange spice of chivalry in their doings that posterity rather inclines to enjoy the romance of their exploits than to condemn, as it ought to do, the manifold errors of their ways.

A COURT-DAY IN FIJI.

A BRIGHT sky vying with the sea for blueness, a sun whose rays are not too hot to be cooled by the sea-breeze, the distant roar of the great Pacific rollers as they break in foam on the coral reef, the whisper of the feathery palms as they wave their giant leaves above yonder cluster of brown native huts, — all these form a picture whose poetry is not easily reconciled with the stern prose of an English court of law. It is, perhaps, as well that the legal forms we are accustomed to have been modified to meet the wants of this remote province of the Queen's dominions, — for the spot we are describing is accounted remote even in remote Fiji, and the people are proportionately primitive. The natives of Fiji are amenable to a criminal code known as the Native Regulations. These are administered by two courts, — the District Court, which sits monthly and is presided over by a native magistrate; and the Provincial Court, which assembles every three months before the English and native magistrates sitting together. From the latter there is no appeal except by petition to the governor, and it

has now become the resort of all Fijians who are in trouble or consider themselves aggrieved.

For several days witnesses and accused have been coming in from the neighboring islands, and last night the village cries proclaimed the share of the feast which each family was called upon to provide. The women have been busy since daylight bringing in yams, plantains, and taro from the plantations; while the men were digging the oven and lining it with stones that when heated will cook the pigs to a turn.

But already the height of the sun shows it to be half-past ten, and the District Court has to inquire into several charges before the Provincial Court can sit. The order is given to the native police sergeant to beat the "lali," and straightway two huge wooden drums boom out their summons to whomever it may concern. As the drum-beats become more agitated and pressing, a long file of aged natives clad in shirt and "sulu" of more or less irreproachable white, is seen emerging from the grove of cocoanut-palms which conceal the village. We have but just time to shake hands with our dusky colleague, a shrewd-looking old man with grizzled hair and beard carefully trimmed for the occasion, when the crowd begins to pour into the court-house.

The gala dresses are not a little startling. Here is a dignified old gentleman arrayed in a second-hand tunic of a marine, in much the same plight as to buttons as its owner as to "teeth." Near him stands a fine young village policeman. whose official gravity is not enhanced by the swallow-tailed coat of a nigger minstrel; while the background is taken up by a bevy of village maidens clad in gorgeous velvet pinafores, who are giggling after the manner of their white sisters, until they are fixed by the stern gray eye of the chief policeman, which turns their expression into one of that preternatural solemnity they wear in church.

The court-house, a native building carpeted with mats, is now packed with natives sitting cross-legged, only a small space being reserved in front of the table for the accused and witnesses. The magistrate takes his seat; and his scribe, sitting on the floor at his side, prepares his writing materials to record the sentences. The dignity with which the old gentleman adjusts his shirt-collar and clears his throat is a little marred when he produces from his bosom what should have been a pair of *pince-nez*, seeing that it was secured by a string round his neck, but is in fact a Jew's-harp. With the soft notes of this instrument the man of law is wont to beguile the tedium of a dull case. But although the spectacle of Lord Coleridge gravely performing on the Jew's-harp would at least excite surprise in England, it provokes no smile here.

The first case is called on. Reiterated calls for Samuela and Timothe produce two meek-faced youths of eighteen and nineteen, who, sitting tailor-fashion before the table, are charged with fowl-stealing. They plead "not guilty;" and the owner of the fowls, being sworn, deposes that having been awakened at night by the voice of a favorite hen in angry remonstrance, he ran out of his house, and after a hot chase captured the accused, — red-handed in two senses, for they were plucking his hen while still alive. Quite unmoved by this tragic tale, Vatureba seems to listen only to the melancholy tones of his Jew's-harp; but the witness is a chief, and a man of influence withal, and a period of awed silence follows his accusation, broken only by a subdued twanging from the bench. But Vatureba's eyes are bright and piercing, and they have been fixed for some minutes on the wretched prisoners. He has not yet opened his lips during the case; and as the Jew's-harp is not capable of much expression, it is with some interest we await the sentence. Suddenly the music ceases, the instrument is withdrawn from the mouth, the oracle is about to speak. Alas! he utters but two words, "Vulle totu" (three months), and there peals out a malignantly triumphant strain from the Jew's-harp. But

the prosecutor starts up with a protest. One of the accused is his nephew, he explains, and he only wished a light sentence to be imposed. Three months for one fowl is so severe; besides, if he has three months, he must go to the central gaol, and not work out his sentence in his own district. Again there is silence, and the Jew's-harp has changed from triumph into thoughtful melancholy. At length it is again withdrawn, and the oracle speaks again: "Bogi totu" (three days).

The prisoners are pounced upon and dragged out by the hungry police, and after a few more cases the District Court is adjourned to make way for the Provincial. The rural police, a fine body of men dressed in uniform, take up positions at the courthouse doors, and we take our seats beside our sable colleague at the table. A number of men of lighter color and different appearance are brought in, and placed in a row before the table. These are the leading men of the island of Nathula, who are charged with slandering their "Buli" (chief of district). They have, in fact, been ruined by a defective knowledge of arithmetic, as we learn from the story of the poor old Buli, whose pathetic and careworn face shows that he at least has not seen the humorous side of the situation. It appears that a sum of seventy pounds, due to the natives as a refund on overpaid taxes, was given to the Buli for distribution among the various heads of families. For this purpose he summoned a meeting, and the amount in small silver was turned out on the floor to be counted. Now, as not a few Fijians are hazy as to how many shillings go to the pound, it is not surprising that the fourteen or fifteen people who counted the money made totals varying from fifty to one hundred pounds. They at once jumped to the conclusion that the Buli, who was by this time so bored with the whole thing that he was quite willing to forego his own share, had embezzled the money; but to make suspicion a certainty, they started off in a canoe to the mainland to consult a wizard. This oracle, being presented with a whale's tooth, intimated that if he heard the name of the defaulter who had embezzled the money, his little finger, and perhaps other portions of his anatomy, would tingle ("kida"). They accordingly went through the names of all their fellow villagers, naming the Buli last. On hearing this name the oracle, whose little finger had hitherto remained normal, regardless of grammar, cried out, "That 's him!"

On their return to Nathula they triumphantly quoted the oracle as their authority for accusing their Buli of embezzlement. The poor old gentleman, wounded in his tenderest feelings, had but one resort. He knew *he* had n't stolen the money, because the money had n't been stolen at all; but then who would believe his word against that of a wizard? And was not arithmetic itself a supernatural science? There was but one way to re-establish his shattered reputation, and this he took. His canoe was made ready, and he repaired to the mainland to consult a rival oracle named Na ivi (the ivy-tree). The little finger of this seer was positive of the Buli's innocence, so that, fortified by the support of so weighty an authority, he no longer feared to meet his enemies face to face, and even to prosecute them for slander. As the Buli was undoubtedly innocent and had certainly been slandered, the delinquents are reminded that ever since the days of Delphi seers and oracles have met with a very limited success, and are sentenced to three months' imprisonment. And now follows a real tragedy. The consideration enjoyed by the young Fijian is in proportion to the length and cut of his hair. Now these are evidently dandies to the verge of foppishness. Two of them have hair frizzed out so as to make a halo four inches deep round the face, and bleached by lime until it is graduated from deep auburn to a golden yellow at the points. Pounced on and dragged out of court by ruthless policemen, they are handed over to the tender mercies of a pitiless barber, and in a few moments they are as crest-

fallen and ridiculous as that cockatoo who was plucked by the monkey. The self-assurance of a Fijian is as dependent on the length of his hair as was the strength of Samson.

But now there is a shrill call for Natombe; and a middle-aged man of rather remarkable appearance is brought before the table. He is a mountaineer, and is dressed in a rather dirty sulu of blue calico, secured round the waist by a few turns of native bark cloth. He is naked from the waist upward. The charge is practising witchcraft ("drau ni Kau"). But it appearing that the whole ceremony was a decidedly tame affair, the accused is acquitted, to be condemned by the other tribunal of public opinion, which evidently runs high.

Two cases of larceny are heard and disposed of; and then two ancient dames clad in borrowed plumes, consisting of calico petticoat and pinafore, are led before the table. Gray-headed and toothless, dim as to sight, and shapeless as to features, they look singularly out of place in a court of law. One of these old women is the prosecutrix, and the charge is assault. We ask which is the prosecutrix, and immediately one holds out and brandishes a hand from which one of the fingers has been almost severed by a bite. The quarrel which led to the appearance in court of these two venerable dames might have taken place in Seven Dials. Defendant said something disparaging about prosecutrix's daughter. Prosecutrix retaliated by damaging references to defendant's son, and left the house hurriedly, to enjoy the luxury of having had the last word. Defendant followed and searched the village for her, with the avowed intention of skinning her alive. They met at last, and having each called the other a roasted corpse fit for the oven, they fell to with the result to the prosecutrix's finger already described. The mountain dialect used in evidence is almost unintelligible to us, so that our admonition, couched in the Bauan, has to be translated (with additions) by our native colleague. But our eloquence was all wasted. Defendant utterly declines to express contrition. Our last resource must be employed; and we inform her that if she does not complete the task imposed on her as a fine, she will be sent to Sueva Gaol, there to be confined with the Indian women. This awful threat has its effect; and the dread powers of our court having thus been vindicated, the crier proclaims its adjournment for three months. The spectators troop out, to spend the rest of the day in gossiping about the delinquents and their cases. The men who have been sentenced are already at work weeding round the court-house,—subjects for the breathless interest and pity of the bevy of girls who have just emerged from court, and are exchanging whispered comments upon the alteration in a good-looking man when his hair is cut off. None are left in the court-house but ourselves, the chiefs, and the older men. The table is removed, and the room cleared of the paraphernalia of civilization. Enter two men bearing a large carved wooden bowl, a bucket of water, and a root of "Yagona," which is presented to us ceremoniously, and handed back to some young men at the bottom of the room to chew. Meanwhile conversation becomes general, witchcraft is discussed in all its branches, and compassion is expressed for the poor sceptical white man. "Sulukas" (cigarettes rolled in banana leaves) are lighted; the chewed masses of Yagona root are thrown into the bowl, mixed with water, kneaded, strained, and handed to each person according to his rank to drink; tongues are loosened, and it is time to draw the meeting to a close.—*Cornhill Magazine.*

LAWYERS.

THE diversities of the legal profession in England and America are curious and suggestive. Already is the obligation mutual; for if in the old country there are more profound and elaborate resources, in the new the science has received brilliant elucidations, and its forms and processes have been simplified. There routine is apt to dwarf, and here variety to dissipate the lawyer's ability; there he is too often a mere drudge, and here his vocation is regarded as the vestibule only of political life. In England the advocate's knowledge is frequently limited to his special department; and in America, while it is less complete and accurate, he is versed in many other subjects, and apt at many vocations. There can be no more striking contrast than that between the lives of the English Chancellors and the American Chief-Justices: in the former, regal splendor, the vicissitudes of kingcraft and succession, of religious transition, of courts, war, — the people and the nobility, — lend a kind of feudal splendor or tragic interest or deep intrigue to the career of the minister of justice; he is surrounded with the insignia of his office; big wigs, scarlet robes, ermine mantles, the great seal, interviews with royalty, the trappings and the awe of power invest his person; his career is identified with the national annals; the lapse of time and historic associations lend a mysterious interest to his name; in the background there is the martyrdom of Thomas à Becket, the speech of the fallen Wolsey, the scaffold of Sir Thomas More, the inductive system and low ambition of Bacon, and the literary fame of Clarendon. Yet in intellectual dignity our young republic need not shrink from the comparison. The Virginia stripling who drilled regulars in a hunting shirt is a high legal authority in both hemispheres. "Where," says one of Marshall's intelligent eulogists, "in English history is the judge whose mind was at once so enlarged and so systematic; who had so thoroughly reduced professional science to general reason; in whose disciplined intellect learning had so completely passed into native sense?" And now that Kent's Commentaries have become the indispensable guide and reference of the entire profession, who remembers, except with pride, that on his first circuit the court was often held in a barn, with the hay-loft for a bench, a stall for the bar, and the shade of a neighboring apple-tree for a jury-room? The majesty of justice, the intellectual superiority of law as a pursuit, is herein most evident; disrobed of all external magnificence, with no lofty and venerable halls, imposing costume or array of officials, the law yet borrows from the learning, the fidelity, and the genius of its votaries, essential dignity and memorable triumphs.

The most celebrated English lawyers have their American prototypes; thus, Marshall has been compared to Lord Mansfield, Pinkney to Erskine, and Wirt to Sheridan; imperfect as are such analogies, they yet indicate, with truth, a similarity of endowment, or style of advocacy. The diverse influence of the respective institutions of the two countries is, however, none the less apparent because of an occasional resemblance in the genius of eminent barristers. The genuine British lawyer is recognized by the technical cast of his expression and habit of mind, to a degree seldom obvious in this country. Indeed, no small portion of the graduates of our colleges who select the law as a pursuit, do so without any strong bias for the profession, but with a view to the facilities it affords for entrance into public life. Some of these aspirants thus become useful servants of the State, a few, statesmen, but the majority mere politicians, and from the predominance of the latter class originate half the errors of American legislation.

Two names appear on the roll of English lawyers, which are identified with the worst characteristics of the race: that of Jeffreys, whose ferocious persecution of those suspected of complicity with Monmouth's rebellion forms one of the most scandalous chapters in the history of British courts; and Lord Thurlow, who in a more refined age won the *alias* of Tiger, for his rudenesses, inflexibility, oaths, and ill manners, his black brows and audible growls. In beautiful contrast shine forth the law reformers of England, whose benign eloquence and unwearied labor mitigated the sanguinary rigors of the criminal code, and pressed the common law into the service of humanity. Romilly and Erskine have gained a renown more enduring than that of learned and gifted advocates; their professional glory is heightened and mellowed by the sacred cause it illustrates.

The popular estimate of a profession is dependent on circumstances; and the law, like every other human pursuit, takes its range and tone from the character of its votaries, and the existent relation it holds to public sentiment; not so much from what it technically demands, but from the spirit in which it is followed, come the dignity and the shame of the law. The erudite generalizations of Savigny belong to the most difficult and enlarged sphere of thought; while the cunning tergiversations of the legal adventurer identify him with sharpers and roguery. In the first cycle of our republic, when a liberal education was rare, the best lawyers were ornaments of society, and the intellectual benefactors of the country. In that study were disciplined the chivalrous minds of Hamilton, Adams, Morris, and other statesmen of the Revolution. A trial which afforded the least scope for their remarkable powers was attended by the intelligent citizens with very much the same kind of interest as filled the Athenian theatre, — a mental banquet was confidently expected and deeply enjoyed. To have a great legal reputation then implied all that is noble in intellect, graceful in manner, and courteous in spirit; it bespoke the scholar, the gentleman, and the wit, as well as the advocate.

No profession affords better opportunities for the study of human nature; indeed, an acute insight of motives is a prerequisite of success; but unfortunately, it is the dark side of character, the selfish instincts, that are most frequently displayed in litigation; and hence the exclusive recognition of these which many a practised lawyer manifests. In its ideal phase among the noblest, in its possible actuality among the lowest, of human pursuits, we can scarcely wonder that popular sentiment and literature exhibit such apparently irreconcilable estimates of its value and tendencies. English lawyers of the first class are scholars and gentlemen. Classical knowledge and familiarity with standard modern literature are indispensable to their equipment, and such attainments are usually conducive to a humane and refined character. In the programme suggested by eminent lawyers for a general training for the bar, there is, however, an amusing diversity of opinion as to the best literary culture: one writer recommends the Bible, another, Shakspeare, one, English history, and another, Joe Miller, as the best resource for apt quotation and discipline in the art of efficient rhetoric. Coke was remarkable for his citations from Virgil. But there is no doubt that general knowledge is an essential advantage to the lawyer, if he understand the rare art of using it with tact. The mere fact that the highest political distinction and official duty are open to the lawyer ought to incline him to liberal studies and comprehensive acquaintance with literature, science, and philosophy.

The trial of Aaron Burr elicited the most characteristic eloquence of Clay and Wirt; that of Knapp, the tragic force of statement in which Webster excelled; Emmett's address to his judges has become a charter to his countrymen; Patrick Henry's remarkable powers of argument and appeal, which fanned the embers of revolutionary zeal into a flame, originally exhibited themselves in a Virginia

court-house. And if eloquence has been justly described as existing "in the man, in the subject, and in the occasion," we can easily imagine why the legal profession affords it such frequent and extensive scope.

There is a peculiar kind of impudence exhibited by the lawyer — it is sometimes called "badgering a witness" — which consists essentially of a mean abuse of that power which is legally vested in judge and advocate, whereby they can, at pleasure, insult and torment each other, and all exposed to their queries, with impunity. It is easy to imagine the relish with which unprofessional victims behold the mutual exercise of this legal tyranny. A venerable justice in one of our cities was remarkable for the frequent reproofs he administered to young practitioners in his court, and the formal harangues with which he wore out the patience of those so unfortunate as to give testimony in his presence. On one occasion it happened that he was summoned as a witness in a case to be defended by one of the juvenile members of the bar, whom he had often called to order with needless severity. This hopeful limb of the law was gifted with more than a common share of the cool assurance so requisite in the profession, and determined to improve the opportunity to make his "learned friend" of the bench feel the sting he had so often inflicted. Accordingly, when His Honor took the stand, the counsel gravely inquired his name, occupation, place of residence, and sundry other facts of his personal history. The queries were put in a voice and with a manner so exactly imitated from that of the judge himself as to convulse the audience with laughter; every unnecessary word the hampered witness used was reprimanded as "beyond the question;" he was continually adjured to "tell the truth, the whole truth, and nothing but the truth;" his expressions were captiously objected to; he was tantalized with repetitions and cross-questioning about the veriest trifles; and finally his tormentor, with a face of the utmost gravity, pretended to discover in the witness a levity of bearing, and equivocal replies, which called for a lecture on "the responsibility of an oath;" this was delivered with a pedantic solemnity, in words, accent, and gesture so like one of his own addresses from the bench, that judge, jury, and spectators burst forth into irresistible peals of laughter; and the subject of this clear retaliation lost all self-possession, grew red and pale by turns, fumed, and at last protested, until his young adversary wound up the farce by a threat to have him committed for contempt of court.

Genius for the bar is as varied in its character as that for poetry or art. In one man the gift is acuteness; in another, felicity of language; here extraordinary perspicuity of statement, there singular ingenuity of argument. It is rhetoric, manner, force of purpose, a glamour that subdues, or a charm that wins; so that no precise rules, irrespective of individual endowments, can be laid down to secure forensic triumph. Doubtless, however, the union of a sympathetic temperament and an attractive manner with logical power and native eloquence form the ideal equipment of the pleader. Erskine seems to have combined these qualities in perfection, and to have woven a spell both for soul and sense. He magnetized physically and intellectually his audience. The advocate, like the poet, is occasionally born, not made, notwithstanding the maxim, *orator fit.* A mind fertile in expedients, warmed by a temperament which instinctively seizes upon and, we had almost said, incarnates a cause, is a phenomenon that sometimes renders law an inspiration instead of a dogma. Such instances, however, are exceptional; few are the lawyers thus constituted.

Whoever, in the freshness of youthful emotions, has been present at the tribunal of a free country, where the character of the judge, the integrity of the jury, and the learning and eloquence of the advocates have equalled the moral exigencies and the ideal dignity of the scene, and the case has pos-

sessed a high tragic or social interest, can never lose the impression thus derived of the majesty of the law. No public scene of human life can surpass it to the apprehension of a thoughtful spectator. He seems to behold the principle of justice as it exists in the very elements of humanity, and to stand on the primeval foundation of society; the searching struggle for truth, the conscientious application of law to evidence, the stern recital of the prosecutor, the appeal of the defence, the constant test of inquiry, of references to statutes and precedents, the luminous arrangement of conflicting facts by the judge, his impartial deductions and clear final statement, the interval of suspense, and the solemn verdict, combine to present a calm, reflective, almost sublime exercise of the intellect and moral sentiments, in order to conform authority to their highest dictates, which elevates and widens the function and the glory of human life and duty. "Justice," says Webster, "is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and as long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and the progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself in name and fame and character with that which is, and must be, as durable as the frame of human society." — *Putnam's Magazine.*

CROWNER'S QUEST LAW.

Response by Mr. Robert D. Wilson at a Meeting of the Alleghany County, Penn., Bar to the Toast, "Crowner's Quest Law."

"But is this law?
Ay, marry is 't: crowner's quest law." — *Hamlet.*

THE paper-book submitted by the plaintiff in error in this case is of the most meagre and unsatisfactory description; and we should be amply justified in refusing to consider the case on this ground. However, the high standing of the parties and the interest excited by the contest, as well as the importance of the legal questions involved, lead us to consider it our duty to decide the case as well as we may with the materials furnished us. The pleadings in the case do not appear at all, and we are confined to the consideration of the finding of the crowner's quest and extracts from the testimony. It is only fair to the plaintiff in error to state that a large portion of the record was taken out of the prothonotary's office by one Carolus C. Dickey, Esq., attorney for the defendant in error, and is supposed to be somewhere on his desk; but the limited time has not sufficed to discover it among the papers.

The facts in the case, as nearly as we can extract them from the evidence, are as follows: —

Mrs. Polonius, widow of Mr. Polonius, deceased, whose sad death — in which persons of the highest standing in this kingdom were implicated — is yet fresh in our memories, brought suit in the court below against one Cornelius for damages for the death of her daughter Ophelia, alleged to have been caused by the negligence of defendant in not guarding a dangerous approach to a stream upon his demesne. The defence was, the deceased had committed deliberate suicide

by drowning herself, or at least had been guilty of contributory negligence. The deceased was last seen leaving Elsinore in the direction of defendant's estate. The only direct evidence as to the manner of her death is that of Gertrude, Queen of Denmark, who testified as follows: —

"There is a willow grows aslant a brook,
That shows his hoary leaves in the glassy stream;
There, with fantastic garlands did she come,
Of crow-flowers, nettles, daisies and long purples,
That liberal shepherds give a grosser name,
But our cold maids do dead men's fingers call them;
There, on the pendent boughs her coronet weeds
Clambering to hang, an envious sliver broke,
When down her weedy trophies and herself,
Fell in the weeping brook. Her clothes spread wide,
And mermaid-like, awhile they bore her up;
. . . . . but long it could not be,
Till that her garments, heavy with their drink,
Pulled the poor wretch from her melodious lay
To muddy death."

Meagre as this account is, the greater portion of it is clearly irrelevant, and might well have been objected to in the court below. However, such as it is, it is absolutely uncontradicted, and must be taken as verity. It therefore appears that deceased came to her death by the breaking of an "envious sliver," and not by her own premeditated act. If the "envious sliver" had been above dry ground, this could not have happened; and we are therefore clearly of opinion that it was gross negligence in the defendant to leave a sliver of that notoriously bad character in such a position. There is no evidence that the sliver was acting outside the scope of his ordinary employment, and no question of the constitutionality of the act of the sliver has been raised.

The finding of the crowner's quest casts no light on the subject. Following the growing disposition of such bodies, they have found many facts of general interest, but have neglected to find by what means the deceased came to her death.

The case principally relied on by defendant in error is that of Fisher *v.* Pennsylvania Railroad Co., 126 Penn. St. 293. The facts in that case are as follows: The action was brought to recover damages against defendant company for the killing of a mule. The mule was returning from his daily toil, and in attempting to cross defendant's track was struck by one of defendant's engines and killed. The court, in a *per curiam* opinion, say: "The mule was killed upon the track by one of the defendant's locomotives. The alleged negligence of the company consisted in not ringing the bell or sounding the whistle as the engine approached the crossing near which the mule was killed. If it was the duty of the engineer to blow the whistle as notice to the mule, I do not see why the mule should not be held to the rule to 'stop, look, and listen.'" The action of the court below in granting a compulsory nonsuit was affirmed.

It was most earnestly urged in the argument that the above case rules the one now under consideration. Mr. Dickey pressed the point with great eloquence that ladies are not ordinarily more stubborn than mules, and are really more intelligent, and should therefore be strictly held to as high a degree of care. This argument is ingenious rather than sound. The cases can be readily distinguished. We will admit, for the sake of argument, that ladies are not usually more infatuated with their own intentions than mules. But the mule is both by nature and habit peculiarly adapted to an easy compliance with at least two of the requisites of the rule. Nature never does a vain thing; and if the unusual development of the auricular appendages and the inborn and ineradicable disposition to stop were not implanted in the mule by a kind providence, with prophetic reference to this very rule, I am at a loss to account for extraordinary faculties otherwise so prodigally wasted in the ordinary routine of the domestic life of a mule.

Again, the law no more than nature insists on vain things. If an act could do no good, the law mercifully dispenses

with the doing of it. It is safe to say that no woman ever missed finding out anything, if it could be done by looking and listening. It is the barest charity to the unfortunate deceased to presume that she would not have done violence to this fundamental instinct had there been anything to gain by obeying it.

The case of Fisher *v.* Pennsylvania Railroad Co., therefore, is not authority for this case, and no negligence has been shown on the part of deceased.

The above case has been misunderstood, and it may not be improper to sound here a note of warning to the profession. It seems to be the impression that we decided in that case that the action was properly brought. Such was not our intention. Neither under the act of 1851, providing that such actions shall survive, nor under the act of 1855, designating in favor of what persons they shall survive, can the case of Fisher *v.* Railroad Co. be sustained. In that case George Fisher sues without stating in what capacity he claims. No letters, either testamentary or of administration, appear to have been out on the mule's estate. From the name of the plaintiff we judge he could not have been the widow, and we take judicial notice of the physiological fact that there is an almost conclusive presumption against the legitimacy of the lineal descendants of a mule. That case was well decided upon other controlling principles, and upon them its authority remains unimpeached; on all other points it is an excrescence and an anomaly in our judicial system to which it is our duty to apply the knife with unsparing hand, and that decision is therefore overruled.

For the reasons above stated, the judgment of the lower court is reversed and a *venire facias de novo* awarded.

I will add that if this decision shall be found to be a mistake, it will afford me pleasure to unite with my brethren in overruling it.

THE ELOQUENCE OF FACTS.

IT has become the fashion to talk about the decline of eloquence, and to speak of oratory as one of the lost arts. Nevertheless, there has never been a time when the faculty of public speaking was so widely diffused. The ordinary business man is quite capable of expressing his opinions at a directors' meeting, succinctly and often forcibly, in a form that would have passed for a set speech in former years. The truth is that with the advance in general education, and by reason of the large fund of information on all topics that everybody must gain nowadays even if he reads only the daily journals, the arts both of writing and speaking have become such well-nigh universal acquisitions, that the prestige of a few men of genius is comparatively much smaller than it used to be. It must be admitted that in the department of statesmanship and politics, especially in this country, the literary has largely superseded the oratorical form of address. The people are instructed and led by the newspapers, not by Congressional speeches; and legislative bodies have become merely the registers and executing agents of the public opinion so formed. But in the pulpit and at the bar we think that not only is the oratorical average higher, but that there are more great orators now than at any previous time.

Undoubtedly there has been a great change in the prevailing style of oratory, — a change toward sobriety of rhetoric and delivery, — which was bound to come with the increase of intelligence. But the intellectual growth of the masses has called for a change also in the substance of discourse. A modern audience, be it only an average petit jury,

must have a foundation of hard facts, verified by sane reason, for any appeal to their emotions. It will not do for the orator merely to persuade his hearers that he believes that such and such facts exist, and then, by impassioned rhetoric, endeavor to inoculate them with his own enthusiasm. He must induce them by essentially scientific methods to share his belief, and it is then comparatively easy to awaken the enthusiasm. The facts, if they be meretorious, will themselves in a great measure generate the enthusiasm, and the flame will require but little fanning. Tact and good taste may, unaided, accomplish great results, though a little passion at the close, when a legitimate foundation has been laid, is of course effective.

Matthew Arnold has said that religion is morality touched by emotion. This epigram gives a clew to a definition of eloquence from our modern point of view. We should say that eloquence is that faculty of discourse which produces in the hearer conviction touched by emotion. There must first be implanted conviction of the inherent merits, and then righteous indignation, sympathetic compassion, or some other feeling should be evoked, to transform mere conviction into an active force, prolific of practical results. It follows that whoever would persuade and influence audiences or juries of the present day must study first of all the most effective method of presenting facts. Although histrionic poses and tricks have, with the decline of the old style of speaking, largely fallen into disuse, nothing is of greater service than a genuine dramatic sense. It enables the speaker to place himself in imagination in the mental attitude of other men, and determine what considerations of fact will most probably work in his favor, and which of the circumstances had best be suppressed.

The speeches of Erskine have been generally accepted by the present generation as a model of forensic eloquence. No man ever had to a greater degree than he the faculty of making facts speak. In his addresses to juries as well as to courts, there was self-effacement and the constant effort so to present the subject that his audience might see it in its true light for themselves, and not be put off with the speaker's descriptions or opinions. It seems only natural that one so essentially modern in his methods should also be free from florid rhetoric and turgid imagery. Those persons who claim that we have no genuine oratory at the bar to-day would be obliged to exclude Erskine from the list of orators.

Of course, there is always the danger of going to extremes in the consideration of any theme. What are sometimes termed the old-fashioned graces of oratory are not to be entirely overlooked. Good rhetoric, graceful action, and a pleasing voice are powerful adjuncts to argumentative force. The theatrical element does to an extent enter into most jury trials, the parties on one side or the other endeavoring to play such parts as are not inconsistent with the facts they cannot deny. Mother wit will often prompt the advocate how to counteract one piece of attitudinizing by another. Great sincerity and earnestness in a client's behalf, especially if the counsel have lofty character to back it, will count for much in verdict-getting. But all these considerations are insignificant in comparison with the main one of so introducing the facts into other minds, that conviction and enthusiastic sympathy are produced according to the inevitable laws of thought. — *New York Law Journal.*

LONDON LEGAL LETTER.

LONDON, June 5, 1891.

THE past winter and spring have been rather more eventful than usual for lawyers in London. Unquestionably the most prominent incident was the agitation which led to the retirement of Mr. Justice Stephen. Some months ago one or two public appearances of the learned judge produced the impression, rightly or wrongly, that advancing years and failing health had impaired his great powers; articles and letters appeared in many of the leading newspapers, and questions were asked in Parliament on the subject. After the matter had been ventilated for some time in this manner, a reaction set in in favor of the judge. The public began to feel that too much had perhaps been made of one or two not very well authenticated instances; and just as the question was quietly dropping out of public notice, Sir James Stephen placed his resignation in the hands of the Lord Chancellor. This step was met with very general approval; every one felt that without pronouncing on the merits of the particular case, it was of the utmost importance that no shadow of doubt should exist as to the efficiency of the judicial bench. It was a pathetic scene when the retiring judge bade adieu to the bench and the bar, *more solito*, in the court of the Lord Chief Justice. Sir James Fitzjames Stephen's name will always be inseparably associated with the jurisprudence of crime, his works being as widely known in America as in England. Although an eminent and laborious judge, he never quite attained a reputation on the bench equal to the fame he had so justly won in other spheres. The vacancy thus caused was filled up by the appointment of a comparatively young Queen's Counsel, Mr. Henry Collins, who had built up an immense reputation as a lawyer, and I believe was regarded by the judges of the Court of Appeal as one of the weightiest legal debaters who appeared before them. His practice to a very large extent consisted of local government cases.

Considerable interest has been excited by the proposal to revive the Guildhall sittings. Perhaps a word of explanation here is necessary. In the old days, — that is to say, some ten years ago, — prior to the consolidation of the different courts, when the common law judges dispensed justice in Westminster Hall, after the end of the various legal terms, several of their number held sittings at the Guildhall in the city, where mercantile causes were disposed of. This was very convenient for city men, whose business occupations are sadly interfered with by the dreary delays of litigation, and who prized very highly a tribunal at their own doors. All this came to an end when the High Court of Justice was opened at Temple Bar, when the Legislature hoped finally to centralize the administration of the law. Experience, however, has shown that the new system caused a great leakage of legal work; merchants and traders in the city developed a rapidly growing preference for having their disputes dealt with by arbitration in some chambers near their offices, to the lengthy processes of the law at the Central High Court. To prevent this state of affairs, and to meet an admitted want, two judges are for the future to be sent down from time to time to sit at the Guildhall and dispose of city causes very much as of old. Lawyers are already hoping that this revival of the old system may restore in large measure the commercial work which was once their most lucrative source of income.

Our most eminent legal author, Sir Frederick Pollock, has set his hand to a very great and important enterprise. He has undertaken the editorship of "The Revised Reports," being a republication of the reports of cases in the English Courts of Common Law and Equity from the year 1785, omitting such cases and parts of cases as are considered to be no longer of practical value. It is estimated that there are six hundred and twenty-seven volumes of old reports which will thus be subjected to revision, and that the valuable residuum will be comprised in fifty volumes. In his prospectus Sir Frederick Pollock says: "The undertaking of 'The Revised Reports' is intended to give effect to a desire which has been felt and expressed in our profession from the time of Bacon downwards. It is proposed to republish the old Reports of our Superior Courts of Common Law and Equity, which are modern enough to be still of frequent practical utility, reducing them to a manageable bulk and cost by the omission of obsolete and unimportant matter. We do not pretend that the need of occasional reference

to the books at large can be superseded by this or any other process of revision. In one sense no reported case can ever be obsolete while the laws and judicial usages of English-speaking countries are what they are; that is, no man can say beforehand that any given case, however antiquated or trifling it may appear in itself to be, may not at some time have its use for the modern practitioner or text-writer." It is unnecessary to point out the advantages of the scheme, and a wide support from the profession may confidently be anticipated. How far the series will extend must depend, as the "Law Quarterly" points out, to no small extent on the support given to the scheme on both sides of the Atlantic.

We have had quite an exceptional number of sensational cases this year, or perhaps I ought to include last year also. Not to mention O'Shea *v.* O'Shea, Charles S. Parnell being co-respondent, with which the world is now familiar, great interest was excited by the action for damages for breach of promise of marriage brought by a lady of the name of Evelyn against Mr. Hurlbert, originally an American journalist, but who had for some years settled in England. Mr. Hurlbert, as most of your readers will be aware, earned the gratitude of all Unionist politicians by a spirited polemic which he published in two volumes, entitled "Ireland under Coercion." The case presented by the lady plaintiff was a very grave one, and had she been able to bring it home to the defendant, he could scarcely have figured in public again. The defence was quite sensational in its character. The defendant alleged that the interviews and letters relied on by the plaintiff had been conducted and written respectively by a man whom he had employed as secretary, and who had successfully impersonated his employer; in the event the jury found that the defendant had not promised to marry the plaintiff, but the authorship of the letters was left an insolvent question.

While I write the greatest *cause célèbre* of the session is proceeding, — Cumming *v.* Wilson, known to the public as the Baccarat Libel Action. The piquancy of this case consists in the fact of his Royal Highness the Prince of Wales having been a prominent actor in the circumstances which gave rise to the dispute. Briefly the facts are these. The Prince was staying at a country-house; one of the guests was Sir William Gordon Cumming, a fashionable baronet and officer of the Guards. One night after dinner the company chanced to play baccarat. Sir William's play, so his accusers allege, caused them to entertain suspicions; and so on the following evening, when they all played again, the baronet was watched, with the result that he was afterward frankly accused of cheating. Several of the ladies failed to observe a strict silence as to what had passed; hence the action brought against them by Sir William Gordon Cumming. The case for the plaintiff has closed. The Prince of Wales, who, seated on the right hand of the Lord Chief Justice Coleridge, was from the first the centre of interest, gave his evidence on the second day of the trial. His appearance in the witness-box was eagerly looked forward to, and it must be confessed he made a very good witness, taking the oath like any ordinary person. It would be improper to express any opinion on the case, *pendente lite.*

Very large numbers of the bar, including the Attorney-General, Mr. Lockwood, Q. C., and other leaders, have only recently recovered from attacks of influenza.

* * *

The Green Bag.

PUBLISHED MONTHLY, AT $3.00 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.

THE following letter from a well-known writer gives some valuable advice as to the best method of obtaining a knowledge of the law: —

Editor of the "Green Bag":

The following letter was written in answer to one from a law clerk, saying, "I desire to ask you, if it will not take too much of your valuable time, to give me a few points as to which way is the best for a young man to get a knowledge of law. I know you could say that that question is answered by the word 'study;' but if I tell you my situation, I do not doubt but what you will be able to give me a more definite reply, and one that will be of intrinsic value to me. I am of the age of twenty-six years, with a very ordinary education, but I confess with ambition, and that of the kind that likes to mark high. Have no other resource but my own labor. . . . I have been in a law office about a year. Since that time I have made very little advancement in the study of the law, having other studies to occupy my time. But now I have commenced; still, not without being confused, — for one tells me to read the ancient authors, and another to study practice, while the third informs me that to make a success at the law as a court lawyer I should study Latin."

To these inquiries I replied as follows: —

"If you are actively engaged in an office and have not a great deal of time to study, I advise you to begin by reading, not whole books, but short passages about what you are engaged upon. If you have access to Parsons on Contracts or Kent's Commentaries, or a good edition of Blackstone, or Greenleaf or Wharton on Evidence, or Shearman and Redfield on Negligence, or Schouler on Wills, or Bishop's books, or Jones on Mortgages, etc., then when you have a deed to copy look in the index of Kent's Commentaries for what he says about deeds, read it carefully and slowly, and compare it with the deed in hand. If you have a contract to copy, notice what kind of a contract it is, and see what Parsons says about that kind of a contract. Do not read much nor fast, and make it a point to see how it bears on what you have in hand. After you have read a passage shut the book, and endeavor to state to yourself what he said. Take a sheet of paper and write down a short account of what he said. If there is something you do not understand, write down your question, and remember that 's a thing you have to find out sometime when you have a chance to ask a question of a lawyer at leisure, or when you are reading some other book. When a new volume of Court of Appeals decisions or Hun comes in, look into the index and see if you find a case on any of the subjects you have been reading about; if so, see if you can understand the case; but don't read too much. You have no idea how much you will learn in a year if you get one new idea clearly grasped every day.

"If you have time outside, say in the Y. M. C. A. or Mercantile Library, take Johnson's or Appleton's Cyclopedia, and read slowly and carefully the article on the subject you have last been reading about in some law book. Notice who wrote the article, if it is signed. After you have put the book away write out the pith of the new things you have learned. Note your questions. Keep your memoranda, and at the end of the month or quarter read them over, and keep what knowledge you have got clear and strong in your mind. Use your memoranda, not instead of remembering, but only to make you clear and exact about what it is you want to remember.

"In all this do not read too much at a time. One page or one paragraph every day in connection with the work you have in hand is worth more to you than fifty pages a day, as law students sometimes read.

"When you come to a Latin word or phrase in your law reading, look it up in a law dictionary or glossary if convenient; but never look up a second one if you find you have forgotten the first, until you have fixed the first so you won't forget it again. In other words, I sum up the whole in saying, as far as possible for the present read only that which is useful, and immediately useful and intelligible in connection with your work; and when you have read something useful don't read anything more to make you forget it because of haste or desire to get on.

"If you find these suggestions help you, you will easily find by and by the way to extend your studies to things not apparently immediately useful, but perhaps more important nevertheless."

Yours truly, AUSTIN ABBOTT.

JUDGE MURRAY E. POOLE, of Ithaca, N. Y., kindly furnishes the following list of distinguished alumni of the Albany Law School: —

Authors: Irving Browne, Charles T. Boone, S. F. Kneeland, George R. Donnan.

Cabinet Officers: Redfield Proctor, War; William F. Vilas, Secretary of the Interior and Postmaster-General.

Commander-in-Chief, G. A. R.: Wheelock G. Veazey.

Editors: Charles E. Fitch, of the Rochester Democrat and Chronicle; William H. McElroy, of the New York Tribune; T. C. Callicott of the Albany Times; St. Clair McKelway, of the Brooklyn Eagle; Irving Browne, of the Albany Law Journal; John H. Farrell, of the Albany Press.

Engineer: Capt. Joseph H. Willard, U. S. A.

Financier: J. Edward Simmons, President New York Stock Exchange.

Foreign Minister: Clark E. Carr, Denmark.

Governors: Redfield Proctor, Vermont; Harris M. Plaisted, Maine.

Judge U. S. Supreme Court: David J. Brewer.

Judge Inter-State Commerce Commission: Wheelock G. Veazey.

Judge U. S. Court Alabama Claims: Andrew S. Draper.

Judge State Court Claims: George M. Beebe, New York.

Judge State Court Appeals, New York: Alton B. Parker, Irving G. Vann.

Judges State Supreme Courts: Wheelock G. Veazey, Vermont; Daniel A. Dickenson, Minnesota; Alton B. Parker, New York.

Judge State Superior Court: A. V. R. Patterson, California.

Judge State District Courts: N. S. Gilson, Wisconsin; A. E. Paige, Indiana.

Judge Court Common Pleas, N. Y. City: Miles Beach.

Judge City Court, Albany: Andrew Hamilton.

Judges County Courts, New York: Zerah H. Westbrook, Montgomery; John C. Mott, Albany; Howard J. Mead, Tioga, John M. Kellogg, St. Lawrence; Henry V. Borst, Schoharie.

Lawyers: Wheeler H. Peckham, Everett P. Wheeler, Esek Cowen, William S. Opdyke, George L. Stedman, George M. Bliss, William P. Prentice, James Lansing, D. Cady Herrick, Grenville A. Tremain, Edmund J. Moffett, Lewis A. Barker, Adelbert Moot, Edwin A. Bedell, Myron W. Van Anken, John V. L. Pruyn, Jr., R. H. McClellan, Charles A. Benton, Judson N. Cross, M. L. Hollister, Orris U. Kellogg, James A. Dennison.

Librarian: Stephen B. Griswold.

Members of Congress: John H. Camp, Lewis Hanback, J. Dewitt Warner, Abraham X. Parker.

Political Leaders: Alfred Orendorf, Illinois; Stanley Plummer, Michigan; Robert J. Fisher, Jr., District of Columbia; Archie E. Baxter.

Professors in Colleges: Tracy C. Becker, E. Corning Townsend, George A. Madill, Ziba H. Potter, G. N. Potter.

Public Leaders: David A. Thompson, President Nineteenth Century Club, New York City; Charles B. Hubbell, N. Y. City.

Regents University, State New York: Charles E. Fitch, St. Clair McKelway.

Senator, U. S.: William F. Vilas, Wisconsin.

Solicitor-General, U. S.: Abraham X. Parker.

State Senators, New York: Abraham Lansing, Amasa J. Parker, Jr., Norton Chase, Charles A. Fowler, John E. Smith, Abraham X. Parker.

State Secretary: Diedrich Willers, Jr.

State Superintendent Public Instruction: Andrew S. Draper, New York

State Supreme Court Reporters, N. Y.: Abraham Lansing, Marcus T. Hun.

OWING to delay in receiving manuscript, we are obliged to defer the continuance of the Supreme Court Articles until our August number. The illustrated article on "The Golden Days of the Maryland Bar," published in this number, recalls pleasant memories of some of the greatest lawyers in our legal history.

IN our August number we shall publish a sketch of the late Sir John Macdonald. A full-page portrait will accompany the article.

LEGAL ANTIQUITIES.

IN Madox's great history of the Exchequer, and in the pipe-rolls from which it was drawn, there are endless notices of the duel. In the reign of Stephen, for example, the escheat of a vanquished man is credited, and a person is represented as owing one hundred measures of wine for the concord of his brother's duel. Under Henry II. large sums are paid to the Officers of the Crown for the duel, for the fine of a duel, for recreancy, for refusal to fight, or absence from a duel. There are amercements for making a man fight two duels in one day; for being present and allowing it to be done; for not keeping the duel properly. Fines are paid in money and horses for

concords of duels, and license to concord. Last on the varied list is a fine paid by a lady to hinder a duel between her and her brother. In the short reign of Richard I. the same thing continues. In his fifth year, notably, a fine was paid by a man who, after confessing to the king that he had no right to certain lands, had the effrontery to wage battle for them. Analogous entries continued throughout the reigns of John and Henry III., with strong indications of a falling off under the last-named king. — *Trial by Combat.*

FACETIÆ.

COUNSEL. Did you observe anything particular about the prisoner?

WITNESS. Yes; his whiskers.

COUNSEL. And what was there peculiar about his whiskers?

WITNESS. Why, he had none.

COUNSEL. Now, Mr. Jenks, you say Mr. Joseph Jenks is a distant relative of yours?

"Yes."

"What relation is he?"

"My brother."

"But you just said he was a distant relative."

"So he is; at present he is residing in India."

NOTES.

CURIOUS instances might be collected from the records of Indian law courts illustrative of the Old World beliefs of the people, which are brought at times into such strange collision with the legal forms of procedure established by our modern lawyers. A man was once being tried for murder, when he put forward a plea such as could only have occurred to an Oriental, and to a believer in the transmigration of souls. He did not deny having killed the man, — on the contrary, he described in detail the particulars of the murder, — but he stated in justification that his victim and he had been acquainted in a previous state of existence, when the now murdered man had murdered him, in proof of which he showed a great seam across his side, which had been the sword-cut that had ended his previous existence. He further said that when he heard he was again to be sent into this world, he entreated his master to excuse him from coming, as he had a presentiment that he should meet his murderer, and that harm would come of it. All this he stated in perfect earnestness and simplicity, and with evident conviction of its truth and force, — a conviction shared by a large number of those in court.

Trial by jury is attended with peculiar difficulties in India, an instance of which I remember as having occurred. In that case, also, a man was on his trial for the murder of another. He had been caught red-handed, and there was no possible room for doubt in the matter. The murdered man had succumbed almost immediateiy to his wound, living only long enough, after being discovered, to ask for some water to drink. Some surprise was felt at the time taken by the jury in considering their verdict; but when at length they returned and recorded it, the astonishment of all in court was unbounded when it proved to be one of not guilty. So extraordinary a verdict could not pass unchallenged, and the judge inquired by what process of reasoning they had arrived at their decision; if the accused had not murdered the man, who had? "Your Lordship, we are of opinion that the injuries were not the cause of the man's death. It has been proved that he drank water shortly before his death, and we are of the opinion that it was drinking the water that killed him." The explanation of this remarkable verdict — the more remarkable when it is remembered that the men who brought it in never drank anything but water themselves — was that on the jury was a high-caste Brahman, to whom the very idea of being a party to taking away a man's life was so abhorrent that no earthly persuasion could have induced him to agree to a verdict that would have hanged the prisoner; and the earnestness of his horror had exercised an influence over the rest of the jury so powerful as to make them return the verdict which so staggered the court. — *Notes and Queries.*

Recent Deaths.

HON. ALPHONSO TAFT, ex-Secretary of War, died at San Diego, Cal., May 21. Judge Taft was born at Townshend, Vt., on the 5th of No-

vember, 1810. His father was a farmer, but he availed himself of all possible advantages for obtaining a good rudimentary education, teaching a country school in the winter months to acquire the means of paying his way through college. In his nineteenth year he entered the freshman class of Yale College, and graduated with honor. From college he passed to the High School at Ellington, Conn., an institution devoted mainly to the preparation of boys for college, where he taught two years, and then accepted a position as tutor in Yale, which he also held for two years, in the mean time attending the lectures of the Law School. He was admitted to the bar in New Haven, Conn., in the summer of 1838. He entered upon the practice of the law in Cincinnati in 1839.

In 1865 he was appointed a Judge of the Superior Court of Cincinnati. After that he was twice elected to the same office by popular vote; the last time, in 1869, he received the unusual honor of a unanimous vote from the people of both political parties. In 1872 Judge Taft resigned his position as Judge of the Superior Court, and entered upon the practice of his profession with his sons, Charles P. and Peter R. Taft.

In 1875 he was a candidate for the Republican nomination for governor of Ohio, being the principal opponent of General Hayes.

In March, 1876, Judge Taft was called into President Grant's cabinet as Secretary of War, to fill the vacancy caused by the resignation of General Belknap, and two months later was transferred to the position of Attorney-General, in which he succeeded Edwards Pierrepont, who was made Minister to England. He was succeeded as Secretary of War by J. Donald Cameron. In March, 1877, after his retirement from the cabinet at the end of Grant's term, Judge Taft was a candidate for the seat in the United States Senate, vacated by John Sherman on the latter's appointment to the Secretaryship of the Treasury under Hayes, but the caucus nomination went to the late Stanley Matthews on the third ballot. Judge Taft was again candidate for governor, but was defeated in the State Convention in August, 1877, by Judge William H. West, who was in turn defeated at the polls by Richard M. Bishop. At the State Convention of May, 1879, Judge Taft was again an aspirant for the gubernatorial nomination. He was the candidate of the faction which favored a third presidential term for Grant, while Charles Foster, the present Secretary of the Treasury, was put forward by the followers of John Sherman. Judge Taft was again defeated in convention, but by a very narrow margin, as Foster received only 280 votes to 271 for Taft.

Meanwhile Judge Taft had resumed his practice at the bar, which was not again interrupted until April, 1882, when he was appointed Minister to Austria by President Arthur. From this position he was transferred, in September, 1884, to the Russian Mission. Since his return from St. Petersburg he had not taken an active part in public affairs. He was one of the trustees of Yale College, and received from that institution the honorary degree of Doctor of Laws. Judge Taft was an able lawyer, and a man of wide and general culture. He possessed a large and accurate knowledge of affairs, that well served him in protecting the interests of his country in all his diplomatic relations, while his fine character and perfect manners commanded universal respect.

Hon. Josiah G. Abbott, one of the most prominent lawyers of the Suffolk Bar, died on June 2. Judge Abbott was born at Chelmsford, Mass., on Nov. 1, 1814. He traced his lineage back to the first settlers of this Commonwealth. The Puritan George Abbott, who came from Yorkshire, England, in 1630, and settled in Andover, was his ancestor on his father's side; while on his mother's side his English ancestor was William Fletcher, who came from Devonshire in 1640, and settled, first, in Concord, and, finally, in 1651, in Chelmsford. He was fitted for college under the instruction of Ralph Waldo Emerson. He entered Harvard College at the early age of fourteen, and was graduated in 1832. After taking his degree, he studied law with Nathaniel Wright of Lowell, and was admitted to the bar in 1837. In 1840 he formed with Samuel A. Brown a partnership, which continued until he was appointed Judge of the Superior Court. He retired from the bench in 1858, having won an enviable reputation for judicial fairness and acumen, and suavity of manner, in the trial of cases, which made him popular with the members of the bar who practised in his court. In the year following his retirement from the bench he removed his office from Lowell to Boston, practising in the courts not only of this Common-

wealth, but of the neighboring States and in the Supreme Court of the United States.

JUDGE SAMUEL M. BRECKENRIDGE, of St. Louis, one of the best known lawyers in the United States, died suddenly at Detroit, Mich., on May 28. He belonged to the famous Kentucky family of that name, and was the son of Rev. John Breckenridge, one of the most noted Presbyterian divines of his day, a cousin of John C. Breckenridge and a nephew of Robert J. Breckenridge. He was born in Baltimore, Md., Nov. 3, 1828, and was educated at Union College, New York, Centre College, Kentucky, and graduated from Princeton. He then took up the study of the law, and completed the law course at Transylvania University at Lexington, Ky., in 1840. Upon leaving the University he went to St. Louis, where he engaged in the practice of the law, and had since resided. In 1858 he ran for Congress against Frank P. Blair and John R. Barrett, but was defeated. In 1859 he was elected a Circuit Judge over Newton Strong, to fill the vacancy caused by the resignation of Judge Lackland. At the end of the term, which was four years, he was appointed a member of the State Convention which terminated in 1863. In 1866 he was made Surveyor of Customs for the port of St. Louis.

Judge Breckenridge was a polished after-dinner orator, his ability in that line being acknowledged by all who knew him. Besides his law practice, Judge Breckenridge was interested in many business and co-operative enterprises, and took a keen interest in the advancement of the interests of St. Louis. No man had warmer friends. Politically he was well known, and was prominently spoken of as a probable appointee to the vacancy on the United States Supreme Bench which occurred in President Hayes's administration, and also the one now occupied by Judge Brewer. At one time his friends thought he would be made a member of President Harrison's Cabinet.

JUDGE C. J. MCCURDY died June 8, at his home in Lyme, Conn., his native place. He was born Dec. 7, 1797. He graduated at Yale in 1817, and was at his death the oldest graduate. He represented Lyme in the State Legislature of Connecticut for ten terms, and the District in the Senate one term. He was Lieutenant-Governor two years. In 1851 he represented the United States at the Court of Austria. In 1856 he was appointed Judge of the Superior Court, and in 1863 was promoted to the Supreme Bench. He was a member of the Peace Congress at Washington in 1861. He was retired from the bench by the age limitation in 1867. Since then he has delivered many courses of lectures before the Yale Law School. He received the degree of LL.D. at Yale. He was, perhaps, the best-known lawyer in Connecticut.

STILLMAN B. ALLEN, one of the best-known members of the Suffolk Bar, died in Boston, June 9. He was born in September, 1830, at Waterborough, York County, Me., and was the son of Horace O. and Elizabeth Allen. He received his early education in the academies in North Yarmouth, Kennebunk, and Alfred, Me. In September, 1853, he was admitted to the bar, and practised law in his native State until May, 1861, when he removed to Boston, and two years later became associated with the Hon. John D. Long, who subsequently retired from the firm upon his election as Governor of the State. Mr. Allen was largely engaged in jury trials, and had the reputation of winning for his clients the largest verdicts against railroads and other corporations ever rendered in this country.

In 1876–1877 Mr. Allen represented his ward in the House of Representatives, serving the first year on the Committee of the Judiciary, and the next as Chairman of the Committee on Probate and Insolvency. In 1877 he conducted an investigation made by the Legislature into the alleged abuses existing in the State Reform School, which led to an entire change in the management of that institution.

MARLAND COGSWELL HOBBS, one of the most promising and able among the younger members of the Suffolk Bar, died at his home in Brookline yesterday afternoon. He was a son of the late William and Mary M. (Cogswell) Hobbs, and was born in Roxbury in November, 1862. After graduating from Harvard College in the class of 1885, he began the study of law at the Harvard Law School, where he took high stand as a member of the Thayer and Pow-wow Law Clubs, and as one of the founders of the "Harvard Law Review," of the Board of Editors of which he was the second president. While still a law student he was appointed

by Governor Ames to the newly created clerkship of the Police Court of Brookline. After graduating from the law school he began to practise in Boston, and speedily worked his way to a lucrative practice. A ready speaker, with quick perception and keen retort, he attracted attention whenever he appeared in court or in public meetings, and was looked upon, both by friends and his elders at the bar, as one sure to take high rank in the profession. With a warm heart and of a genial disposition, he attracted to himself friends both in his social and business relations.

HON. WILLIAM ALLEN, Judge of the Massachusetts Supreme Court, died June 4, at his home in Northampton. He was born in Brunswick, Me., March 31, 1822. He was the grandson of the Rev. Thomas Allen, the "fighting parson" of the noted Berkshire militia, who performed such conspicuous service under General Stark of Revolutionary fame. His father, William Allen, was a clergyman of Pittsfield, a scholar of eminence, and at one time President of Bowdoin College; while his mother, Maria M. Wheelock, was the daughter of John Wheelock, formerly President of Dartmouth College.

Educated at Phillips, Andover, and North Yarmouth academies, the son in 1838 entered Bowdoin College, but the next year changed to Amherst, where he graduated in 1842. His law studies he began at the Yale Law School, and subsequently completed them at Northampton; was admitted to the practice of his profession during 1845, and immediately entered upon its duties. He entered into partnership with the late C. P. Huntington in 1849, continuing with him till 1852. In 1870 he became a partner with Judge D. W. Bond, now of the Superior Bench, continuing that association two years. During 1872 Mr. Justice Scudder was forced by ill health to resign his seat on the Superior Court Bench, and for a season to seek restoration in travel. Governor Washburn selected Mr. Allen to fill the vacancy, which position he held until promoted by Governor Long to the Bench of the Supreme Judicial Court.

Judge Allen was a scholar and a justice of capability. Patient, thoughtful, and mild-mannered, he was also firm and independent in his rulings. Always dignified and polite, he was very quiet, and took little part in any affairs outside his office.

REVIEWS.

THE AMERICAN LAW REVIEW for May–June comes filled with an unusual amount of interesting matter. Charles E. Fenner contributes a readable paper on "The Roman Advocate." George A. O. Ernst discusses the question, "How far is it safe for citizens of one State to organize a corporation in another State to do business at home?" "Reform in Land Transfer," by Prof. Harvey B. Hurd; "Hammond's Blackstone," by George H. Smith; "English Legal Affairs," by G. H. Knott, and "The New Orleans Mafia Case," by Robert H. Marr, Jr., complete the list of solid articles. In the "Notes" Brother Thompson appears at his best, and we cheerfully forgive him for appropriating a page or two of "Facetiæ" from the "Green Bag."

IN the June number of the POLITICAL SCIENCE QUARTERLY, Professor Burgess of Columbia College discusses the international and constitutional questions raised by the recent controversy with Italy. He holds that a foreign government whose subjects have been wronged is entitled to demand that the United States Government should initiate proceedings against the wrong-doers in the United States courts. Horace White writes on bi-metallism in France; showing that all attempts to keep the two metals in equipoise have proved unsuccessful. F. M. Drew gives a careful account of the organization and aims of the Farmers' Alliance and kindred bodies. E. J. Renick, of the Treasury Department, explains and criticises the method of accounting employed by the United States Government. Gaillard Hunt, of the Department of State, contributes a chapter to the history of the Nullification Movement in South Carolina; and Professor Osgood, of Columbia, concludes his study of the Political Ideas of the Puritans.

IF Carl Schurz's remarkable article on "Abraham Lincoln" is the first thing to which the reader naturally turns in the June ATLANTIC, it is not alone because it occupies the first pages of the number. It is fitting to give so interesting a survey of Lincoln's life and work the place of honor, and we think of no magazine article which has appeared for a long time which will command such attention, not only from its subject, but from the

fact of its being written by Mr. Schurz. Mr. Stockton's "House of Martha" is continued. Prof. George Herbert Palmer contributes "Reminiscences of Professor Sophocles," who was Professor of Greek at Harvard University for nearly forty years. College men will be also deeply interested in Mr. S. E. Winbolt's paper on "Rowing at Oxford." Rose Terry Cooke contributes a story called "A Town Mouse and a Country Mouse;" and Rev. Samuel J. Barrows has an important paper on "What the Southern Negro is doing for himself." President D. C. Gilman, of Johns Hopkins University, has a paper on "The Study of Geography," and its place in the college course.

THE popular writer, George Parsons Lathrop, author of "An Echo of Passion," "Newport," "Afterglow," etc., contributes the complete novel to the June number of LIPPINCOTT'S MAGAZINE. The story is called "Gold of Pleasure," and it is the most interesting and the most dramatic story that has come from the pen of Mr. Lathrop. It is a tale of love and adventure, with scenes that shift from the quiet surroundings of a New England seaport town to Ceylon. "Some Familiar Letters by Horace Greeley" are continued, but contain nothing of especial interest to the general public. "Is Alaska worth visiting?" We decidedly say, Yes, after reading Grace Peckham's description of marvellous scenery to be found therein. Lucy C. Lillie contributes an interesting sketch of "Alexandra, Princess of Wales;" and Edgar Fawcett gives a capital character sketch of a literary man, in an article entitled "A Literary Pet."

THE June CENTURY has an interesting frontispiece portrait of George Mifflin Dallas, formerly Vice-President of the United States. This portrait accompanies the second and last instalment of the papers extracted from Mr. Dallas's journal written while he was American Minister to the Court of the Czar Nicholas I. In the fourth instalment of the Talleyrand Memoirs, Talleyrand denies, categorically and with emphasis, that he had anything to do with the execution of the Duc d'Enghien or with an alleged plot to assassinate Napoleon. The new paper in the California series is by Dr. Charles B. Gillespie, of Freeport, Pennsylvania, and is substantially a transcript from his California journal of 1849 and 1850, being a description of a Sunday in Coloma, in which the rougher life of the mines is most prominent, — the auctioneering, racing, gambling, thimble-rigging, etc. The first paper in the number is one of Mrs. Burton Harrison's sketches of Old Virginia life, and is entitled "Colonel William Byrd, of Westover, Virginia." The reproductions of old family portraits constitute a striking feature of the paper. Mr. and Mrs. Pennell have papers on "Play and Work in the Alps." The one on "Play" is written by Mrs. Pennell, and that on "Work" by her husband, both being picturesquely illustrated by him. In the series of American pictures a full-page engraving by Closson is given of "Springtime," from a painting by Ernest L. Major. Edward Eggleston's "Faith Doctor" is continued in this number; and the second instalment of Stockton's "Squirrel Inn" is numerously illustrated. Several new writers contribute short stories to this number.

THE contents of the June HARPER'S are varied and interesting. Colonel Dodge contributes a second paper on "Some American Riders," with illustrations from paintings by Frederic Remington. "The Royal Chateaux of the Loire" and "The Warwickshire Avon" are both profusely illustrated. Charles Egbert Craddock's "In the 'Stranger People's' Country" and Thomas Hardy's "Wessex Folk" are continued, and both grow in interest. There is the usual supply of shorter articles, none of which, however, call for any special mention.

THE frontispiece of the COSMOPOLITAN for June is a delight to the eye, being a superb full-page portrait of Madame de Pompadour. In fact, for illustrations this magazine stands unrivalled. The present number contains eight fully illustrated articles. "Japanese Women" with portraits of many almond-eyed beauties; "The Royal Arsenal at Woolwich;" Reminiscences of two Modern Heroes;" "The House of Madame de Pompadour;" A Model Municipality;" "A Remarkable Artist;" "The Needs of the Farmer;" "Pythagoras" (a poem); "Beau Brummell," and "The Light of the Harem." Hjalmar Hjorth Boyesen's remarkable story of "The Elixir of Pain" is continued, and its interest increases.

SCRIBNER'S MAGAZINE for June continues the notable series on "The Great Streets of the

World" and "Ocean Steamships;" Francisque Sarcey being the author of the article on "The Boulevards of Paris" and William H. Rideing contributing the paper on "Safety on the Atlantic." The illustrations in both groups continue to be very rich, and appropriately supplement the text. Another group of articles — that on Practical Charity — is represented in this issue by a sympathetic and often amusing account of "Boys' Clubs." Amateur photographers will find much to interest them in the article on "Some Photographs of Luminous Objects," with many illustrations reproduced directly from the negatives by mechanical processes. The fiction includes stories and sketches by F. J Stimson, Bliss Perry, and Maria Blunt. There is also an essay on Molière by Andrew Lang, with a striking portrait as the frontispiece of the number; and a calm, critical review, on large lines, of some of the most significant features of the Civil War viewed as illustrations of military science and strategy by John C. Ropes.

BOOK NOTICES.

A TREATISE ON THE LAW OF NEGOTIABLE INSTRUMENTS, including Bills of Exchange, Promissory Notes, Negotiable Bonds and Coupons, Checks, Bank Notes, Certificates of Deposit, Certificates of Stock, Bills of Credit, Bills of Lading, Guarantees, Letters of Credit, and Circular Notes. By JOHN W. DANIEL. Fourth Edition. Baker, Voorhis, & Co, New York, 1891. Two vols., law sheep. $12 net.

It is now nine years since the last edition of this valuable work appeared. The fact that the last edition has been for some months exhausted and out of print is sufficient evidence of the great favor with which it was received by the profession; and this new and enlarged edition will doubtless meet with the same flattering reception which was accorded its predecessor. Covering a much broader field than the ordinary treatises on Bills and Notes, thoroughly and exhaustively prepared, it is not detracting in the least from the merits of other excellent works on the subject to say that this book of Mr. Daniel's is still to be considered superior to any work we have on the subject of Negotiable Instruments. In the present edition some two thousand new cases are cited, and the newly added matter embraces more than one hundred printed pages. Mr. Daniel writes in a clear, incisive style, and on many doubtful points does not hesitate to express his own views, most of which will, we think, be commended for their soundness.

In these days, when some publishers seem determined to economize space at the expense of eyesight by using the most diminutive of small type, it is a real pleasure to take up a book printed in such clear and distinct type as the publishers have used in this work. They deserve the thanks of every lawyer and student.

THE LAW OF LIFE INSURANCE, including Accident Insurance and Insurance by Mutual Benefit Societies. By FREDERICK H. COOKE, of the New York Bar. Baker, Voorhis, & Co., New York, 1891. Law sheep. $4.00 net.

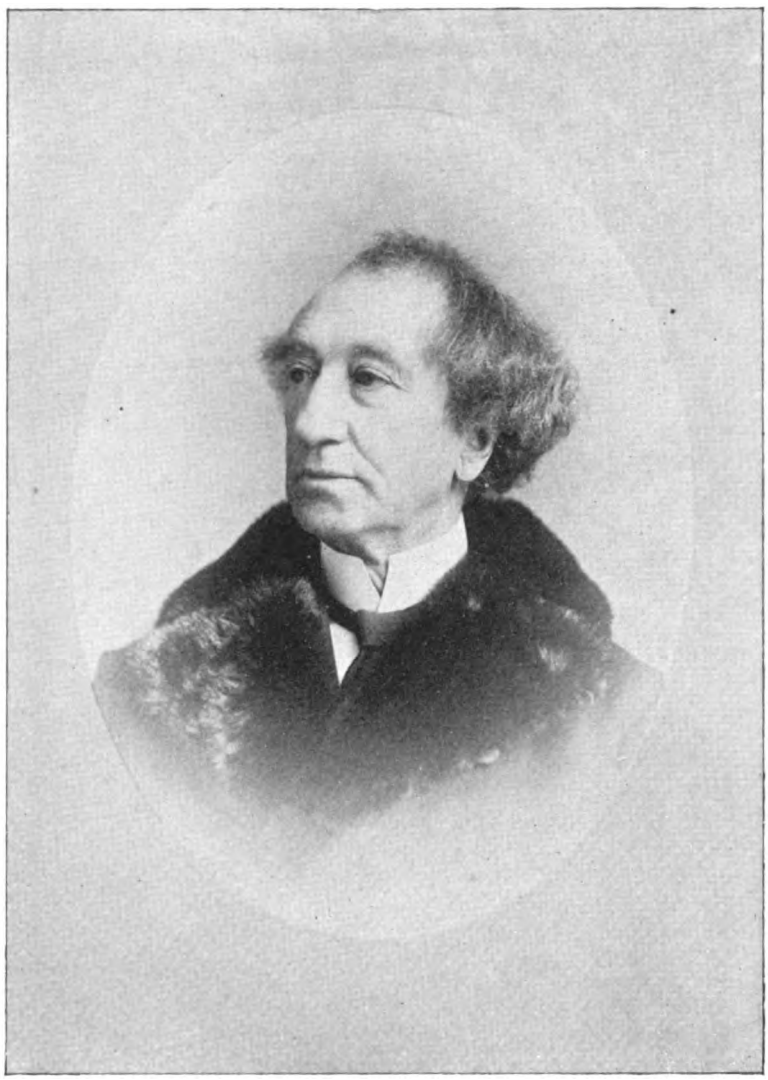
We have rarely taken up a work in which the subject was so clearly and concisely treated as in this treatise by Mr. Cooke. There is certainly room for such a work, and the present volume will prove of great value and assistance to the profession. American decisions, both State and Federal, have been exhaustively examined by the author, and also English, Scotch, Irish, and Canadian decisions. Every existing rule of law has been carefully considered, and its application to particular cases fully set forth. Mr. Cooke is eminently fitted for the task he has undertaken, and, as we have said, he has given the profession a really valuable book.

THE CRIMINAL JURISPRUDENCE OF THE ANCIENT HEBREWS. By S. MENDELSOHN, LL.D. M. Curlander, Baltimore, 1891. Cloth. $2.50 net.

The subject treated in this little book is one which cannot fail to interest every one who cares to become familiar with the institutions and laws of the Ancient Hebrews. It appeals to every Christian as well as every Hebrew.

In a series of twenty-eight chapters the author furnishes a comprehensive view of the whole subject. He discusses the nature of crimes and of punishments, and the conditions under which an indictment could be found against an alleged delinquent; the qualifications; the constitution and the jurisdiction of the Sanhedrim; the prosecutors and the defendants; the witnesses and the laws of evidence; the mode of procedure at the trial; the deliberations of the judiciary; the verdict and the sentence; the executioners and the modes of execution; the status of the culprit's children and the disposition of his property, — in short, every point appertaining to the subject is clearly stated and minutely described.

The work is carefully compiled from the Talmud and its contemporaneous writings; and every ancient Jewish law is compared with its counterpart in the penal jurisprudence of the classical and modern nations.



John A. Macdonald

The Green Bag.

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THE LATE RIGHT HON. SIR JOHN A. MACDONALD.

By J. A. CHISHOLM, LL.B.

AT Ottawa, on the sixth day of June, 1891, Sir John Macdonald, the greatest Canadian of the age, closed his remarkable career. On the evening of May 29th the members of the Dominion House of Commons were engaged in a fierce debate, when it became the painful duty of Sir Hector Langevin to announce to the House that the Premier had been stricken by paralysis, and that his medical attendant expected his death hourly. The voice of party strife was at once hushed, and the House adjourned for some days. But the heroic man fought death bravely, and the struggle continued for more than a week. Each day brought the news to his sorrowing countrymen that the Premier, although still alive, was getting weaker. Finally, on the evening of the 6th of June, the most distinguished of Canadian and one of the most distinguished of contemporary statesmen passed quietly away.

To write the history of Sir John Macdonald is to write the history of Canada for the long period of his service as a public man; and the history of Canada for the last forty-seven years has been too eventful to be disposed of in a magazine article. Nothing, therefore, is attempted in this sketch beyond giving the barest outlines of a life which has been phenomenal in its rapid and continual success.

John Alexander Macdonald, the son of Hugh Macdonald and Helen Shaw, was born in Glasgow on the 11th day of January, 1815. The family emigrated in 1820, and settled at Kingston, Ontario, at that time the chief centre of the Scottish population of Upper Canada. The future Premier was placed in the Royal Grammar School under the tuition of Dr. Wilson, an Oxford man; and he soon gave token of the splendid talents which later in life displayed themselves in his country's service. He had an excellent memory, and a special aptitude for mathematics; and it is said that when the head-master was showing off his pupils to visitors, he always called upon young Macdonald. In his sixteenth year the young man entered the law office of George Mackenzie, a leading barrister, and he was called to the bar of Upper Canada in 1836. He soon became prominent in his profession. Two years after his admission Von Schultz, a Polish adventurer, who led a band of raiders from the United States into Canada, was captured and put on his trial. Mr. Macdonald defended him with great ability, though unsuccessfully, and a Montreal paper describing the event said the young lawyer would soon be one of the first men in Canada.

Five years later, in 1844, he turned his steps to the sphere in which he was afterwards to shine so brilliantly. A general election was pending, and he contested Kingston in the Conservative interest. He was returned, and during the next few years he showed such wisdom and moderation in his treatment of public questions that in 1847 he was asked to take the portfolio of Receiver-General in the Sherwood-Daly administration. He accepted, and soon exchanged his post for the Crown Lands. His party, however, was growing weak; and

when the House was dissolved and a general election held in 1848, the Conservative ministry was defeated. The Cabinet resigned, and Mr. Macdonald went into opposition under the leadership of Sir Allan McNab.

The sessions of '52 and '53 were held at Quebec. The Hincks ministry, although Liberal, was opposed by George Brown and the extremists associated with him, as well as by the Conservatives under McNab. The result was the defeat of the Government in 1854. The Conservatives were not prepared to form a government, and a coalition ministry was therefore formed, with Mr. Macdonald as attorney-general for Upper Canada. The coalition was distasteful to the extreme Liberals and the ultra-Tories, but it had the support of the moderate men of both parties, as parties previously existed. It was thus the Liberal-Conservative party was formed. During his tenure of office the young attorney-general grappled with and settled the questions of the Clergy Reserves and Seignorial Tenure. Sir Allan McNab retired from the leadership in 1856, and Mr. Macdonald became leader in the House of Assembly, Sir E. P. Tache becoming Premier and leader in the Council. The ministry was defeated in the first session after the reconstruction on the question of the selection of Ottawa as the seat of government. George Brown was called upon to form a cabinet, but failed; and the Governor refused a dissolution. Mr. Macdonald was then again called to office, and Mr. Cartier became Premier.

The session of 1861 opened at Quebec. George Brown advocated the right of Ontario to increased representation. His fierce attacks on the French people did much to create a feeling of hostility between the two provinces of Canada; while Mr. Macdonald on the other hand employed his singular tact to allay this feeling. His ambition was to make Canada a happy and united country under British connection; and the following extract from a speech which he delivered at the time epitomizes the sentiment that actuated him throughout his whole career: —

"I hope that for ages, forever, Canada may remain united with the mother country; we are fast ceasing to be a dependency, and assuming the position of an ally of Great Britain. England will be the centre, surrounded and sustained by an alliance, not merely with Canada, but Australia and all her other possessions. There will thus be formed a vast confederation of freemen, the greatest confederacy of civilized and intelligent men that ever had an existence on the face of the globe."

In 1862 the Government was defeated on the Militia Bill; and for two years its members remained in opposition, after which they were restored to power. About this time the Charlottetown convention took place, and was followed by the Quebec conference, where the question of the union of the Upper and Lower Provinces was considered. In 1865 a coalition was formed between Macdonald and Brown to bring about the union, and resolutions accordingly submitted to the House. Mr. Macdonald's speech on the union was an able and comprehensive presentation of the case, and the measure was carried through the legislature.

The Dominion of Canada, comprising the Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, was established on the 1st of July, 1867. Mr. Macdonald, who did more than any other man to consummate the scheme of union, was made Knight Commander of the Bath for his eminent services by the Queen. He was also selected as first Premier of the new Dominion, and accepted the portfolio of Minister of Justice. His greatest work, however, was not completed. The four large provinces were united, but a large amount of legislation was now necessary in the way of organizing the various public services, and Sir John Macdonald proved equal to the demand. In the course of a few years the Northwest Territory was purchased from the Hudson Bay Company, and the Provinces of British Columbia and Prince Edward Island joined the union.

Sir John Macdonald was appointed, in 1871, one of the British Joint High Commissioners to act for the settlement of certain disputes between the United States and Great Britain. The result of the conference was the treaty of Washington. The debate on the treaty in the House of Commons was vehement, and the treaty was violently criticised; but finally, after Sir John Macdonald had delivered what remains perhaps as his greatest speech, the treaty was adopted by a majority of 66. Soon after this the Government entered into negotiations for building a trans-continental railway; but it was defeated in 1873, and gave way to a Liberal administration. Sir John Macdonald was anxious to retire from the party leadership; but his party insisted upon retaining him, and he accordingly consented to act as leader of the opposition. With his keen apprehension of what the country wanted, he inaugurated the National Policy, a policy of protection to native industries; and when the general elections of 1878 took place, he fairly swept the country. He again became Premier of Canada. A protective tariff was at once adopted with satisfactory results, and the construction of the Canadian Pacific Railway begun. In 1882 the Government appealed to the country, and came back with a large majority, and five years later another general election took place with a similar result.

A few years ago the Liberals adopted a policy of unrestricted reciprocity with the United States. Sir John Macdonald opposed the policy which appeared to him to be anti-Canadian and anti-British, and he gave the people of Canada an opportunity of pronouncing upon it by dissolving the House early in the present year. In his eloquent address to the Canadian people in which he outlined the issue, he used the following language, which considered in the light of subsequent events seems prophetic:

"As for myself, my course is clear. A British subject I was born, a British subject I will die. With my utmost effort, with my latest breath, will I oppose the 'veiled treason' which attempts by sordid means and mercenary proffers to lure our people from their allegiance. During my long public service of nearly half a century, I have been true to my country and its best interests, and I appeal with equal confidence to the men who have trusted me in the past and to the young hope of the country, with whom rest its destinies for the future, to give me their united and strenuous aid in this my last effort for the unity of the Empire and the preservation of our commercial and political freedom."

The result of the election was a majority of nearly thirty for the Government.

In 1872 he was nominated a member of Her Majesty's Most Honorable Privy Council, — a distinction enjoyed by no other colonial statesman, — and in 1884 he was created a G.C.B.

Such, in brief, are some of the more notable political events of this great man's fruitful life. His name is associated with every great public measure enacted in Canada for over forty years. Besides his numerous political distinctions, he received various degrees from the universities, among others the degree of D.C.L. from Cambridge in 1865. He married in early life Miss Clark, who died in 1856, by whom he had one son Hugh J. Macdonald, M. P. for Winnipeg. In 1867 he married Miss Bernard, the present Lady Macdonald, a woman of rare intellectual and social gifts.[1]

It has been said that it is too soon to pronounce judgment upon the life and work of Sir John Macdonald. It is not too soon to proclaim his greatness and popularity, for abundant evidence of these is at hand. The emigrant boy who left Glasgow at the age of five years died the other day the Premier of a united Canada, and the greatest, most powerful, and most popular colonial subject of the British Queen. We may be curious to know the secret of his wonderful success as a statesman, and perhaps it is too soon to determine that matter. In Canada there

[1] Since the above article was written, Lady Macdonald was raised to the peerage by Her Majesty the Queen, with the title Baroness Macdonald of Earnscliffe.

have been greater orators than Sir John Macdonald, greater masters of the details of public measures; but to no other has the prophet's clearness of vision been vouchsafed in the same degree. His opponents admit his patriotic devotion to his country. He was essentially Canadian. His ambition was to create a powerful and prosperous self-governing British colony on the northern half of the continent, and that ambition was amply gratified. The historian of the future, removed from the events of Sir John Macdonald's life, may be able to see more clearly the reasons why his career has been so successful, so fruitful in great things accomplished; we who have been witnesses of that success feel safe in affirming that one reason was that he loved his country and served it well.

OLD LAW AND ODD COOKERY.

By Nathan Newmark.

IN the City by the Golden Gate there is to be found a Law Library which at various times has had the benefit of the supervision of men of more than ordinary scholarship and of real antiquarian tastes. The result is seen not only in the miscellaneous collection, but also in the law books themselves. Perhaps there is nothing so extraordinarily rare in some of them, yet those interested in legal lore of the days gone by or of distant regions, who delve among the volumes on the crowded shelves, may run across many a suggestive relic of the legal controversies of past centuries. What strikes one most strangely is the orderly alphabetical arrangement of the law, like that of the modern encyclopædia, in some of the works antedating not only Blackstone, but also Sir Matthew Hale and Sir Francis Bacon. Way back before the days of the supposed Shakspeare — whose name is spelled in sixty-one different ways, but who is not yet quite ciphered out into another commanding personality, that of the Lord Chancellor just named, who took all knowledge for his province — came forth Fitzherbert's Abridgment, in which topic after topic, according to the place of its name in the alphabet, is treated in the law-jargon of the time; and it is surprising to see how many of these subjects survive to-day. This, and Rolle's like but later Abridgment are perhaps the bulkiest volumes in the library; and it is natural to contrast them with Brooke's "New Cases," that pocket volume which shows that the idea of convenient little books for the profession existed already in that early time.

This smallest of books consists of selections from Brooke's Abridgment, which came out about half a century after Fitzherbert's, and with it digested the learning of the Year Books, so well known as quite the earliest of our reports. Then it is rather startling to find in this place a translation of the famous work of Maimonides, who flourished in the Golden Age of Hebrew literature, when the Moors ruled Spain, and whose clear explanations of the Mosaic laws make the reading of Deuteronomy much less dry and bewildering. Still stranger is it to chance to open a volume every other page of which is filled with singular characters looking much like a chain of circles or series of loops strung across a line, and find from the translation from the Burmese set opposite that these are the celebrated Brahminical Laws of Menu, here spelled "Menoo" and more properly called "Manu," into which we may dip for the most peculiar regulations. A reading of Rudyard Kipling's lantern-flash stories and of Edwin Arnold's Oriental poems may prepare us for these minute references to rigid castes; but what surprises one is to find the

particularity with which laws are laid down for the regulation of property rights, marital relations, etc. There is, of course, not so much system as one of our modern codes or treatises; and still the many instances covered without much regard to logical arrangement are no more specific in their detail than many of the English or criminal statutes. But of course really to understand such a work we must have a firm grasp of the entire social and political features of the region.

Perhaps the oddest discovery of all might be made on opening a book placed among the statutes and labelled "Loan Societies, etc." and lighting upon various "Receipts," making up a mass of "Advice on Cooking." How came these culinary suggestions, with the popular designation for "recipes," into such strange company? The solution appears on turning over the other pages of the book. We find that a number of pamphlets have been bound together, and that they include an enactment for the relief of the poor in Ireland, and a statute for the regulation of charitable loan societies, both passed before 1845; and naturally related to these is a pamphlet giving "Cheap Receipts and Hints on Cookery for Distribution amongst the Irish Peasantry in 1847," and explaining that much suffering may also be relieved by the introduction of unknown dishes and directions for the preparation of others. Some of these suggestions and directions are quite interesting even to those who know little of the housewife's modes of management, and many are gravely comical. For instance, we are told that the "first point to be attended to in cookery is *cleanliness;* — the hands of the cook, in particular, should be always clean, — that is, washed every time after doing any kind of work which has soiled them, before proceeding to cook. She should be careful in having her hair neatly fastened up, so that no loose hairs may drop into the dishes, and also that she has no pins about her, which might be exceedingly dangerous if they fell, unawares, into the food." The effect of stray hair-pins upon the appetite, which might so appropriately have been touched upon in such a connection, is not even mentioned. We learn that meat should be wiped daily with a cloth in damp weather, to ward off the effects of a moist thick atmosphere; that musty meat may be completely restored by washing it in camomile tea; and that vegetables begin to ferment very soon after being taken from the ground, and so should be placed in a perfectly dry and cool situation, but not exposed to cur rents of wind, all of which may be interesting information to domestic-minded members of the profession, who care about the control of the kitchen. Culinary experts may also be interested in the recommendation of Indian corn, which, it appears, had never before that date been extensively used in Ireland, on account of the almost total ignorance of the people as to the mode of preparing it for human food. But now none need feel amazed on beholding maize, but can learn that men "will endure more, work longer, and enjoy better health on this food than on any other that can be bought for the same money." Americans have often been charged with the possession of dyspeptic tendencies, but we are here told that Indian corn is "excellent in all disorders arising from bad digestion." Passing by such prosaic "receipts" as those pertaining to rice, oatmeal, barley, and rye, and the department of soups, we find the advice winding up with directions for boiling tripe or salt fish, and preparing peas pudding and peas flour pudding, chopped cabbage and mint, and fry of spinach and onions; the whole ending with a tailpiece representing a fountain spouting from a vase in the midst of a mass of oriental tracery, in the highest style of the art of the period. Altogether, amid these arid statutes, this advice on cookery is a real culinary oasis in the desert of legal phraseology; and it seems quite appropriate that the welcome waters should be represented as appearing in such peculiar surroundings.

CATS.

By R. Vashon Rogers.

CATS are not of any very great importance in the eye of the law in this part of the nineteenth century. In studying legal history we find, about the beginning of the tenth century, Howel Dda, or Howel the Good, a conspicuous king in South Wales, in the government of which he succeeded his father Cadell. He inherited from his mother, Elen, possessions in Powis, and his influence seems to have been powerful throughout North Wales. Perceiving the laws and customs of the country to be violated with impunity, he summoned the archbishops, bishops, nobles, and other chosen men to meet at Y Ty Gwyn ar Dav with him. After spending all Lent in prayer and fasting, he selected from the whole assembly twelve of the most experienced persons, and adding to their number a doctor of laws, named Blegywryd, committed to them the task of examining, retaining, expounding, and abrogating the laws. The work when completed was sanctioned by Howel, and duly promulgated; and maledictions were pronounced on those who did not observe them as they were set forth, unless they were altered by the concurrence of the country and the lord. Wales being of some size, before long local customs arose, somewhat differing; ideas differed, and so the versions of the laws. Hence we have three separate codes,—the Venedotian, which was in force in North Wales; the Dimetian, in West Wales; and the Gwentian in the Diocese of Landav.

The provisions in these codes concerning cats we wish to relate.

In the Venedotian Code (chap. xi. book iii.) we find: (1) "Guerth kenen cath ew or nos y ganer hyt yny agoro y lygeit keinhaoc kyfreith," etc., which being interpreted into the vulgar tongue means, "The worth of a kitten from the night it is kittened until it shall open its eyes, is a legal penny: and from that time until it shall kill mice, two legal pence: and after it shall kill mice, four legal pence: and so it shall always remain." The penny, we may point out, was, by the code, the value of a lamb, a kid, a goose, or a hen; a cock or a gander was worth twopence; a sheep or a goat, fourpence. "(4) The teithi [or qualities] of a cat are, to see, to hear, to kill mice, to have her claws entire, to rear and not to devour her kittens: and if she be bought, and be deficient in any one of these teithi [qualities], let one third of her worth be returned."

The Dimetian and the Gwentian Codes (doubtless) very properly draw a distinction between cats and cats. The former says (book ii. chap. xxxii.),—to save the proof-reader we will only give the English,—(1) "The worth of a cat that is killed or stolen: its head is to be put downwards upon a clean, even floor, with its tail lifted upwards, and thus suspended, whilst wheat is poured about it, until the tip of its tail be covered: and that is to be its worth: if the corn cannot be had, a milch sheep, with her lamb and her wool, is its value: if it be a cat which guards the King's barn. (2) The worth of a common cat is four legal pence." The Gwentian code hath it thus: "(1) Whoever shall kill a cat that guards a house and a barn of the King, or shall take it stealthily: it is to be held with its head to the ground, and its tail up (Capite deorsum posito, et cauda sursum erecta), the ground being swept, and then clean wheat is to be poured about it, until the tip of its tail be hidden: and that is its worth. (2) Another cat is four legal pence in value."

The attentive student will observe that neither Howel Dda nor his legal adviser Blegywryd made any provision for the possible case of the King intrusting his granary to the care of a Manx cat.

According to the Dimetian code, "whoever shall sell a cat is to answer for her not going a caterwauling every moon: and that she devour not her kittens: and that she have ears, eyes, teeth, and nails, and is a good mouser." The Gwentian version says: "The teithi [qualities] of a cat are, that it be perfect of ear, perfect of eye, perfect of teeth, perfect of tail, perfect of claw, and without marks of fire: and that it kill mice well: and that it shall not devour its kittens: and that it be not caterwauling on every new moon." Manx cats are ruled out here. At what stage of the moon's waxing do American cats chiefly caterwaul? The vendors of every cat in our neighborhood would be liable for breach of the implied warranty as to non-caterwauling were the laws of Howel the Good now in force. Under the Gwentian code the damages for breach of warranty and the legal worth of the cat were co-equal.

One cat was necessary to make a lawful hamlet, together with nine buildings, one plough, one kiln, one churn, and one bull, and one cock, and one herdman (Welsh Laws, book xiv. chap. xxxiii.).

The tail, eyes, and life of a cat were considered of equal value (Gwentian code, book ii. chap. xxxix.). The milk of a cat was deemed worthless, and no satisfaction had to be made on account of it (Dimetian Code, book ii. chap. viii.). If a cat was caught mousing in a flax-garden, the owner had to pay all damages. When a husband and wife separated, the goods and chattels were carefully divided, and the husband took the cat, if there was but one; if there were others, the wife had them (Dimetian Code, book ii. chap. xxv. and xviii.).

Cats are not so much thought of in these days of mouse-traps, and in this land where we have no king's barns and therefore no *custos horrei regii*. In fact, it has been decided to be libellous in Georgia to say that a young lady said that her mamma acted like a cat, purring and mewing, and assuming the attitude of a cat in the effort to catch rats, and such-like things (Stewart *v.* Swift Specific Co., 76 Ga. 280). A dozen years or more agone a cat figured in the sheriff's court at Perth, Scotland; the cat had killed the plaintiff's carrier-pigeon on a neighbor's premises. The learned sheriff in his judgment said: "It was quite legitimate for the pursuer (*i. e.* the plaintiff, not the cat) to keep a pigeon, but just as much so for the defender to keep a cat. The latter is more a domestic animal than the pursuer's bird. But there are no obligations on the owner of a cat to restrain it to the house. The pursuer's plea is that the natural instinct of the feline race is to prey upon birds as well as mice. So it was argued that the owner of the cat should prevent the *possibility* of its coming into contact with its favorite sport. But it is equally true that the owner of a bird should exercise similar precaution to prevent it coming within the range of a hostile race. If the defender's cat had trespassed into the pursuer's house or aviary where the bird was secured, there might be ground for finding the owner of the cat liable for the consequences of its being at large. With parity of reason, had the bird intruded itself upon the territory of the cat and there been slain, there could have been no recourse, because the owner of the bird should have prevented its escape. In the present case it appears that both the quadruped and the winged animal were in trespass, both were on neutral territory, being the green of a neighboring proprietor. It was the duty of the pursuer to take the guardianship of the bird said to be so valuable, and therefore both owners are in equal blame, and the case must be viewed as arising from natural law, for which neither owner without *culpa* can be answerable. The defender having at first not sympathized with the loss of the pursuer, but rather put him at defiance, and forced him to prove that it was the defender's cat who slew his bird, the defender will be assoilzied (acquitted), but without costs (Webb *v.* McFeat, 22 Journ. of Jur. 669).

Another Scotch judge has recently decided

that a man who sets a dog to chase a cat in a public street acts negligently and without due care for passers-by, and is liable in damages for injuries to a child knocked down by the excited dog (44 A. L. J. 20).

Once upon a time an old lady who lived by herself kept a multitude of cats; these she provided with regular meals, and furnished them duly with plates and napkins. She died, and it was held, in a discussion over her will, that such fancies as hers were no certain indications of insanity (Redfield on Wills, i. 84). The will of another lady who died in London about sixty years ago, contained the following bequests: "I bequeath to my monkey, my dear and amusing Jacko, the sum of £10 sterling per annum, to be employed for his sole use and benefit; to my faithful dog Shock and my well-beloved cat Tib, a pension of £5 sterling; and I desire that in case of the death of either of the three, the lapsed pension is to pass to the other two, between whom it is to be equally divided." The bequests were not set aside (Proffatt, Curiosities and Law of Wills, 78). In modern Egypt funds have been bequeathed for the support of cats, in compliance with which these animals are daily fed in Cairo at the Cadi's court and the bazaar of Khan Khaleel, like the pigeons in the Square of St. Mark's.

"Cats" should certainly end with tails; and behold, is there not a fitting tale at page 506 of the first volume of this "useless but entertaining magazine for Lawyers"?

HUMOR OF THE BENCH.

By Clark Bell, Esq., *of the New York Bar.*

PERHAPS no judge has sat upon the English bench who had a higher sense of humor than Sir W. Maule.

The finest pieces of judicial ironical humor are attributed to him. Mr. Percy Fitz-Gerald has given us in "Belgravia" some capital reminiscences of the judicial humorist, who has been called "the wittiest man upon the English bench." We quote some of these: —

In an unsavory case warning had been given, and all the women retired save a few strong-minded ones who kept their places. "You may go on now," said the judge, "as all the ladies have withdrawn."

On a similar occasion, when the court had been cleared in a like manner, the witness still seemed to hesitate. "Out with it!" said the judge; "the ladies don't mind it, you need not be afraid of me."

A smart barmaid was giving testimony before him against an ill-looking ruffian charged with what is called "ringing the changes." They got into a sort of wrangle or recrimination; but the prisoner, an impudent fellow, could make nothing of her, and at last said, "Well, you may go away; the jury won't believe you." "I sha'n't go for your letting me go," was the answer. The judge, who had been taking his notes, looked up and said, "My good girl, you have given your evidence very well, and can go; and remember you have this advantage over the prisoner, — that you can go away, and he can't." The man was found guilty and sentenced to penal servitude, when he said in a low voice, "You 'll be in hell before the time is over." Maule did not hear, and asked the clerk what he had said. "He said," replied the clerk, with much solemnity, "that your lordship will be in hell before the time is over." "*We shall see*," said the judge; "call the next case." There is something exquisitely humorous in this "*We shall see*," — an acceptance, as it were,

a willingness to leave the issue of the prophecy to be decided by the event.

Another hardened ruffian, when about to be sentenced, broke out with, "May God strike me dead if I did it!" on which followed a long, solemn pause, the jury wondering and everybody expecting some expression of severity or punishment. At last Maule broke the silence, "As the Almighty has not seen fit to interpose," and proceeded to sentence. There was nothing profane in this; it was really a rebuke. But a better version is this: A man tried for stealing a watch was asked if he had any witnesses. He replied that he had none but his Maker, who knew his innocence. The judge, after waiting a few moments, addressed the jury: "Gentlemen, the prisoner is charged with stealing a watch. He calls a witness who does not appear; on the other hand, two witnesses saw him steal the watch."

On another occasion he said, *en passant*, as it were: "One of these defendants is, it seems, a minister of religion, — of what religion it does not appear; but to judge by his conduct it cannot be of any form of Christianity." Here it will be noted there is no rebuke; he simply indicates that the practice does not correspond with the standard of precept. The whole is coldly judicial, yet scathing from its very moderation.

A young prosecuting counsel had sat down after concluding his case, which he had conducted very inefficiently, but with much affectation of knowledge. "Have you any further evidence, Mr. ——?" the judge asked. "None, my lord; that is my case." "You surely have other witnesses?" "No, my lord," the counsel answered flippantly, "I don't think more to be necessary." "Then, sir, I must tell you that you have not proved any ownership in the articles, which, for all I know, may be the property of the prisoner himself. Gentlemen, I direct you to acquit." This must have extinguished the young counsel on the spot. To another of the same class he said sarcastically: "You have already read that four times, Mr. ——; it 's iteration; it 's — well, I 'll use no epithet, but it *is* iteration."

Another of his capital illustrations of the limits of evidence was the following: "If a man," he said to a jury, "goes into the London Docks sober, without the means of getting drunk, and comes out of one of the cellars wherein are a million gallons of wine, very drunk, I think that would be reasonable evidence that he had stolen some of the wine in the cellar, though you could not prove that any wine was stolen, or any wine missed."

A stupid jury and an ingenious counsel were engaged in a case of the plainest kind, where a previous conviction was proved against the prisoner by the usual certificate and the evidence of a policeman who had him in his charge. The counsel threw doubts on the certificate and on the policeman's evidence, to which the jury seemed to listen. In his most ironical vein the judge proceeded to tell them that the certificate by itself was of course not conclusive; that policemen have often told falsehoods, papers too have often been forged, "and, gentlemen, never forget that you are a British jury, and if you can have a reasonable doubt in your minds, God forbid that you should not give the prisoner the benefit of it." The jury, it is said, were twenty minutes in consultation before it dawned upon them that the judge had been laughing at them. There was much wit, too, in his definition of imprisonment for debt, which he happily characterized as "merely a device for enabling a man to pledge the compassion of his friends."

A jury being about to retire to consider their verdict, the usual oath was administered to the tipstaff, that "they should be kept in some convenient place without meat, drink, or fire, candle-light excepted, till they had agreed on their verdict." One of the jury having sent out for a glass of water, a grave representation of the fact was made to the judge, who affected to treat this matter seriously. He had the oath read aloud, then called for "Lush's Practice." After some

hesitation he gave judgment stating, "he was clear that water was not meat, neither was it drink, in the popular acceptance of the word;" so he decided that the juryman might have it.

The most memorable and oftenest quoted of his utterances is, of course, the one delivered at the Warwick Assizes on the trial of a prisoner for bigamy. The first wife had taken to drinking, pawned all his property, and finally had gone off with her paramour. After the lapse of many years the prisoner married, and now was indicted, it was said, at the instigation of her seducer. This hard case moved the judge to express himself in the matchless piece of irony which has excited such admiration. There have been many versions of this address, some halting enough; but the one we shall furnish was given in the "Times" over thirty years ago, at the moment when Mrs. Norton's grievances were engrossing attention, and seems to be the most authentic in form.

"Prisoner, you have been convicted upon clear evidence; you have intermarried with another woman, your wife being still alive. You have committed the crime of bigamy. You told me, and indeed the evidence has shown, that your first wife left her home and her young children to live in adultery with another man. You say this prosecution is an instrument of extortion on the part of the adulterer. Be it so. I am bound to tell you that these are circumstances which the law does not, in your case, take notice of. You had no right to take the law into your hands. Every Englishman is bound to know that when a wrong is done, the law, or perhaps I should say, the Constitution, affords a remedy. Now listen to me, and I will tell you what you ought to have done. Immediately you heard of your wife's adultery you should have gone to an attorney and directed him to bring an action against the seducer of your wife. You should have prepared your evidence, instructed counsel, and proved the case in court; and recollect it was imperative that you should recover, I do not say actually obtain, substantial damages. Having proceeded thus far, you should have employed a proctor and instituted a suit in the ecclesiastical courts for a divorce *a mensa et thoro*. Your case is a very clear one, and I doubt not you would have obtained a divorce. After this step your course was quite plain; you had only to obtain a private act of Parliament to dissolve your marriage. This you would get, as a matter of course, upon payment of the proper fees and proof of the facts.

"You might then have lawfully married again. I perceive, prisoner, that you scarcely appear to understand what I am saying to you; but let me assure you that these steps are constantly taken by persons who are desirous to dissolve an unhappy marriage; it is true, for the wise man has said it, 'A hated woman when she is married is a thing the earth cannot bear,' and that 'a bad wife is to her husband as rottenness to his bones.' You, however, must bear this great evil, or must adopt the remedy prescribed by the Constitution of your country. I see you would tell me that these proceedings would cost you £1,000, and that all your small stock in trade is not worth £100. Perhaps it may be so; the law has nothing to say to that. If you had taken these proceedings you would have been free from your present wife, and the woman whom you have secondly married would have been a respectable matron. As you have not done so, you stand there a convicted culprit, and it is my duty to pass sentence upon you. You will be imprisoned for one day."

It is astonishing to recall that Douglas Jerrold wrote of him: "Thank God the world is not made of Justice Maules, nor are there many natures like his!" His associates knew that what they uttered was being measured by that too critical intellect. Carrying out his high standard of propriety, he retired from the bench in 1856, as soon as he found he could not do full justice to the duties of his high office. Two years later he died, at his home in Hyde Park Gardens, aged only sixty-nine.

THE SUPREME COURT OF NEW JERSEY.

By John Whitehead Esq.

I.

THE courts of New Jersey were not established upon any settled plan nor upon any perfected system until about the beginning of the eighteenth century. This was due, in a very great measure, to the peculiar circumstances connected with the early settlement of the colony. The first white population was by no means homogeneous. The Dutch, with a few Norwegians and some Danes, went into Bergen County, on the Hudson River; the Puritans, from New England, settled on the Passaic River, at or near Newark; a few English came direct from England and established themselves in and around Elizabeth Town and Perth Amboy; the Quakers peopled the central part of the State; and the Swedes and some few Danes sailed up the Delaware Bay and River, and landed in the southern counties. Each of these nationalities brought to its new home its peculiar idiosyncrasies, and each strove to impress itself and its own customs and laws upon the others.

It was perhaps, however, due more to the unsettled state of the country, and to the fact that the new settlers were necessarily so intent upon securing for themselves and their families the absolute necessities of life, and in softening the asperities of their condition, that they had no time to provide for the wrangles of suitors. There was no necessity that their attention should be given at once to the perfecting of a system of jurisprudence; but there was need that means should be taken to preserve life, and their wives and children must be fed.

The early division of the colony into two distinct, independent districts or provinces was also a hindrance in the way of an early settlement of so important an adjunct to civilization as the establishment of tribunals for the adjustment of disputes between citizens, arising from the varied interests of a bustling, thriving community. It is true that that division was not made until 1676, and that forty years, at least, prior to that time settlements had been made; but those settlements were few and scattered at different points, and it must not be forgotten that the population was made up of people possessing many different characteristics.

The settlers in East Jersey were restless, restive under restraint, and would brook no interference, either real or fancied, with their rights; while those of West Jersey were more peaceable and more disposed to submit, yet when occasion demanded were sturdy in insisting that their privileges should be respected and preserved.

But though there was no settled system of jurisprudence, no tribunals established by legislative authority, where suitors could be heard, their antagonistical claims adjusted, and justice done to all parties according to law, still courts of a certain kind were to be found about the beginning of the last half of the seventeenth century. No legislature had met which had the authority to establish courts when these tribunals first came into existence; so they had received no legislative sanction. Some of them, in fact, were created by the immediate action of the people, and all the powers they ever possessed came directly from the people.

The first court in New Jersey was a local or municipal tribunal established at Bergen, in what is now Hudson County, and near Jersey City. It was created Sept. 5, 1661, when New York and New Jersey were under the dominion of the Dutch, and when Petrus Stuyvesant was governor. The patent for forming this court was signed by Stuyvesant in behalf of their "High Mighti-

nesses the Lords States General of the United Netherlands, and the Noble Lords Directors of the Privileged West India Company, Director-General of New Netherlands, Curaçoa, Aruba and Borayro and dependencies." This patent had eighteen or twenty sections which minutely described the kind of actions which might be prosecuted in this court. The names of the judges, three in number, were given in the charter, and they were selected by Stuyvesant. This court was restricted in its jurisdiction, being confined to the municipality and to the settlement of disputes between its citizens.

Thus was established the first court of any description in New Jersey. When, in 1664, Stuyvesant surrendered to Nicholls, the English commander of the troops sent against New Amsterdam, New Jersey and New York passed quietly into the hands of the conqueror of Manhattan. This transfer of government did not seem to work any change in this court, but it continued to exist and to perform all its functions until a later period, when its aid was sought at an eventful time in the history of the colony.

Newark was settled in 1666 by Puritan immigrants from Connecticut, who before they came to their new home entered into a solemn compact, which they called the "Fundamental Agreement," by which it was covenanted, with devout reference to several Scripture texts as the basis of their action, that no one should own land in the new colony, be elected to office, or vote at any election, unless he were a member of "some or other of the Congregational churches." This restriction, which was rigidly enforced for many years in the new settlement, fully indicates the character of the first inhabitants of Newark, and in what manner they would conduct their government. The old town records from the very beginning have been preserved, and to the reader of to-day they present some suggestive and interesting considerations.

At the town meeting held in January, 1668, which date, according to the modern method of reckoning time, would be January, 1669, the first action taken was the choosing of "Mr. Crane and Mr. Treat" magistrates for the year "insueing for our town of Newark." There is no similar action up to this time, so far as appears from the records, and no mention of courts nor of magistrates. At the close of this same meeting, if the order of proceeding is preserved by the minutes, this resolution was passed, and, as it is important, it is copied *verbatim et literatim:* "Item, the Town hath Agreed that there shall be Two Courts in our Town Yearly, to hear and try all Causes and actions that shall be Necessary and desired within our Compass and according to our Articles; and that the same shall pass by the Verdict of a Jury of Six men. And one of the Terms is to be the Last Fourth day of the week commonly Called Wednesday, in the month of February, and the other is the Second Wednesday of the next following Month of September."

This action is deserving of particular notice for several reasons: first, it is the initial attempt, so far as any record is known, to organize a court among the English-speaking colonists of New Jersey; second, it originated with the people for their own guidance; third, it guarded the rights of suitors through the intervention of jurors; and fourth, it fully exhibited the subordination to law of these founders of an empire. They claimed the fullest liberty, but that liberty should be subject to order and only exercised within the limits of a due observance of the principles of eternal justice. The two magistrates selected were the very best men in the colony; they were revered and respected for their Christian characteristics and for their virtues; they had been the leaders of the people in all their movements, both before their departure from their homes on the Connecticut as well as after they found themselves on the Passaic. But even such men were not permitted to sit in judgment upon the rights of their fellow-citizens, nor to settle their disputes

without the aid of a jury. The old Anglo-Saxon element, which deemed a jury indispensable for the preservation of individual rights, here asserted itself. From this time onward, from year to year, constant reference is made in the town records to these courts, to the election of magistrates, and to other measures connected with them. It is noticeable that the very best citizens were selected from time to time to fill the important position of judges. The fees were regulated by a vote of the citizens; one man was chosen as the head of the tribunal; constables and other officers were selected, and a general supervision of these courts was carefully maintained. Their jurisdiction was not defined, nor were their powers definitely settled by any authority; but they seem to have been established for the purpose of settling the disputes of a primitive people, and were of the nature of piepoudre tribunals.

The first legislative assembly which ever met in New Jersey was convened May 26, 1668, and continued in session four days. It then adjourned to meet on the 3d of November of the same year, when it again sat for four days. At neither of these sessions was there any action taken about courts. Seven years elapsed before another assembly met. Neither the people, nor the Governor of the province, nor his Council, deemed courts to be of any great necessity; nor, in fact, were they necessary until they were required by the wants of an increasing population. Even in New York, far more populous than New Jersey, during the administration of Governor Nicholls, from 1663 to 1667, there were no courts. Nicholls took upon himself the sole decision of all controversies between suitors. Complaints came before him by petition, "upon which he gave a day to the parties, and after a summary hearing pronounced judgment." It cannot be ascertained that this state of things existed in New Jersey; it is more than doubtful if it ever did.

In 1668 a local or municipal court similar to that in Newark existed in Woodbridge; but when it was created is not known, nor can its exact powers be defined. It was certainly of a very limited jurisdiction, and merely local in its authority. It is supposed that it was established by virtue of the charter of that town. A very shadowy tradition existed at one time, that before 1668 a local tribunal had been created at a small settlement near Hackensack, in Bergen County; but even the tradition is so mythical that no credence whatever can be given to it.

About this time, in 1670, a controversy sprang up between Governor Carteret and some of the early settlers relative to the payment of quitrents. Many of the colonists refused to pay the rent demanded by the proprietors who had succeeded by grant to the rights of the Duke of York. They not only refused to pay, but most vigorously and sharply attacked the title of the lords proprietors. Carteret was the representative of these proprietors, and sought to obtain payment of this rent. There were no courts of competent jurisdiction to whom he could apply for judicial aid. He exhausted every means of compelling payment, and in this dilemma sought to enforce his demand and obtain payment through the intervention of these two courts at Bergen and Woodbridge. He endeavored to enlarge their jurisdiction so as to give them power to hear and determine his contention with his refractory tenants, and make them amenable to the judgment of the courts. In this, however, he utterly failed. The courts, even if they were willing to aid the Governor, which is extremely doubtful, were too feeble to quell the disturbance, or afford any relief to Carteret; and he abandoned the attempt.

There were some other courts, as early as 1667, in Monmouth County, created under a patent from Governor Nicholls of New York, who had dispossessed Stuyvesant. But these tribunals were short-lived, and very soon went out of existence. The right of Governor Nicholls to grant any patent for any purpose, in New Jersey, more especially to create a court, was strenuously assailed at

the time; and these courts were soon abandoned, and before their legality could be fairly tested.

Berkeley and Carteret, the assignees of the Duke of York, and the first proprietors of New Jersey, by their "concessions," — which formed the first constitution of the Province, and played a most important part in the subsequent history of the State, — granted to the General Assembly the power of creating courts and of defining their jurisdiction.

In 1675 the Assembly of East Jersey met, seven years after it had adjourned at the close of its second four-days session in 1668. The very first act passed by this second Assembly was one which provided for the establishment of courts throughout East Jersey. The courts which then existed were merely local, and were the creatures of the people. Now the Legislature took the matter in hand, and enacted a law providing for the creation of general courts which should have legislative sanction, with defined jurisdictions and settled powers. These courts were of three kinds: first, one for the trial of small causes, to be held in each town once every month in the year, and to have jurisdiction in cases where the amount in dispute was less than forty shillings. The judges of this court, of whom at least one must be a justice of the peace, might be two or three in number, as the people should determine, and were elected by the voters of the different towns. This court still survives in the Justice's Courts of to-day, which were then and are still called courts for the trial of small causes. One merciful feature introduced at this early date is retained to this day in the stay of execution.

Another kind of court created by this second Assembly, in 1675, was the County Court, or Court of Sessions, which was required to hold semi-annual meetings in each county. The judges of these courts were also elected by the people of the different counties, and from the people. They exercised both civil and criminal jurisdiction, and their powers were enlarged as far and as wide as it was possible to be done by the use of words. All "causes actionable" was the term used with reference to actions which might be prosecuted in these tribunals. This seemed certainly very comprehensive and unlimited. But when it is remembered that at that early period in the history of the colony no very complicated issues could have arisen, the jurisdiction could not have been so very unlimited after all. From these County Courts appeals from judgments for twenty pounds and over could be made to "the Bench *or* to the Court of Chancery." What was meant by the "Bench" is not exactly known, but it certainly must have referred to the Court of "Assize," which was the third kind of court created by this Assembly of 1675. This was a provincial tribunal, and was to be held yearly at Woodbridge, or wherever the Governor and Council should direct. It had original as well as appellate jurisdiction, and was the precursor of the Supreme Court as afterward more fully established. Appeals lay from the Court of Assize to the Governor and his Council, and from them to the King, who was of course the last resort.

In 1682, after the division of the colony into East and West Jersey, a change was made in these various courts. The suitors in any case in the courts for the trial of small causes were entitled to a trial by jury. When it is remembered how trivial were the amounts necessarily involved in cases before these tribunals, it will be understood with what reverence this right of being tried by their peers was regarded by the early settlers in East Jersey. This province was then divided into four counties, — Bergen, Essex, Middlesex, and Monmouth, — and it was enacted that the County Courts should meet four times yearly in each one of these counties, and the judges were to be the justices of the peace of the several counties, of whom at least three must be present to constitute a quorum. For the first time a high sheriff was provided in each county, to

whom all processes issuing out of the County Courts were to be directed. The Court of Assize, the Supreme Court of the colony, now became the Court of Common Right. This new name is first mentioned in the instructions from Robert Barclay and the other proprietors to Gawen Laurie, the Deputy-Governor. This Court of Common Right was presided over by "twelve members, or six at least;" and instead of one yearly session, it was to hold four sessions a year at Elizabeth Town. Subsequently, after a severe struggle, in 1686, it was directed that it should be held at Perth Amboy.

To this simple system, thus established more than two hundred years ago, may be traced the present jurisprudence of New Jersey. Justices' courts still exist with limited jurisdiction, — the justices now, as then, elected by the people, — before whom could be tried the smallest, most trivial of causes, meeting the wants of the common people; County Courts, now the Circuit and Common Pleas, with jurisdiction over all disputes arising between citizen and citizen; then the Supreme Court, with original and appellate jurisdiction; then the Governor and Council, who formed simply an appellate tribunal. Until the new Constitution, established in 1844, the Council chosen by the people was the Court of Appeal in the last resort, where the Governor, if he chose, might preside, but which generally had for its presiding officer a President elected by the members.

There was a remarkable fact connected with the legislation respecting these early courts. In the law constituting them there was no provision for their guidance; no rules by which they were to be governed; no mode established by which their judgments were to be enforced; there was no Practice Act, nor anything like it. The statutes constituting them were the simplest possible; the tribunals were created, their titles given, and the times and places when and where they were to meet; and that was all.

An officer, called the High Sheriff, was to be elected in every county; but the act providing for his appointment failed utterly to state what were his duties, or to make any provision concerning him other than his mere title. The following is the act passed in 1682: "An Act to appoint Sheriffs. Forasmuch as there is a necessity of a High Sheriff in every County in this Province, Be it therefore enacted by the Governor, Council, and Deputies in General assembly met and assembled, that there be yearly a Sheriff constituted and commissionated for each County, and that each Sheriff may appoint his under Sheriff or Deputy."

Grand juries were directed to appear at the County Courts; but what made them eligible, of whom they should be composed, by whom they should be summoned, and what were to be their duties, was not stated. This all seems inexplicable, and it appears most difficult to understand the apparent inconsistency or to solve the mystery. These laws can only be explained or interpreted in one way. The early settlers in East Jersey were mostly Englishmen, and as such were thoroughly acquainted with the principles of the common law as it existed in the mother country, where courts of similar name and like character were to be found. These courts in England were governed by the rules of that universal law so dear to every Englishman's heart. The English colonists had drunk deep and long draughts from the fountain of liberty, which, strange to say, had been opened in the time of Charles II., when Selden and Eliot, Pym and Hampden, had taught a wicked and sensual king that his subjects had rights which he must respect, and when Sir Matthew Hale was Chief-Justice and Lord Nottingham was Lord Chancellor. These colonists had fled from their old home beyond the sea to escape religious persecution; but they brought to their new home those unquenched and unquenchable aspirations for civil as well as religious liberty which impelled them ever to provide for absolute freedom from oppression and for the preservation of their political rights. They were stern and unyielding

in their religious views; fanatical they will be called in these days of more enlightened toleration. They were equally unyielding when their political freedom was endangered; jealous of any encroachments on that political freedom, they were watchful in guarding against any action even the slightest by Governor or State or Legislature, which seemed at all like interference with their rights as citizens.

This feeling pervaded all classes, and led them to learn what were their rights and what were the best foundations of civil liberty; and so they studied the principles of the common law of England, and they needed no statute to enable them to understand how to conduct the courts provided for them. They needed only courts properly constituted; and falling back on their knowledge of the modes of procedure in similar courts in the mother country, they required nothing more. It was remarked by one of the greatest of English statesmen that with the exception of religious books, no volumes were more readily sold in the colonies than those relating to law.

The courts of which mention has been made were those which were established in East Jersey. In 1676 the colony was divided into East and West Jersey. A line drawn from Little Egg Harbor extending irregularly northward, a little west of north, and reaching the Delaware River at the 41st degree north latitude was the boundary between the two new districts.

It will be remembered that the first Legislature in East Jersey which took any notice whatever of courts met in 1675. The first Legislature in West Jersey which constituted any courts, so far as can now be ascertained, met in 1682. At this meeting County Courts, which were called Courts of Session, were created. But these courts at first were established only in Burlington and Salem Counties. In 1693 they were extended to Cape May, which was then a new county.

Before this time courts for the trial of small causes existed all over West Jersey. They were held by one justice of the peace, and had jurisdiction over actions which involved forty shillings and under. An appeal lay from them to the County Courts, which met quarterly and were held by three justices of the peace of the county. These courts could not try any indictments for murder and treason, but with those exceptions they had unlimited jurisdiction over all causes, both civil and criminal. They were, in fact, the great courts of the Province, and from them for many years there was no appeal.

In 1693 a Supreme Court of Appeals was created, of which the judges were one or more of the justices of the counties, with one or more of the members of the Governor's Council; any three of whom, one being of the council, made a quorum. At first this court was strictly appellate, but in 1699 it was materially changed. It then became the Provincial Court, and was held by three judges appointed by the Legislature, or House of Representatives, as that body was then called, and one or more of the justices of the peace of the counties. Two of the judges appointed by the Legislature, in connection with three of the justices, constituted a quorum. It had original as well as appellate jurisdiction, sat twice a year, and from its judgments for twenty pounds and more, an appeal could be taken to the General Assembly. In the same year a Court of Oyer and Terminer was established for the trial of criminal cases. This court was held by a judge appointed by the Governor and Council, assisted by two or more of the justices of the county where the crime was committed.

West Jersey was very largely under the influence of the Quakers, and the spirit of those peace-loving men was manifested in their jurisprudence and in the formation of their courts. Up to the time of the creation of the Oyer and Terminer, there was no tribunal in West Jersey which could try a capital offence. In fact, the punishment of death for any offence was not mentioned

in any of their statutes. The crimes of murder and treason were triable by the Court of Oyer and Terminer; but if the accused were convicted his punishment was referred to the Governor and his Council.

The contrast between this penal code of West Jersey and that existing in East Jersey was most remarkable. The settlers in East Jersey drew largely upon the Mosaic law for penalties for crime. In cases where domestic animals were the occasion of injury to any human being, this was most specially the case; the provisions of the Levitical law being literally copied. In this province there were thirteen crimes punishable with death, to wit: Murder, Arson, Perjury, "Stealing away any of mankind," Burglary and Robbery on the commission of the third offence, Witchcraft, Conspiracy to invade or surprise a fort, Theft where it was incorrigible, Smiting or cursing a father or a mother, on the complaint of the parent, Rape subject to the discretion of the court, and gross and unnatural licentiousness. But life, in no instance, could be taken without a trial by jury, and the evidence of two or more witnesses was invariably required. A jury was guarantied in all cases, whether civil or criminal. The punishment by whipping entered very largely into the penal code of East Jersey.

In West Jersey there was no enactment which provided any punishment for the crimes of murder, treason, or arson; and during the twenty-four years of the Quaker administration there was not a single case of an indictment for any of these offences. There was, in fact, no mention of a punishment by death for any crime in the statute-book of the Province.

While the Puritan element in East Jersey thus asserted itself by these sanguinary laws, that same element was unsurpassed in its jealous preservation of the personal rights of the individual citizen, and in its protection of the suitors who sought the aid of the courts.

In other directions the influence of this element was manifested. It made the amplest provision for the education of the youth of the community. The foundation of the very best system for the maintenance of common schools was laid in an act passed in the early history of the province. It introduced, by solemn act of the Legislature, the pious custom of setting apart a day for public Thanksgiving. The settlers at Newark brought with them from Connecticut their church organization and their pastor; and for many years that settlement was the only one in the whole colony of New Jersey where there were stated religious services on the Sabbath through a regularly ordained minister.

But even the jealous guard which the Puritan placed over the independence of the citizen of his community was more than equalled by the vigilant and liberal toleration of the Quaker. The Puritan never learned the lesson which his neighbors in West Jersey were taught by the fiery persecutions which had followed them from their old home in England to their new one in America. The austere and grim Puritan never learned the true spirit of liberality in permitting others to worship God as they chose.

William Penn was one of the proprietors of West Jersey, and doubtless was a leader among its citizens. It is not known who was the author of that wonderful document called the "Concessions," which was the real constitution of the Province of West Jersey, but it was worthy of the broadest-minded statesman who ever ruled the destinies of a nation, and, considering the tendency of public sentiment of the time, it was amazing that such a document could be produced. "No man nor number of men upon earth," says this immortal declaration, "have power or authority to rule over men's consciences in religious matters; therefore it is agreed and ordained that no person or persons whatsoever within the said Province" (of West Jersey) "shall at any time hereafter, in any way or upon any pretence whatsoever, be

called in question, or in the least punished or hurt, either in person, privilege, or estate, for the sake of his opinion, judgment, faith, or worship, in matters of religion."

The "Concessions" of Berkeley and Carteret were liberal and tolerant, but they were prompted by the desire to secure immigrants for the new colony, and were based upon selfish considerations. For once avarice surrendered to principle; but the "Concessions" of West Jersey were the honest declarations of pure-minded, liberal-hearted men, who had learned mercy in the terrible fires of persecution, who desired to benefit their kind, and who determined to found a state upon the eternal principles of justice and truth, of righteousness and freedom.

The Court of Chancery never was very popular with the people of New Jersey. They originally submitted to the fact of its existence and to its jurisdiction with a sort of protest. It is probable that in the early history of the colony a court of equity was not needed. In the simple methods of dispensing justice, the stricter rules of the common law were so tempered with equity that it was not necessary to resort to a court of chancery. Thomas Olive, who was governor of West Jersey, would be called upon by suitors to determine controversies; and sitting on a stump in his field, would settle the dispute on the spot, and generally to the satisfaction of both parties.

The dislike of the people to the Court of Chancery was due, probably, to the fact that its procedure dispensed with a jury, and the Saxon element in the settlers revolted against a court which enforced decrees and judgments pronounced by a single judge. But the institution of equity tribunals was of English origin; and time, after a period of distrust and jealousy, softened the prejudice and dispelled the doubt which was entertained of this tribunal.

It is very difficult to establish a time when the Court of Chancery began its existence as a separate institution. It certainly was in being early in the history of the province, and before its division into East and West Jersey, — undoubtedly earlier than 1675. In that year the General Assembly enacted a statute providing that appeals from the County Courts might be made to the Bench "*or* to the Court of Chancery." This phraseology certainly implies that the Bench and the Court of Chancery were two distinct tribunals. For a short time after the institution of the Court of Common Right, equity and common law jurisdiction seemed to have been blended, and both confided to this court. But in 1695 the Legislature solemnly enacted that the judges of the Court of Common Right should not be judges of the Court of Chancery. However unpopular a court of equity may have been with the people in New Jersey, it was always a delight to lawyers; and the unseemly wrangles between the courts of chancery and those of common law, too often witnessed in England, never occurred in New Jersey. The two jurisdictions kept side by side in perfect harmony, each according to the other its proper place in the jurisprudence of the country.

This brief sketch of the Courts of New Jersey exhibits somewhat their condition as they existed at the time of the reunion of the two Provinces of East and West Jersey, and when the sovereignty of both of those provinces was surrendered to the Queen of England. The courts were simple in their formation and in their procedure; there was really very little system and not entire uniformity in the mode of dispensing justice in the different tribunals. Many irregularities crept into the courts, for which no one can now account. Before the surrender justices of the peace were found sitting among the judges of the Supreme Court, and many other incongruities existed in this highest Court in the colony.

Toward the close of the seventeenth century the people of both East and West Jersey became very restive under the then existing methods of government. They objected most strenuously to the right of civil

authority being exercised by the Proprietors. The disaffection became very general, and all classes were in a ferment. A resort to legal proceedings was threatened. A writ of *quo warranto* had in fact been issued, and was pending before the Court of King's Bench to test the governmental rights of the Proprietors. The number of these Proprietors had very largely increased, the shares in many instances having been almost infinitesimally divided, so that some owned the fortieth part of a forty-eighth of a twenty-fourth share. At present that would be an imperial fortune; but then it did not represent much value. In this manner the number of the Proprietors became too large, and the body of owners was so cumbrous that order and system could not well be preserved. The interests of the many owners too often clashed, and their opinions conflicted so much that their power of government really became of extremely doubtful advantage.

RICHARD STOCKTON.

An absolute and unconditional surrender of the right of sovereignty was made to Queen Anne, but the ownership of the soil was retained. The Queen accepted the surrender, and appointed her cousin Edward, Lord Cornbury, governor of the colony. He was the grandson of Lord Clarendon, the father of Ann Hyde, the queen of James II., who was the mother of Queen Anne. This was in 1702, and in the first year of the Queen's reign. By a royal commission granted on the fifth day of December, 1702, Lord Cornbury was duly invested with the high dignity of Governor of the united provinces, again called New Jersey. Accompanying the commission were instructions to the new Governor of the fullest and minutest character. They were exceedingly well drawn, displayed great literary merit, consummate ability, and a profound knowledge of state craft. The commission and the "instructions" are somewhat inconsistent with each other. The commission is dated on the fifth day of December, 1702, and the "instructions" on the sixteenth day of November of the same year, yet frequent mention is made of the commission in the other document. The very first sentence of these instructions notified Lord Cornbury that he would receive the two papers together. In the commission full power and authority are given to him, "with the advice and consent of our said Council, to erect, constitute, and establish such and so many Courts of Judicature and publick justice within our said Province as you and they shall think fit and necessary, for the hearing and determining of all causes as well criminal as civil, according to law and equity and for awarding execution thereupon, with all reasonable and necessary Powers, Authorities, Fees, and Privileges belonging unto them." In the instructions, however, he was particularly directed, thus: "You shall not erect any Court or office of Justice, not before erected or established, without our especial order."

Lord Cornbury was as graceless a scamp as was ever intrusted with authority in the

colonies, or as ever dishonored a noble ancestry. He was effeminate, grasping, and tyrannical. He delighted to array himself in woman's apparel and parade the streets of New York. He had some ability, and at first gave great promise of being an efficient and honorable governor; but in process of time he exhibited his entire unworthiness for the position to which the affection of his cousin the Queen had raised him. His efforts, however, in the reorganization of the courts of New Jersey on a more systematic basis were eminently successful, and to him and to his guiding hand may be attributed the present condition of the legal tribunals of the State. There has been very little, certainly no substantial, change in the constitution and procedure of the courts since his day. Before his time the creation of courts and the election of judges were vested in the people and Legislature, — the people electing the justices of the peace and the judges of the County Courts; the Legislature choosing the judges of the higher courts. By his commission Lord Cornbury was vested with full power to "constitute and appoint Judges, and in cases requisite, Commissioners of Oyer and Terminer, Justices of the peace and other necessary officers and magistrates in our said Province, for the better administration of justice and putting the laws in Execution."

This authority was exercised by the colonial governors up to the time of the Revolution. For many years after that event the Legislature elected justices of the peace and the judges of the Court of Common Pleas; the Governor, by and with the advice and consent of the Council, until the Constitution of 1844, nominated the justices of the Supreme Court.

In 1776, while the country was resounding with the din of arms and there could be but one result, — the disseverance of the colonies from England, — a new constitution was established in New Jersey, which, while it impliedly acknowledged the supremacy of the King of England, yet fully recognized the fact that his rule in the province was really at an end. This Constitution made no change either in the names, nor in the procedure, nor in the jurisdiction of the courts. It continued in force until 1844, when there was a very material change in some of the courts. The Court of Common Pleas and the Supreme Court remained the same; justices of the peace still had cognizance of small causes. But there was a vital alteration in the Court of Chancery. Up to that time the Governor of the colony and of the State had been the chancellor, so that a lawyer was required to fill the office of chief magistrate. By this new organic law the Governor ceased to be the chancellor, and on him was laid the responsibility of selecting the justices of the Supreme Court and the chancellor; but his selection must receive the sanction of the Senate, which now took the place of the Council. Under the Constitution of 1776 the Governor was elected from year to year; now his term expires only after three years, and the chancellor's term was extended to seven. Appeals in the last resort, instead of being submitted to the Council, now go up to the Court of Errors and Appeals, composed of the chancellor, the justices of the Supreme Court, and six lay judges who are nominated to the Senate by the Governor. Under the new Constitution a return was had to the old method of electing the justices of the peace by the people.

There were two glaring defects in the jurisprudence of the State as established in this Constitution of 1844, — one, the composition of the Court of Appeals, in the introduction of the lay element; and the other, the election of justices of the peace by the people. Both were compromises, and, like most compromises, mischievous. For a time, under the new Constitution, the judges of the Court of Common Pleas were elected by the Legislature in joint meeting; but now by statute the responsibility of selecting these officers is laid upon the Governor, who nom-

inates them to the Senate, who may confirm or reject the nominations.

When Lord Cornbury undertook the task of reconstructing the courts of his province, he found a framework ready to his hand which only needed filling out, and perhaps required some additions. The proprietary courts then in existence had met all the requirements of the community; but there were many inconsistencies and blemishes in them, and a guiding master mind was required to reduce them to order, lop off excrescences, introduce precision, make them consistent with each other, and, above all, produce system out of disorder.

It is quite doubtful whether the measures which he adopted originated entirely in his own mind. They hardly seem consistent with the frivolity and meanness which he so often manifested. In fact, the conclusion can be fairly reached that he was very materially aided by a lawyer of mature life who came from England about that time, who had attained some eminence in his profession at home, and who afterward became the first Chief-Justice of New Jersey.

Lord Cornbury's effort at reforming the courts was by ordinance, and without the intervention of the Legislature. He recognized in his ordinances, however, the action of his Council, which had been selected for him by his sovereign to aid him in his responsible position of governor. His first ordinance is not dated; but it was promulgated in 1704, and somewhat less than two years after he received his commission. By this ordinance he invested every justice of the peace with full jurisdiction over all causes of debt and trespass to the value of forty shillings and under, which "causes or cases" might be heard, tried, and finally determined without a jury. The mode of procedure in such cases was particularly prescribed. By the same ordinance he also established Courts of Common Pleas in each county in the colony, the sessions of which were to be held four times each year at the same place where the Courts of Sessions were held, and immediately after their adjournment. These Courts of Common Pleas had "Power and Jurisdiction to hear, try, and finally determine all Actions or Causes of Action, and all Matters and Things Tryable at Common Law of what nature or kind soever." From these courts an appeal was had where the judgment was for Ten Pounds or upwards, or where the right or title to land, "or anything relating thereto," might be brought into dispute. The ordinance did not provide to what tribunal this appeal could be taken; but it was presumably to the Supreme Court, which was created at the same time and by the same ordinance.

The royal governor also provided for the formation of General Sessions of the Peace, which, like the Common Pleas, were to sit four times yearly in each county, but could continue in session only four days at one time. The terms of the Common Pleas were to begin immediately at the close of the Court of Sessions, and could continue for three days. The jurisdiction of the Court of General Sessions was exclusively criminal.

A "Supream" Court of judicature was also created by this ordinance, which was directed to sit alternately at Perth, Amboy, and Burlington. Its jurisdiction was declared to be the same as that of the Courts of Queen's Bench, Common Pleas, and Exchequer in England. This court was required to hold two sessions yearly, but could sit only five days at one time. Circuits of the "Supream" Court were held once in each year in every county in the State by one of the justices of the main court, assisted by two or more justices of the peace of the county where the Circuit sat, but the terms could be only two days.

This Supreme Court was authorized to establish such rules of practice as the judges of the Courts of Queen's Bench, Common Pleas, or Exchequer in England might ordain.

The last section of this ordinance was

significant. It provided that no suitor's right of property should be determined by any of these courts, except where there was an actual confession by the parties of the facts, or where there was no appearance, unless a jury should intervene.

There was no mention of the number of judges of any of the courts thus established, nor were any particular persons named for chief or associate justices of the "Supream" Court.

In 1837 a law was introduced into the Legislature by a far-sighted and acute-minded lawyer which proved to be of incalculable value to the State and to suitors. Before that time, carrying out the provisions of Lord Cornbury's ordinance, circuits of the Supreme Court were held in each county. Trials at bar were rarely had; by statute they could not he held before a full bench unless the amount involved was three thousand dollars. Issues of fact, therefore, which were begun in the Supreme Court were tried at these circuits; the records from the higher court were sent to the clerk of the county, who acted as clerk of the circuit, over which a justice of the Supreme Court presided. But unless two hundred dollars were recovered by the plaintiff he lost his costs. Causes for any amount of one hundred dollars and over could be brought in the courts of Common Pleas; and if judgment were recovered for that amount or more, costs followed the judgments. The jurisdiction of justices of the peace by this time had gradually crept up to one hundred dollars and less; so that suitors for claims less than two hundred and more than one hundred dollars were driven to the courts of Common Pleas. But the judges who generally presided in those courts were invariably selected from citizens who were not lawyers, and who were elected by joint meeting or nominated by the Governor. These selections were made for political reasons and to reward partisanship. Regard was seldom had to qualifications or fitness for the position. The result was that suitors were obliged to have recourse for their remedies to tribunals where incompetency and ignorance too often were the chief characteristics of the judges, and glaring injustice was too frequently the result.

In the first part of this century an unsuccessful attempt was made to remedy this evil. It was reserved for a member of the Legislature from Essex County successfully to work out this remedy. For several years, and until the system had been fairly tested, it was very unpopular; in fact, the lawyer who introduced the plan into the Legislature failed of a renomination on account of the great unpopularity of the new organization. But time has fully demonstrated the great excellence of the system, and it is now fairly rooted and grounded into the jurisprudence of the State.

These Circuit Courts of the county are of original jurisdiction, and suits of every character, of a common-law nature, can be brought in them; but a recovery of one hundred dollars is necessary to carry costs. The Courts of Common Pleas still exist with the same jurisdiction, but are now almost entirely disused, except for appeals from Justice's Courts and the district courts recently established by statute in the large cities. In these appeals the Common Pleas has, in the first instance, exclusive jurisdiction.

This ordinance of Lord Cornbury is really the origin of the Supreme Court of New Jersey, as it exists to-day. From his time until now it has remained the same so far as jurisdiction and procedure are concerned. The number of its judges and of its terms has been increased. It assumed, at first, the common law procedure, some of which has been altered by legislation, more by the action of the court itself. The old common law method of pleading, which at first also obtained in all its absurdity and complexity, has been materially changed, not so much by statute as by the decisions of the court. Fifty years ago great delays were occasioned by a system of fictitious pleadings. Pleaders may still employ the

old system of delay by pleading specially, but they do it at their peril. By statute pleas intended merely for delay, or which are false or frivolous, may be stricken out by the court. The old fictions of John Doe and Richard Roe, and lease, entry, and ouster in actions of ejectment have been abolished; and now the real parties in the cause meet face to face, without the intervention of two men of straw, and without the necessity of confessing lease, entry, and ouster, and the case is tried on the merits. Special demurrers are also abolished, and general demurrers with specifications of causes are only allowed. The old-fashioned styles of action are done away with, and instead contract and tort are substituted. There have been some other modifications and changes, but they are not radical, nor are they very important. With these exceptions the practice in the Supreme Court is about the same now as it was two hundred years ago, when it was first established. Writs of error from judgments in the Circuit Court and in the Common Pleas, and writs of Certiorari, Quo Warranto, and Mandamus are brought to this court; and cases may be certified to the Supreme Court for rehearing by the judge of the Circuit Court of the county. Indictments may be removed from the Oyer and Terminer and Quarter Sessions to this court. It has virtually appellate jurisdiction from all inferior courts. It is now composed of a Chief-Justice and eight associate justices, who hold four terms a year; and no limit is put to the length of its sessions. Circuits are held four times yearly in each county in the State, over which the Chief-Justice or one of the associate justices presides, in which the issues of fact begun in the Supreme Court are tried.

No provision for appeals from the Supreme Court to any other tribunal was made in the ordinance published by Lord Cornbury; but in the Queen's instructions to him this was arranged. An appeal lay from this court to the Governor and his Council, when the judgment exceeded one hundred pounds sterling. In case any members of the court were also members of the Council, they might be present at the hearing of the appeal, but could not vote. Appeals from the judgments of the Governor and Council lay to the Queen and her Privy Council in cases where the judgment was for an amount exceeding two hundred pounds sterling. In all appeals from the Supreme Court, or from the Council, security was required.

The first term of this Supreme Court thus organized was held on Nov. 7, 1704, at Burlington. It was presided over by Roger Mompesson, its first Chief-Justice, and William Pinhorne, its first associate justice, or, as he was then called, Second Judge. Mompesson was Chief-Justice of New York as well as of New Jersey. On the first day of the session the commissions of the justices were read, and they were sworn in and took their seats, clothed with full power to hold court, hear, try, and determine all causes which might be submitted to them. But there were no cases ready, no indictments were found, and after admitting a few attorneys and calling and swearing a Grand Jury and awaiting its return, the court adjourned to meet on the first Tuesday in May then next. The adjournment on the first day was to eight o'clock in the morning of the next day. What the lawyers of the present time would say to such a conscienceless action can better be imagined than described.

Roger Mompesson was the son or grandson of an English clergyman, rector of a church at Eyam, in Derbyshire. Miss Seward, in her letters from England, written in 1784, speaks of this pious man with very great respect. He was physician as well as priest during the visit in 1666 to his parish of the Plague, which almost depopulated London. The family was an ancient one, and of very great respectability. Mompesson himself had attained to some eminence in his profession; he had been Recorder for Southampton, and had served twice in Parliament. He arrived in Philadelphia in 1703. A letter from William Penn to a friend in

this country, still preserved by the Pennsylvania Historical Society, speaks in the highest terms of him. Penn in his letter recommended him as Chief-Justice of his colony, but the people did not take kindly to the English lawyer. They refused to pay him any salary; but as he was appointed Chief-Justice for New York as well as New Jersey, it is presumable that he did not suffer for lack of funds. He became a member of Lord Cornbury's Council, and played a most conspicuous part in the politics as well as in the jurisprudence of the colony. There are no reports of his decisions, but the minutes of the Supreme Court are exceedingly full and minute. There are the records of some indictments presented in his court which may be an index to the manner in which he presided and dispensed justice.

Very soon after Lord Cornbury became governor, quarrels originated between him and the citizens of the State and the popular branch of the Legislature. The English practice relative to indictments was, at first, adopted by the Chief-Justice. The witnesses were sworn in open court; the bills of indictment were drawn and presented to the grand jury. At the second term of the court several of these indictments were prepared in this way and given to the grand jury. The charges in these indictments were most peculiar, — they were all for seditious words spoken of the Governor. In one case these were the words which were deemed so seditious as to make the utterer liable to punishment: "The Governor had dissolved the Assembly, but they could get another just as good; and if the Governor liked it not, he might go from whence he came." Another indictment was for uttering these words: "I will give you a pot of beer to vote for the old Assemblymen, because they would give Lord Cornbury no more than thirty-five hundred pounds, which his Lordship made a huff at." There were two indictments against the same man; one for saying "that the Assembly could have done their business well enough, but that the Governor dissolved it, which he was satisfied was because they would not give him money enough;" the other was for these words, "that Colonel Morris was dismissed from being of the Council by my Lord, but that it was more than my Lord had power to do." The grand jury, to their honor be it said, ignored these indictments. The Governor, however, was determined not to be balked. His Attorney-General was instructed to file informations, which was done in all the cases in the very words of the indictments. It was necessary, before informations could be filed, that leave to file must be obtained from the court. This leave was granted, and the defendants were tried. One of them moved to postpone his trial until the next term of the court. The postponement was granted, but upon terms, — first, that he should plead issuably; second, that he should enter into recognizance to appear at the next term; and third, that he should give security to keep the peace and to be of good behavior. The defendant refused to comply with these conditions. The court, instead of ordering on the trial, committed him for contempt, charging him with abusing the queen's witnesses. Another defendant submitted to trial, but refused to swear any witnesses in his own behalf. The jury rendered a verdict of guilty, but the court did not dare pronounce judgment, and sentence was never imposed. At the next term one of the other defendants was tried and acquitted, but the court refused to discharge him until he paid the costs of prosecution. The utter subservience of the Chief-Justice to his master the Governor was fully manifested through all these trials.

Very little is known of the private character of Mompesson; and he may be dismissed with the remark that he gained no credit as a lawyer, no glory as a judge, by his discharge of the duties of first Chief-Justice of New Jersey.

At last Lord Cornbury became so outrageous in his deportment that complaint was made to the queen, and in 1710 he was

removed; and his first Chief-Justice, fearful that he too might be removed, resigned. Roger Mompesson, from the time of his resignation, disappears for a short time from the history of New Jersey. He will again appear in the same judicial position, but he is best remembered as the pliant tool and base adviser of the worst governor who ever ruled in New Jersey.

William Pinhorne was associated with Mompesson as the second judge of the Supreme Court. He would now be called an associate justice. Before he became judge in New Jersey he had served in a prominent judicial position in New York. He became *ex officio* Governor of New Jersey when Lord Cornbury was removed. He had been a merchant in the city of New York, and was a member of the Council of that colony until 1692, when, being a resident of New Jersey, he was not allowed to take the oath of office. He purchased, during the latter part of the seventeenth century, a large plantation near Snake Hill, between Newark and Jersey City, which he called "Mount Pinhorne." This property is mentioned in that curious production called "The Model of the Government of East Jersey," printed in Edinburgh in 1685, and written by George Scot of Pinlochie of Scotland. Mr. Scot says: "Next unto Snake Hill is a braw Plantation, on a piece of Land almost an Island, containing 1,000 & 1,200 Acres, belonging to Mr. Pinhorne, a Merchant of New York, and one Edward Eickbe. Its well improved and Stokt. Mr. Pinhorne payed for his half 500 lib."

Mr. Pinhorne was a hospitable man, and had quite a large family. Some of his descendants are still resident in New Jersey, among whom are the children and grandchildren of the Hon. Joseph C. Hornblower, at one time Chief-Justice of New Jersey, and one of the most distinguished men who ever adorned the judiciary of the State. Chief-Justice Mompesson was a bachelor when he reached this country. He became a frequent visitor at the house of his associate judge, and the result was that Martha Pinhorne became Mrs. Mompesson.

Judge Pinhorne attached himself warmly to Lord Cornbury, and became one of his stanchest adherents. He supported the Governor in his quarrels with both people and Assembly. A paper was prepared, most probably by the Governor himself, addressed to the Queen, intended to answer the remonstrance of the Assembly against Cornbury, which assailed the Legislature and some of its individual members in the most slanderous terms. The address was circulated secretly, and although bearing a semi-official character was never entered on the minutes of the Council. Judge Pinhorne signed this paper, and when called to account for his action had not the manliness to avow the act, but evaded responsibility. In fact, there was only one man among the signers who had the moral courage to defend his action. He not only did that, but refused to apologize, and was expelled from the Assembly.

Pinhorne took his seat on the bench in November, 1704. It would have been impossible for him, if he had followed the lead of his son-in-law, to have escaped the censure which attached to Mompesson. He undoubtedly concurred with the Chief-Justice in all his rulings relative to the indictments for seditious words spoken of the Governor. He became quite unpopular, and received very severe rebukes from the Assembly. Among other charges made against him was the very serious one that he had refused the writ of habeas corpus to Thomas Gordon, Speaker of the House of Assembly, and allowed him to remain in custody until the prisoner had obtained the services of the son of the judge, who was an attorney.

It must not be forgotten, however, that the Assembly, from which body came the fiercest denunciation of the two judges, were factious, too often inconsistent with themselves, and not observant of the rights of those in authority. Lewis Morris, who was the idol of the Assembly while these squabbles between the Governor and the popular

branch of the Legislature were in progress, when he became governor afterward, was denounced in as unmeasured terms as ever Lord Cornbury received.

Pinhorne remained in commission during the whole of Cornbury's administration, and continued after his removal to be a member of the Council. The Assembly, however, insisted that he should be removed from office, and at last was successful, but not until Robert Hunter became Governor.

Pinhorne at one time was President of the Council, and by virtue of his holding that position, was Governor of the colony for a short time, in the interregnum between the removal of Ingoldsby and the appointment of Robert Hunter. He died probably in 1720. His will is dated May 10, 1719, and was probated April 12, 1720. He was a man of ample means, and was enabled to draw around him at "Pinhorne Mount" a goodly company of cultured and educated men. He seems to have retired to private life after his dismissal from the Council.

The successor of Mompesson was Thomas Gordon, formerly speaker of the Assembly. His term of office as Chief-Justice was very short, but he had filled a very large space in the political history of the colony. He was a Scotchman, and claimed to be connected with the family of the Duke of Gordon. He became complicated with some of the political troubles in Scotland, and immigrated to New Jersey in 1684, bringing his family and servants with him. Becoming a large landed proprietor near Scotch Plains, which place undoubtedly was named from the great number of Scotch colonists who settled in that vicinity, he located there, and soon made himself felt as a man of ability and force. He held several offices under the Proprietors and the Colonial Government. He was Deputy Secretary for the Proprietors, Clerk of the Court of Common Right, Register of the Court of Chancery, Judge of Probate, and Collector of Customs at Amboy. He was also, late in the seventeenth century, Attorney-General of the State, and subsequently became Speaker of the Assembly. He adopted the popular side in the quarrels between Cornbury and the representatives of the people, and was firm and outspoken in his opposition to the Governor, but was not violent, either in speech or conduct. On the resignation of Mompesson, Governor Lovelace, who succeeded Lord Cornbury, appointed Gordon Chief-Justice. His appointment was dated April 28, 1709. He took his seat on the bench in the May Term of that year. He does not seem to have been educated as a lawyer, although licensed as an attorney, and soon became conscious of his inability to perform the duties of the office. He resigned in a very few months after his appointment, and then became Receiver-General and Treasurer of the Province. He died in 1722, and was buried at Amboy.

After the resignation of Gordon, Roger Mompesson again appears. He was reappointed Chief-Justice by Lieutenant-Governor Ingoldsby, who became acting Governor upon the death of Lord Lovelace.

Robert Hunter arrived in the colony in 1710 with a commission as its Governor; and Mompesson again withdrew, and David Jamison was appointed to the position thus vacated. His name would indicate that he was a Scotchman. He had been a lawyer of some eminence in New York, and had been counsel for McKernie, a clergyman of the Presbyterian Church who had been indicted in 1707 for preaching without a license at Newtown, Long Island. He was tried and acquitted, but was detained in prison, notwithstanding the acquittal, until he paid the costs of the prosecution. For his defence of Mr. McKernie, Gordon had acquired great favor with the citizens of New York, but he did not escape the popular fury in New Jersey. Governor Lovelace's administration was one which had won almost universal favor; but at one time there was a serious break of the excellent relations which had existed between the Governor and the Assembly. The Chief-Justice became involved in the quarrel, and an indictment was

found against him at the Quarter Sessions in the county of Burlington, and this was the ground of the indictment. At the November term of the court in 1715, one of the grand jurors refused to take the oath in the ordinary form, alleging that he was a Quaker, and that by an act of the Legislature passed several years prior to that time, he was entitled to be affirmed and not sworn, as he was conscientiously scrupulous of taking an oath. The passage of the act was admitted, but it was contended that it had been repealed by a statute of Parliament. This was the position assumed by the partisans of Lord Cornbury. The Chief-Justice overruled the objection, and ordered that the juror should be affirmed. But the clerk was contumacious, and refused to obey the order of the Chief-Justice. Here was a decided contempt of court, and that of the most flagrant character, — a refusal of the sworn officer of the law to perform a known duty. Of course no grand jury could be impanelled at that term. The Chief-Justice had but one course to pursue; he necessarily was obliged to sustain the dignity of the court: he held the obstinate clerk to be in contempt, and fined him. The punishment, under the circumstances, was very light. Yet at the next term of the Court of Quarter Sessions the Chief-Justice was indicted for fining the clerk. Jamison behaved in the most dignified manner. Governor Hunter felt constrained to interfere, and he rallied in defence of the Chief-Justice. He published an address to the citizens of the colony relative to the subject, and in a calm and dispassionate manner reviewed the whole case. The indictment was quashed on motion of the Attorney-General, after having been removed into the Supreme Court. The order setting aside the indictment may be still read in the minutes of the court. It states that it is made because the proceeding is against the Chief-Justice of the colony for doing his duty in the execution of his office. Jeremiah Basse, a licensed attorney, one of the most prominent men in the province, was most instrumental in procuring the indictment to be found against Jamison. Promptly, so soon as the indictment was quashed, an order of court was entered disbarring Basse.

The rest of the term of Jamison as Chief-Justice was uneventful. Harmony was restored between the contending parties, and no disturbing cause ever interfered to prevent the peace that reigned while Hunter continued in the office of governor. Jamison appears to have been a great student of the Bible. He delighted to quote largely from the sacred records, especially in his charges to grand juries. He was a believer in witchcraft, and thought heretics ought to be punished. But no prosecution for either of these offences, as they were called by Chief-Justice Jamison, ever disgraced the jurisprudence of New Jersey. He was continued in office by Governor Burnet, who succeeded Hunter in 1719. Jamison resided in New York during all the time he was Chief-Justice. By this arrangement suitors and their counsel were very much embarrassed, and at the earnest solicitation of the Assembly Governor Burnet removed him, and appointed William Trent in his place.

Trent was not a lawyer by profession; but he had been a judge in Pennsylvania, and had acquired a most enviable reputation. He was a Scotchman, had been a successful merchant, and was a man of excellent judgment, of good, sound common-sense, with not a breath of suspicion on his reputation. At the time of his appointment he was Speaker of the Assembly. His house in which he had resided in Philadelphia was standing a few years ago. At the time of the meeting of the Continental Congress, during the Revolution, it was used as a boarding-house, and John Adams and several other members of Congress had boarded there. Trent bought several hundred acres of the ground upon which Trenton, the capital of New Jersey, now stands. This was in 1714. Seven years afterward, in 1721, he

removed to this property, then called Littleworth, but was afterward known as Trent's Town, and subsequently changed to Trenton. It was, however, nothing but a hamlet, there being only two or three houses there at the death of Trent, which occurred in 1724, and only nine months after he became Chief-Justice. His retention of office was so short that very little can be said of his performance of its duties. He was stricken down with apoplexy, and died on Christmas Day. His death was thought to be a public calamity, and was universally lamented. The courts of Hunterdon County, in which Trenton was then situate, had been held at that place. Trent before his death donated to that county the lot on which the first Court House was built.

Trent was succeeded by Robert Lettice Hooper, who was an appointee of Governor Burnet, and who took the oath of office on the thirtieth day of March, 1725. He was a member of the Assembly when he was appointed. There is a very great scarcity of material about this man's history, either private or official. He held the office about three years, and seems to have been universally respected.

Thomas Farmar, in 1728, succeeded Hooper. He came to New Jersey in 1711. He soon began to take a great interest in public affairs, was for many years a member of the Assembly from Middlesex, and while such member was appointed second judge of the Supreme Court. He continued to hold his seat in the Legislature even after he ascended the bench. This did not seem to be incompatible with propriety in those days, as there is more than one instance where the same person held those two offices at the same time. Farmar was one of these persons. But his continuance in the office of Chief-Justice was very short, as he held it only from March, 1728, until November term, 1729, when Hooper resumed the position. Farmar became insane, and was at times so violent that his friends were obliged to confine him closely. He continued in this condition of mind for several years.

Lewis Morris was one of the most noted characters in the colonial history of New Jersey. He was at one time appointed second judge of the Supreme Court; but no record can be found that he ever took his seat on the bench. It is believed that he never did, as very soon after his appointment he was made Chief-Justice of New York, and removed to that colony. He seems to have been a restless man, of great ability, and always assumed the popular side in the quarrels between Lord Cornbury and his antagonists in New Jersey. He was a member of the Council which was appointed by Queen Anne for her cousin when he was made governor. But Cornbury could not consent that so refractory a spirit should be a member of the board which had in a measure a sort of control over his movements. So Morris was expelled, and Roger Mompesson took his place. In the subsequent quarrels between the royal governor and the Assembly, Morris took a very prominent part. He was the author of the remonstrance to Queen Anne against Cornbury, and it can be well imagined that the expelled member of the Council did not spare the Governor. After his expulsion he was returned a member of the Assembly, and had ample opportunity of revenging himself. The indictment against Cornbury which he presented to the Queen was a document of tremendous power, and did not spare the Governor, nor did it fail to expose his meanness and his entire unfitness for the position of governor.

When an infant, Lewis Morris had the misfortune to lose both of his parents, and was adopted by an uncle, who was unable to curb his wild spirit. He left home in early youth, strayed away to Virginia, and led a sort of vagabond life; but tiring of this, he returned to his home, and soon afterward became a judge of the Court of Common Right under the Proprietors After his appointment as Chief-Justice of New York,

he remained many years in that province, and then returned, when quite advanced in life, to New Jersey. Although seventy years of age, he again became prominent in public affairs, and not greatly to his credit. He was made governor; but his life as governor was more than inconsistent with that of his earlier days. Then he embraced most enthusiastically the cause of the people; now he became as strong an advocate of the right of the governor, insisted most vehemently upon all its prerogatives, and quarrelled constantly with the Assembly. He was the grandfather of Lewis Morris, one of the signers of the Declaration of Independence, and of that most distinguished American, Gouverneur Morris, who contributed so much toward creating in European capitals a profound respect for the citizens of the new republic.

Daniel Coxe was an associate justice who sat on the bench with Hooper. He was appointed in 1734, and was the son of Dr. Daniel Coxe, whose connection with West Jersey and some others of the American colonies was such as to make him one of the most remarkable men of his time. He was one of the Proprietors of West Jersey, and at one time its Governor. He was also one of Lord Cornbury's Council, and Speaker of the Assembly. A hundred years before his son became associate justice, a patent had been granted by Charles I. to Sir Robert Heath of a very large extent of territory then called Carolina. A little more than thirty years after it was granted the patent was declared to be invalid, and a few years after that it was assigned to Dr. Coxe, who anticipated large returns from his investment. He submitted his claims under the patent to the King, who referred them to the Attorney-General. After a full examination the former decision as to the invalidity of the patent was reversed, and it was declared valid. After his death the associate justice revived his father's claim, and made several unsuccessful efforts to induce settlers to immigrate to the country covered by his patent. To accomplish this he wrote and circulated a pamphlet which deserves more notice than has generally been awarded to it. It contained a description of the province granted to Heath, which exhibits the lamentable ignorance of the men of that time as to the geography of the continent. In his pamphlet Coxe claimed that there was an easy communication between the Mississippi River and the South Sea which lay between America and China, by means of several large rivers and lakes, "with the exception of about half a day's land carriage." But the pamphlet is more remarkable for the proposal it made of a plan of union between the American colonies for mutual protection and defence. This plan is the same afterward proposed by Benjamin Franklin, called the "Albany Plan of Union," and for which Franklin received so much credit. Franklin needs no borrowed glory, and his memory can afford to allow the credit to be given to the real author of this admirable scheme. The plan was this: That all the North American colonies should have a common union, presided over by an officer to be called a Lieutenant or Supreme Governor; each colony was to be represented in a general council composed of two delegates chosen by the Legislatures of the respective colonies. This general council was to be convened, whenever necessary, by the Supreme Governor, and to it was to be confided all measures providing for mutual defence, and for offensive operations against the common enemy, such as the quotas of men and money needful to be raised. The acts and proceedings of this general council were to be subject to the veto of the Governor, but he could take no aggressive action without the consent of the Council. In 1754 Franklin proposed his plan, which was almost identical with the one recommended by Coxe in his pamphlet. The justice of history demands that this New Jersey judge should receive his due meed of praise too long withheld.

Daniel Coxe was associate justice until the time of his death, which occurred at Trenton in 1739. He was implicated in the early part of his public life, with Cornbury in his quarrels with the Assembly, and after Cornbury's time his conduct in the strife with Governor Hunter was not much to his credit; but his later career was such that he secured the confidence and esteem of his fellow-citizens. His judicial duties were performed with ability and honor to himself.

Robert Hunter Morris succeeded Robert Lettice Hooper as Chief-Justice. He was the son of Lewis Morris, of whom mention has already been made, and inherited some of the peculiar characteristics of his eccentric father, and much of his ability. He was in office twenty-six years, but did not burden himself much with the cares of his position. So far as accomplishments were concerned, he was perhaps as well equipped as any one of the chief-justices who sat on the bench prior to the Revolution. He had been carefully educated, and owed very much to the influence of a most excellent and careful mother. He enjoyed all the advantages which could be obtained at his time in the very best educational institutions of the country. He had an ample fortune, was of a very fascinating address, possessed a handsome face and person, was a persistent disputant, and one of the best talkers in the province. At first he paid enough attention to his position to introduce some reforms, to reduce pleadings to stricter rules, and to insist upon more regularity and precision in the forms of procedure. But he soon apparently wearied of the irksome confinement which an honest performance of his duties involved. He was a young man when he assumed, in 1738, the position of chief-justice. In 1749 he visited England with a view, it is supposed, of securing nomination to some office in the colonies. About that time a plan was contemplated of uniting the two provinces of New York and New Jersey, and placing in the hands of one man the office of chief magistrate. The nominal object which sent him to the mother country was to protest, at the request of the Council of New Jersey, against the proposed plan. Perhaps injustice is done him with the charge that he was covetous of political preferment. But he was an ambitious man and tarried long in England. He certainly was a candidate for the position of Lieutenant-Governor of New York. He returned after five years' absence with the commission of Governor of Pennsylvania in his possession, so that he was not only Chief-Justice of New Jersey, but also chief-magistrate of another colony. He appreciated the incongruity of his holding the two offices at the same time, and so he tendered his resignation of the position of Chief-Justice, which was not accepted, — for what reason does not sufficiently appear. He did not, however, hold the office of Governor for any great length of time. He received that appointment in 1754, resigned it in 1756, and returned to his duties as Chief-Justice. In 1757 he again visited England. During his absence a strange state of affairs was originated. Morris held his office, according to his commission, during good behavior; but while he was absent in England William Aynsley was appointed Chief-Justice. He held the position, however, only a few months. He took his seat on the bench in March, 1758, but died soon after, probably in the same year. Shortly after his death Nathaniel Jones received the appointment to the apparently vacant office. He arrived from England in November, 1759, went at once to Amboy, where he was formally commissioned by Governor Bernard. From there he went to Elizabeth Town, where he was received with great honor. Speeches were made by the Mayor and the new-comer, and general congratulations were exchanged. The next term of the court was held in March, 1759. Mr. Jones appeared at that time, and requested that he might have the oath of office administered to him. But unfortunately for him and his aspirations, there

was another Chief-Justice in the shape of Robert Hunter Morris sitting in the place which Mr. Jones proposed to occupy. This was a dilemma which Mr. Jones found to be exceedingly awkward. However, he had his commission read, and in his argument referred to some minutes of the court when Chief-Justice Aynsley was present and had taken part in the proceedings. This was certainly quite embarrassing for Morris, who had possession. But he was equal to the occasion; he produced his commission dated in 1738, by which he was undoubtedly vested with the office. Morris referred to the condition upon which he was to hold the position; he was to have it during good behavior, and he had not been removed. Chief-Justice Morris took no part in the debate which ensued, except to say that David Ogden and Charles Read would appear for him. Associate Nevill decided the case, declaring that the court could not recognize Mr. Jones as Chief-Justice; that Robert Hunter Morris had the first right to the office, and that Mr. Jones must seek his remedy in another tribunal and by a due course of law. The defeated aspirant for office abandoned the controversy, and that was the last that was ever heard of the contention, which at one time bid fair to become a *cause célèbre*. Mr. Morris held the office without further molestation until his death, which occurred under very sad circumstances. In 1764 he made a visit to a relative in Shrewsbury. In the evening he attended a dance in the village; and while dancing with his relative, dropped to the floor and expired instantly without a struggle.

Morris had two associates while he was on the bench; one was Richard Saltar, of whom very little can be said. When Morris attempted to resign his office of Chief-Justice upon being appointed Governor of Pennsylvania, he recommended Mr. Saltar as his successor. Samuel Nevill was then also on the bench; but although he appears to have been much more fit than Saltar, Morris passed him by with the remark that he did not think Samuel Nevill would do; "his circumstances are so low, and he is from that reason unfit to be trusted in the principal seat of justice."

Samuel Nevill was born in England, and had received a liberal education. At one time before he came to America he had been editor of the "Morning Post." He had a sister, the widow of Peter Sonmans, who died in New Jersey, leaving quite an estate. Being her elder brother, Samuel Nevill inherited this estate, and came to the province in 1736 to claim the property. He resided at Amboy, where his character and talents were soon recognized and respected. He became a member of the Assembly, and at one time was its Speaker. He espoused the cause of the Proprietors in their quarrel with the people, and led the Assembly in its long controversy with the governor. Perhaps Chief-Justice Morris was avenging his father's fancied wrongs when he wrote so disparagingly of Nevill.

Nevill was made second judge of the Supreme Court in 1748, and continued in office for sixteen years. He compiled two volumes of the statutes of the colony, which were published by authority of the Legislature. These books contain all the Acts of the Assembly from 1702 to 1752, and are almost worth their weight in gold, being eagerly sought after by the Bar of New Jersey.

Judge Nevill was a man of considerable literary merit. He became the editor of the "New American Magazine," the initial number of which appeared in January, 1758. It was the first periodical in New Jersey, and the second magazine of the kind ever printed in America. Nevill wrote for it under the name of "Sylvanus Americanus." The magazine was discontinued, for want of support, in 1760. It deserved patronage, however, and was really a very creditable affair.

Judge Nevill died soon after the death of Robert Hunter Morris, and left an unsullied name.

Charles Read succeeded Morris as Chief-Justice. His appointment did not receive universal approbation. Some members of the bar openly denounced it. He acted as Chief-Justice only a few months, and gave way to Frederick Smyth, who was the last Chief-Justice of the colony of New Jersey before the Revolution. Read, after retiring from his position at the head of the court, again became second judge, which place he had previously held.

Mr. Smyth was appointed in 1764, and continued in office until 1776. It was during his time that the trouble between the colonies and the mother country was first manifested. At the outset of his term of office the Stamp Act was passed, and it was charged that he had been a candidate for the position of stamp distributor. A meeting of the bar was called for the nineteenth day of September, 1765. The use of the stamps was the subject discussed at this meeting, which was, in fact, called for that express purpose. It was unanimously resolved by those present that they would use no stamps for any purpose. Of course this action if persisted in would put an end to all legal business, and also prevent any return being made to the home government from the sale of stamps. The lawyers persisted in their determination, and resolutely refused to purchase any stamps. The Chief-Justice requested the members of the bar to meet him on the day succeeding this meeting. He denied in the most emphatic terms that he had accepted the post of tax-distributor, and then propounded several questions to the lawyers; among them this,—whether they would agree to purchase stamps if they should arrive at a certain time. A negative reply was promptly given. He also asked for their opinion as to the payment of duties, and whether he was under any obligation to distribute the stamps. To this there was only one answer,—that the duties could not be paid, and that he was not obliged to aid in the delivery of the stamps. The Chief-Justice acted on this advice, and the result was that the court was closed.

In 1772 the British schooner "Gaspée" was burned by Rhode Island Whigs. Chief-Justice Smyth was appointed, in connection with the Governor of Rhode Island and with the Chief-Justices of New York and of Massachusetts and the Judge of Admiralty, a committee, to examine into the affair. The examination was fruitless of any result; but the appointment of this commission gave authority to the first Continental Congress to issue an address to the people, in which it was charged that "a court had been established at Rhode Island for the purpose of taking colonists to England to be tried." The lines began now to be sharply drawn between the friends of the independence of the colonies and the supporters of the mother country. Chief-Justice Smyth was a decided loyalist, and never refrained from fairly and openly defining his position. But he was honest in his opposition to what he deemed treasonable attempts against the regularly constituted authorities. His charge to a grand jury in Essex County afforded an opportunity to the members of that body to make some very decided and sharp replies to his strictures.

It is not perhaps generally known that in New Jersey there was a small tea-party fashioned somewhat after the larger and more celebrated one at Boston. The captain of a vessel loaded with tea, bound for Philadelphia, did not dare land his cargo at that city. So he sailed up the Cohansey River as far as Greenwich, and there unloaded. No fear of any disturbance at this quiet hamlet was anticipated, but a number of men assembled, went to the cellar where the chests of tea were stored, quietly took them out to an adjoining meadow, and burned them. Some of the trespassers were known, and were among the most respectable citizens of Cumberland County. One of them was the father of the Hon. L. Q C Elmer, who afterward became an associate justice of the

Supreme Court, and another was elected Governor of the State. Suits were brought for the recovery of damages for the destruction of the tea. Eminent counsel were employed on both sides, but the suits were never brought to trial. The plaintiffs were non-residents, and security for costs was demanded, which was never furnished, and there was an end of the matter. Chief-Justice Smyth brought the matter to the attention of the Grand Jury of Cumberland County at the next session of the court, and strongly urged the finding of indictments. But the grand jury refused to listen, and ignored the bills, although they were sent a second time to their room.

After the War of the Revolution was actually begun, Chief-Justice Smyth removed to Philadelphia, where he died.

His associate judges were David Ogden and Richard Stockton, two of the most distinguished men who ever practised law in New Jersey.

It is a fact which has perhaps escaped the attention of historians that some of the strongest and ablest men in the profession of the law became devoted loyalists. David Ogden was one of these, and he embraced the side of the King of England from pure convictions of duty, for he was an honest man, and his decisions for his own individual guidance were based upon what he deemed just and right.

He was of a distinguished family which came to New England at an early date and removed from there to New Jersey. His father was Josiah Ogden, who was for many years a member of the Legislature from Essex County. His brother was Jacob Ogden, a physician who attained great eminence in his profession. David Ogden was born at Newark, very early in the eighteenth century. He was educated at Yale, where he was matriculated in 1728. He then read law in New York, and after completing his studies began practice in Newark. He was not a dazzling nor a brilliant man; he could not even be called a genius, but he had better qualifications than those generally accompanying genius, to equip him for a lawyer's life. He was clear-headed, of uncommon good sense, and of an unfailing judgment. He added to these excellent aids to success in a legal profession, the most untiring industry, which was unsurpassed by any of his contemporaries at the bar. Very soon he was the acknowledged leader of the profession in New Jersey. He received an appointment to the bench as associate justice in 1772. No man of his time was better equipped than he for the performance of the duties of this office. His never failing judgment, his inexhaustible stores of learning, his clear-sighted perception, his good, sound common-sense, and honesty of purpose were qualifications which admirably fitted him for the office of judge. But he could not have a fair opportunity of displaying his capability for the position. He was appointed in troublous times, at a period when it must have been apparent even to the most casual observer that the issue between the colonies and England must soon be submitted to the arbitrament of the sword. When the lawyers refused to purchase stamps, he united with them in their action; but he was a loyalist and an honest one. When hostilities actually began and it was not safe for him longer to remain in the place of his birth, he removed to New York and resided there during the war. His convictions of duty drove him to decided action, and he devoted all the energies of his strong nature to the success of the cause he honestly believed deserved to be successful. He never despaired until the last moment of its final triumph. He busied himself most industriously with his pen. Among his productions was one which provided for a plan for the government of the colonies after their submission, which, as he expressed it, "was certain and soon to happen, if proper measures were not neglected." His plan was quite complex, but it is somewhat amusing to notice that it embraced perfect self-government by the colonies through a parliament and officers chosen

by the colonists; with power of taxation vested only in the Continental Parliament. Among other propositions made by Mr. Ogden was the creation of Barons from among the freeholders and inhabitants of the colonies, who were to compose a house of Peers for the American Parliament. Perhaps David Ogden might have had in his mind one inhabitant of the provinces who, he thought, would make an excellent member of the proposed House of Lords, and who ought to be made a Baron.

After the independence of the Republic was acknowledged by the British Government, Mr. Ogden went to England, and became agent for the loyalists in the prosecution of their claims for compensation for losses they had sustained by their adherence to the king. He returned from England in 1790, and resided in Long Island until his death, which occurred in 1800.

The other associate justice with Chief-Justice Smyth was Richard Stockton, than whom no one of his time is more revered in New Jersey. He came of most excellent stock, whose representatives are now to be found in New Jersey, with just claims upon the respect and confidence of their fellow-citizens. Justice cannot be done to this eminent man in the short space which remains. His forefathers came to New Jersey in the seventeenth century, and were large landholders near Princeton, the seat of the College of New Jersey. His father was John Stockton, who at one time held a high judicial position in Somerset County, and was a man of mark in his day. Richard Stockton was educated in his native village, under the very best teachers which the colony afforded. He graduated at the College of New Jersey in 1748, and then read law with David Ogden in Newark. He came to the bar in 1754, and then began to practise his profession at Princeton. It was not long before his power was felt, and he soon led the bar in his part of the State. For twelve years he was fully engaged in a very large practice, when he visited England, where he was received with the most gratifying consideration. He remained abroad for fifteen months, and while in England was frequently consulted by members of the government and by other persons who were interested in the affairs of the colonies.

The act which most redounded to his credit, and for which he should receive the gratitude of all Jerseymen, was that which procured the settlement of the Rev. Dr. Witherspoon as president of the College of New Jersey. The trustees of that institution had unanimously elected the Scotch divine to that position; and the letter to him announcing his appointment was transmitted to Mr. Stockton while he was in England, with a request that he would make a personal application to Dr. Witherspoon. He made a journey to Scotland for the express purpose, and it was due entirely to his exertions that the office was accepted. He was obliged not only to overcome the Doctor's natural reluctance to leave Scotland for an untried experiment, but also to remove the very decided repugnance which Mrs. Witherspoon entertained toward the removal. He was at last successful, after repeated efforts; and the college and New Jersey gained a scholar and divine, and the colonies a devoted friend, who proved a tower of strength in the struggle with England. Mr. Stockton returned in September, 1767, was soon elected a member of the Legislature, and in 1774 was raised to the bench, taking his seat beside his old preceptor, David Ogden.

There was very little opportunity for either of these distinguished men to display their peculiar fitness for the high judicial positions they occupied. The career of Ogden has already been sketched, though very imperfectly. Stockton did not follow the lead of his former teacher. He espoused the popular cause, and was as fearless and determined in his support of it as David Ogden was in his adherence to the king. In 1776 Mr. Stockton was elected a member of the Continental Congress, sitting at Philadel-

phia. Dr. Witherspoon was one of his colleagues, and they both signed the Declaration of Independence. That act, which seems so glorious to the citizen of today, was then fraught with serious consequences. Mr. Stockton took part in the debates in Congress relating to the Declaration before it was signed, and made an able speech in favor of the measure. But his prominence in this transaction rendered him liable to attack from the enemy. He had a most delightful home which lay directly in the path of the British army as it marched through New Jersey flushed with the victories of Long Island. His property was desolated, and his house and premises were made the scene of rioting and wilful, wanton destruction. He was driven from his estate, and compelled to seek refuge in Monmouth County. The enemy followed him to this retreat, seized him in his bed at night, inflicted upon him every species of insult and injury, and with a brutality which would have disgraced even barbarians, in a most inclement season carried him to New York, where he was made the inmate of a jail, herded with criminals, and subjected to such severe, unprecedented treatment that Congress at last interfered and threatened retaliation. He was at length released; but so enfeebled in health by his sufferings and privations, that he soon succumbed to the result of this treatment, and died in the early part of the year 1781, at the age of fifty-one. He was for many years one of the trustees of his Alma Mater, and one of the most eloquent of the divines of that institution, and its vice-president pronounced his funeral sermon, whose estimate of the character of Mr. Stockton was given in the most touching and sympathetic utterances, and with an eloquence and fervor which was heightened by the truthfulness which adorned his address. "At the bar," said this eulogist, "he practised for many years with unrivalled reputation and success. In council he was wise and firm, but always prudent and moderate. The office of Judge of the Province was never filled with more integrity and learning than it was by him for several years before the Revolution. As a man of letters he possessed a superior genius, highly cultivated by long and assiduous application. His researches into the principles of morals and religion were deep and accurate, and his knowledge of the laws of his country extensive and profound. He was well acquainted with all the branches of polite learning, but he was particularly admired for a flowing and persuasive eloquence by which he long governed in the courts of justice."

He was the last associate justice in New Jersey prior to the Revolution, and of all those who adorned the bench before that event he was undoubtedly the best.

ROYAL WITNESSES.

THE calling of the Prince of Wales as a witness, and the fact of his being sworn in the ordinary way, afford a striking proof that in the eye of the law all men are equal. The privileges (if any) that would attach to the Prince of Wales would not attach to him in his capacity of Prince of Wales or Heir Apparent to the Throne, but simply in his capacity of a peer of the United Kingdom, as Duke of Cornwall. It is curious to think that a peer of the realm, while sitting in judgment on a fellow peer in cases of felony, either as a member of the House of Lords when Parliament is meeting, or as a member of the Court of the Lord High Steward when Parliament is prorogued or dissolved, can give his verdict without oath upon his honor, whereas he cannot be examined as a witness in any cause, whether civil or criminal, or in any court of justice, whether it be an inferior court or the House of Lords, unless he be first sworn or make the affirmation to which by statute the sanction of an oath is attached. "The respect," as Taylor, in his "Law of Evidence," observes, "which the law shows to the honor of a peer does not extend so far as to overturn the settled maxim that *in judicio non creditur nisi juratis*." A peer was, however, permitted under the old law to answer a bill in Chancery upon his protestation of honor and not upon his oath. This practice led to a curious mistake in an Irish case. A newspaper proprietor named Birch sued Sir William Somerville — afterwards Lord Athlumney — when Chief Secretary for Ireland, for an alleged breach of contract to pay him for articles written in the interest of the Government. The late Lord Clarendon, the Lord Lieutenant of Ireland of the day, was subpœnaed as a witness. An attestation of honor instead of an oath was by mistake administered to him, and he was then examined and cross-examined without any objection being taken to the reception of his evidence. A motion for a new trial was made on the ground that the testimony of an unsworn witness had been received; but the Court, having ascertained that the losing party had from the first been aware of the irregularity, held that the objection came too late, and the rule was accordingly discharged. (Birch *v.* Somerville, 2 Ir. L. Rep. N. S. 243.)

Closely connected with the examination of princes of the blood as witnesses is the possible examination of Royalty itself in a court of justice.

In the impeachment of the Earl of Bristol, in the early part of the reign of Charles I., a curious constitutional question arose, which Lord Campbell, in his "Lives of the Chancellors," tells us very much perplexed the Lord Keeper, who was, curious to relate, the Lord Coventry of the day. It remains still undetermined. The Earl of Bristol, in his defence, relied upon communications which had passed between him and the King, when Prince of Wales, at Madrid, and proposed to call the King himself as a witness. The Lord Keeper gave it as his opinion that the Sovereign cannot be examined in any judicial proceeding, under an oath or without an oath, as he is the fountain of justice, and since no wrong may be imputed to him, the evidence would be without temporal sanction. On the other hand, the hardship of an innocent man being deprived of his defence by the heir to the Crown becoming king was urged, and much stress was laid on the doctrine that substantial justice ought to be paramount to all technical rules. A proposal was made, which could not be resisted, that the judges should be consulted; they however declared on a subsequent day that his Majesty, by his Attorney-General, had informed them that, "not being able to discuss the consequence which might happen to the prejudice of his crown from these general questions, his pleasure was that they should forbear to give an answer thereto." (2 Campbell's

Lives, pp. 510, 511.) Lord Campbell, writing in 1845, apprehends that the Sovereign, if so pleased, might be examined as a witness in any case, civil or criminal, but must be sworn, although there would be no temporal sanction to the oath. He likewise states that in the Berkeley Peerage case, before the House of Lords in 1811, there was an intention of calling George IV., then Prince Regent, and as such exercising some royal prerogatives, as a witness; the general opinion being that he might have been examined, but not without having been sworn. It seems strange to think that eighty years afterwards another stage of this Berkeley Peerage case deprived one of the parties in a case in which the Prince of Wales of the day was actually examined of the advocacy of the Attorney-General. — *Law Times.*

DIVORCES ON CONDITION.

By David Werner Amram.

THERE is perhaps no more striking and anomalous feature in any legal code than the provision of the ancient Hebrew law embraced under the above title. It evinces great subtlety on the part of its framers, and at the same time is a mark of the genuine humanitarian spirit in which the Pharisaical Doctors laid down the law and executed it.

The Mosaic law (Deut. xxv. 5–10) provided that when a man died leaving a widow without issue, it became the duty of his brother to marry her; or if he refused to do so, to express publicly his intention and submit to the ceremony of Halisa, or drawing off the shoe, which was performed before the elders of the city. The widow drew off the shoe of her unloving brother-in-law, and spitting before him, said, "Thus shall be done to the man who will not build up his brother's house" The purpose of this law was to preserve the memory and name of the deceased in the names of the children of his wife begotten by his brother; it had the further effect of preventing the too minute subdivision of the property of the deceased, for the brother marrying the widow became the sole heir. Thus under the Mosaic law the woman on the death of her husband became *ipso facto* the betrothed of her brother-in-law, and no stranger could marry her until the brother-in-law had renounced his right.

Naturally this law often worked a hardship, the woman being compelled to marry a man who might be personally odious to her, and perhaps to pay heavily for the privilege of being released from the enforced betrothal. To meet this case the Rabbis invented the Divorce on Condition, whereby the law of Moses, which could not be abrogated, was neatly evaded. The husband on his sick-bed, believing the end to be near, gave to his wife a Bill of Divorcement, coupled with the condition that it should not go into effect until his death, and be null and void should he recover from his sickness. The effect of this was that she remained a wife until the moment of his death, when by force of the condition annexed to the Bill of Divorcement, she became not his widow but a divorced woman, and thus was saved from the brother-in-law. To meet the objection that there could be no divorce after death, the Rabbis argued that the Bill of Divorcement worked retroactively, and that it dated as of the day of its delivery to the wife; that the death of the husband was like any other event, merely a condition, which being fulfilled made the divorce absolute and indefeasible.

In carrying out this law, the Rabbis departed widely from the precedents. The strict rules of law required that to constitute a valid divorce there must be actual delivery of the Bill of Divorcement to the wife or her legally constituted agent or attorney during the lifetime of the husband. Yet in a case where the husband had given the Bill of Divorcement to a messenger with instructions to deliver it to his wife, stating at the same time that its purpose was to protect her from the marriage with the brother-in-law, the Rabbis held it to be a valid divorce, although the husband had died before the Bill had been delivered.

Once established, this form of the Bill of Divorcement was used to meet another case, which under the old law had often resulted in great hardship to the wife. The Jewish law knew of no presumption of death from long absence, so that if a man went abroad and died there, his wife was ever regarded as a married woman, and prevented from remarrying until actual proof was had of her husband's death. In those days an unprotected woman was in a really unfortunate condition; they called her the *Aguna* (the forlorn one). Here again the convenient Divorce on Condition was invoked as a preventative measure. Before setting out on his journey to distant lands, the husband gave his wife a Bill of Divorcement, with the condition annexed that it should go into effect if he did not return within a certain number of days, but to be null and void if he did return within the specified time. If then, as often happened in those days, he was murdered, or carried away to a distant land as a slave, his wife was free to contract a second marriage after having waited the prescribed length of time, after which the divorce became of full effect.

When first introduced, this form of divorce was in the nature of a free-will offering by the generous husband to his wife to protect her from trouble in the event of his death; but as it sometimes happened that a husband would without cause depart for distant lands, leaving his wife uncared for and helpless, this custom became law and obligatory. Every husband, journeying to distant lands, was obliged to leave with his wife a Bill of Divorcement "on condition."

When the Divorce on Condition had become a fixed institution, it became the theme for much discussion and fine hair-splitting in the colleges. The Rabbis distinguished between *conditions precedent*, where the divorce became operative at some definite future time or on the happening of some particular event, and *conditions subsequent*, where the Bill of Divorcement by the terms of the condition annexed went into effect on the day of delivery, but was dependent on some future event to make it absolute, failing which it became null. So in the course of one of the discussions in the college of Pumbaditha in Babylonia under the cross-fire of question and answer the following distinction was made by Abaye, the president of the college (A. C. 335): "If a husband on his sick-bed says to his wife, 'Here is your Bill of Divorcement, which shall become operative *when* the sun rises,' and then dies during the same night, there is no divorce, for the condition being precedent, and not having been fulfilled during the lifetime of the husband, the divorce is annulled; for there can be no divorce after death. But if the husband had said, 'Here is your Bill of Divorcement, which shall become operative *as soon as* the sun rises,' it would have been a valid divorce, for the condition in this case is subsequent, and the divorce went into effect immediately on the delivery of the bill, and merely required the rising of the sun to render it absolutely indefeasible; and as the divorce was valid when the bill was delivered, it matters not that the husband died before the condition was fulfilled." That the Divorce on Condition should have given rise to a vast number of hypothetical questions in the schools is but natural. Of all these I will cite one which is interesting on account of the light it throws on Roman criminal law as administered in conquered provinces. As the status of the widow differed materially

from that of the divorced woman, it was important to determine, in cases where the husband sent a Bill of Divorcement from a distant place to his wife, whether he was still alive when the bill was delivered to her. The presumption was ordinarily in favor of the validity of the divorce; and the question arose, what if the husband was known to have been in danger of his life at the time when he gave the bill to the messenger?

"Suppose," once said a disciple to Rabbi Joseph of Pumbaditha, "a man, accused of a capital crime and led before a Court of Justice for trial, sends a Bill of Divorcement to his wife, may we presume that he was yet alive when it was delivered?" To which the Rabbi replied, "If the accused is led before a Jewish tribunal, he is presumed to be yet alive when the bill is delivered, for a Jewish tribunal is loath to condemn man to death; but if he is led before a Court of the Heathen (*alias*, Romans), I should be obliged to decide otherwise, since a man *accused* before them is as good as dead."

LONDON LEGAL LETTER.

LONDON, July 4, 1891.

WE are at last attempting to grapple with the subject of legal education. It is notorious how far we in the old country are behind you in this matter; singularly enough, although no country has ever produced a more splendid roll of practising lawyers, or for that matter a finer type of the legal practitioner, yet we are nowhere in the sphere of formal instruction in law. This arises partly from our virtues, partly from our faults. We venerate the actual; we like to see legal principle in every-day operation; we weary of the mists and vapors which hang round the original springs in the uplands of history. Your readers are no doubt more or less familiar with the mode of becoming an English barrister; every one has smiled at our eating of dinners, our not too embarrassing examinations. A smaller number, however, are aware that for a good many years there has been in existence a system of law lectures delivered in the various Inns of Court by competent authorities on all the main branches of the science, including of course Roman, Constitutional, and International Law, and Jurisprudence. The flaw in the scheme was that, attendance not being compulsory, very few students ever went to the lectures at all. These instructions exerted not the slightest influence on the education of the professsion.

The system has for long been admitted to be unsatisfactory, but it is only quite recently that the Benchers of the Inns of Court have brought their deliberations to a practical conclusion. It is now proposed to inaugurate a fully organized scheme of legal instruction; there are to be Professors, Readers, and Tutors, the scope of the instructions will be enlarged, and I gather that students in the future will be required, or at least find it necessary, to attend the prelections. Lord Justice Lindley and Mr. Justice Matthew have identified themselves prominently with the movement for a higher standard of legal education. Nothing beyond the outlines of the scheme has at present become known; but such as they are they have met with very general approval.

The case of the Bishop of Lincoln, which is at present before the Judicial Committee of the Privy Council on appeal from the judgment of the Archbishop of Canterbury, continues to excite the greatest interest. When the proceedings against the Bishop of Lincoln for alleged ritualistic practices were commenced in the first instance, an obsolete jurisdiction of the Primate was revived, in order if possible to meet the objections of the High Church party to a civil tribunal. This well-meant effort, however, was only partially successful; High Churchmen, while entertaining the highest respect for the Archiepiscopal Court, declined to regard it as a constitutional tribunal, asserting that the proper court to deal with such matters was one consisting of all the bishops of the province of Canterbury. In the event the Archbishop and his episcopal assessors found for the bishop on every substantial point; in so doing

they disregarded previous decisions of the Privy Council on matters of ritual. In the proceedings on appeal, the bishop does not appear; he refuses, of course, in any way to recognize a civil tribunal in matters spiritual. The result of the case is awaited with no little anxiety. Hitherto the decisions of the Privy Council on ritual questions have been a dead letter; all efforts have utterly failed to restrain the spread of the Catholic ceremonies.

The Lord Mayor has not received much eulogy for his most recent exertions as a public peacemaker. After the settlement of the recent omnibus strike, Lord Mayor Savory addressed a letter to the Directors of the General Omnibus Company, suggesting that they should drop all legal proceedings which had been commenced against workmen in respect of acts of violence and intimidation committed during the strike, in view of the pacification arrived at. To this appeal the directors somewhat forcibly replied that they regretted the Lord Mayor should wish so much favor shown to men who had broken the law; and only a few days since, Sir Peter Edlin, in passing smart sentences on the men proved to have been guilty of improper conduct, commented unfavorably on outside efforts to interfere with the operation of the law. Of course the Lord Mayor was actuated only by the most good-natured motives; no man is less likely to smile upon law-breaking even in its mildest form.

One of the defects of the High Court of Justice is that the court accommodation is insufficient if all the judges happened to sit at once. We had an illustration of this the other day. Two judges could find no court-rooms; so for one a tribunal was fitted up in a sort of consulting-room, while the other was ensconced in the old Hall at Lincoln's Inn, now in disuse, but once the scene of the pomp and ceremony of the High Court of Chancery.

Miss Wiedeman, the German governess, has on the third trial at last succeeded in getting a verdict in the action she brought against the Hon. Robert Walpole for breach of promise of marriage. The jury gave her £300, which she regards as a very inadequate solatium. Of course this sum will be quite insufficient to meet legal expenses; moreover the verdict is subject to the decision of a question of law, the judge at the trial having admitted some very vague evidence as corroboration of the promise to marry. Breach of promise actions appear in every succeeding Cause list in undiminished numbers. * * *

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 these hot, sweltering midsummer days it is easy enough to live up to that part of our title which calls upon us to be "useless;" but when it comes to being "entertaining" under such depressing conditions, the Editor may be excused for groaning a little in spirit. Many of the Editors of prominent law journals — the "American Law Journal," the "Albany Law Journal," and the "Chicago Legal News," for example — have deserted their posts, and are making the "grand tour" of Europe. No such good luck has befallen the Editor of the "Green Bag," and his heart rejoices if he can get an occasional "day off." His turn may come, however, and he has carefully preserved Brother Thompson's directions (see the "American Law Review") as to what to do and what not to do when the important time comes. In the mean time he resigns himself patiently to his lot, and strives to add something to the pleasure of his readers, all of whom, judging from the orders received for changes in addresses, insist that the "Green Bag" shall follow them in their summer wanderings.

WE are indebted to Judge Murray Edward Poole, of Ithaca, for the following list of distinguished Alumni of the Law School of Iowa State University.

Authors: 1873, Emlin McClain, compiler of Annotated Code and Digest of Iowa; 1881, Charles B. Elliott, author of articles on "North-Eastern Fisheries and the Legislature and the Courts."

Chancellor Law School: 1873, Emlin McClain, Law Department, State University, Iowa.

Financier: 1867, W. W. Baldwin, Land Commissioner, C. B. & Q. R. R.

Foreign Minister: 1884, Alexander Clark, Liberia.

Judge U. S. Supreme Court: 1874, Joseph C. Helm, Chief-Justice, Colorado.

Judges State District Courts: 1867, David Ryan, Iowa; 1868, John W. Harvey, Iowa; 1869, Robert C. Henry, Iowa; 1869, Charles H. Lewis, Iowa; 1872, J. C. Elwell, Colorado; 1873, J. Perry Conner, Iowa; 1873, William J. Jeffries, Iowa; 1875, Nathan W. Macy, Iowa; 1875, John W. Nowlin, South Dakota; 1877, George H. Carr, Iowa; 1878, Marcus Kavanagh, Iowa; 1879, John Campbell, Colorado; 1879, Horace E. Deemer, Iowa; 1881, Scott M. Ladd, Iowa.

Judge Municipal Court: 1881, Charles B. Elliott, Minneapolis, Minn.

Lawyer: 1866, Thomas S. Wright, General Solicitor of "Rock Island" Road.

Lecturer in Law School: 1881, Charles B. Elliott, Law Department, University of Minnesota.

Members of Congress: 1886, Joseph Lyman; 1870, William E. Fuller; 1877, John J. Seerley; 1881, J. H. Sweeney.

President State Senate: 1880, Jefferson B. Browne, Florida.

Reporters State Supreme Court: 1875, John L. Griffiths, Indiana; 1881, Nath. B. Raymond, Iowa.

State Secretary of State: 1874, Frank D. Jackson, Iowa; 1880, William M. McFarland, Iowa.

State Attorney-General: 1870, Smith McPherson, Iowa.

LEGAL ANTIQUITIES.

CHARONDAS, in order to check capricious innovations in his Thurian laws, ordained that whoever should propose any alteration in them should remain in public with a rope about his neck, till the people had formally decided upon its adoption or rejection. In the latter case the rope was tightened, and the reformer strangled. It is hardly necessary to observe that few alterations were proposed. Only three instances are recorded by the Greek historians; and of these, but one refers to criminal legislation.

In 1175, immediately after his release, William of Scotland made a law for the repression of theft after the English model, but much more drastic. It was, in the terms of the assize of Clarendon in 1166, enacted by Henry II., that any man defamed as a malefactor by the oath of twelve lawful men of the hundred and four men of any vill, was to go to the ordeal of water. William's enactment was a stronger measure. Whoever was accused of theft or theft bote — that is, compounding with a thief or sharing his plunder — might, on oath of the bailie or grieve and three other leal men of the vill, be taken and made to underly the ordeal of water. But if to these four oaths the oaths of three old men were superadded, instant execution followed without either ordeal or battle.

FACETIÆ.

Mr. Jasper. Jedge, I wants to pucchase de ve'y stronges' kin' e' 'vorce papers dat you 'm got in the cote.

Judge. Divorce papers, eh? Have you and your wife had trouble?

Mr. J. No, sah! Dar 'd be a little prebious un'er de suckemstanzas, cos we haid't done been tuk inter de shackles er mattermony yit.

Judge. What! Not married yet, and asking for divorce papers?

Mr. J. Dat 's de case, Jedge; but yo' see I 'm gwinter take a partner nex' week, an' weze ten'in' to mobe ober in the lowlan's whar cotes iz mighty sca'se, an' I wants deze papers whar I kin lay mer han's on 'em. I 'm oner deze precautionous citerzens, Jedge, dat berlebes in de maxiums, "In timer peace, prepar' for war," an' I prefers ter hab deze dockermen's whar I kin forwif 'bolish de lady wid dim ef she done grow rantankerous. Ol' Parson Widemouf hain't been proach dat Foolish Vargin case ter me fo' nuffin, an' I wants to gyard merse'f ergin de same 'speunce.

An old man was on the witness-stand, and was being cross-examined by the lawyer. "You say you are a doctor, sir?" "Yes, sir; yes, sir." "What kind of a doctor?" "I makes intments, sir, I makes intments." "What 's your ointment good for?" "It 's good to rub on the head to strengthen the mind." "What effect would it have if you were to rub some of it on my head?" "None at all, sir; none at all. We must have something to start with."

An old Maine judge who was a stern Prohibitionist was once trying a case in which a certain man was accused of selling liquor. Everybody, including the judge, was morally certain that the man was guilty, but on the evidence the jury felt obliged to acquit him. On hearing the verdict the judge arose and remarked: "It is evident by the goings on in this village that some one is selling. I 'll fine you $10 and costs," he added, turning to the prisoner; "and if I ever hear of your selling again I will send you to jail."

"Do you know the value of an oath?" asked the judge of the old darkey who was to be the next witness.

"Yes, sah, I does. One ob dese yeah lawyers done gib me foah dollars foh to swear to suffin. Dat 's de value of an oath. Foah dollars, sah."

And then there was consternation in the court-room.

Judge Duffy. And you saw the prisoner strike the complainant?

Witness. Yes, your honor.

Judge. And had he given him provocation?

Witness. Why, you see he pulled out a roll of bills.

Judge. And you mean to say the prisoner struck him for that.

Witness. Well, he struck him for some of it.

"No," said the condemned, "I don't think much of your judges; there 's nothing polite or gentlemanly about 'em, you know. There 's Recorder Smyth, for instance. He gets me into his court and asks me, 'Are you guilty, or not guilty?' And when I tells him, 'Not guilty,' instead of taking my word, as one gentleman should take another's, he goes to work and leaves it to a dozen fellows that never knew me a second in all their lives. 'T ain't square, that 's what I say; and 't ain't good manners, neither."

THE prisoner at the bar was doing his best to make out his case. "I did n't know," he said, "that there was any — "

"I beg your pardon," interrupted the prosecutor. "Ignorance of the law excuses no man."

"Oh, does n't it?" responded the prisoner, with fine sarcasm; "then what are you asking me to excuse you for?"

IN a case against a respondent charged with the crime of arson, one witness was asked by the court: "When you looked in the fireplace that evening, was there anything combustible there?" To which the witness replied, after deliberating: "I sware, Jedge, I did n't see nothing *a-bustin* there."

AT an examination of candidates for admission to the Maryland Bar, one of the aspirants, now a prominent criminal lawyer, was asked, —

"In case a *life tenant* holds over, what is the proper form of action?"

The answer came promptly: "Ejectment."

On being sent to the law library to make a search for authorities, the candidate prepared a very readable brief on the subject.

Scene, a Court-Room. Time, 1890.

JUDGE. Your age?

LADY WITNESS. Thirty years.

JUDGE (incredulously). You will have some difficulty in proving that.

LADY WITNESS (excitedly). You 'll find it hard to prove the contrary, as the church register which contained the entry of my birth was burned in the year 1845.

JUDGE. You say your father died from a sudden shock to his system. Was he an electrician?

PRISONER. No. He fell from a scaffold.

JUDGE. Oh, a bricklayer, was he? Was it his own fault?

PRISONER. I think it was the sheriff's fault, your honor.

NOTES.

"THE sparks of all the sciences in the world," said Sir Henry Finch, "are raked up in the ashes of the law."

A MARYLAND judge recently held Bavaria to be a province of Austria; and a Baltimore attorney cited "that eminent English barrister Justinian, one of the early authorities on the law of bailments."

AT Stafford, England, a judge sentencing a prisoner convicted of uttering a forged one-pound note, after pointing out to him the enormity of the crime, and exhorting him to prepare for another world, continued as follows: "And I trust that through the merits and mediation of our Blessed Redeemer you may there experience that mercy which a due regard to the credit of the paper currency of the country forbids you to hope for here."

WHEN King Frotho the Third, in the misty age of Denmark, sanctioned the settlement of controversies by the sword, he said he deemed it much fitter to contend with weapons than with words.

AN extraordinary superstition was brought to light in Scotland, a short time ago, during the course of the trial of a man named Laurie for the murder of an English tourist, a Mr. Rose. The police were requested by the counsel in the case to explain the mysterious disappearance of the dead man's boots at the time of the inquest held on his body. With manifest reluctance the inspector in command of the local constabulary informed the court that he had directed a policeman to take the boots down to the seashore and bury them in the sand below high-water mark. The purpose of this extraordinary measure was to "lay" the murdered man's ghost, — an object which, according to ancient Scotch tradition, may be obtained by burying his boots under water. For ghosts are popularly credited with as deep-rooted an aversion to water as they have to walking barefooted; and Mr. Rose's ghost, being shoeless, would therefore abstain from disturbing people in the neighborhood of the spot where the murder was committed.

The sentiment with regard to "dead men's shoes" and to the dislike of ghosts to run about barefooted prevails not only among the masses, but also among the classes in Scotland, and is based on an ancient superstition that the dead must pass through a kind of purgatory. A curious old manuscript in the Cotton Library, dating

from the sixteenth century, states that the dead must pass through "a greate lande full of thorns and furzen" before reaching heaven, and, with a view of preserving their feet from any scratch, cut, or other injury on the road, a pair of boots is always laid with them in the grave. The shoes thus buried — the custom prevails in Scotland to this day — are described as "hellshoon;" that is, shoes for passing through hell.

A somewhat similar superstition prevails among the Tsiganes of Hungary, and also among the peasants of Tyrol, who moreover believe that the ghosts of persons who have been buried without "hellshoon," and are therefore unable to get across the thorny tract of country which separates death from life eternal, assume the form of toads. Consequently toads are regarded with pity and sympathy by all good people in Southern Germany and along the banks of the Danube. The poor creatures are supposed to be hopping about, astray and bewildered, striving to find their way to some particular shrine where their future penance will be remitted. At the famous church of St. Michael in Schwatz, on the evening before great festivals, but when no one is present, an immense toad is reported to come crawling before the altar, where it kneels, and weeping bitterly, prays that its period of penance may be brought to an end, and that the omission to put the "hellshoon" in the grave of the human form of its being long ago may be pardoned through the intercession of St. Michael. — *N. Y. Tribune.*

ENGLAND, Germany, and the United States are the only three countries which permit actions for breaches of promise of marriage on grounds of wounded feelings. Neither in Italy, Austria, Holland, nor France does a mutual promise involve obligation of marriage, and, except in cases where the promise has been followed by betrayal, a defaulting lover is liable only in so far as his or her fault has caused actual pecuniary damage. In Germany an engagement invariably assumes an official form; and should one of the parties thereto withdraw, the other may claim damages to the extent of a fifth of the dower agreed upon. German bridal dowers are proverbially small, and the fractional fifth awarded to the jilted sweetheart by way of solace for wounded feelings falls considerably short of the average damages which an American or English jury would award.

GENERAL knowledge is unquestionably necessary for the lawyer. Ludicrous mistakes have frequently occurred through the deficiencies of some lawyers in this respect. We have heard of an anecdote of an eminent barrister examining a witness in a trial the subject of which was a ship. He asked, among other questions, where the ship was at a particular time. "Oh," replied the witness, "the ship was then in quarantine." "In Quarantine was she? And pray, sir, *where* is Quarantine?"

This reminds us of an instance given by Mr. Chitty of the value of general knowledge to a lawyer. "A certain eminent judge was so entirely ignorant of insurance causes, that after having been occupied for six hours in trying an action "on a policy of insurance upon goods (Russia duck) from Russia, he, in his address to the jury, complained that no evidence had been given to show how Russia ducks (mistaking the *cloth* of that name for the *bird*) could be damaged by sea water and to what extent."

IN Malta the English let the municipality administer their own laws, and frequently that means that the affair is referred to the clergy.

There is a fine church in process of building just without the wall of Valetta, but it progresses very slowly. It is all the work of a single man's hands. He was a stonemason, and he assassinated a brother workman in cold blood. The clergy condemned him to build this church alone and with his own money, or suffer the penalty of the criminal courts. One may see the murderer working out his expiation early and late.

Two prominent Albany lawyers — one through whose veins trickles Southern blood, and the other whose ancestors date their residence in Albany back to its early days — drove together out into the country Saturday to appear as opposing counsel in an action of a trivial nature. The Southron finished, and the defence opened. The opposing lawyer said that the statements made by the plaintiff's lawyer were false, and intimated that the lawyer had made them knowing that they were not correct. He was proceeding nicely, when whang! a chair struck him on the side of the head. To tell the jury that his statements were lies was too much for the Southern man, and

he resented. Then the two lawyers clinched. The judge rapped for order, but chaos increased. The plaintiff and the defendant began pummelling each other; and one of the jurors, in endeavoring to stop hostilities, received a black eye. When quiet was restored, the judge said that if the fighting was not stopped he would adjourn the case. The assaulted lawyer invited his opponent out into the road; but the challenged party did not care for further personal encounter, and apologized for his action. The lawyers returned to the city in separate conveyances.—*Albany Journal.*

A CASE which occurred a short time ago in England, at the Chester Assizes, shows the inexpediency and injustice of detaining a jury for any excessive period in the hope of getting a verdict. A married woman named Cutler had been convicted of perjury, the trial lasting fifteen hours, and the verdict being found shortly after midnight. The presiding judge, Mr. Justice Vaughan Williams, sentenced the prisoner to five years' penal servitude. The case excited much comment, and an effort was made to obtain the views of the jury, in order to press the Home Secretary for a reduction of the punishment. One juryman writes: "I was one of the five to hold out against the verdict of guilty. You will naturally inquire why I gave way. One reason was that we had sat from 9.30 A. M. until midnight, and it was of great importance that I should be at home the following morning. Had it not been for that, I would have sat for a week without giving way, because I considered that there was a doubt in the case, and that the woman should have the benefit of it. I did not think the sentence would have been more than six months at the most." Another juryman says: "I was very reluctant in convicting the prisoner, as there are very grave doubts in the case. For myself I was in favor of giving the prisoner the benefit of the doubt." A third juryman writes: "I think there has been a miscarriage of justice. Although a verdict of guilty was returned, many of us were very hard to convince, but, owing to the late hour, we felt that a verdict must be arrived at. As to the sentence, I should like it to be considerably reduced or entirely cancelled." A fourth juryman says that the verdict turned on certain plans of premises, and he was so dissatisfied with the sentence, that on the following day he went to inspect them, and he made up his mind at once that, had he seen the premises prior to the trial, he certainly would not have given a verdict of guilty. He adds explanatorily: "The jury were about equally divided, but none were strongly against the prisoner." — *Legal News.*

Recent Deaths.

JUDGE JAMES A. MILLIKEN, for many years a prominent member of the Washington County Bar, Maine, died July 8. He had held various town offices, had served a term in the Legislature, and was chairman of the commission created in 1869 for the equalization of municipal war-debts. He was elected judge of probate of Washington County in 1872, and was three times re-elected. He served sixteen years, but resigned in 1888 on account of failing health. He was seventy-eight years old.

ISAAC HAZLEHURST, one of the oldest members of the Philadelphia Bar, died on July 7. Mr. Hazlehurst was born in Philadelphia Nov. 27, 1808, and was one of eleven children of Samuel Hazlehurst. He graduated from Trinity College in the class of 1828, and then began the study of law with Joseph R. Ingersoll, and was admitted to the bar in Philadelphia April 22, 1831.

Mr. Hazlehurst early in life took an active part in politics, and was the first City Solicitor under the act of consolidation, serving for two years. He was also, for several years, a member of the State Legislature, and was a Native American candidate for Governor, but failed of election. In 1841 Mr. Hazlehurst was elected a Vice Provost of the Law Academy of Philadelphia, serving continuously in that position until 1855. He took an active interest in various public and charitable institutions, and at the time of his death was the oldest member of the original Board of Trustees of the Pennsylvania Institution for the Deaf and Dumb. He was also a member of the Board of Counsel of the House of Refuge, one of the original Directors of the Pennsylvania Fire Insurance Company, and a member of the Board of the Franklin Fire Insurance Company.

JAMES M. LOVE, of Keokuk, Iowa, one of the oldest United States District Judges, died at his home on July 2. He was seventy-two years old. He was born in Fairfax County, Va., and was educated in the common schools and in a Virginia academy. Removing to Ohio, he studied law with Judge Richard Stillwell at Zanesville, and was admitted to the bar. In 1846 he entered the army as Captain of Company B, Third Regiment of Ohio, Volunteers, for service in the Mexican war, and served until the close of the term of their enlistment, in 1847. He removed to Keokuk in 1850, and in 1852 was elected a State Senator. In 1885 he was appointed a United States District Judge for the District of Iowa. When the division was made in 1883, he was made Judge for the Southern District, which position he held until death.

REVIEWS.

MR. LEWIS H. CAMPBELL, of Washington, D. C., has written an exceedingly interesting history on "The Patent System of the United States." In a small pamphlet, of only fifty-five pages, the author gives the history of the United States patent system, so far as it relates to the granting of patents. Much new and valuable matter is contained therein, and no one who is interested in the subject of patents will fail to find much to interest and instruct. The work should have a hearty reception from the legal profession.

THE University Faculty of Political Science of Columbia College have commenced the publication of a series of STUDIES IN HISTORY, ECONOMICS, AND PUBLIC LAW. We have received the first two numbers: No. 1, "The Divorce Problem," by Walter Francis Wilcox, Ph. D.; No. 2, "The History of Tariff Administration in the United States," by John Dean Goss, Ph. D. Other valuable papers will follow. Like the "Johns Hopkins University Studies," this series will appeal to all intelligent readers throughout the country.

THE July COSMOPOLITAN is beautifully illustrated, and contains a varied and interesting table of contents. "Submarine Boats for Coast Defence," by W. S. Hughes, will, perhaps, attract leading attention. "Trout-Fishing in the Laurentides," by Kit Clarke, will interest every lover of fishing. Other articles which call for especial mention are "The Diamond Fields of South Africa," by E. J. Lawler; "Two Modern Knights-Errant," by James Grant Wilson; "Country Life in the Honduras," by Gertrude De Aguirre; "Ostrich Farming in California," by Emma G. Paul. There is the usual supply of fiction.

THE July CENTURY, offers its readers an exceedingly interesting table of contents, namely: "A Day at Laguerre's" (illustrated), by F. Hopkinson Smith; "Provençal Bull-fights" (illustrated), by Joseph Pennell; "Restraint," by Margaret Crosby; "Mr. Cutting, the Night Editor," by Ervin Wardman; "Italian Old Masters" (illustrated), by W. J. Stillman; "Chatterton in Holborn," by Ernest Rhys; "General Miles's Indian Campaigns" (illustrated), by Major G. W. Baird; "July," by Henry Tyrrell; "Greeley's Estimate of Lincoln," by Horace Greeley; "The Squirrel Inn," III., by Frank R. Stockton; "Love Letters," by C. P. Cranch; "The Faith Doctor," VI., by Edward Eggleston; "Across the Plains in the Donner Party, 1846" (illustrated), by Virginia Reed Murphy; "Arrival of Overland Trains in California in '49," by A. C. Ferris; "At the Harbor's Mouth," by Walter Learned; "The Force of Example," by Viola Roseboro'; "For Helen," by Grace H. Duffield; "A Lunar Landscape" (pictures from negatives taken at Lick Observatory), by Edward S. Holden; "The Drummer" (pictures by Gilbert Gaul), by Henry Ames Blood; "Tao: the Way. An Artist's Letters from Japan," by John La Farge; "Paris: the Typical Modern City," by Albert Shaw.

SCRIBNER'S MAGAZINE for July (beginning the tenth volume) has its leading article on a subject which attracts particular attention at this season, — "Speed in Ocean Steamers." The author, A. E. Seaton, is connected with a large ship-building firm in England. The illustrations show a number of the fastest steamers afloat. This issue contains also two illustrated out-of-door articles, — one on "Izard Hunting in the Spanish Pyrenees," and

the other on fishing for the Black Sea-Bass on the Pacific Coast. The number is unusually rich in fiction, containing four complete short stories, — by George A. Hibbard, the late John Elliott Curran, Edith Wharton, and George L. Catlin, U. S. Consul at Zurich. There are three articles of political importance, — one on "Starting a Parliament in Japan," by Prof. John H. Wigmore, of the University of Tokio; another giving a civil engineer's glimpse of the revolutionary Republic of Hayti; and the third summarizing the romantic history of outlawry on the Mexican border.

THE July LIPPINCOTT'S MAGAZINE opens with a charming novel, by Mrs. Amelia E. Barr, entitled "A Rose of a Hundred Leaves." Of the other contents the article which will excite most interest is entitled "The Future of Cuba," and is written by Frank A. Barr. "Talleyrand and Posterity," by C. R. Corson, and "Some Recent American Changes," by James W. Gerard, are well worthy of perusal. The other contents call for no especial mention.

THE contents of HARPER'S MAGAZINE for July are varied and interesting. They include "Peter Ibbetson," Part II., by Geo. Du Maurier; "Christianity and Socialism," by Rev. J. M. Buckley; "An Imperative Duty," a novel by William Dean Howells; "Some American Riders," third paper, by Col. Theodore A. Dodge; "Briticisms and Americanisms," by Brander Matthews; "The Republic of Paraguay" (illustrated), by Theodore Child; "The Warwickshire Avon" (illustrated), third paper, by A. T. Q. Couch; "Oliver Wendell Holmes," by George William Curtis; "London, — Saxon and Norman" (illustrated), by Walter Besant. There are also several short stories. A striking portrait of Oliver Wendell Holmes forms the frontispiece.

THE place of honor in the July ARENA is given to a sketch of Oliver Wendell Holmes, by George Stewart, LL.D. An admirable portrait accompanies the article. The other contents of this number are "Plutocracy and Snobbery in New York," by Edgar Fawcett; "Should the Government control the Railways," by C. Wood Davis; "The Unknown," by Camille Flammarion; "The Swiss and American Constitutions," by W. D. McCrackan; "The Tyranny of all the People," by Rev. Francis Bellamy; "Revolutionary Measures and Neglected Crimes," by Prof. Joseph R. Buchanan; "Æonian Punishment," by Rev. W. E. Manley; "The Negro Question," by Prof. W. S. Scarborough; "A Prairie Heroine," by Hamlin Garland.

THE ATLANTIC MONTHLY for July presents its readers with the following attractive table of contents: "The Lady of Fort St. John" (Prelude, I.–III.), by Mary Hartwell Catherwood; "Underground Christian Rome," by Rodolfo Lanciani; "The Old Rome and the New," by W. J. Stillman; "Plantation Life in Arkansas," by Octave Thanet; "The Male Ruby-Throat," by Bradford Torrey; "When with thy life thou didst encompass mine," by Philip Bourke Marston; "The House of Martha" (XXXVII.–XL.), by Frank R. Stockton; "The Story of a Long Inheritance," by William M. Davis; "English Railway Fiction," by Agnes Repplier; "The Neutrality of Switzerland," by W. D. McCrackan; "College Examinations," by Nathaniel Southgate Shaler; "Tintoret, the Shakespeare of Painters," by William R. Thayer; "The Finding of Miss Clementine," by Elizabeth W. Bellamy.

BOOK NOTICES.

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. XVIII. Bancroft-Whitney Company, San Francisco, 1891. $4.00.

This volume contains one hundred and twenty-five cases selected from fourteen volumes of the official State reports as follows: 89 Ala., 84 Cal., 58 Conn., 123 Ind., 79 Iowa, 77 and 78 Mich., 42 Minn., 100 Mo., 9 Mont., 26 Neb., 121 N. Y., 105 N. C., and 76 Tex.

It has, in addition thereto, the usual number of shorter notes, cross references, and current references.

We have exhausted our vocubulary of praise in noticing previous volumes of this series. It is saying all that need be said to state that the present volume is in every way equal to its predecessors.

LAWYERS' REPORTS ANNOTATED, Books IX. and X., containing all current cases of general value and importance decided in the United States, State, and Territorial Courts, with full annotation by ROBERT DESTY. Lawyers' Co-operative Publishing Company, Rochester, N. Y. $5.00 per volume.

The publishers are keeping this series of reports up to the high standard of excellence which they promised. Under the able editorship of Mr. Desty, whose annotations merit the highest praise, and whose selection of cases is most judicious, the reports cannot fail to be of great value and assistance to the profession. The indexing is exceptionally thorough and complete, and is supplemented by a brief résumé under logical arrangement of subjects discussed and points decided in the cases reported.

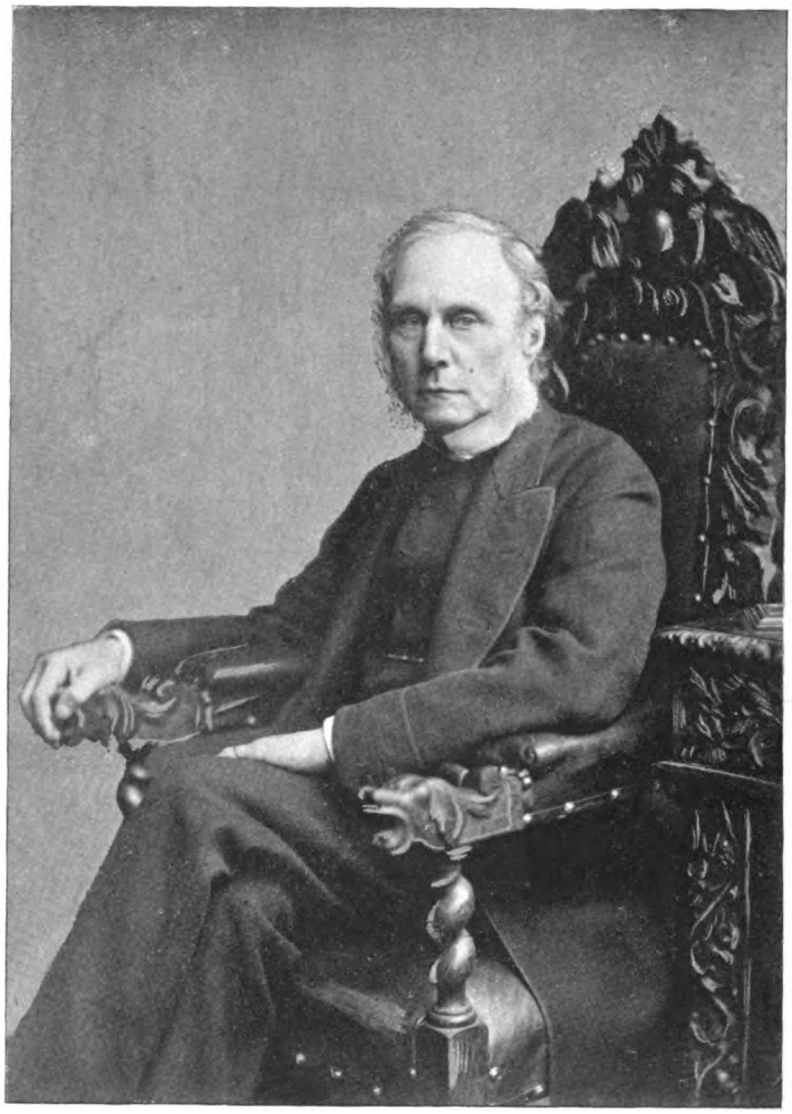
A MONOGRAPH OF THE LAW OF LOST WILLS. By W. W. THORNTON. Callaghan & Company, Chicago, 1890.

This interesting brochure has just come into our hands. It is a very thorough and useful examination of an important branch of the law of wills which is but barely touched upon in the standard treatises. The author has evidently examined, abstracted, arranged, and digested all the English and American cases there are upon the subject. The result of his work is so satisfactory that no lawyer who has a large practice in the administration of estates can safely dispense with this little volume.

It is interesting to notice how many contributions to legal literature have been made by the law librarians of the present generation. Among those whose names occur to us at the present writing are Mr. Berryman, State Librarian of Wisconsin; Mr. Gould, assistant Librarian of the Social Law Library, Boston; and Mr. Thornton, the State Librarian of Indiana. A cultivated lawyer who accepts the position as librarian of a large State or Bar Library has exceptional facilities for the examination of authorities; and the works of these three writers show what good use can be made of their opportunites.

CONSTITUTIONAL LEGISLATION IN THE UNITED STATES; its Origin, and Application to the Relative Powers of Congress and of State Legislatures. By JOHN ORDRONAUX, LL. D. T. & J. W. Johnson & Co., Philadelphia, 1891. Law Sheep. $6.00 *net*.

An admirable work, in which the author presents in a clear and interesting manner the entire system of Federal and State Legislation in the United States, as practised under a written constitution. Going back to the foundation of our political system, Mr. Ordronaux traces its development to its present state. The relations which Federal and State legislation bear to each other are fully considered, and an able exposition is given of those administrative powers which, in our dual form of representative government, are sovereign within their several spheres of action. The work cannot fail to interest all students of our history as a nation, and the legal profession will derive both profit and pleasure from its perusal. The book is a pattern worthy of imitation as regards its typographical work.



LORD SELBORNE.

The Green Bag.

VOL. III. NO. 9. BOSTON. SEPTEMBER, 1891.

LORD SELBORNE.

IN view of the fact that the AMERICAN BAR ASSOCIATION at its recent meeting in Boston awarded a gold medal to Lord Selborne for his eminent services in the cause of legal reform, his name becomes of especial interest to the profession in the United States, and a brief biographical sketch of so distinguished a man cannot fail to be welcomed by our readers.

Lord Selborne is the second son of the late Rev. William Jocelyn Palmer, rector of Mixbury, Oxfordshire, England (the son of William Palmer, Esq., of Nazing Park), by Dorothea, youngest daughter of the late Rev. Wm. Roundell, of Gledstanes, Yorkshire, and was born at Mixbury, on the 27th of November, 1812. His school and college career was of the utmost brilliancy. He went first to Rugby and then to Winchester, and in 1830 gained an open scholarship at Trinity College, Oxford, where he graduated first class in classics in 1834, having previously gained the Chancellor's prize for Latin verse ("Numantia") and for the Latin essay in 1831, the Newdigate prize for English verse ("Staffa") in 1832, and in the same year the Ireland scholarship, which was certainly considered the "blue ribbon" of the University until the institution of the Derby scholarship some ten years ago. In the same year that he took his degree he was elected to a fellowship at Magdalen College — of which society he is still an honorary fellow — and obtained the Eldon Law Scholarship. He graduated M.A. in 1837, and was called to the bar at Lincoln's Inn on the 9th June of that year.

Mr. Palmer's upward path in the profession he had chosen was smooth, and it is perhaps hardly an exaggeration to say that from the first its highest rewards were prophesied for him. At that time a reputation such as he had brought with him from Oxford was no mean passport to success in liberal callings and in the world of politics, though no doubt it would be folly to deny that his influential family connections were of much greater service to him. Having attained a very heavy and lucrative practice as a Chancery "stuff," he was created a Queen's Council in April, 1849, and was in due course elected a Bencher of his Inn, and it might be convenient here to sum up his career at the bar by remarking that the Law Reports show that when he had once made his way to the front he was hardly ever left out of a big case in Lincoln's Inn, or any important appeal to the House of Lords. No more need be said in praise of the industry and solid talents of one who yet was never deemed to possess the versatility and genius for law possessed by a Cairns or a Bethell.

As a "political lawyer," Mr. Palmer was an early and pronounced success, and did yeoman service to the Liberal party during the many years he was associated with it in the House of Commons. He was first returned to Parliament as member for Plymouth at the General Election of July, 1847, and is described in the "Dod" of the day as "a Liberal Conservative, favorable to the extension of Free Trade, but friendly to the principle of the Navigation Laws; opposed to the endowment of the Roman Catholic Clergy." He represented Plymouth till July 1852, when he was not re-elected. However, he regained his seat in June, 1853, and held it till March, 1857, when he did not offer himself as a can-

didate; indeed, when in the middle of 1861 Lord Palmerston made him Solicitor-General in succession to Sir William Atherton (who had become first law officer of the Crown on the elevation of Sir Richard Bethell to the woolsack), he was without a seat, though one was soon afterward found for him at Richmond, — a borough in which the influence of the Whig Earl of Zetland was paramount, and which he continued to represent until he was raised to the peerage.

Sir Roundell Palmer became Attorney-General on the death of Sir William Atherton, in 1863,—an office which he of course lost when Lord John Russell's second administration was compelled to resign some three years later. But his party did not long remain in the cold shades of opposition, and on its return to power under the leadership of Mr. Gladstone, in December, 1868, he was offered the Chancellorship. The mission with which Mr. Gladstone was then charged by the country was the disestablishment and disendowment of the Irish Church, and Sir Roundell Palmer differed from his chief on this great question. He publicly stated in a speech made at the time to his constituents that though he was willing to endorse the policy of the Government as far as disestablishment was concerned, he could not concur with its views as to disendowment. He accordingly declined to take office. Owing to this refusal Sir William Page Wood became Chancellor, and Sir Roundell Palmer took up the position of an independent supporter of the Government, which he represented as counsel before the Court of Arbitration on the "Alabama" claims at Geneva in 1871. On the retirement of Lord Hatherley, in October, 1872, he had no difficulty — the Irish Church question being settled — in accepting the Chancellorship, and was raised to the peerage by the title of Baron Selborne. Since then he has been created an Earl.

Lord Selborne attained the highest judicial office without ever having held a seat on the ordinary judicial bench. Erskine was promoted in like manner *per saltum* in 1806; so was Sir Frederick Thesiger in 1858, and Sir Richard Bethell in 1861. In 1852 also Lord St. Leonards was appointed Lord Chancellor of Great Britain without ever having been an English judge, though he sat as Lord Chancellor in Ireland for a few months in 1835, as did Lord Campbell in 1841. This in no way prevented Lord Selborne gaining a solid reputation as a judge; and his decision in Morris *v.* The Earl of Aylesford, the leading modern case on 'catching bargains with heirs and reversioners,' is a good specimen of his painstaking and exhaustive style of dealing with the questions which come before him. His efforts in the cause of the reform of legal procedure will be remembered by the bar, if not by the public. In 1871 he proposed, in a long and weighty speech in the House of Commons, a resolution for the establishment of a "General School of Law," having sole power to grant certificates of capability to practice, both to barristers and solicitors. The debate died a natural death; but he had spoken with such severity of the deficiencies of the Inns of Court, that the benchers of those societies were startled, and with the view, no doubt, of to a certain extent cutting the ground from under his feet if he should reintroduce his resolution, instituted the system of compulsory examinations now obtaining. In 1872, however, Sir Roundell Palmer returned to the charge; but though his resolution was by no means of so sweeping a character as that of the previous year, and indeed merely proposed the establishment of what was called a "Legal University," it was defeated by a majority of thirteen. Almost every lawyer of note in the House took part in the discussion, and the Attorney-General (Sir John Coleridge) and the Solicitor-General (Sir George Jessel) in particular distinguished themselves by the energy of their attacks upon the project. But it would be impossible to over-estimate the benefit done to the cause of legal education by these two bold denunciations of faults and abuses in the Inns of Court. During his first term

of office as Lord High Chancellor, he brought forward and carried through the Judicature Act of 1873, by which Great Britain abandoned that system of pleading and procedure which had been the growth of a thousand years, and substituted for it substantially those methods which had been previously adopted and approved in so many of our American States.

He received the honorary degree of D.C.L. from the University of Oxford in 1863, and was elected Lord Rector of the University of St. Andrew's in November, 1877. He has appeared as a writer on religious subjects, having edited "The Book of Praise from the best English Hymn Writers," in 1862, and published "Notes on some Passages in the Liturgical History of the Reformed English Church," in 1878.

With respect to his high reputation for all the domestic virtues, an anecdote is extant which speaks volumes. A predecessor on the woolsack, Lord Westbury, better known for legal erudition and a caustic tongue than for exaggerated saintliness, was told, on the occasion of Lord Selborne's appointment, that his motto was *Palma virtuti*. "I suppose," he lisped out, "that that means 'the palm to Palmer.' It is very appropriate. I have always considered that his character was *unredeemed by a single vice*."

LOOKED UPON WITH VENERATION.

SINCE the days when a seal was looked upon with some such veneration as the heathen look upon their idols, the superstition has been growing very shadowy. The law moves much like the gods of Homer, an interval of ages between the steps; and to the layman, unversed in its wonderful mysteries, the legal effect of a seal can hardly fail to seem less than a miracle. The simple wax wafer must appear to him like "some amulet of gems annealed in upper fires." Why it should have the consecrating influence the law imputes to it, he will never be able to understand, and even lawyers are beginning to wonder if after all they themselves ever understood it.

"The phrase 'hand and seal,'" said one of Philadelphia's most learned jurists, "is a lawyer's phrase, useless and obsolete, but the old fellows cannot forget it. Educated persons sign their names; ignorant people, as the Indians, seal papers. Hence educated people never use seals to indicate their acts nowadays."

The times of the earliest use of seals by the English-speaking people were those of gross ignorance, and their use was by a grossly ignorant people who could handle the sword, but knew not how to use the pen. They were then of significance when each one had his particular signet. Now that person is an exception who knows not how to write; but under the lead of the lawyers in a matter which has only a legal aspect, this people is not yet equal to the task of freeing itself entirely from a venerable superstition. However, it has made the observance of it as easy and meaningless as possible. In no State of the United States is the old common law ceremony of "impressing upon wax" required. Most of them require only a scroll or any written or printed device which shows the intention of the signer to have been to invest the instrument with the importance of a sealed instrument.

In many States the mere dash of a pen after a signature has been held by the Supreme Court to be sufficient sealing. In contrast with this is the very recent decision of the Supreme Court of Pennsylvania in an opinion delivered by Justice Mitchell, that the absence of this scratch or a scroll is fatal,

although the symbol "L. S." followed the signature.

"The printed letters 'L. S.,'" said Justice Mitchell, "following the signature literally import the 'place of the seal'—*locus sigilli.* They simply draw the attention of the signer to the place for making his seal. Unless there be some act or declaration of the signer showing his adoption of them as his seal, the instrument signed is a simple contract, and not a specialty. A place for a seal indicated by a printed blank is not a seal, and signing before it cannot imply a seal in that place wherein none is made."

The superstition surrounding the seal has not unnaturally led even lawyers into the absurdity of attaching them to wills where they are utterly useless, since signing rather than sealing is relied on for authentication. This one instance of an extreme case in which a seal need not be used must suffice for this article, for there are many technical and arbitrary distinctions in the law relating to seals, knowledge of which the layman may reach only through a fee to his legal adviser, and even then he "pays his money and takes his choice." Enough to say of the effect of a seal, that it is held to impart a consideration for the deed, though none is expressly stated; it estops the party from averring anything contrary to the deed when by the same words in a simple contract he would not be estopped, and extends the limitation of the presumption of payment to twenty years, while on simple contracts the limitation is six years. It is pretty well settled in this State that when a seal is necessary, the courts will adopt anything, — scrawl, scroll, letter, or dash; but where a seal is not necessary they will not regard anything as a seal which is not strictly one.

The origin of seals is lost in the obscurity of unhistorical times, but that they were in use for the authentication of writings in the days of the Patriarchs is shown by the Books of Esther, Kings, Daniel, and Jeremiah. At all times, from then to now, they have had the same purpose, to give greater solemnity to contracts. Traces have been found in the Assyrian, Babylonian, and Persian explorations. From the East the seal travelled into Greece, thence to imperial Rome. From Rome its use extended among the nations of the continent of Europe, where it prevailed during the Middle Ages. From the eighth to the twelfth century it was confined in Europe to kings and persons of high official position. Subsequently sealing became general among all classes until the revival of learning made it possible for men of the lower, and, in fact, sometimes of the upper, classes of society to subscribe their names. Since writing has become common and the distinctive character of the seal lost, sealing has become almost a hollow form, and legal enactments in different States are gradually tending toward its abolition. — *Ex.*

SOME SINGULAR TENURES.

IN the "Green Bag" for October, 1890, an interesting article was published on "Strange Tenures," in which many quaint examples of old-time tenures were given. The list was, however, by no means exhausted, and a few additions may prove acceptable to those who found enjoyment in reading the article referred to.

The first thing that strikes the searcher through the title-deeds of yore is the contrast presented by their concise and oftentimes jocular wording to the tortuous phraseology affected by latter-day lawyers. Thus John of Gaunt gave, in a grant extending to only twenty-six words, a Bedfordshire property to one "Roger Burgoyne and the heirs of his loin" to hold "until the world's rotten;" and at Stoneycroft, in the vicinity of Liverpool, lands have been tenanted for ages by a London corporation, their lease being made out to stand good "as long as grass doth grow and water does flow."

Tenants under the Crown were divided into two classes, — those who held by Grand and Petit Serjeanty, respectively. The former consisted of personal services to the sovereign, such as carrying his standard, lending his army, or other knightly duties requiring attendance at stated times at court or elsewhere. Tenure by Petit Serjeanty or in Escuage was the yearly rendering of a bow, an arrow, a dagger, or any other specified article appertaining to war. Lands let in Escuage were those in respect of which the occupiers had to pay a reserved rent of provisions, articles of apparel, etc., or to do harvest work, undertake the care of cattle, hounds, or hawks, or perform other more or less menial services.

Royal demesne lands in various parts of the country furnished all manner of necessaries to the king's household. Under Edward the Confessor, Brill, in Bucks, supplied one hundred capons yearly to the monarch's table, and lands in Surrey and Sussex were at the same time held under similar conditions. In many cases these reservations were of but little importance, the stipulated supplies being but seldom called for, having only to be rendered when the king passed the estate in question in travelling through the country.

In Aylesbury an estate was held on condition of paying three eels to the king whenever he went through the town in winter, and two green geese if the visit occurred in summer. Henry I. of lamprey-loving celebrity, and several of his successors exacted from the citizens of Gloucester a huge raised lamprey pie every Christmas. The Manor of Cresswell, Berks, was held during the reign of Edward I. by the serjeanty of carrying bottles of wine for the king's breakfast. A Cornish family at Helston held a farm in return for the enjoyment of finding a boat and nets for fishing in the lake adjacent whenever the king chose to visit that corner of his domain for the "disport of angling." The Marmions of Scrivelsby are hereditary royal champions by right of their Lincolnshire holding. The tenant for the time being has, since William the Conqueror's time, stepped forth at the coronation of the kings and queens of England to fight in single combat any person who should presume to gainsay the sovereign's right to rule.

At Bares, in Essex, a person held an estate on the singular condition that he should scald the hogs of his royal landlord when called upon to do so; and the wealthy family of the Greens, of Greensnorton, Northampton, held their estate on condition that the head of the household extended his right hand toward the king on Christmas Day. In 1348 land at Bermeton, Durham, was held by the service of three grains of pepper yearly. Fifty years later, Sir William Marche died, seized of eighty acres in Finchley and Hendon, Middlesex, for which he had

annually paid a pound of pepper. Demesne lands and tenements in the manor of Pokerley were rented on condition of the payment of one clove upon every anniversary of St. Cuthbert's Day.

Three gilliflowers formed the singular rent-charge paid for property at Kingston, Surrey; and roses, of various prescribed colors, were rendered to landlords in respect of various other holdings. At Brookhouse, near Penistone, a farmer used to pay, two centuries ago, the very remarkable rent of one red rose at Christmas, and one snowball at midsummer. It may be stated, by way of attempt at explanation, that in the caverns and hollows of the high moors, in this district, snow has occasionally been seen in the month of June, so that these peculiar conditions of tenancy might not always be so difficult of fulfilment as would at first sight appear.

When King John occupied the throne of England, two farmers at Apse, in Surrey, held their lands under the stipulation that they should, each All Saints' Day, give away a cask of ale for the benefit of the soul of their sovereign and his ancestors; truly a curious condition, and little likely to accomplish the desired object. The memory of an old dragon legend is preserved in a tenure at Sockburn, near Durham. The manor is held by the Blackett family of the bishop of the diocese by simply showing to that dignitary of the church, upon his first assuming the prelatical functions, an ancient falchion with which, tradition says, Sir John Conyers, the first lord of the manor, slew a monstrous flying serpent, or "worm."

Cornage was another class of tenure. This was the blowing of horns to herald the approach of the king's army. One example was the barony of Burgh-over-sands, Cumberland, the lord of which had to precede the royal forces whenever they went into Scotland. The bugle or hunting-horn played a very important part in connection with ancient tenures. It was often the token by which lands were held, and thus stood in the place of a written charter. A fine charter-horn of this description is still preserved at Queen's College, Oxford.

By way of conclusion we may mention two tenures of comparatively recent date, but with very interesting associations. We refer to the Strathfieldsaye estate, in Hampshire, held of the Crown by the descendants of the Duke of Wellington by the nominal rent of a tri-colored flag, to be presented at Windsor Castle on every anniversary of the battle of Waterloo; and the honor of Woodstock conferred by Queen Ann on the Duke of Marlborough as a reward for his services at the battle of Blenheim, the sole rental of which is the bringing of a banner to Windsor on the 2d of August in each year, in memory of the "famous victory" as Southey makes "Old Kaspar" call it, which was gained on that date in the year of grace 1704.

At Broughton, near Brig, in Lincolnshire, some lands are (or were) held by the following tenure. Every year, on Palm Sunday, a person from Broughton comes into the church porch at Caister, having a green silk purse, containing two shillings and a silver penny, tied at the end of a cart-whip, which he cracks three times in the porch, and continues there until the second lesson begins, when he goes into the church and cracks it three times over the clergyman's head, and kneeling before him during the reading of the lesson, he presents the minister with the purse, and continues there during the rest of the service.

We are indebted for many of the foregoing curious tenures to an interesting paper, written by T. B. Trowsdale, and which was published in the "Antiquarian Magazine."

LEGAL NOTES ON CARD-PLAYING.

By Norton T. Horr.

THE element of chance has a strong attraction for the legal mind as well as for the layman, and particularly so when it is made a means of gaining something that has not been earned. To a certain extent it necessarily enters into every business undertaking having gain for its object; but as soon as a venture becomes dependent for success upon chance alone, it is a swindle and merits restriction by laws. Games at cards such as faro and vingt-et-un, in which the only skill consists in a correct calculation of the probabilities, are no better as games than throwing dice or matching pennies, and are seldom practised except as excuses for gambling.

Whether the games played involve chance alone or chance combined with skill, if no money is wagered on the result, their practice is not immoral, and should not be unlawful.

Playing-cards were first used in England some six hundred years ago, at a time when England's safety depended upon the physical ability of her subjects in the arts of war. The common people were addicted to outdoor sports, chiefly wrestling, shooting the cross-bow, and sparring with the quarter-staff. As soon as these manly games began to be neglected for the indoor pastimes of dice and cards, Parliament sought to protect and foster the development of muscle by prohibiting any of the common classes from playing cards or dice at any time except at Christmas. The first law of this nature was enacted in 1496 under Henry VII. The restriction does not seem so harsh when we consider that Christmas in the sense then used extended from November 1, All Hallows Eve, to the 2d of February, the day after Candlemas. Even during these months artisans, laborers, and servants dared not play except in their masters' houses, or in their own houses by express license from their masters.

This law seems to have been well observed; for one of the favorite writers under Henry VIII. is quoted as saying in the year 1550, that "he did not love to play king and queene but at Christmasse, according to the old order of England; that few men played at cards but at Christmasse, and then almost all, men and boys."

However, with the change in the methods of waging war, caused by the general introduction of gunpowder, the necessity for such laws ceased to exist, and after 1542 they were not re-enacted, and in fact were no longer observed, even in popular custom, after the sixteenth century. The betting at card games soon became so heavy as to need restrictions, having ruined a few prominent courtiers; and in 1679 a law was enacted which forbade cheating at cards, and restricted the amount which one might lawfully lose in any one sitting to one hundred pounds. In 1711 this limit was reduced to ten pounds.

For two hundred years or more the playing-cards used in England were largely imported from France and Germany, and all cards specially prepared for the use of gamblers in playing dishonest games came from Germany. Cards were there called "briefe," and to this day English gamblers call cards which are marked for gambling purposes "briefs." This may account for the skill frequently displayed by gentlemen of the legal profession in games at cards, they being well schooled in the art of preparing "briefs" to perplex and circumvent their adversaries.

The laws of many of our States do not stop at the punishment of playing for money, but make it unlawful to play at or use cards or any other gambling device in a public place.

It is interesting to observe what is considered a "public place" within the meaning of such laws. A definition has been given by the highest courts in many states; and it would seem that they have been careful to preserve their own liberties and to protect the rights and privileges of lawyers and court officials; for they have decided that a lawyer's office is not a public place, and the same privacy is attributed to the offices of the clerk of the court and to the jury-rooms.

If one does not have access to these privileged localities, it is held that he may safely tempt fortune in his room in a hotel provided the door is locked; or if he has not registered at a hotel, he may retire to a convenient patch of woods and deal the cards on a stump or on a stone; but beware the constable if he plays in the back-room of a corner grocery, or on the railroad train, or on the beach at the sea-shore.

Card-players frequently seek to evade the law against playing cards in public places by using dominoes; but sooner or later they come to grief, for judges as well as juries know well enough that vingt-et-un, ramps, and euchre may be played as well with dominoes as with cards; and if the identity of the game actually played is denied, the prosecution calls upon the town gamester to play the game with each, thus demonstrating to the jury that euchre is euchre, however played.

A moral and a warning may here be drawn from the unfortunate experience of a stanch and pious churchwarden in Arkansas, who happened into the back-room of the corner store of a small village, and was initiated into a game played with dominoes. He was not told that he was playing euchre, and was horrified when arrested by a vigilant police-officer, and charged with playing a card game in a public place. His protestations that he never touched a card and knew nothing of euchre, and that he supposed dominoes to be an innocent diversion like mumblety-peg or jack-stones, availed him nothing. The jurymen knew euchre when they saw it, and they considered bone-plated pieces of wood with spots and blanks as dangerous to the welfare of the community as pasteboards with pips and pictures. The defendant paid his fine, and forever after shunned the back-room of the grocery.

A review of our daily literature shows the prominence of the game of poker, and even the sedate judge upon the bench cannot avoid testifying to its rank. When euchre, ramps, faro, or some other unusual game is involved in the case on trial, the court frequently admits the testimony of an expert to prove the method of playing the game. For example, in St. Louis four or five years ago, a learned judge of the city court was obliged to confess that he could not take judicial notice of the fact that "the so-called game of seven-up is a game of chance." But when the game of poker is at issue, the court is fully informed of his own experience. As a Montana judge says, "The word 'poker' as applied to a game of cards, so far as we know, has but one meaning." In Oregon the court knows that "stud-poker" is the usual game; and last year a learned ornament of the bench in Alabama went so far as to instruct the jury that "rattling of chips" heard on the other side of a locked door is *prima facie* proof that a game of poker is there in progress. We may be consoled by the belief that the court had paid for his intimate knowledge of the game.

Playing at cards, so far as the law is concerned, is governed by essentially the same statutes now as three hundred years ago; and the decisions here referred to are making rules of law by which the enforcement of those statutes will doubtless be regulated for a century more. If endowed with the power of speech, playing-cards might complain to our courts now in the same words attributed to the knave of hearts in "His supplication to the card-makers" in 1612: "Yet wee . . . must wear the suites in which wee first were made."

THE SUPREME COURT OF NEW JERSEY.

By John Whitehead, Esq.

II.

NEW JERSEY, during the Revolution, was subjected to all the horrors of war, certainly more than any one of the other colonies. Both contending armies traversed the territory of the State between the mountains and the sea, from its northern frontier to Delaware Bay. The Legislature, and very often the courts, were obliged to change their location, being driven from place to place by the enemy's armies. This occurred, however, more frequently in the fall of 1776 and winter of 1777, and especially while Washington was retreating before the British after the disastrous battles of Long Island.

The Provincial Congress of New Jersey met on the 10th of June, 1776, at Burlington. Almost the first subject of discussion, after its assembling, was the question whether the colony should declare its independence. On the 21st of June it was determined, by an overwhelming vote of fifty-four to three, that the province should be declared independent of the British Crown. On the 24th of June a committee was formed, with the Rev. Jacob Green as chairman, charged with the duty of preparing a Constitution. The committee reported two days afterward, and on the 2d of July the organic law thus reported was adopted.

The Rev. Jacob Green was a man of more than ordinary intelligence and ability. He was a Presbyterian minister, one of the first of his denomination who ever settled in Morris County. He preached at Hanover at the time of his election to Congress. He was not only the pastor of his people, but he was their counsellor and adviser; drew their wills, their deeds, and their contracts; arbitrated their disputes, and settled their estates. He was a practical man of business, as well as an earnest and devout divine. His various avocations were wittily summed up in the direction of a letter once sent him, —

> "To the Rev. Jacob Green, Preacher,
> And the Rev. Jacob Green, Teacher;
> To the Rev. Jacob Green, Doctor,
> And the Rev. Jacob Green, Proctor:
> To the Rev. Jacob Green, Miller,
> And the Rev. Jacob Green, Distiller."

John Cleves Symmes, afterward one of the Associate Justices of the Supreme Court, and another lawyer were also members of the committee; but it is the universal tradition that the chairman was the framer of the Constitution. It was, apparently, prepared in the very short space of two days; but in all probability it had been planned before Congress met, or at least had received much thought from the clerical chairman. It was never submitted to the people, did not receive much discussion from the members of Congress, and was rather a crude affair. It was, however, a very great improvement on the one which preceded it. The people of New Jersey acted under it until 1844, nearly seventy years. By its terms the Justices of the Supreme Court were elected by the Council, as the higher body of the Legislature was then called, and the House of Assembly, in joint meeting, and could hold office for seven years.

This Constitution was, in some respects, a remarkable document. It nowhere used the word "state," in speaking of the province, but in almost every instance employed the word "colony;" it provided that all laws should begin in the following style: "*Be it enacted by the Council and General Assembly of this Colony.*" All commissions granted by the Governor or Vice-President of the Council, who acted for the Governor, under certain circumstances, ran in this manner:

"*The Colony of New Jersey to A. B. Greeting.*" By its terms the Governor and Council were made the Court of Appeals in the last resort in all cases, and could pardon criminals for any offence. In its very last article it was provided: "*That if a reconciliation between Great Britain and these colonies should take place, and the latter be again taken under the protection and government of the Crown of Great Britain, this charter shall be null and void.*"

Even then, when the Continental Congress was just about to shut the door most effectually against any settlement with the mother country, the patriots of New Jersey were still hoping for peace.

There was little business done by the Supreme Court, or by any other court in New Jersey, while the war continued, except in the punishment of traitors and other criminals, confiscating estates, and providing for the confinement of suspected rebels; in fact, regular terms could not and were not always held. It became necessary, in consequence of the many irregularities in suspending terms and in other proceedings, for the Legislature to pass a statute legalizing the acts of the Supreme Court, reviving writs and other processes, and giving efficiency to the tribunal as if it had regularly met.

The last term of the court held by the justices appointed by the colonial authorities was in May, 1776, when Frederick Smyth was Chief-Justice, and David Ogden and Richard Stockton were Associate Justices. The Chief-Justice and Justice Ogden were the only judges then present.

The first session, under the new Constitution, was held in November, 1776, only one judge — Samuel Tucker — being present. He was one of the Associate Justices who had been elected in the month of September preceding. The office of Chief-Justice was tendered to Richard Stockton immediately upon the adoption of the new Constitution, and he would have been unanimously elected had he not refused to accept the position.

When Mr. Stockton rejected the proffered office, it was tendered to John DeHart, a leading lawyer in Newark, who accepted in writing, but, for some reason which cannot now be ascertained, did not serve. At the same time that he was elected, Francis Hopkinson was appointed an Associate Justice; but he was a member of the Continental Congress, and declined to serve. This left Samuel Tucker the only Judge of the Supreme Court.

Mr. Tucker was not a lawyer; but he had been much in public life, and had held some most important offices. He had been Sheriff of Hunterdon County, a member of the Legislature, and was President of the Provincial Congress when the Constitution was adopted. At the beginning of the war he was Treasurer of the province, and had in his possession a large amount of the paper currency issued by the colony. In February he was called to an account, and then asserted that the British had captured him and stolen this money during the preceding December, when Washington was on the west bank of the Delaware, resting after the terrible struggle succeeding the Long Island campaign. Mr. Tucker had obtained a protection from Colonel Rall, the German officer in command of the British forces at Trenton. During the preceding summer Howe, the English General, had issued a proclamation inviting the colonists to seek protection by submission to him as the representative of the mother country. Tucker had availed himself of this invitation, and had sought pardon, and then, as he alleged, was robbed. His submission to the English leader was a very weak measure; his fellow-citizens clamored for his resignation, and he was obliged to yield to the popular indignation. He lost favor; the accuracy of his statements as to the robbery was not only doubted, but openly questioned as untrue, and he never recovered from the disgrace. He died in 1789, still resting under a cloud which has never been removed.

Two excuses may be urged for his disloyalty to the patriot cause, — one, the ap-

parent hopelessness of success on the part of the colonists; the other, the influence of his wife, an English lady, over his actions, which, it was then believed, led him to prove recreant to his prior actions and promises. Neither excuse, however, was sufficient in the eye of his contemporaries, as he ever after lived a dishonored man.

There is no report of any of his decisions, and no estimate can be formed of his ability as a judge; his career in that position was too short to enable him to demonstrate his capabilities. He was, however, a man of decided intellect, and in less stormy times might have left an enviable memory as a member of the highest tribunal of his State.

JAMES KINSEY.

No record of any resignation by John De-Hart, as Chief-Justice, can now be found; but he never served, and it became necessary to fill the vacancy which had already existed too long. In February, 1777, Robert Morris was elected, and he immediately assumed the discharge of the duties of the position. He was a member of a family distinguished in colonial history for a century in many directions, not only in New Jersey, but elsewhere. His father was Robert Hunter Morris, who had been Chief-Justice for twenty-six years, from 1738 to 1764, and had died while holding that office. Robert Morris was appointed at the darkest hour of the Revolution. Little civil business was done by the courts, but a very large volume of criminal cases engaged the attention of the judges. Terms were held regularly for about a year; grand juries were summoned and sworn, and criminal business transacted. The Courts of Oyer and Terminer were held by one or more justices of the Supreme Court, assisted by county judges who were not lawyers. Venires for grand and petit jurors were issued to the sheriffs of the several counties. Under the colonial government commissions for holding the Oyer and Terminer were sent by the Governor and his Council to the justices as exigencies required. In the Constitution of 1776 no express authority was given to any one to issue these commissions; but an act of the Legislature was passed very soon after, which gave full power to the Governor and Council to convene the court; and at last, after some persistence, despite the grave doubts of many excellent lawyers, the practice was fully recognized and never after questioned. Very soon, too, the word "Colony" was dropped from all commissions and laws, and the word "State" substituted. The commissions for holding courts of Oyer and Terminer were invariably issued until 1794, when they were abolished and those courts were regularly convened in the several counties.

Chief-Justice Morris was very busy in performing the duties of his office. There were no public conveyances then, and he was obliged to use his own horse and carriage in passing from county to county. A letter written by him to Governor Livingston, and dated June 14, 1777, is particularly

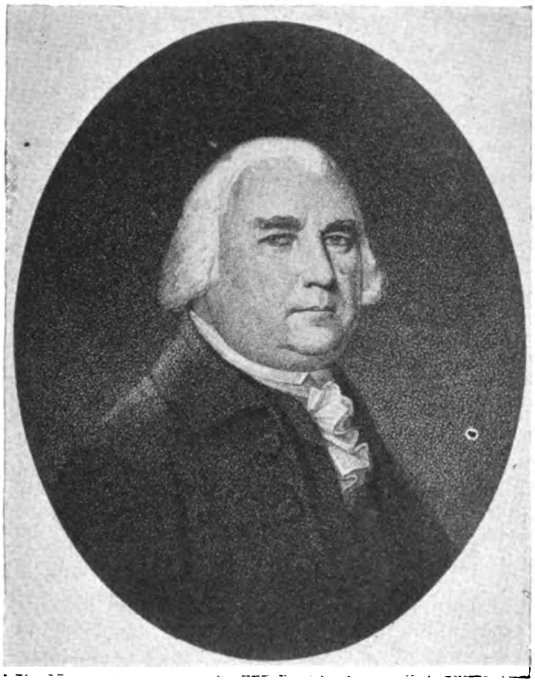
interesting, as it gives evidence of the difficulties attending the travel from one court to another; of the ignorance of the officers of the courts of the proper manner of performing their duties; of the doubts of the Chief-Justice whether the court had met or could properly meet the obligation of its office in the very trying circumstances which surrounded it, and with their limited knowledge of the law involved in the cases of treason submitted to them.

Robert Morris held his position for less than two years. In 1779 he resigned and retired to private life, until 1790, when, on the death of Judge Brearley, General Washington made him Judge of the United States District Court for New Jersey, which position he held until his death, in 1815. During the last year of his life he was in infirm health; and often his court, in consequence, would not be held at the regular terms. This occasioned very little inconvenience, as the business was very small, and rarely required the attendance of the judge more than a day at each term.

The Associates — or, as they were then called, the second and third Justices — with Chief-Justices Morris and Brearley, were Isaac Smith and John Cleves Symmes. Of Isaac Smith very little can be said. He was not a lawyer; he was educated at Princeton College, where he graduated in 1758, when only eighteen years old. He then studied medicine, and became a practising physician. During the troubles with England, and as early as 1776, he strongly identified himself with the cause of the colonies, and commanded a regiment in the continental army. He soon became distinguished as an efficient officer, and obtained an elevated rank as a patriot. His talents were of a very high order, and he was especially noted for his wisdom and sagacity. In February, 1777, the joint meeting of the Legislature raised him to the office of second justice, and he assumed the duties of the position at once. Although he had no legal education and had never practised law, his native ability and his untiring industry soon made him a good lawyer, and he became able to decide the cases submitted to him with judgment and accuracy. He was thrice re-elected, and held the position longer than any other Associate Justice. In 1803, at the expiration of his fourth term, the political party opposed to him came into power, and he failed in obtaining a re-appointment. He then retired to private life, made his home at Trenton, and became the President of the Trenton Banking Company, which position he retained until his death, in 1807.

John Cleves Symmes was born at Riverhead in New York, in 1742, and received a good, sound education, but never graduated at any college. In early life he was a teacher and a surveyor, but subsequently studied law, was licensed, and began the practice of his profession in his native State. At the breaking out of the Revolution he became an intense patriot, was a member of the Provincial Congress of New Jersey in 1776, and in September of that year was appointed one of two commissioners to visit the troops of the State, which were serving in New York, to learn their condition "and their disposition farther to engage in the service in the new establishment." He subsequently entered the army as Colonel of the Third Battalion from Sussex County, was present at several severe battles, and aided at that of Saratoga. At the beginning of the war he was a resident of Newton in Sussex County, New Jersey. In 1776 he was elected a member of the Provincial Congress, and was put upon the Committee which framed the Constitution. In February, 1777, he was appointed third Justice of the Supreme Court, and retained the office until 1788. In 1784 he was sent as a Delegate from New Jersey to the Continental Congress at Philadelphia, still retaining his office as third Justice. In 1788 he was appointed a Judge of the Federal Court in the Northwest Territory. He removed to Ohio, and in company with some other Jersey men, attempted to purchase from the Government a tract of about one

million acres of land. In this, however, he did not succeed; but afterward, in connection with his Jersey friends, did buy 250,000 acres between the two Miamis. This land included the present sites of the cities of Cincinnati and Dayton. Judge Symmes had formed a plan of founding a great city at the north bend of the Ohio River, where he himself and his illustrious son-in-law President William Henry Harrison both lived, and which he purposed to call after his own name. A romance is connected with the selection of the site of Cincinnati. The Commander of the United States force is said to have fallen in love with a young lady who resided where that city is now situated; and so, despite the well-laid plans of Judge Symmes, the great city of Ohio obtained its present location. He married for his first wife a daughter of a Mr. Tuthill. Anne Symmes, born of this marriage, became the wife of Gen. William Henry Harrison; and thus Judge Symmes was the ancestor of Benjamin Harrison, the present President of the United States. Just before he removed to Ohio he married Miss Livingston, the daughter of Governor Livingston of New Jersey, for his second wife. The author of the singular theory that the earth was a hollow ball and was inhabited in its interior, was his son, who bore the same name.



ISAAC SMITH.

Judge Symmes presided at the trial of James Morgan, a continental soldier, who was indicted for the murder of the Rev. James Caldwell, the "Fighting Parson," from New Jersey. Grave doubts were entertained as to the guilt of Morgan, but he was convicted and hung. The trial was conducted very fairly and with great solemnity.

Judge Symmes died in 1814, at Cincinnati, after a very active, busy life, and left behind him the reputation of having been a public-spirited man, and of more than ordinary ability. His Western biographer, if he have one, would claim undoubtedly, as his chief merit, what is recorded on his tombstone, "that he made the first settlement between the Miami Rivers." There is no report of any of his decisions. His ability as a judge and his merit as a lawyer are to be inferred from the fact that after serving as an Associate Justice of the Supreme Court of New Jersey he had acquired such a reputation that the President of the United States selected him as a Judge of the Federal Court in the Northwest Territory.

Morris was succeeded as Chief-Justice by David Brearley, who at the time of his appointment was a Lieutenant-Colonel in General Maxwell's New Jersey Brigade, to which position he had risen from a subordinate office. He was a lawyer, and resided in Monmouth County, and was only thirty-four years old when elected Chief-Justice. The appointment was, in a measure, forced upon him, as he preferred to remain in the army, but gave way to the solicitations of the Legislature that he would accept the position. He seems to have been a man of great activity, and of more than ordinary intellect.

There is no report of his decisions, but he has left a reputation of being a faithful officer, with learning and brains, of great integrity, and perfectly reliable. In 1781 the College of New Jersey gave him the honorary degree of A. M. In 1787, while still Chief-Justice, he was sent as a delegate from New Jersey to the Convention which framed the Federal Constitution. He took an active part in the deliberations of that body, supported the "*New Jersey plan*" for a constitution, but signed the organic law when it finally passed. He was a member of the convention which met in New Jersey to consider the new Constitution, and urged its ratification. In 1788 he was a presidential elector, and voted for Washington. He resigned his position as Chief-Justice in 1789, and was succeeded by James Kinsey.

During the term of office of Chief-Justice Brearley, questions involving the construction of the Constitution of the United States, then recently adopted, came before his court for discussion and settlement. An opinion had been somewhat extensively held by lawyers that the courts had no power to decide constitutional questions; that the English law should prevail, which never permitted the judges of the courts to determine as to the constitutionality of acts of the Legislature. Chief-Justice Brearley grappled bravely with the disputed questions, vigorously contended for the right of the court to pass judgment on such matters, and fearlessly decided that the Supreme Court had the right to construe the organic law of the country.

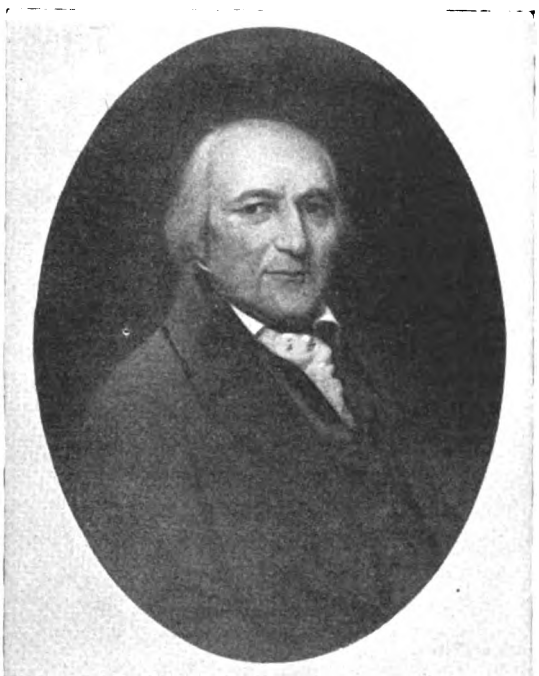
James Kinsey was the son of John Kinsey, a member of the Society of Friends, who emigrated from England in 1716 and settled in New Jersey, where his son James was born in 1733. The elder Kinsey became Chief-Justice of Pennsylvania, which office he held for seven years and until his death. James Kinsey became a lawyer, and soon took a prominent part in the politics of New Jersey. He was a member of the Assembly in 1772, and became the leader of the opposition to Gov. William Franklin, the son of Benjamin Franklin, and the last Tory Governor of New Jersey. In 1774 he was elected a member of the Continental Congress, but resigned from that body in 1755, for reasons which were entirely satisfactory to his constituents. In 1777 the Legislature, by statute, required all attorneys and counsellors to take an oath of allegiance to the new Government. Mr. Kinsey refused to take this oath, and was obliged to give up his practice, which was very extensive. It is supposed that he was prevented from complying with the act by reason of his devotion to the principles of the Society of Friends, of which, like his father, he was a member. In 1789, when Judge Brearley resigned, he was elected Chief-Justice, and at the expiration of his first term of office was re-elected, so that he held the position for nearly fourteen years. No suspicion ever attached to him as being disloyal to the cause of the colonies. Governor Livingston, one of the most ardent patriots of Revolutionary times, never doubted him, and firmly believed that he was fitted for the performance of the duties of the office of Chief-Justice. He was, however, not a man of broad intellect, but was well versed in the principles of law relating to real estate, and accurate in legal learning. His successor, Chief-Justice Kirkpatrick, who was eminently qualified to judge, paid him a very high compliment in one of his opinions. The first book of law reports ever published in New Jersey began with his decisions. The reporter, Mr. Richard S. Coxe, was not regularly appointed, but obtained the cases and opinions he published, or the most of them, at second hand, from his father-in-law, William Griffith, who at one time was a judge of a United States Court. Chief-Justice Kinsey died in 1803, and was succeeded by Andrew Kirkpatrick, who was then and had been for several years an Associate Justice.

The Associate Justices with Chief-Justice Kinsey were Isaac Smith and John Chetwood. Judge Smith has already been noticed.

John Chetwood was a lawyer of great respectability, and had practised his profession for several years at Elizabeth Town, as it was then called, now known as Elizabeth. He came from a Quaker family, many of whose descendants have been distinguished members of the Bar of New Jersey. He was on the bench of the Supreme Court for many years, and filled his office to the entire satisfaction of the lawyers practising in his court, and with great honor to himself. His family was originally settled at Salem, in the lower part of the State, but subsequently removed to Elizabeth Town, where it became connected with the Episcopal Church. In 1797 Judge Chetwood resigned, on account of his ill health. He died in 1806, at the age of seventy-two.

In 1798 the Legislature, by statute, authorized the election of a third Associate Justice of the Supreme Court. Elisha Boudinot was selected to fill the new office, and served for a term of seven years. He was one of the many illustrious men to whom New Jersey has given birth. He was distinguished not only as a lawyer, as a judge, as a philanthropist, but as a firm and fast friend of the cause of the colonies, and an unswerving patriot. At the very beginning of the troubles with Great Britain, he unhesitatingly espoused the patriot cause, became the Secretary of the Committee of Safety, and otherwise, by active service, identified himself with the movement against the royal authority.

He was born in 1742, at the family-seat, known as Beaverwyck, in Morris County, and obtaining a good education, studied law, and after proper preparation was licensed as an attorney and then as a counsellor. In 1792 he was called to the degree of Serjeant-at-law, — a title now obsolete, but then very much desired by lawyers in New Jersey. He pursued the practice of his profession at Newark. His undoubted ability as a lawyer and his high character soon procured for him the confidence of the community. His office was eagerly sought by young men who desired to study law; and many distinguished men of the profession, not only in New Jersey, but in New York, pursued their studies under his direction. His brother Elias Boudinot, also a lawyer, was a member of the Continental Congress, at one time its President, and signed the articles of peace between the young Republic and England in 1783. Elias Boudinot, however, is better remembered as the first President of the Bible Society, and as a great friend of the Indians. In 1804 the Legislature repealed the law creating the office of Third Associate Justice, and Judge Boudinot retired from the bench. He died in 1819.



ANDREW KIRKPATRICK.

Andrew Kirkpatrick was one of the most remarkable men of his time. It will be impossible to do justice to this eminent man in the brief space allotted to him in these reminiscences. He was the third son of David Kirkpatrick, and the grandson of Alexander Kirkpatrick, who were both born in Scotland. The grandfather emigrated to New Jersey in

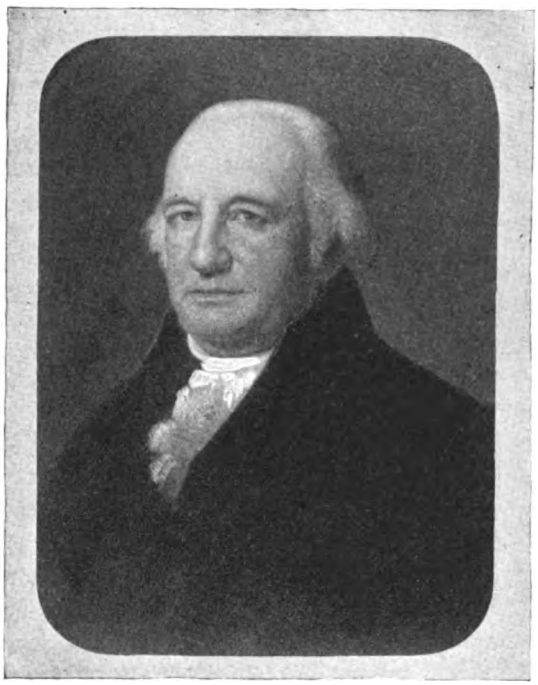
1736, and became a farmer. At his death his son David bought the farm from his elder brother, and remained upon it until his own decease, in his ninety-first year. He was a strong-minded man, of sterling integrity, and a stanch Presbyterian. He purposed to educate the future Chief-Justice for the ministry, and the young man's early education was directed with a view to the sacred calling. In fact, he spent six months after his graduation from Princeton College in the study of divinity with the Rev. Dr. Kennedy, a clergyman of the Reformed Dutch Church. But at the end of that time Andrew became convinced that he was not fitted for a minister's life, and determined to become a lawyer. He announced his determination to his father, who was bitterly disappointed, forbade him his home, and withdrew his support. The young man was thus thrust upon the world, to win his way upon his own resources. But nothing daunted, he assumed the responsibility, and worked upward to his profession. His mother sent him from the home his father denied him with her blessing and a single gold-piece, — a half "Joe," the savings of many years. The young man never forgot the incident; for years afterward, when he married, he presented his bride with a gold coin of the same kind and value, with the remark that his own father had been hard-hearted to him, but that his mother had removed the sting by her unselfish gift; that perhaps he too might prove cruel, and then she would need the gold. Mrs. Kirkpatrick never parted with the coin, placed it in a wrapper, and indorsed on the paper with her own hand, "a pocket piece presented to me by my husband, Jane K." The half "Joe" has been piously preserved in the family, and is now in the possession of his grandson, who bears the same name, in the original covering in which it was placed.

After thus leaving his father's house he became a tutor in a family in Virginia, then assumed the same position at Esopus, in the State of New York, and finally went to New Brunswick in New Jersey, and there prepared boys for college. In this way he obtained the necessary funds, was finally enabled to enter the office of William Paterson,— at one time Governor of New Jersey, afterward one of the Judges of the Supreme Court of the United States, and then one of the leading lawyers in the State. Andrew Kirkpatrick was admitted to the bar in 1785, and began the practice of his profession at Morristown, where he had some relatives residing. He undoubtedly would have obtained a lucrative practice there; but, soon losing his library and office furniture by fire, he removed to New Brunswick, and opened an office there, where his commanding talents were soon appreciated. He added to his native ability, which was uncommonly great, a most untiring industry; and the combination of these characteristics with his stern integrity soon won for him a leading position at the bar, not only in his own county, but all over the State. In 1797 he was elected to the Assembly from Middlesex County, but was very soon obliged to resign, so as to assume the position of Associate Justice, to which he was elected in January, 1798. He held that office for six years, and then, when the term of Chief-Justice Kinsey expired, was chosen to succeed that gentleman. He was twice re-elected, so that he held the position, in all, for twenty-one years.

During his term he became much interested in the creating of the office of Reporter of the Decisions of the Supreme Court, and it was mainly due to his exertions that the court was invested with the power of appointing the person to fill this position. Chief-Justice Kirkpatrick was instrumental in selecting William S. Pennington as the first reporter. He was an Associate Justice, and thus had the amplest opportunity to make the fullest reports of the decisions. His reports were published in two volumes. Then came Southard, also an Associate Justice, in two volumes; and he was succeeded by William Halsted with eight volumes. The decisions of Chief-Justice Kirkpatrick are found scattered through Pennington, South-

ard, and the first two and part of the third volumes of Halsted.

He was a man of very extensive learning, especially in the law relating to real estate; of great acumen and power of analysis. He was not a brilliant genius, nor was his mind rapid in its movements; but it was solid, substantial, and he rarely failed in arriving at a proper judgment in any case submitted to him. He sat frequently in the *nisi prius* Courts, or, as they are called in New Jersey, the Circuits of the Supreme Court. In the cases there brought before him he was necessarily obliged frequently to express himself extemporaneously. In all these utterances he was lucid and direct; jurors had no difficulty in understanding him, and his opinion of the legal principles involved in his charges. When time was given him for thought, and he could commit his ideas to writing, he was convincingly strong. His mind was logical, and its distinguishing characteristics were those which are peculiarly fitted for the bench.



ELISHA BOUDINOT.

His decision in the case of Arnold *vs.* Mundy has remained in the jurisprudence of the State as a model of research, of the most diligent study, of the closest scrutiny, and of the strictest examination of the history of the legislation of the State and of the legal principles involved in the case. The value of the property for which the suit was brought was very small; but the questions of law presented were of the utmost importance. The cause involved the question as to the right of owners of land on a tide-river to the right of exclusive fishery in front of their property.

The lands of New Jersey had been granted by Charles II. to his brother, the Duke of York. The grant was accompanied with one of sovereignty. The Duke of York in turn conveyed both the right of proprietorship and that of government to a body of men called the Lords Proprietors, whose successors exist to this day. In 1702 the Lords Proprietors ceded the right of sovereignty to Queen Anne, but retained the fee in the land. Arnold, the plaintiff, owned land on the bank of the Raritan River, a tide-water stream. He had planted oysters in front of his land, in a bed between high and low water mark, and claimed the right of an exclusive fishery. A fleet of skiffs with the avowed purpose of testing this right invaded the oyster-bed, and dredged a few bushels of oysters. A suit was brought against the trespassers, and tried before Chief-Justice Kirkpatrick at the Circuit. When the plaintiff rested his case, a motion for a non-suit was made and argued, and Kirkpatrick granted the motion. A rule to show cause why the non-suit should not be set aside and a new trial granted, was taken and argued before the whole bench. The most distinguished counsel in the State participated in that debate, and the most consummate skill was manifested in the argument on both sides. The questions involved required research not only into the law, but

also into the history of the State and of the mother country. The court decided that no owner could have an exclusive right to a fishery in front of his land on tide-waters; that when the Lords Proprietors by their patent conveyed the land originally to the plaintiff's grantor, they could only grant the fee to low-water mark, and that the people of the State had an equal right to the oysters with the owner, although he had planted the bed. The case was elaborately argued not only by counsel, but by the Chief-Justice, and the rule was discharged. The opinion has been frequently criticised, but has never been directly overruled; and the decision remains to this day the law in New Jersey. The opinion is remarkable for its great learning, its profound knowledge of the common law, and its admirable judicial style.

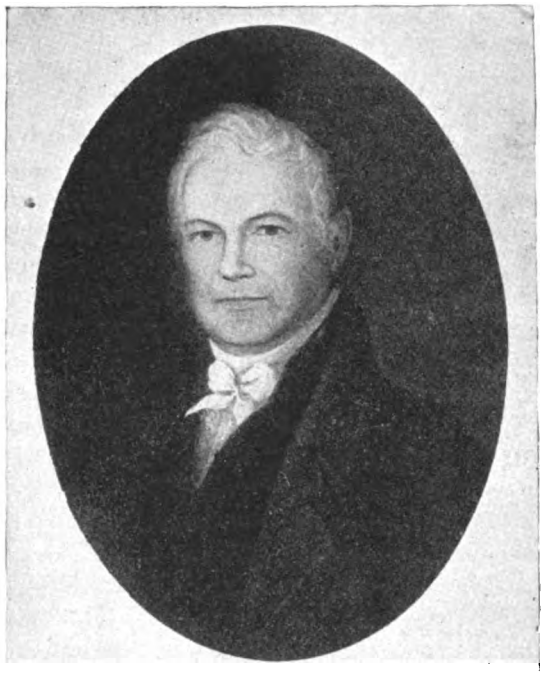
It will be considered somewhat remarkable that Chief-Justice Kirkpatrick should have had such an admiration for the black-letter and common law of England, when it is known that he was the author of a law passed by the Legislature in New Jersey in 1799 which enacted that no report of legal decisions, no digest, nor law book published in Great Britain after 1776, should be read in the Courts of the State. He was a great stickler for the old-fashioned practice in pleading; knew Coke upon Littleton almost by heart, and regarded with great disfavor any modern innovations upon the practice. He held the office of Associate Justice from 1798 to 1803, and that of Chief-Justice from 1803 to 1824.

He married Miss Jane Bayard, the daughter of Col. John Bayard, who had made a distinguished record in the Revolutionary War. Chief-Justice Kirkpatrick was a man of remarkable presence and bearing, of great personal beauty; and he and his wife were pronounced the handsomest couple in New Brunswick. In private life he was of unsullied character, and in his family was unrivalled as a father, husband, and friend. Some of his letters to his wife still retained by his descendants are full of affection. He was a public-spirited man, foremost in aiding measures for the common good; of great piety and unaffected zeal in the cause of religion. He was the founder of the Theological Seminary at Princeton, connected from its foundation with the Presbyterian church in America, and was the first President of its Board of Trustees, which position he held for many years. He took a very deep interest in his *Alma Mater*, and from 1809 to the time of his death was one of its Trustees. He died in 1831, at the age of seventy-five. A grandson bearing the same name is now President Judge of the Essex County Courts of New Jersey, — a position of great responsibility and importance.

During the twenty-one years that Andrew Kirkpatrick was Chief-Justice, the Supreme Court was composed of a Chief and two Associate Justices. Five persons — William S. Pennington, William Rossell, Mahlon Dickerson, Samuel L. Southard, and Gabriel H. Ford — were Associates during his time: all of whom, except Rossell and Ford, attained gubernatorial honors.

Among the settlers in Newark, in 1666, was a young man, named Ephraim Pennington. He probably came from the Colony of New Haven, in Connecticut. He signed the "*fundamental agreements*," already referred to which provided that no one could vote or hold land in the new Colony, unless he were a member of some congregational church; and as a home and "*out*" lots were allotted to him, young as he was, he must have complied with the necessary requirements to entitle him to an equality with other members of the church. The quaint old English cottage which he built and which was used for nearly one hundred and fifty years as a homestead for the family, was standing until about sixty years ago. This young man, Ephraim Pennington, was the ancestor of a family which has given many distinguished men to the State and nation. William Sandford Pennington was his great-grandson, and was born at Newark about

the middle of the eighteenth century. His mother's brother, William Sandford, after whom he was named, was a very large landholder between Newark and New York, and early in life his nephew was apprenticed to him to learn to be a farmer, with the understanding that he was to become the uncle's heir. When the lines between Whig and Tory were sharply drawn, the uncle and his nephew found themselves standing far apart from each other; William Sandford embraced the royal cause, and young Pennington was an ardent supporter of the colonies. The uncle threatened to disinherit the young patriot, if he continued in his disloyalty to the British Crown. The young man chose rather to risk losing a very large fortune, than surrender his principles. The uncle sundered the relation of master and apprentice; and young Pennington, at a very early age, entered the patriot army, and became attached to a company of artillery. He soon attracted the attention of General Knox, by his cool and intrepid conduct at an engagement, when, abandoned by his comrades, he continued to fire the cannon intrusted to him, and was instantly promoted to a lieutenancy. He took an active part in several battles, was present at the siege of Yorktown, was wounded either there or soon after, and was brevetted captain. He was obliged, however, to leave the army; became a hatter, and embarked in some commercial enterprises. He kept a diary, while in service, which is still existing, and is in the library of the New Jersey Historical Society. Unfortunately it covers only about a year's time. Much information can be gained from it, short as is the period it covers. He seems to have been present at the execution of Major André; he certainly was one of the detachment sent to Pompton to quell the mutiny of the troops of the New Jersey line.



WILLIAM ROSSELL.

In 1787 he was elected to the Assembly from Essex County, and, in 1801, while a student-at-law, he represented the same county in the Council, and was re-elected Councillor in 1802. In 1798 he entered the office of Elisha Boudinot, as a student-at-law, and was licensed as an attorney in 1802. In February, 1804, before he had been licensed two years, and prior to the time when, according to the rules of the Court, he could become a counsellor-at-law, he was made an Associate Justice of the Supreme Court, to fill the vacancy occasioned by the elevation of Andrew Kirkpatrick to the Chief-Justiceship. Mr. Pennington, with his brother Samuel, who for fourteen successive years was a member of the Lower House of the Assembly, was a leader in the Republican, or as it was afterward called, the Democratic party, who opposed the Federalists. This organization had very few lawyers in its ranks. Pennington was then in middle life, was a man of pronounced ability, of great good sense, of excellent judgment, was wise and sagacious; and his appointment as Associate Justice was the best which could possibly be made from his

political organization. Of course the dominant party would make no appointment from among its opponents.

Judge Pennington's selection was a necessity; it seemed like an experiment, and many old and experienced lawyers sagely shook their heads when it was announced; but he very soon convinced the bar, even the best of the profession, that he was far better fitted for the position than was feared. His native ability was good, his powers matured, and his industry untiring; and the lawyers practising in his court soon learned to confide in his judgment and to respect his opinions.

In 1806, mainly through the exertions of Chief-Justice Kirkpatrick, the office of Reporter of the Supreme Court was created; and the judges appointed Judge Pennington to that position, which he held until his election as Governor and Chancellor in 1813, when he resigned, and Samuel L. Southard, another Associate, was appointed.

Judge Pennington was an advanced lawyer, ahead of his times, and he had the force of his convictions. He did not believe in enforcing the antiquated abstractions of special pleading; and although he had a very great respect for the head of the court, he never failed, when he differed from his chief, to express his opinions fearlessly and decidedly.

In 1812 he was a candidate for Governor, which then included that of Chancellor, but was defeated. In 1813 he was more successful, and was elected. The next year, however, he was again defeated. In 1815 he was appointed by President Monroe to the office of Judge of the United States District Court of New Jersey, to succeed Robert Morris, who died, after many years of ill health. This position was almost a sinecure. There were four terms during the year, — two held at Burlington and two at New Brunswick; none of them, however, rarely lasted more than a day. No grand jury was ever sworn in his court, nor were any indictments found. He held this office until 1826, when he died at Newark, where he was born, and where he had lived all his long life except while Governor, when he resided at Trenton. He was of an unsullied character, both as a man and as a judge, and possessed the confidence of the entire community. He was the father of a large family, among whom was William Pennington, for many years Governor and Chancellor of New Jersey, a Representative in Congress and Speaker of the Lower House at the stormiest period in the history of the Republic, just before the breaking out of the Civil War.

Judge Pennington, besides the two volumes of Reports, already mentioned, wrote a small volume for the use of young lawyers, — a treatise on the small-cause courts. It was an excellent compilation, but has been superseded by more modern works on the same subject. Fifty years ago it was found in every lawyer's library of any extent in New Jersey, and was then much quoted, being regarded as final authority on all matters of which it treated.

William Rossell was not a lawyer; but he became through his indefatigable zeal and by virtue of his sound intellect and great industry, quite versed in the principles of the subtle science he was called upon to expound. He was a saddler, and when raised to the dignity of third Justice of the Supreme Court of New Jersey, had but a smattering of legal knowledge. By what fortuitous circumstance he was raised to the honor of the bench, is not now known. It was, undoubtedly, a political move. Judge Rossell belonged to the Republican party, opposed to the Federalists, and was elevated by that party when in power. He is reported to have said that the reason why he was selected was because there was no lawyer in the western part of the State, and that he had been persecuted by the Federalists. He had certainly been an active partisan, and it is probable that his appointment was a reward for political services rendered. At first his election was regarded with very great disfavor; and an act

of the Legislature was actually passed, which provided that no judge should hold a circuit in the same county for two terms in succession. Judge Rossell's ignorance of the practice of the profession, especially of the forms and modes of pleading, was so great that the lawyers were afraid to trust their cases to his adjudication. But he proved himself in the end to be a very fair judge, certainly an impartial one, although, even while on the bench, he took a very deep interest in political affairs and was a leader in his party. In some respects he was an able judge; his great good sense and sound judgment enabling him to master the principles which underlaid the cases submitted to him. He read an opinion in Arnold *vs.* Mundy, already referred to, which was sound and showed extended study and deep thought.

MAHLON DICKERSON.

At the death of William Sanford Pennington he was appointed to fill the position of Judge of the District Court of the United States for New Jersey. He died in 1840, quite an old man.

Mahlon Dickerson was a Judge of the Supreme Court for two years, and Governor and Chancellor for the same length of time. He was more remarkable for his public services, as Senator and Secretary of the Navy, under General Jackson, than for those he rendered to the State as Judge or Chancellor. He was always a public man, a politician, but a politican of the better kind, free from stain. He was descended from Revolutionary ancestry. His father raised and equipped, at his own expense, a company which went into the patriot army. He was born in 1771, was graduated at Princeton in 1789, and licensed as an attorney in 1793. He removed to Pennsylvania, and was licensed there in 1797. This fact, probably, prevented him from taking the degree of counsellor in New Jersey; his name does not appear among the list of counsellors in the Supreme Court. While living in Philadelphia he held many public positions and was an active partisan, sympathizing with the Republicans. In 1819 he came to Morris County in New Jersey, where his father had large and very valuable possessions. In 1812 and 1813 he was elected to the Legislature from that county, and while a member of the Lower House was chosen by the joint meeting a Justice of the Supreme Court to succeed Judge Pennington, who had just been made Governor. He was on the bench, however, for only two years, when he became Governor. Then in 1817 he was elected to the Senate of the United States, and was returned as Senator in November, 1822. In 1829 he was succeeded by Theodore Frelinghuysen, as Senator, but, by a strange combination of circumstances, was again returned to the Senate. Ephraim Bateman, who was then Senator resigned the same year on account of ill health, and Mr. Dickerson was elected to fill the vacancy thus created, so that he held this office for sixteen years. He took a prominent position while Senator, and was

identified with the Republican party, finally became attached to the Democratic organization, and in the end supported Andrew Jackson. He was offered the position of Minister to Russia, but declined the appointment, and in 1834 became a member of General Jackson's Cabinet, as Secretary of the Navy. In 1840 he was made Judge of the District Court of the United States, for New Jersey, in the place of Judge Rossell, who had just died. He held the office about six months. He was offered the position of Reporter of the Supreme Court, but declined it. There are no reports of his decisions while on the bench. He was not fond of the profession, and it is not probable that he exhibited any great proficiency in legal knowledge; but he was an able man, and made an impartial and discreet judge. He was of very courtly manners, a gentleman of the olden time. He never married, and left a large fortune to his relatives, some of whom are now occupying and owning his valuable property at Succasunna. His death occurred in 1853, when he was eighty-two years old.

Samuel L. Southard was a representative Jerseyman of the better class of politicians. His position in the political circles of the Republic was so pronounced, and his utterances in public life were so brilliant, that it is frequently forgotten that he was ever Governor and Chancellor or Judge. His father before him was a remarkable man, — at first but a common day-laborer; but rising by the sheer force of his native ability from his low condition in life, he filled successively the offices of Justice of the Peace, member of the Assembly, and finally became a Representative in Congress, where he met his more distinguished son, then a Senator from New Jersey, both being members of the joint committee which reported the Missouri Compromise. The father was a Representative in Congress for sixteen years, — perhaps, the longest time of service in that position ever given by any citizen from New Jersey.

Notwithstanding his father's poverty the very best opportunities were afforded to young Southard for the acquisition of an excellent education. He was prepared for college at one of the very best academies in the State, and under the tuition of a thorough and experienced instructor. Here he met Theodore Frelinghuysen, his life-long friend, Joseph R. Ingersoll, and Philip Lindsley, who became eminent men in their different professions. At a very early age he entered Princeton College, where he again met his academic friends. He graduated when only a little more than seventeen years old. He was then obliged to face the stern realities of life unassisted by his father's purse. Very soon after leaving college he taught a school at Mendham in his native State, and in his nineteenth year made his way to Virginia, and became a tutor in the family of Col. John Taliaferro, a wealthy planter, living in Prince George County. Here he was treated as a member of the family, and introduced to a refined and cultured society, in which he met James Madison, the future President of the United States, for whom he had a high admiration. Here, too, he found the lady whom he afterward married. While engaged in his duties as tutor, he studied law, and in 1809 was licensed by the Virginia courts. He returned to New Jersey, and in 1811 was licensed by the Supreme Court as an attorney-at-law. He began the practice of his profession at Flemington, in Hunterdon County. His talents and industry soon secured a large clientage, and he became one of the leading lawyers in West New Jersey. He had not been long in Flemington before he was appointed Prosecutor of the Pleas for Hunterdon.

In 1813 the Legislature of New Jersey passed a statute which provided that Aaron Ogden and Daniel Dod should be vested with the exclusive privilege of using the waters of New Jersey for steamboats passing between that State and New York. This statute was intended as a check to an act which had been passed by the State of New York, providing that the first person who should construct a steamboat capable of a cer-

tain speed should have the monopoly of the waters of the latter State. Fulton and Livingston had been successful in acquiring this monopoly, and in 1815 an attempt was made to repeal the New Jersey statute. Thomas Addis Emmet represented the New York applicants; Joseph Hopkinson and Samuel L. Southard spoke for Ogden and Dod. The effort of Mr. Southard secured his future success; it lost nothing by a comparison with the efforts of his more experienced and distinguished rivals. It was a masterly effort, and although it failed in convincing the Legislature, yet it convinced those who heard him and could appreciate such an effort, that in Mr. Southard were all the elements of a successful advocate and lawyer. At the succeeding election he was chosen a member of the Assembly, and while such member was elected a Justice of the Supreme Court, to succeed Mahlon Dickerson, who was made Governor. Judge Southard remained on the bench five years, and during the larger part of that time he was the Reporter of his court. But his true place was not on the bench. His talents were of a kind which fitted him for another sphere of action, a broader field of endeavor. He made a respectable judge, and lawyers had confidence in his decisions.

SAMUEL L. SOUTHARD.

In 1821 the office of Senator became vacant by the expiration of the term of Senator Wilson. There were strong objections entertained by some of the leading men of the party to which Mr. Wilson was attached against him, and Mr. Southard was elected over him. He immediately resigned as Judge, and Gabriel H. Ford was chosen to succeed him.

Mr. Southard entered the Senate at a very critical period in the history of the politics of the Republic. The country was in a ferment; Missouri had applied for admission into the Union, and the lower house of Congress had refused by a very large majority to admit. Mr. Clay, who was then a Representative from Kentucky, had moved for a joint committee. Mr. Clay was an old and experienced politician; Mr. Southard was a new member, and, lacked the prestige of a long service in the political field. However, he prepared a series of resolutions which were submitted to Mr. Clay, who approved of them, and it was agreed that Mr. Southard should present them in the Senate. But on the morning of the very day when they were to be offered Mr. Clay urged that the resolutions should be used by himself in the House. Mr. Southard consented, and the Kentucky statesman brought the resolutions without alteration before the lower branch of the National Legislature, where they were passed and afterward received the sanction of the Senate. These were the celebrated Missouri Compromise resolutions, for which Mr. Clay has received so much laudation. They were the work of Samuel L. Southard, the Senator from New Jersey, who has received no credit as their author.

In 1823 he was made a member of Mr.

Monroe's cabinet; the great Virginian did not forget his youthful friend, and now made him his Secretary of the Navy. When John Quincy Adams was elected President he continued him in the position,—a compliment to the ability and patriotism of the Jerseyman not since offered any citizen. In 1829 he was made Attorney-General; in 1832 he was again returned to the Senate of the United States, re-elected in 1838, and in 1841 was appointed President of the Senate, which position, on the death of General Harrison while President, made him virtually the Vice-President of the United States. He died in 1842, enjoying the respect of all, even of his political opponents, one of whom, Senator King from Alabama, made a most feeling address when his death was announced in the Senate Chamber.

Gabriel H. Ford, who succeeded Samuel L. Southard as Associate Justice, came of the very best stock in the State. His father was Col. Jacob Ford, Jr., a distinguished officer in the Revolutionary Army, and a firm and decided patriot. He built and, at the time of his death, owned the Washington Headquarters at Morristown, where Washington resided in the winter of 1779–80; and his mother was the daughter of the Rev. Timothy Johnes, the pastor for half a century of the historic Presbyterian Church at that place. The Ford family was very influential and numerous, and the Johneses were among the very first in the county.

Judge Ford was born in 1765, graduated at Princeton College in 1784, and then studied law with Abraham Ogden, a leading lawyer at Newark, where he met, as fellow-students, William Griffith, Richard Stockton, Alexander C. MacWhorter, and Josiah Ogden Hoffman, all afterward distinguishing themselves as lawyers. He was licensed in 1789 as an attorney, and as a counsellor in 1793.

Reference has already been made to the county courts, and to the judges of these courts as entirely unfit for the performance of their duties. The system was so vicious that the Legislature attempted to remedy the evil, and in 1818 by statute divided the State into judicial districts, and directed that a fit person should be appointed as president judge for each district, who should be "skilled in the law." One of these districts, a very large one, composed of Bergen, Essex, Morris, and Sussex, was committed to the care of Judge Ford as Presiding Judge of its several county courts. The law, however, was an unpopular one, was soon repealed, and Judge Ford was legislated out of office. He was a candidate to fill the vacancy caused by the resignation of Judge Southard, as Associate Justice, and seemed to have strong claims for that appointment. He had been long enough in the office of District Judge to give evidence of his competency to fill that of Associate Justice, and he was elected, but not without a very strong opposition. His opponent was Joseph McIlvaine, who received only one vote less than Mr. Ford. The election, however, was determined by the fact of locality rather than by the superior ability of the successful candidate. Mr. McIlvaine was the stronger man, the better lawyer, but Mr. Ford was from East Jersey. Judge Ford, however, became a very influential justice, and his decisions were generally reliable, but he did not receive the full confidence of the bar. He was, however, very conscientious and industrious, patient as a listener to arguments, and the most methodical man who ever sat on the bench of any court; and this precision he carried into all the details of his private business. He was a gentleman of the old school, courteous and affable to the last degree, precise in his manner of speech and in all his public service. In the performance of one part of the duties of judge he was unrivalled, and that was in his charges to juries. He was most persuasive in his addresses on such occasions, and generally succeeded in convincing his hearers. If he failed here, it was in his determination to convict when he thought a defendant guilty.

He filled the office of Associate Judge for

three terms and retired in 1842, only induced to relinquish an attempt at re-election for a fourth term by his increasing years and the consciousness that a growing deafness would soon render him unable properly to discharge the duties of the office. He died in 1849, at the advanced age of eighty-five years.

He was of an unsullied reputation, just and impartial as a judge, patient in investigation, and sincerely desirous of performing his whole duty.

CHARLES EWING.

Charles Ewing succeeded Andrew Kirkpatrick as Chief-Justice in 1824. Kirkpatrick had rendered himself somewhat obnoxious to some of the lesser lights of the bar, who imagined that he had become arbitrary and dictatorial. It is true that he did at times manifest an impatience at long arguments, but it is more than probable that counsel had exhausted the case they were supporting long before they were called to order by the Chief-Justice. It is reported that while a member of the bar, who afterward became an Associate Justice, was arguing some matter before the court, Kirkpatrick took his watch from his pocket, looked at it intently for a moment, and then deliberately turned its face toward the speaker. Long arguments are now prevented by a rule which limits the time of each counsel; but then no such rule existed, and no other method could, perhaps, be so well adopted to stop the deluge of small talk, which must have annoyed a man so capaciously equipped mentally as was Kirkpatrick. The stronger members of the bar deprecated the action of the Legislature which refused to reappoint him. No one was more outspoken in denouncing this action than was Charles Ewing. He was not averse from receiving the appointment, but he was unwilling to take the office in the character of an opposing candidate to the late incumbent. He objected to any change, even if he himself were to benefit therefrom; and it was only when he ascertained that there was no chance of his predecessor being retained that he consented to accept the position. The change, however, resulted in the concurrence by all parties in the sentiment that there was no fitter successor to Andrew Kirkpatrick than Charles Ewing.

His grandfather was distinguished for his bravery at the battle of Boyne-water, where he fought for King William, who rewarded him for his courage and devotion by presenting him with a sword. The son of this friend of King William came to New Jersey in 1718, and settled in Cumberland County, where he married a Miss Boyd, who became the mother of the future Chief-Justice, her only son, who was born in 1780. He graduated from Princeton College a first-honor man, entered the office of Samuel Leake, an eccentric lawyer, and in due course of time was licensed as an attorney and then as a counsellor.

Charles Ewing was fully equipped for the performance of his duties as the head of the Supreme Court, and brought to the bench peculiarly fitting qualifications. He had

been educated in the office of a lawyer who was a great lover of the black-letter English law, and the pupil fully shared with his master in his admiration for the old teachers. He was a lawyer by instinct, and loved his profession, its studies and its practice. He had no liking for any innovations of modern times, and viewed with much jealousy any interference by the Legislature with the settled principles of the common law. Yet he was broad-minded enough to appreciate any improvement, and did not hesitate, if his judgment approved, to adopt readily and heartily any change which might prove a benefit to the jurisprudence of the country. A case was decided in his court where he dissented from his two associates, and insisted upon an abrogation of an old common-law rule. This was a great surprise to the bar at the time, but it carried out the idea that Chief-Justice Ewing was not so wedded to old rules that he could not change for better ones. His mind was naturally inquisitive, and he was never satisfied with any mere cursory examination of subjects brought to his attention. A very large part of the business of the Supreme Court consisted in considering cases brought from Justices of the Peace by *certiorari* or otherwise. Many of these involved small amounts; but this made no difference with Chief-Justice Ewing: if there were any principle of law in the case — and he was sure to ascertain if there were any — his scrutiny was as searching and exhaustive as if there were millions at stake. In his investigations he never rested until every possible authority had been examined and all doubt removed. His patience was untiring, and he listened apparently unwearied to the arguments of counsel, however prolix and uninteresting. His earnest and honest endeavor was to learn the real merits of the case. His great honesty of purpose and integrity of action were striking characteristics of his nature. His character as a judge and as a citizen was unsullied by a stain, and in his action as a judge he was possibly too strict in avoiding even the appearance of evil. He refused to receive any fee unless it was unmistakably and in express terms allowed by the statute. The salary of the judges then was very small, and the expense in attending the different circuits was very large. Lawyers who could afford it were in the habit of inviting the judges to their houses while attending court. But Chief-Justice Ewing invariably declined their invitations, so as to avoid the appearance of partiality. He was an excellent scholar, and a close student of other subjects than the law. In all the relations of private life he was all that could be desired, and left behind him a most enviable record.

Mr. Ewing held the position of Chief-Justice for one term of five years, and was then re-elected without opposition by the political party opposed to him, no one in fact being named as a competitor. In 1832, less than a year after his re-election, he was stricken down by cholera and died, to the great regret of all parties. He died as he had lived, a firm and decided Christian.

Among the many cases decided by him, perhaps the most remarkable was that of Hendrickson *vs.* Decow; it was one which certainly elicited the greatest interest and attention. A very large element of the population of South Jersey was then, and is now, made up of Quakers. This sect, then and still, comprises among its members some of the very best citizens of the State, but had been hopelessly divided into two great bodies, called the Hicksites and Orthodox. The division was well marked and clearly defined, and the quarrel between the two parties had assumed that rancor and discord to which religious contests too often descend.

A controversy arose over a mortgage which was subjected to foreclosure in the Court of Chancery. Both parties claimed the fund, and it was finally submitted to the Chancellor to decide the true ownership. That official had been counsel for one of the parties, and could not hear the cause. He called to his aid Chief-Justice Ewing and Associate Justice George K. Drake, and the

cause was tried before them as advisory masters. It was argued by the most distinguished counsel and in the most elaborate manner. A week was consumed in the argument, and the testimony filled two large octavo volumes. Questions of law, of fact, and of theology were discussed; the government of the Quaker denomination was examined, and every possible argument which the acutest intellect and the profoundest learning could dream of were brought into the cause. When the day of decision arrived, a most impressive scene was witnessed. The court-room was crowded with quiet, undemonstrative Quakers, who sat apparently imperturbable, with their hats on, but divided into two unmistakable antagonistic bodies. They attempted to retain their stoical calmness, but in vain; compressed lips, gleaming eyes, and twitching features fully evinced the interested tumult which surged within their breasts. As the time approached for the delivery of the opinions, the silence became almost painful, only interrupted by the rustling of the paper held by the judges. The Chief-Justice first read his decision, written in the purest and best English, in his usual calm, clear, and deliberate tone, incisively enunciating his view of the law which governed the case, and discussing the facts involved. His opinion was masterly and convincing, and could by no means be misunderstood; it was the pitiless, cold, logical argument of a judge dealing with problems of law, but couched in such courteous tones and manner that even the defeated party could find no quarrel with it, nor with the man who pronounced it. Not so with Judge Drake; he was equally clear and definite, but his opinion went further than the Chief-Justice's, and decided not only the principles of law involved in the case, but discussed the theological questions which divided the two religious bodies, and so exasperated the Hicksites, who lost, that they revenged themselves by taking the most efficient means to prevent his re-election when his term expired.

GEORGE K. DRAKE.

When the result was announced, the spectators most interested rose, and quietly shaking one another's hands in their usual quaint fashion, Hicksite with Orthodox, left the room.

George King Drake, an Associate with Chief-Justice Ewing, was born in Morris County on the 16th of September, 1788. He was the son of Col. Jacob Drake, a patriotic officer in the Revolutionary army. His mother was a near relative of Mahlon Dickerson, who has already been noticed, and the widow of George King, a member of one of the most respectable families of Morris County, after whom Judge Drake was named. He received his early education under the Rev. Amzi Armstrong, who at one time was the preceptor of Samuel L. Southard, and who had in his time, as pupils, some of the most distinguished men of the Republic. He entered Princeton College in due course of time, and graduated from that institution in 1808, having for his classmates Bishop

Meade of Virginia, George Wood, and Judge Wayne of the United States Supreme Court. Immediately after graduation, he entered the office of Sylvester Russell, a leading lawyer in Morristown, was licensed as an attorney in 1812, as a counsellor in 1815, and in 1834 was made serjeant-at-law. So soon as he was licensed he began the practice of his profession at Morristown. His practice steadily increased, and he won and secured the confidence of the community by his strict integrity, and commanded the respect of the bar and bench by his superior talents and close attention to the interests of his clients. In 1823 he was elected a member of the House of Assembly, was twice returned by his fellow-citizens of Morris County to the same position, and became the Speaker of the House during the last two years. While a member of the Legislature, in 1824 and 1825, he was made Prosecutor of the Pleas for Morris County, and in 1826, still a member of the Legislature, was appointed an Associate Justice of the Supreme Court to succeed Judge Rossell. While holding this office, and to meet the wishes of the members of the bar in the southern part of the State, he removed to Burlington, where he remained while on the bench. At the expiration of his term, the Hicksite Quakers combined with the political party opposed to him, and elected enough members of the Legislature to prevent his re-election. His defeat was deprecated by all parties, except those who were determined to be revenged upon him for doing that which he deemed to be his duty; and no one more strongly condemned that action than did the gentleman who succeeded him, and who only consented to accept the office when he ascertained that his predecessor could by no possibility be re-elected. Judge Drake was tall and rather slender, but with a commanding presence. He was a clear-minded thinker, a good lawyer; not a brilliant man, but of excellent judgment, and good, sound, common-sense, and possessing a discriminating intellect of more than ordinary power, he easily grasped the salient points in a case. His opinion in the great Quaker cause, to which reference has already been made, is perhaps as good an example of his mode of reasoning and of his ability as any other which he decided. He returned to Morristown after his term expired, and resumed the practice of his profession; but his long absence from his former clientage interfered very materially with his success. His health had suffered from a very severe attack of rheumatism, from which he never entirely recovered. In the spring of 1837 he imprudently rode on horseback from Morristown to Succasunna, after making a change of clothing, was seized with pleurisy, and died at the residence of his brother-in-law Dr. Woodruff.

Joseph C. Hornblower, who succeeded Chief-Justice Ewing in 1832, was the first and only citizen born in Essex County who ever held that office. He was the son of Josiah Hornblower, an Englishman, who came to New Jersey in early youth and settled at Belleville; a man of learning, a surveyor, and of great public spirit, identifying himself especially with the educational interests of the community. He became a member of the Legislature of the Continental Congress, was a justice of the peace, and a Judge of the Court of Common Pleas. Young Hornblower in boyhood was of a weak physical constitution, and could not therefore avail himself of all advantages for acquiring a superior education. Whatever, however, could be done for him in that direction was carefully afforded him. He finished his studies in the Orange Academy, at that time one of the best conducted and most celebrated institutions of learning in the State, and of which his father was one of the trustees. John McPherson Berrien, prominent in Southern politics, at one time Senator and at another Attorney-General of the United States, was a fellow-student at this institution. Mr. Hornblower, after leaving the Academy, was employed in New York by his brother-in-law, in some mercantile enterprise, but very soon determined that he was fitted for a different life.

He accordingly entered the office of David B. Ogden, afterward a celebrated lawyer in the city of New York, and, after a course of five years' study, was licensed as an attorney in 1803, became a counsellor in 1806, and subsequently sergeant-at-law. It is said that Mr. Ogden had so high an appreciation of the merits of his student that he offered him a partnership before he had finished his term of study.

JOSEPH C. HORNBLOWER.

At the time when Mr. Hornblower began the practice of his profession Newark was a long, straggling town of perhaps five thousand inhabitants. Its history had extended during a period of a little over a century. The old puritanic feeling and sentiments which dominated its first settlers was still there almost as strong as ever. Mr. Hornblower was physically a man of feeble health, not fitted for the severe struggle of life among a stern and pitiless people. He could only hope to succeed by the sheer force of his mental ability. His success was assured almost from the beginning. His competitors in the race, then in active business life in Newark, were no mean antagonists; some of them were the very best lawyers in the State. But he proved himself equal to the task, and soon became a successful practitioner. In one line of his profession he was particularly eminent, and that was in the trial of causes and in addressing juries. He spared no pains to fit himself for the discharge of his duty as an advocate, and he became one of the ablest at the bar in New Jersey.

In 1832 Chief-Justice Ewing died, and Mr. Hornblower became a leading candidate for the vacant position. By this time his reputation as a lawyer and an advocate had become established. There were, however, those who objected to his appointment, and, perhaps, with good reason. He was a man of impulses, too quick in arriving at a conclusion, and too apt to permit his judgment to be swayed by his emotions. When once interested in a cause he made it his own; his client was the only injured party, and his eyes were closed to any arguments except those which aided in the establishment of what he considered the right. These characteristics, which certainly did exist more or less, in Mr. Hornblower's mental make-up, were urged as strong objections to his appointment, and they were all that could be proved; but to those making them they were deemed insuperable. Notwithstanding the opposition he was elected; and while it is certain that he erred in the directions indicated by his opponents, yet his success as Chief-Justice was almost phenomenal. He was too impulsive; he would frequently form incorrect judgments by yielding to first impressions; but the impulses of his generous nature were so correct that he rarely failed in the end of doing entire justice. He was a learned lawyer, fertile in intellectual resources, his industry almost marvellous; his inquiring mind was not satisfied with mere cursory examination, but would return again and again to the scrutiny. His pride of

opinion was great, but not obstinate; he was willing to be instructed, and if in error the nobility of his nature taught him how to acknowledge his mistake and make all needed reparation. He was a close student, and supplemented by research and industry, added to his native vigor of mind, what he had lost by the lack of educational advantages. His intellectual characteristics manifested through his whole career were quickness of perception, alertness in grasping the main prominent features in a case, and a readiness of expression. Ideas seemed to come too rapidly, so rapidly sometimes as to obscure his mental vision and prevent a proper appreciation of the real issue; but his sober second thoughts, and his willingness to listen and yield to logic and argument, prevented him from making any great mistakes. A notable instance of this feature in his character was manifested in the proceedings connected with the trial of a man named Thomas Marsh indicted for murder. A building had been burned, and two human lives had been sacrificed. By the statute of New Jersey, this offence was a capital one. Marsh had been tried and convicted at a term of the Oyer and Terminer in Essex County, held by Justice Whitehead. During the trial his counsel became unmistakably insane. A motion was made for a new trial, and Judge Whitehead called to his aid Chief-Justice Hornblower, who heard the argument on the motion. He wrote an opinion denying the new trial; Judge Whitehead remonstrated, and presented such arguments to his chief that he was induced to reconsider his opinion. The new trial was granted, and Marsh was acquitted.

Chief-Justice Hornblower settled the law in New Jersey in two most important particulars, — one, that relating to challenges of jurors, and the other, that which governed the defence of insanity. Eliphalet M. S. Spencer had been indicted for murder, and Chief-Justice Hornblower presided at the trial. He prepared in advance an opinion on the subject of challenges, and, as the clerk was about to call the jury, announced this opinion. He decided that there could be no challenge to a juror because he had formed or expressed an opinion in the case before the trial, unless it appeared that the "*opinion expressed was out of ill will or malice toward the party.*" This opinion was approved by the full bench of the Supreme Court, after solemn argument. It is certainly contrary to the practice as it obtains to-day in many other States. If Chief-Justice Hornblower's law, as laid down by him in Spencer's case, governed judges elsewhere, the miserable spectacle would not so often be witnessed, when days and sometimes weeks are spent in seeking for an incompetent jury. In the same case he also declared two opinions, — one of which is settled law in New Jersey, and the other open to criticism. One was his definition of that kind of insanity which ought to prove a sufficient defence in indictments for crime. He summed up his opinion on that point in these words in his charge to the jury: "If the evidence makes it clear to your minds, beyond a reasonable doubt, that the prisoner at the time *was unconscious that he ought not to do it*, he is to be acquitted; but if not, then he cannot be acquitted on the ground of insanity, *whether he was partially insane or not.*" He utterly discarded the idea of moral insanity, and by his charge did not leave the prisoner a ghost of a chance for acquittal upon that ground. He was equally emphatic when he addressed the jury on the evidence which proved the intention of the defendant to commit murder. He held that the prisoner was guilty of murder, if *at any moment of time* before the deed was committed he intended to take the life of a human being; that it was not even necessary that the act should be the result of a previous determination, but that it was murder in the first degree if at the very moment the knife was plunged in the heart of the victim, or the pistol fired, the intention was formed to take life. He made many other very important decisions, settling disputed principles, some of which

were overruled by his immediate successor; but as a general rule, his opinions have remained unquestioned. He served two terms of office, and retired from the bench in 1846.

He became a member of the Constitutional Convention which framed the Constitution of 1844, and took a very active part in the deliberations of that body, and was very influential in shaping its action. In 1841 the College of New Jersey conferred upon him the title of LL.D.; and after he left the bench the same institution attempted to establish a law school, and made him one of the professors; but the school was not successful, and Mr. Hornblower in a measure resumed the practice of his profession. He did not meet with the success which might have been expected from his great experience and undoubted high order of talent. He delivered some lectures in the law school at Princeton, and was not an idle man.

WILLIAM L. DAYTON.

He took a great interest in the public questions of the day, was an ardent politician, supporting in his young manhood the Federalist party, then the Whig, and when the Republican party was formed threw himself with all the forceful impulses of his nature into that organization. He died in 1864, in his eighty-seventh year.

He was an easy and fluent writer, rather diffuse; and his opinions, as printed, all bear the evidence of his strong, impulsive nature. He wrote well, logically, strongly; if any criticism were made upon his decisions, so far as literary merit is concerned, it would be that they sometimes lacked compactness and precision, were frequently disconnected, and seemed the result of a yielding to impulse, and not to logic and argument; but his style was correct and often eloquent.

He left quite a family: one of his daughters married Judge Woodruff, a judge of one of the Federal courts of New York; another married Hon. Joseph P. Bradley, an Associate Justice of the Supreme Court of the United States; and one of his sons was a distinguished divine in the Presbyterian Church, and at one time a professor in the Alleghany Seminary.

In 1838 the number of the Justices of the Supreme Court was increased from three to five. John Moore White was one of the two additions to the court. He was born in 1770 at Bridgeton, in Cumberland County, studied law with Joseph Bloomfield, was admitted as an attorney in 1791, as a counsellor in 1799, and became sergeant in 1812. His education was quite limited, being that which was acquired by an ordinary English course. He began the practice of his profession at Bridgeton, but removed in 1808 to Woodbury, where he ever after lived. He made himself fully acquainted with the legal principles relating to real estate, was a good surveyor, and was able to try any cause which related to boundaries of land, or where the title to real estate was involved in an able manner. His rank at the bar, however, was not high, but his practice was large and lucrative, and he was considered a safe counsellor. In his early practice

the Attorney-General deputized counsel in the different counties to try criminal causes, and Mr. White acted as Deputy Attorney-General for many years in his own county. In 1822 this practice was abrogated by a special act of the Legislature, which provided that the prosecutors should be appointed by the quarter sessions; but this act was repealed the next year, and the appointment of these officers vested in the joint meeting of the Legislature. The Constitution of 1844 provided that they should be nominated by the Governor and confirmed by the Senate. In 1833 Mr. White was made Attorney-General, and held the office for five years. He prosecuted the pleas in several counties, as was then the custom, and made a very successful officer. He preferred this position to that of Associate Justice; but in 1838 the Legislature gave the office of Attorney-General to another, and made him Associate Justice. He accepted the office rather reluctantly, believing, and not hesitating to express the belief to others, that he was not fitted for the position. However, he performed the duties of the place intelligently, and generally with success. He failed in one particular, and that a most important one: his charges to juries were neither strong, nor were they calculated to aid them in the discharge of their duties. He was a conscientious man, and aimed always at doing just what was exactly right; his honesty certainly never failed him. At the expiration of his term of office, having passed his threescore and ten years, he retired into private life, and died at the advanced age of ninety-one years.

That short-sighted and wicked blunder, known in history as the Revocation of the Edict of Nantes, gave to this country a body of immigrants of the very best character, who have added greatly to the prosperity of the nation. Among those Frenchmen who were driven from their homes and who sought refuge in Holland was a family named Ryerse. It soon assimilated itself with the cold and phlegmatic Hollanders to a certain extent, but it never lost many of its French characteristics From this Huguenot family there came a representative to America in the person of Martin Ryerse, who settled on Wallabout Bay in Long Island. Here he married Anetie Rapelje, the first white child born in Long Island, — a fact which the Canarsie Indians recognized by donating to her a large tract of land. Martin Ryerse had four sons born to him by this marriage. Three of them went to New Jersey, and settled in different parts of the State, one of them finding a home in Hunterdon County. The family name by this time had been changed to Ryerson. From this son who went to Hunterdon County, was descended the father of Thomas C. Ryerson, who was born on his father's farm at Myrtle Grove in Sussex County, in the month of May, 1788.

Young Ryerson had at first only the usual advantages of a common education, then afforded by an ordinary school in the country. But when he was sixteen years old he began preparing for college, and in 1807 entered the junior class in Princeton College, where he graduated in 1809. He then entered the office of Job S. Halsted in Newton, where he remained for four years, — that being then the required term of studentship, whether the student were a graduate of college or not. He practised his profession at Hamburg, Sussex County, until the year 1820, when he removed to Newton. In 1825 and to the year 1827 he was a member of the Council from Sussex County, and in 1834 was elected an Associate Justice of the Supreme Court. He was not a candidate for the office, and objected strongly to the removal of Justice Drake, of whom he was a warm personal friend. But the Hicksites, who were determined to prevent Drake's re-election, ascertained that he could be defeated with the aid of the members from Sussex County. They therefore nominated Ryerson, without his knowledge and against his consent, as he had urged the re-appointment of Judge Drake. But the opposition

arising from the Quaker prejudice against him was so strong that Mr. Ryerson received the vote of a caucus of the Democratic party. The majority of that party in joint meeting was large; but one member from Sussex and other Democrats refused to stand by the caucus nomination, and Mr. Ryerson was elected by a very small majority. This was not due to any doubt of his ability and capacity, but to the feeling that it was wrong that an honest and capable judge should be punished for doing his duty. Ryerson was not aware of his election until he was notified of it by his friends in Trenton, and even then he would not accept until he received a letter from Judge Drake, in which he urged him to take the position, "*and that promptly.*" The arguments used by Justice Drake were successful, and Thomas C. Ryerson was sworn into office, as an Associate Justice of the Supreme Court, in February, 1834. He did not, however, hold it for a whole term, but died while in office in 1838.

Judge Drake, in his letter urging his friend to accept the office, rejoiced that the place would be filled by one who would so act as judge that all might still confide "in the independence and integrity of the court." This prophecy was fulfilled to the letter. Judge Ryerson was an officer of the strictest integrity and of great independence. He was a first-rate lawyer, well equipped for the performance of the duties of his office. He was not quick in his perceptions, his mind partaking of that characteristic of the true judge, which enables its possessor to think well, judge wisely, and determine correctly. His mind was peculiarly discriminating, his perceptions were judicious, and his conclusions were sound and reliable. He was not content with his first impression of a cause, but he required, or rather, perhaps, determined to give his thoughts time to form a determination which would be logical and judicial. He was a man of untiring industry, of great candor, and conscientious in the discharge of his duties, both public and private. His personal tastes and habits were simple and unostentatious. He was well pleased with sprightly talk, and had himself a fund of anecdote which he delighted to give his friends. He died at the early age of fifty; his death, in all probability, being hastened by the great industry which ever filled his life.

William L. Dayton was the youngest man who ever sat in the Supreme Court, and, like Samuel L. Southard, was so well known in the political circles of the Republic that he is not often remembered as a judge. He was born in 1807 in Somerset County, from a most respectable family which had given several prominent men to the service of their country. One of these was a general in the Revolutionary army, and another was a member of the Convention which framed the Federal Constitution, afterward a Speaker of the House of Representatives, and subsequently Senator from New Jersey. Young Dayton had the best opportunities for obtaining an education which the country could give in his time. His academic course was pursued under the tuition of celebrated teachers, and he was graduated at Princeton College in 1825. Neither his academic nor college life gave promise of his future greatness. He was rather dull, slow in comprehending his studies, while in academy and college. He entered the office of Peter D. Vroom, one of New Jersey's most accomplished lawyers, as a student-at-law; was licensed as an Attorney in 1830, and as a Counsellor in 1833. He removed to Freehold in Monmouth County, and remained there until he was appointed judge. He was not of robust health, and at one time was quite slender in person; and perhaps this physical defect had some influence over his mental activity. He required impulses to arouse him to action. He was not what might be called an indolent man; his mind certainly was alert enough, but he did not by any means exert his full powers at all times. He was what might be called an unequal man; at times evincing great powers of intellect, especially when

obliged to act, think, and speak independently; at other times disappointing his friends. But he had within himself the elements of greatness and when fully aroused, was equal to any emergency, and competent to grapple with the abstrusest principles.

A lucky hit brought him prominently into notice as a lawyer in the early part of his practice in Freehold. He was retained to defend a client who was indicted for an assault and battery. Mr. Dayton feared that the defendant could not be acquitted on the merits of his case, and strove to find some technical point on which to base an argument to quash the indictment. He ascertained that the grand jury had not been legally summoned, moved to quash the indictment, and his motion was sustained. The result was that every indictment found at that term was dismissed. This, of course, brought him very speedily into public notice; clients flocked to his office, and his practice soon became very large. Political honors were early accorded to him. He was naturally an ambitious man; and rightfully so, for he was a born politician, and was fitted for public life. Such natures as his must necessarily find their true position, and whatever trammels may surround them, or obstacles withstand, the end is sure and certain.

Monmouth was overwhelmingly Democratic; young Dayton was a Whig, and it seemed a forlorn hope for any one of his party affiliations to seek the overthrow of the opposing organization. But this was just the task which suited Dayton's inclination. In 1837 he was nominated by his party as its candidate for the Council. This placed him at the head of his ticket, and he succeeded not only in securing his own election but that of his fellow-candidates. A new field of endeavor was opened to his aspirations, and in this arena he was destined to gain his greatest glory, to win his brightest laurels. He was a young man, untried as a legislator; just thirty years old, and had never been in office. But at once he became the leader of his party in the Legislature, and prominent in all movements in the Council. It soon became patent to all thoughtful observers that the proper sphere for a man of Mr. Dayton's consummate abilities was in the domain of politics, and here began a career of almost unexampled activity and brilliant success. Mr. Dayton was a broad-minded patriot, of high resolve and honorable aims. He never descended to the low arts which too often characterize those who seek political preferment. He never did a mean act; he never sullied his life by baseness.

It was while he was in the Legislature that the Circuit Courts of the various counties were established, and the success of the plan was mainly due to his exertions. Alexander C. M. Pennington, a leading lawyer from Essex County, was a member of the Assembly while Dayton was in the Council; and he prepared and presented the statute which provided for the adoption of this admirable system. Mr. Pennington was an acute-minded lawyer, and fully competent to prepare such a law as was required for so radical a change in the jurisprudence of the State. Mr. Dayton was Chairman of the Judiciary Committee of the Council, and was charged with the duty of reporting and acting on the new statute. Doubtless it received his strictest scrutiny, and in all probability was improved by his additions and amendments. He heartily approved of it, and it became the law of the land. The result has fully demonstrated the correctness of Mr. Dayton's judgment. The Courts of Common Pleas have been almost entirely abandoned by suitors who were obliged to seek redress by resort to civil suits. The Circuit Courts have received the fullest confidence of lawyers and their clients; even the Common Pleas have been remodelled, and lawyers of standing and learning placed at their head. One defect in the admirable system exists: the judges who are assigned to the larger circuits, with their duties in the Supreme Court and in the Court of Errors and Appeals, added to those of the County Circuits, are overworked men.

In 1838, while a member of the Council, Mr. Dayton was made an Associate Justice of the Supreme Court. He was then just turned of thirty-one; but he soon manifested, notwithstanding his youth, his fitness for the position. He remained on the bench until Feb. 18, 1841, nearly three years, having been elected on the 28th of February, 1838; then he resigned and returned to his profession. The moving cause of his resignation was understood to be the fact that the salary of the office was not sufficient to meet the wants of his family. In the succeeding year the death of Mr. Southard, then Senator, opened a door to the ambition of Judge Dayton. He was commissioned to the vacant office by William Pennington, then governor, in the interim of the Legislature, and was elected by that body at its coming session to fill the vacancy. He entered the Senate at a critical period in the history of the Whig party, to which he was attached, and which had elevated him to office. General Harrison, who had been inaugurated in 1842 as President, had died, and John Tyler had succeeded him. It was soon evident that Tyler intended to prove a traitor to the party which had elected him Vice-President, and Mr. Dayton found himself almost immediately obliged to grapple with the embarrassments environing his party in consequence of this defection. It was no easy task; and the new Senator was at once plunged into difficulties, which were intensified by the treason of the Vice-President, and the very evident fact that the Whig party was fast losing its hold upon the power which the election of Harrison seemed to assure to it. His situation was most embarrassing; but his cool head, his equable temperament, his calm foresight, and his great ability enabled him to avoid the great dangers which would certainly have overwhelmed a more inferior man. He spoke but seldom, only when occasion demanded, and then he demonstrated that though so silent he was equal to any emergency. He very soon impressed himself upon his fellow-senators, and was placed upon important committees. At the formation of the Republican party he took an active part in shaping and moulding its policy, and became influential in that organization. In 1856 he was nominated as Vice-President, with General Fremont as President. The ticket was not favorably received by the thoughtful men of that party, many of whom were of the opinion that it would have been much better if the names had been reversed. No one, however, whose judgment was worth anything thought that the ticket would be successful; and it was not, but through no fault of the nominee for Vice-President.

His term as Senator expired in 1851, and the Democratic party being then in power, he was succeeded by Commodore Robert F. Stockton. While in the Senate he measured swords with some of the ablest men in that body, and did not hesitate to try his strength even with Daniel Webster. He lost nothing by the inevitable comparison between his efforts and those made by his antagonists in the debates.

In 1857 he was appointed Attorney-General by Governor Newell, his competitors for the appointment being Frederick F. Frelinghuysen, afterward Secretary of State, and Cortland Parker, one of the most distinguished lawyers the State ever produced.

In 1860 Lincoln was elected President, and the eyes of every New Jersey Republican were turned toward Senator Dayton as a proper member of his cabinet. Lincoln would have appointed him, but for the reason that he believed that under the circumstances other States than New Jersey had greater claims upon him in the selection of the members of his political family. But he determined to appoint him to such a prominent position as would show his appreciation of his merits and abilities. To use his own words: "I then thought of the French mission, and wondered if that would not suit him. I have put my foot down and will not be moved. I shall offer that place to Mr. Dayton." He did offer the place to Mr. Dayton; it was

accepted, and he found himself in the possession of the most important and embarrassing embassy in the gift of the President. Paris swarmed with emissaries of the Confederacy; the Emperor of the French was more than half inclined to favor the Southern government, and to recognize it as an independent sovereignty. He had already acknowledged that the Confederacy was entitled to the rights of belligerents.

With consummate tact, and with far-reaching foresight, Mr. Dayton thwarted the plans of the Southerners, and finally succeeded in inducing the French Government to adopt a policy of action which materially crippled the Confederacy and added greatly in forcing the result.

Mr. Dayton lived long enough in Paris to secure the confidence and respect of the Emperor and of his court, and to render the most inestimable services to his own government. He died very suddenly on the first day of December, 1864, before the war closed, but at a time when it required very little sagacity to understand that the end of the great struggle was near.

Mr. Dayton's service on the bench was short; it extended over a period of only three years. But it was long enough to teach his fellow-judges and the members of the bar that he was a safe judge, to whom the interest of suitors might be entrusted with perfect safety. He was not a learned lawyer; he rather trusted to the strong common-sense of his nature for aid than to the learning which could be obtained only from study. Still he was sufficiently acquainted with the principles of law gained from books to equip him for the performance of his duties as judge. He had the uncommon faculty of seizing the salient point in a cause, and of using it with great ability in reaching a conclusion. He disdained technicalities, and refused to be governed entirely by mere forms. His broad-minded and capacious intellect must secure some fact, some principle in a cause submitted to him which was worthy of his observation. He was dignified and impartial, easy of access, pleasant and agreeable to all who approached him. Few citizens ever filled higher places in the respect and admiration of the people of his native State than did William Lewis Dayton.

Daniel Elmer succeeded, by the appointment of the joint-meeting, to the position vacated by the resignation of William L. Dayton. He came from one of the most influential families of Cumberland County, numerous branches of which are still to be found in that county. He was the fifth Daniel, in regular descent, from the first of that name, who emigrated to New Jersey from Connecticut early in the eighteenth century, and became pastor of a Presbyterian church at Cohansey. Members of the family became distinguished as patriots in the Revolutionary army. It is claimed that the first settler in this country was a descendant of the Alymer who was a tutor to Lady Jane Grey, afterward Bishop of London, and who changed the name to Elmer.

Daniel Elmer was born in 1784 at Bridgeton, in Cumberland County. His father, who was in very moderate circumstances, died when his son was only eight years old, and young Elmer was obliged to struggle for his livelihood. Fortunately he found a generous friend in his grand-uncle, Dr. Ebenezer Elmer of Revolutionary fame, who provided for his young relative, but could not give him all the advantages of a collegiate life. His education was such as he might acquire in the common schools of his time, but his natural activity and industry enabled him to obtain by study the necessary equipment for his profession. He was employed in the clerk's office of the county while he pursued his studies in the office of General Giles of Bridgeton, who was not only clerk of the courts, but also a practising attorney. The young student lost nothing by this experience; his service in the clerk's office made him acquainted with the routine of the practice, and brought him in contact with citizens from all parts of the county.

In this way Mr. Elmer was enabled to secure a large part of his clientage, after he was licensed. He finished his studies in 1805, after a course of five years, then required by the rules of the Supreme Court. In 1808 he received his counsellor's license, and in 1828 was made a sergeant-at-law. The removal of John Moore White to Woodbury was of material service to Mr. Elmer in his practice. He himself, at one time, contemplated a removal to another field; but, fortunately for his future, he relinquished the idea and remained at Bridgeton, where he lived all his life. He very soon obtained a large practice, but it was not of a character greatly to extend his knowledge of the abstruser principles of the law. His business was largely that of a collection lawyer, and his studies were necessarily confined to such cases as he was compelled to try, arising from that character of business. He was not a well-read lawyer, in the acceptation of that phrase as applied to the knowledge of legal principles gained from general study. He examined all the cases within his reach, which were applicable to any suit he might have in hand. This, of course, did not fit him to grapple with every question which might meet a judge, in the discharge of the varied duties of his office, but it did prepare him admirably for any case in which the principles of mercantile law were involved. In 1841 he was made an Associate Justice of the Supreme Court, in the place of Judge Dayton. He was not a candidate for the position; but he was a Whig in politics, and that party was in power. Daniel Elmer was a man of influence and power, a respectable lawyer; and it was shrewdly surmised, at the time, that political reasons entered into the action of the Legislature which elevated him to the bench. It ought, however, to be said that he was not a politician scheming for office, although decided in his views. He took the office rather reluctantly, for more reasons than one; one of which, perhaps, was the consciousness that his training at the bar had not fitted him for the full performance of the duties of judge. He certainly did not come up to the full requirements of the position, but he made a very respectable officer. His opinions, while not evincing any great learning, are marked by good sense and sound reasoning.

His ability as a lawyer and a judge was fully tested in the trial of Singleton Mercer, who was indicted for slaying Hutchinson Heberton. The offence was committed on the ferry-boat plying between Philadelphia and Camden. Heberton was charged by Mercer with having seduced his sister, and was murdered in revenge for the wrong. The trial created intense excitement; Mercer was defended by the ablest counsel, and the public sentiment was strongly in favor of the defendant. Judge Elmer presided in the Oyer and Terminer, assisted by lay judges. He soon ascertained that the feeling which so generally pervaded the community had reached his Associates on the bench. The defendant was acquitted, notwithstanding a strong though impartial charge from the head of the court.

In 1844 the Constitutional Convention was convened, and Judge Elmer was honored by being sent as a delegate from Cumberland County. After the convention had finished its labors, he was obliged, in consequence of failing health, to resign his office as judge. His great activity of life induced an attack of apoplexy from which he never recovered. He died in 1848, universally respected.

LEGAL INCIDENTS.

VIII.

MINE OF WEALTH IN A MULE.

"HELLO, Bob, how 's the mule?"

"First-rate."

"Still alive and eating against the writ?"

"Yes, the mule 's all right, and as lively as when I first took charge of him."

"Well, I guess I 'd better take another receipt from you, Bob, to keep the sheriff's records straight," said Under-Sheriff Long, in an official talk with R. T. Scott, who chanced to drop into the sheriff's office recently to report that he was alive, and that he still recognizes the red tape which is attached to an old mule. Mr. Scott signed the following paper: —

I, R. T. Scott, do hereby certify that of the two mules that were left in my charge by Thomas Cunningham, Sheriff of San Joaquin County, in 1872, and which mules, I was informed, belonged to the estate of M. Capurro, insolvent, one died in the year 1878. The other is still at this date alive and doing well, considering age and infirmities incident thereto; the said mule being now to my certain knowledge about thirty years old; nevertheless I am still holding the said mule subject to the orders of Thomas Cunningham, Sheriff.

R. T. Scott.

Dated Stockton, Nov. 14, 1890.

The story of the mules is interesting to show how property can be tied up in litigation. Somewhere about 1864 M. Capurro was a well-to-do business man of this city, owning a fine team, which was engaged in hauling freight to the mountains, and a horse and dray, which the owner used about the city. Hard luck came upon the pioneer, however; and along in 1866, when C. C. Rynerson was sheriff, an attachment was issued against M. Capurro's property, and the mule-team and horse and dray were taken in charge by the officer.

The owner claimed a pair of mules as exempt property under a law exempting a pair of animals for a teamster, and also set up a claim to his horse and dray, which were the means of his livelihood. Then commenced a legal fight, and in a little while the Stockton man was forced into insolvency under the United States laws. He finally won in his fight for the horse and dray; but the pair of mules claimed as exempt for a teamster were tied up in litigation, which has never been settled.

The sheriff then in office held the animals under a writ of attachment, and when he went out of office in 1867 the mules were delivered to his successor, Freeman Mills. Two years later Sheriff Mills gave the animals to the next sheriff, George C. Castle; and in 1872, when Sheriff Cunningham went into office, the mules were given over with the books and records and property under attachment.

Sheriff Cunningham placed the mules in the charge of R. T. Scott, and he kept the animals together until one died in 1878. The other animal is fat and healthy, and promises to live to the end of the century, but not to the close of the litigation.

Allowing the sheriff's keeper $3 per day, which is the limit fixed by law for the pay of keepers, the surviving mule is charged with $28,280 costs. If the mule is charged with ranch fees at $2 per month, the bill against the animal struggling to outlive the courts is $576. Adding $144 for ranch fees, chargeable against the one that grew tired of the law's delay and died, would make a bill for ranching to be collected out of the only property remaining, the lone mule, $720. — *Stockton Independent.*

CHINESE COURTS.

THE course of American politics, we usually acknowledge, is like a stream flowing over shifting sands, — liable to get a little muddy and sometimes to change its channel ; but in contrast to this we point to our courts of justice, apart from turmoil, inaccessible to bribes, unswerved by the stress of party conflict. The Chinese have studied these courts, and though they can hardly pretend to have mastered the mysteries of their intricate apparatus, it strikes our critics that no system could be more skilfully designed for the purpose of defeating justice. A court consists of three elements, — bench, bar, and jury, — the second and third apparently serving no other ends than to prevent law and to screen the guilty. In China, where there is neither bar nor jury, the processes of law are not only more expeditious, but, as the Chinese assert, more certain. In their eyes the jury is open to three objections: (1) while the weighing of evidence requires a trained mind, the jurors are chosen at random and are chiefly uneducated men ; (2) their verdict is required to be unanimous, making conviction next to impossible in cases that admit of a difference of opinion ; to secure impartiality, they are required to declare beforehand that they have formed no opinion on the subject ; they are accordingly men who either do not read or do not reflect. In addition to these objections, much time is lost in impanelling a jury ; and then the judge has to instruct them how to understand the evidence. Why not permit the judge and a couple of assessors to pass on the facts in the first place ? It is amusing to an Oriental to learn that these jurors are locked up and deprived of food in order to compel them to agree, and that one man who can endure hunger longer than the others may thereby procure the release of a prisoner. Such is the palladium of our liberties, — an institution which ranks among the noblest privileges of Magna Charta ! As for the bar, in the estimation of the Chinese its theory is thoroughly immoral, and the practice founded on it is a game of trickery and deceit. One of our great writers gives a comical picture of a judge who averred, when he had heard one side, that he could understand the case, but who always suffered from a confusion of ideas when he came to hear the other. The function of a lawyer is to compel a judge to hear the other side. The lawyer, however, is by the rules of his profession permitted to present only a one-sided view of the case. He seeks not the triumph of right, but the success of his client. The opposing counsel strives to determine the court in a contrary direction, and between these contending winds the arrow of justice will not fail to go straight to the mark ! Each advocate browbeats the other's witnesses ; he lays snares for the unwary ; and to weaken their testimony he does his best to ruin their reputations. One who has the gift of eloquence appeals to the sympathies or prejudices of the jurors, who, being unsophisticated men, are liable to be carried away by his oratory. He acquires a name for power over a jury, and the litigant who can offer him the heaviest fee is almost sure to win his suit. What an original scheme for the promotion of even-handed justice ! In some of our courts our visitors see a statue representing a blindfolded goddess holding aloft a pair of scales. That emblem expresses perfectly the Chinese ideal of the character of a judge ; but to express ours it ought to exhibit the counsel for the litigants as doing their best by surreptitious means each to turn the scale in his own favor. The task of weighing rival claims in such circumstances must transcend even the powers of a goddess. By means of these aids to justice rogues are set free to prey on society ; wills of honest testators are broken ; creditors are defrauded of their dues ; and more than all, through this cumbrous machinery the processes of law

are rendered so expensive that the poor are deterred from attempting to defend their rights. Whatever else our Chinese visitors may borrow, they are pretty certain not to transplant either bar or jury. — *Forum.*

THE LAW AND AUTHORS IN THE OLDEN TIME.

THE agitation now going on as to the suppression of certain books, by certain authors, recalls to mind the thought that authors and their books have in all times suffered more or less at the hands of the law. In the olden times they certainly fared much worse than at the present day; and a few instances of the manner in which the majesty of the law was vindicated in former days may prove of interest to the readers of the "Green Bag."

In June, 1599, by order of Archbishop Whitegift and Bishop Bancroft, nearly all the copies of Christopher Marlowe's translation of Ovid's Elegies, with Sir John Davies's Epigrams (1596), were condemned to be burned at Stationers' Hall. The few existing copies of the little volume containing these two performances are worth from six to eight guineas each. An old writer tells us that, by command of the Pope, and with the consent of the whole clergy of England, the Bishop of Rochester preached in St. Paul's Churchyard against Martin Luther and all his works, and denounced those persons as accursed who kept any of his books, of which many were burned during the sermon. In 1617 James I. published his famous "Declaration to his Subjects concerning Lawful Sports," sanctioning the public enjoying certain recreations and pastimes on the Sabbath, and positively ordering all parochial incumbents to make his permission known in their respective churches, of pain of the king's displeasure. On March 10, 1643, twenty-six years after its publication, this royal book was burned by the common hangman, in Cheapside, in pursuance of a resolution of both Houses of Parliament, which commanded all persons having any copies of that work in their hands to deliver them forthwith to be burned according to the order. For writing his "Altrare Christianum" (1637) and "Sunday no Sabbath," Dr. Pocklington was deprived of all his livings, dignities, and preferments, disabled from ever holding any place or dignity in church or commonwealth, and prohibited from ever coming within the verge of the king's court, and his works were ordered to be burned by the common hangman. "I am afraid," says Southey, "that this act of abominable tyranny must mainly be attributed to Archbishop Williams, who revenged himself thus for the manner in which Dr. Pocklington had foiled him in a controversy." On August 27, 1659, all Milton's books were burned by the common hangman, according to an order altogether worthy of the prince who had Cromwell's mouldering bones taken up and exposed on a scaffold. Dr. J. Drake's very curious "Historia Anglo-Scotica, or Impartial History of the Kings and Kingdoms of England and Scotland, from William Conqueror to the Reign of Queen Elizabeth" (1703), was ordered to be burned by the common hangman. The Scottish Parliament having pronounced William Attwood's work entitled "The Superiority and Dominion of the Crown of England over the Crown of Scotland" (1704), to be scurrilous and full of falsehoods, commanded it to be burned by the hangman of Edinburgh. When Linnæus first published his works, the Pope ordered them to be burned; but some time afterward his holiness unseated a professor of botany for being igno-

rant of the writings of that illustrious Swede. In France, in 1790, above 4,194,412 books, which were in the suppressed monasteries, were burned. Two millions were on theology, and 26,000 were manuscripts. In the city of Paris alone 808,120 volumes were burned.

A gentleman named Collingbourne was executed on Tower Hill for the following couplet, alluding to Catesby, Ratcliff, and Lovel giving their advice to Richard III., whose crest was a white boar: —

> "The cat, the rat, and Lovel our dog,
> Rule all England under a hog."

The unfortunate versifier having been hanged, was cut down immediately, and his entrails were then extracted and thrown into the fire; and all this was so speedily performed that, as Stow says, when the executioner pulled out his heart, "he spake and said, 'Jesus, Jesus!'" W. Thomas, author of "A Historie of Italy, a Boke Excedyng Profitable to be Redde" (1549), enjoyed the confidence of Henry VIII. and Edward VI., but was hanged by order of Queen Mary, for the bitterness he evinced toward the Pope and others in that curious and now very scarce book. The printer of a work entitled "Doleman's Conferance about the next Succession to the Crown of England" (1594), was hanged, drawn, and quartered; and it was enacted by the 35th of Elizabeth that whoever should have this book in his house should be condemned as guilty of high treason. Cardinal Allen, Sir Francis Englefield, and Father Robert Parsons the Jesuit are supposed to have written this work, the object of which was to support the title of the Infanta against that of King James, after the death of Elizabeth. It is now so very rare that as much as fifteen pounds has been paid for one of the few copies that exist; and even an imperfect copy has been sold for £1 10*s*. Archbishop Laud was beheaded for compiling Charles I.'s "Book of Sports" (1633). Jacques Boulay, canon of St. Pierre en Pont, wrote "Le Vigneron Français" (1723), containing an excellent account of the French vineyards, and so faithful an exposure of the frauds and adulterations practised by the growers and sellers, that tradition says he was found one fine morning hung up in the midst of his own vineyard, as a public warning to those who make people too wise by telling the tricks of trade. Campbell the poet called Bonaparte the literary executioner, because Palm the bookseller was executed in Germany by order of the French.

George Withers the poet was imprisoned for several months in the Marshalsea, as a punishment for the offence he gave by his satires, in a little book entitled "Abuses Stript and Whipt" (1633). In James II.'s reign Richard Baxter, the eminent divine and nonconformist, was committed to the King's Bench by a warrant from the detestable Judge Jeffries, who treated this worthy man, at his trial, in the most brutal manner, and reproached him with having written a cartload of books, "every one as full of sedition and treason as an egg is full of meat." Bussy Rabutin, maliciously betrayed by the Marchioness of Beaume as the author of "Amours des Illustres de France," published at Cologne in 1717, was sent to the Bastile, and then exiled seventeen years on his own estate.

Thomas Wilson, who was seized at Rome and thrown into the Inquisition in consequence of the heresies contained in his "Arte of Rhetorique, for the use of all such as are Studious of Eloquence" (1553), would have been burned if the prison itself had not taken fire; for the people then broke open the doors, that the prisoners might save their lives if they could, and Wilson made his escape. Henry Stephens the printer was condemned to be burned for publishing a work entitled "Introduction au Traité de la Conformité des Mervailles Anciennes avec les Modernes" (1566), which is so full of amusing anecdotes and satire against monks, priests, and popes, that many authors have been tempted to extract from it without acknowledgment. While Charles II. had the

portrait of Hobbes on the wall of his bedroom, in reverence of his aristocratical principles, the bishops were strongly urging the necessity of burning him, in abhorrence of his religious doctrines.

For writing "An Appeal to Parliament, or Zion's Plea against the Prelacy" (1628), Dr. Alexander Leighton was twice publicly whipped and pilloried in Cheapside, his ears cut off, his nose twice slit, his cheeks branded with red-hot iron, and he was also eleven years imprisoned in a filthy dungeon in the Fleet. William Prynne lost his ears for writing "Histrio-Mastix; the Player's Scourge, or Actor's Tragedie" (1633), a scarce and famous work in two volumes. The recent recommendation of his works in the "Oxford Tracts" has brought them again into considerable demand.

Queen Elizabeth being enraged at a book that was written against her, and which she did not believe was penned by the person whose name appeared on the titlepage, declared that she would have him racked to discover its real author, "Nay, madam," said Bacon, "he is a doctor; never rack his person, rack his style. Let this pretended anthor have pen, ink, and paper, and help of books, and be enjoined to continue his story; and I will undertake, by collating the styles, to judge whether he were the author or not." Voltaire, when at Berlin, wrote an epigram on his patron and host, the King of Prussia. for which he was rewarded with a flogging on his bare back, administered by the sergeant-at-arms, and was compelled to sign the following curious receipt for the same: "Received from the right hand of Conrad Bachoffner, thirty lashes on my bare back, being in full for an epigram on Frederick the Third, king of Prussia. *Vive le Roi.*"

The present King of Prussia conversing with George Kerwegh, a celebrated poet of very liberal opinions, said, "I have to be faithful to my mission as a king, and I desire that you may be faithful to yours as a poet, for I do not like want of character. A warm opposition, founded upon conviction, pleases me; and I therefore like your poetry, although it sometimes contains a bitter dose for me."

Milton, in his "Treatise for Unlicensed Printing," shows that in Greece and Rome no books were prohibited which did not blaspheme the gods or were not libellous. And passing on through the times of the Emperors, after Christianity had been publicly established, he finds a similar indulgence of all books not blasphemous or calumnious; for even heretical works were not prohibited till they had been condemned by a general council. But about the year 800 he finds this course altered, and the origin of the invention of licensing books. At one period in France it seems that works on any subject, no matter what, were obliged to be written in a religious strain, to insure the quiet publication of them. Addison, writing from Paris in 1699, remarks that "as for the state of learning here, there is no book that comes out that has not something in it of an air of devotion. Dancier has been forced to prove his Plato a very good Christian before he ventures upon his translation; and has so far complied with the taste of the age, that his whole work is overrun with texts of Scripture, and the notion of pre-existence supposed to be stolen from two verses of the prophets." Dr. Johnson justly observes, that "if nothing may be published but what civil authority shall have previously approved, Power must always be the standard of Truth." It is rather remarkable, however, that the Doctor nevertheless advocates the punishment by law of authors who murmur at the government, or are sceptical in theology.

A modern writer very truly remarks that, "notwithstanding the vast increase of knowledge in the departments of physical science, and the partial demolition and decay of some ethical errors (the causes of great practical unhappiness), the cause of intellectual independence is not yet gained. The right of free thought is not so firmly established, that we have nothing more to learn or to suffer in

its behalf. There is, it is true, no room to doubt that the Reformation in religion, by relieving mankind from the incubus of one sole infallible authority, has materially improved the condition of society morally, scientifically, and politically, no less than in its relation to the point originally at issue. We are in no immediate likelihood of such a crusade against science as that directed by the Church in Galileo's time against the Copernican system ; but though knowledge, or rather the improved moral feeling that knowledge brings with it, has gained this triumph, yet is the human mind itself a combination of the same passions, obeying the same laws, and ready at any moment to manifest, we fear, the same passions, whenever the opportunity arises for the assertion of self-interest. We ask ourselves whether, all things considered, there is not as much evil disposition manifested in the intolerance with which rival sects persecute and plague each other in this much-lauded nineteenth century, as was displayed by the persecutors of the Galileos in the sixteenth? The fagot and the cord, it is true, are no longer permissible instruments of religious or political controversy, as in the times of Huss and Servetus; but the ingenuity of power, whether lodged in church, state, or public opinion, has employed other methods of enforcing silence scarcely less painful to the mind of the sufferer." In fact, the law no longer pillories an author who writes to the distaste, or, like poor Defoe, above the comprehension, of the powers that be, because it no longer pillories any one; but the imprisonment and the fines remain in force.

LONDON LEGAL LETTER.

LONDON, August 5, 1891.

EVERYBODY and everything connected with the administration of justice languishes as the long vacation approaches. The vacation lasts from the 12th of August to the 24th of October, so that those whose minds and bodies are wearied with the stress and anxieties of legal work have ample time to recruit their faculties and brace their powers for fresh conflict. Men in large practice generally avail themselves of the entire period for a lengthened holiday; men with a little work who would like more, and some of those with none who aspire to a more extended usefulness, remain in town in the hope that something may turn up. At one time such abnegation was regarded as an ardent token of industry and application, but the custom has now become so common that a barrister's attendance at his chamber during the recess has ceased to evoke particular admiration. Very many of our judges and leading counsel are enthusiastic sportsmen. Sir Henry James, Q. C., M. P.; Mr. Murphy, Q. C.; the genial and witty Frank Lockwood, not to mention others, — are all devotees of the gun. Mr. Bigby, Q. C., one of the leaders of the Chancery Bar, is never more thoroughly in his element than when entertaining a large party at a hare-drive in his Highland shooting. Golf is a game which has of late been making extraordinary strides in popular favor; always a national pastime of high repute in Scotland, it is only quite recently that the English mind has become keenly alive to its charms. I mention this because a very large number of barristers have become enthusiasts in golf; of this company is the popular Queen's Counsel, Mr. B. B. Finlay. Among politicians the sport has no such zealous champions as the Rt. Hon. A. J. Balfour, Chief Secretary for Ireland; indeed, the Irish members some time ago complained that the Chief Secretary played golf when he should have been weeping over their woes.

The amount of legal and ecclesiastical patronage which has fallen to the lot of the present government is almost unparalleled: the Liberal lawyers have been heaving many a sigh during the past few years, as one valuable office after another has become vacant and been filled by their Conservative rivals. Since I wrote last, yet another coveted piece of preferment has been dangled before the wistful gaze of the bar; after constant rumors on the sub-

ject, a statement appeared in the "Times" the other day to the effect that it was now practically settled that the Recorder of London, Sir Thomas Chambers, Q. C., would shortly retire. As this vacancy had been so often predicted, most people believed the intimation in question to be final, and a number of names suggested themselves for the appointment. The most likely candidate was, in influential quarters, considered to be the Judge Advocate-General Sir William Mariott, Q. C., senior member for Brighton; but just as curiosity was at its height, the veteran Recorder took an opportunity of flatly contradicting the statement that he intended to retire. A curious feature of the case was the action taken by Sir William Charley, the Common Serjeant. He was piqued at no one proposing himself as a likely successor to his superior, Sir Thomas Chambers; so reflecting that he must strike a blow on his own account, he published a statement setting forth the traditional right of the Common Serjeant to be promoted to the higher office, on its becoming vacant. This extraordinary proceeding has been commented on by the press in the severest manner.

An extraordinary amount of public interest has been excited over the case of Mrs. Cathcart, a lady of large fortune and eccentric habits; her husband presented a petition in lunacy against her, seeking to have his wife pronounced a lunatic. The enquiry which took place before one of the masters in lunacy, Master Bulwers, and a jury was extremely prolonged, and was remarkable for the number of sharp conflicts between the distinguished counsel engaged in the case. Sir Henry James appeared for Mr. Cathcart, while Sir Charles Russell represented the lady. Sir Charles had to admit, in opening his client's case, that she had a "bee in her bonnet;" but in fact Mrs. Cathcart's eccentricities and delusions were proved to be very numerous and deeply rooted. Most people who had watched the case carefully, assumed that the husband's petition would be granted, when, to their surprise, the jury at the conclusion of the hearing pronounced Mrs. Cathcart sane; probably the kindly jurors wished to err on the safe side, and there is no doubt the verdict was an extremely popular one, as a sort of impression got abroad at one time that the proceedings were a plot to have a wealthy and highly intelligent lady placed under most uncalled for restraint.

The authorities at St. Paul's Cathedral can now breathe freely. Many visitors from your shores have admired the magnificent Reredos which now befittingly adorns the chancel, and whose erection is only part of a larger scheme for decorating the interior of the great Metropolitan Cathedral. The Reredos, however, was a source of intense sorrow to a small section of ultra-Protestants, who resolved to bring the question of its legality before a court of law. Accordingly two "representatives," under the provisions of the Public Worship Regulation Act, 1874, were sent to Dr. Temple, the Bishop of London, — one complaining that the Dean and Chapter of St. Paul's had set up on a reredos in the Cathedral figures which tended to encourage ideas and devotions of an unauthorized and superstitious kind, and were unlawful; the other repeated the former complaint, and alleged that the figures had in fact encouraged such ideas and devotions as before alluded to. The Bishop replied to the first representation by stating that having considered the whole circumstances of the case he was of opinion that proceedings should not be taken. His reasons were that the question of principle had been already decided in a previous case; that litigation in such matters even when necessary to decide an important point is a great evil, causing irritation and party strife, and that in the present case it would cause more mischief to the church at large than benefit. As to the second representation, he observed that the questions it raised were substantially the same as those in the first. The complainants in both cases applied for a mandamus to compel the Bishop to direct proceedings to be taken. The Court of Queen's Bench having, after very carefully considering their judgment, granted the mandamus, the Court of Appeal promptly set the order aside; the decision of the Court of Appeal has just been affirmed by the House of Lords. The final settlement of the matter in favor of the Dean and Chapter gratifies every one except the promoters of the absurd suit.

I hear that Sir Charles Russell is about to start on a tour to San Francisco, that he may see his sister who is Mother Superior of a convent there. It is stated that the brother and sister have not met for upward of thirty years. * * *

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 CORRESPONDENT in Colorado kindly sends in the following: —

Editor of the "Green Bag".

DEAR SIR,—The following death-sentence was delivered by Judge Kirby Benidict, who was for thirteen years an Associate Justice of the Supreme Court of New Mexico, and is reported in the minutes of the Bar Association of New Mexico for the year 1890. A Mexican, Jose Maria Martín, was found guilty of an atrocious murder at the District Court in Taos, and Judge Benidict sentenced him as follows: "Jose Ma. Martin, stand up — Jose Ma. Martin, you have been indicted, tried, and convicted by a jury of your countrymen, of the crime of murder, and the court is now about to pass upon you the dread sentence of the law. As a usual thing, Jose Maria Martin, it is a painful duty for the judge of a court of justice to pronounce upon a human being the sentence of death. There is something horrible about it, and the mind of the court naturally revolts from the performance of such a duty. Happily, however, your case is relieved of all such unpleasant features, and the court takes positive delight in sentencing you to death.

"You are a young man, Jose Maria Martin; apparently of good physical constitution and robust health. Ordinarily you might have looked forward to many years of life, and the court has no doubt you have, and have expected to die at a green old age; but you are about to be cut off in consequence of your own act. Jose Maria Martin, it is now the spring-time; in a little while the grass will be springing up green in these beautiful valleys, and on these broad mesas and mountain sides flowers will be blooming; birds will be singing their sweet carols, and Nature will be putting on her most gorgeous and her most attractive robes, and life will be pleasant and men will want to stay. But none of this for you, Jose Maria Martin: the flowers will not bloom for you, Jose Maria Martin; the birds will not carol for you, Jose Maria Martin; when these things come to gladden the senses of men, you will be occupying a space about six by two beneath the sod, and the green grass and those beautiful flowers will be growing above your lowly head.

"The sentence of the court is that you be taken from this place to the county jail; that you be there kept safely and securely confined, in the custody of the sheriff, until the day appointed for your execution. — Be very careful, Mr. Sheriff, that he have no opportunity to escape, and that you have him at the appointed place at the appointed time.—That you be so kept, Jose Maria Martin, until — Mr. Clerk, on what day of the month does Friday about two weeks from this time come? March 22, your honor. Very well — until Friday the 22d day of March, when you will be taken by the sheriff from your place of confinement to some safe and convenient spot within the county — That is in your discretion, Mr. Sheriff; you are only confined to the limits of the county,— and that you there be hanged by the neck until you are dead, and — the court was about to add, Jose Maria Martin, 'may God have mercy on your soul,' but the court will not assume the responsibility of asking an All-Wise Providence to do that which a jury of your peers has refused to do. The Lord could n't have mercy on your soul. However, if you affect any religious belief or are connected with any religious organization, it might be well enough for you to send for your priest or your minister and get from him, well, such consolation as you can; but the court advises you to place no reliance upon anything of that kind. Mr. Sheriff, remove the prisoner."

This sentence was never carried out, as before the day of execution Jose Maria Martín broke jail and was heard of no more.

LEGAL ANTIQUITIES.

TOBACCO users had a hard time of it under the Blue Laws of Connecticut, as witness the following stringent regulations: —

"Forasmuch as it is observed, that many abuses are crept in, and comitted by frequent taking of tobacko,

"*It is ordered by the authority of this Courte*, That no person under the age of twenty one years, nor

any other, that hath not already accustomed himselfe to the use thereof, shall take any tobacko, untill hee hath brought a certificate under the hands of some who are approved for Knowledge and skill in phisik, that it is usefull for him, and allso, that hee hath received a lycense from the courte for the same. And for the regulating of those, who either by theire former taking it, have, to theire owne apprehensions, made it necessary to them, or uppon due advice, are persuaded to the use thereof.

"*It is ordered*, That no man within this colonye, after the publication hereof, shall take any tobacko, publiquely, in the streett, highwayes, or any barneyardes, or uppon training dayes, in any open places, under the penalty of six-pence for each offence against this order, in any the perticulars thereof, to bee paid without gainesaying, uppon conviction, by the testimony of one witness, that is without just exception, before any one magistrate. And the constables in the severall townes, are required to make presentment to each perticular courte, of such as they doe understand, and can evict to bee transgressors of this order."

FACETIÆ.

"WILL your honor permit me to add a few words?"

"Certainly, sir, you have a right to sum up."

"GENTLEMEN of the jury, the question is so serious, so momentous, so overwhelming in importance, that I confess that I am unable to express my thoughts."

"I should think not," murmured a brother lawyer; "he was always noted for his slow train of thought."

A YOUNG man down in Carroll County, Mo., who has doubtless heard a case or two tried before a country squire and has attended an alliance meeting, wants to practise law, and has asked the Carroll County Circuit Court to grant him a license. His application, which it is asserted is serious, is given below verbatim. The court examined him, perhaps thinking that it had run across a practical joker; and his answers were more ridiculous than his application. He got no license. Among other things he gave the definition of law as "something that must be obeyed." The application is as follows:—

In the Circuit Court of Carroll County, Missouri, July term, 1891.

To the Hon. JAMES M. DAVIS, Judge.

Whereas I, the undersigned, now of sound disposing mind; and

Whereas, I feel disposed to make an application for a license to practise as an attorney: therefore I am

Resolved to ask that your honor grant me said license, and fail not at your peril. Wherefore deponent saith not. So help me God and keep me steadfast in the faithful performance of same.

Witness my official hand and seal this 20th June, 1891 (eighteen hundred and ninety-one)

L. A. B——,
Late Clerk Special School Election.

THERE was a Civil Justice in one of the lower courts of New York City, who during the existence of the Stamp Act, of his own motion, dismissed a suit on a verbal lease because the plaintiff had not proved that the lease was stamped according to the Act!

THE following was a part of a young lawyer's peroration in one of the courts recently: "May it please your honor, this is a stupendous question. Its decision by you this day will live in judicial history long after you and I shall have passed from this scene of earthly glory and sublunary vanity. When the tower of Pisa shall be forgotten; when Waterloo and Bunker Hill shall grow dim in the distant cycles of receding centuries; when the names of Napoleon, Marlborough, and Washington are no longer remembered; when the pyramids of the Pharaohs shall have crumbled into dust; when the hippopotamus shall cease to inhabit its native Nile, — even then your ruling on this demurrer will still survive in the antique volumes of legal lore, fresh, green, and imperishable. The case, your honor, originally concerns the cost of two new hats and an umbrella."

"YOU know that you are not obliged to say anything that will commit yourself," said the judge, mechanically.

"Now, honor bright, Judge," replied the prisoner, "if I'll promise to be non-committal, will you?"

A BRIGHT ten-year-old girl, whose father is addicted to amateur photography, attended a trial at court, the other day, for the first time. This was her account of the judge's charge: "The judge made a long speech to the jury of twelve men, and then sent them off into a little dark room to develop."

A FEMALE witness, in a court in Maine, the other day testified somewhat injuriously to the side she was supposed to favor. This made the examining lawyer mad, and he sharply asked her: "Has not Brother So-and-so," meaning the opposing counsel, "been talking to you and told you what to say?" She replied fully and sharply and in a higher key: "I don't know whether he is a brother to you or not; he can never be one to me."

THE latest volume of Massachusetts Reports contains many decisions unfavorable to Judge Thompson of the Superior Court. Meeting a well-known lawyer, Judge Thompson asked him if he had read his new book.

"No," replied the lawyer; "who are the publishers?"

"Little, Brown, & Co," said the judge.

"What is the title of the book?" asked the lawyer.

"Thompson's Overruled Cases," was the dry response.

ROSCOE CONKLING came into Charles O'Conor's office one day in a nervous state.

"You seem to be very much excited, Mr. Conkling," said Mr. O'Conor, as Roscoe walked up and down the room.

"Yes, I'm provoked, — I'm provoked," said Mr. Conkling. "I never had a client dissatisfied about my fee before."

"Well, what's the matter?" asked O'Conor.

"Why, I defended Gibbons for arson, you know. He was convicted, but I did hard work for him. I took him to the Superior Court, and he was convicted; then to the Supreme Court, and the Supreme Court confirmed the judgment and gave him ten years. I charged him six hundred dollars, and Gibbons is grumbling about it, — says it is too much. Now, Mr. O'Conor, I ask you, was that too much?"

"Well," said O'Conor, very deliberately, "of course you did a great deal of work, and six hundred dollars is not a big fee; but to be frank with you, Mr. Conkling, my deliberate opinion is that he *might have been convicted for less money.*"

NOTES

SOME years ago the court-crier at Keene, N. H., had the habit of exclaiming quite frequently in conversation, "by the way," with which he often prefaced his remarks. When the court opened at Keene he began in the usual form to announce the fact with "All persons having anything to do before the honorable, the Justices of the Court of Common Pleas, now sitting at Keene, within and for the County of Cheshire, may now draw near, give their attendance, and they shall be heard." Here the crier dropped into his seat, when the thought occurred to him that he had omitted the customary invocation, and up he jumped with the startling exclamation: "By the way, God save the State of New Hampshire!" — *New York Law Journal.*

SOME years ago, in one of our smaller New England cities, there occurred a succession of fires, evidently of incendiary origin. They were clearly the work of the same hand, and so skilfully executed that for a long time no trace could be found of their author. Every one was alarmed, every one was on the watch, and a large reward was offered for the detection of the "firebug." Private and public buildings were set on fire, the churches were not spared, and in no instance could a motive be assigned for the act. At last an attempt failed, and by the side of the building was found a wooden box filled with combustible material on which kerosene had been poured. In the box was found a St. Paul newspaper. The detective employed to work up the case found that only one man in the place received this paper, a carpenter, a man of good family and irreproachable character, with some property, apparently inoffensive, and one of the last persons to be suspected of crime. In his absence his shop was examined, and it was found that the boards of which the box had been made had been sawed from boards still in the shop, as was shown by putting the parts together, when every little vein in

the two parts matched, as no pieces if the world were hunted over would do if they had not once been a part of the same board. It was noticed, also, that the nails had been driven into the boards with a hammer having a dent on its face, and a hammer with this same dent was found in the shop.

The man was arrested, and though not a particle of direct evidence could be found against him, the three circumstances — the St. Paul newspaper, the matching of the boards, and the dent in the hammer — so impressed the jury, one member of which was a carpenter, that he was convicted, and was without a doubt guilty, as all, even his nearest friends, came to believe. The only explanation for his crime was that he was a monomaniac on the subject of fires; and he was sentenced to a long term of imprisonment, with compassion for the man, but to protect the community. It was regarded as an illustration of the remark that circumstantial evidence is often more convincing than direct; for in this case the only chance for doubt was that another person than the carpenter used his shop, which was not for a moment contended by his attorney.

The meeting of the American Bar Association at Boston, on August 26, 27, and 28, brought together the largest number of members ever gathered at any of these annual reunions. The exercises were of unusual interest. President Simeon E. Baldwin's address may well be held up as a model for imitation by future presiding officers, being brief, concise, and yet thoroughly covering the changes which have been effected in the laws of the United States and the several States during the past year. His remarks regarding the hasty manner in which legislation is rushed through during the last days of Congress furnish food for earnest reflection, and should stimulate endeavor to reform altogether this objectionable feature of our law-making.

"Of the 433 pages of legislation," said Professor Baldwin, "which constitutes the work of the last session of the Fifty-first Congress, 284 pages are covered by the enactments of the closing day and 139 only are occupied by those of the three months preceding. The opportunities for 'log rolling' which such a condition of things involves, the injustice to the President, on whose attention fifty bills are pressed at the same moment, and the ready excuse it offers for evading the responsibility for any measure in the shape it finally assumes, are obvious. The remedies are obvious, too; but there are many and powerful interests opposed to their adoption."

It appears, then, that over one half of the legislation of the Fifty-first Congress was matter that was just as little authorized by due consideration at the hands of the people's representatives, as though it had been thrown upon the President's desk by the man in the moon, and signed by Sinbad the Sailor instead of the chief executive, who merely glanced at the titles of the bills and signed them hurriedly.

The annual address was delivered by Hon. Alfred Russell, of Detroit, his subject being "Avoidable Causes of Delay and Uncertainty in our Courts." In it he earnestly advocated the abolition of the jury system in civil cases, and his remarks upon this subject will undoubtedly give rise to much comment and discussion. The address was a most scholarly production, and evinced much thought and research. Admirable papers were read by Frederick M. Judson, of St. Louis, on "Liberty of Private Contract under the Police Power," and William B. Hornblower, of New York, on "The Legal Status of the Indian."

Of the reports of the various standing committees, that on "Legal Education and Admission to the Bar," prepared and presented by Prof. William G. Hammond, of St. Louis, deserves especial mention as a masterly and exhaustive treatise upon the subject; and if the Association had done nothing else at this meeting, the presentation of this report alone would entitle it to recognition as doing able work in the interests of the profession.

The Association voted to bestow gold medals upon Lord Selborne and Hon. David Dudley Field for their eminent services as law reformers.

The meeting next year will be held at Saratoga.

Recent Deaths.

Ex-Governor Paul Dillingham, of Waterbury, Vt., died on July 27. He was born in Shutesbury, Mass., Aug. 10, 1799. His parents were Paul and Hannah (Smith) Dillingham. The Dillingham fam-

ily trace their origin to John Dillingham, who emigrated from England as a member of the Winthrop colony. Governor Dillingham's father was a farmer by occupation, and removed to Vermont in 1804 and settled in Waterbury. Paul was the seventh child of a family of five sons and seven daughters. The grandfather of the ex-Governor was a soldier in the "Old French War," and was slain in the conflict prior to Wolfe's capture of Quebec in 1759. His father was a patriot soldier in the Revolutionary army.

Young Paul Dillingham attended the common school in Waterbury, and in 1818 he entered the Washington County Grammar School at Montpelier. In 1820 he began the study of the law in the office of Judge Daniel Carpenter in his adopted village. Paul Dillingham was admitted to the Washington County Bar in March, 1823, and the following year was further admitted to practice in the Vermont Supreme Court. He formed a law partnership in 1823 with Judge Carpenter, under the firm name of Carpenter & Dillingham. The firm was dissolved in 1827 by reason of the election of Mr. Carpenter as assistant judge of the Washington County Court. From that time until within a few years Mr. Dillingham was an active legal practitioner in the courts of Vermont. For many years he stood at the head of the profession in the State, and as a jury advocate he had no superior.

Mr. Dillingham served as town clerk from 1829 to 1844. He was elected as representative to the Legislature in the years 1833, 1834, 1837, 1838, and 1839. He was also elected State Attorney in 1835, 1836, and 1837. He was a member of the State Constitutional Convention in 1836. In 1841 and 1842 he served as Senator in the General Assembly. He was nominated for member of Congress at the Democratic District Convention in 1843, and elected at the ensuing election. He was the only Democrat in the Vermont delegation in Congress, and differed from his colleagues in the matter of annexation of Texas as widely as in other respects. Congressman Dillingham served as a member of the Judiciary Committee and also on the Committee on Claims. He was re-elected to Congress in 1845; he was a member of the State Constitutional Convention in 1857, and in 1861 was re-elected to the Vermont Senate from Washington County. Soon after the outbreak of the Rebellion he declared his allegiance to the Republican party.

Mr. Dillingham was elected Lieutenant-Governor of the State in 1862, 1863, and 1864. The Republican State Convention in 1865 nominated him for Governor, and he was inaugurated in October, 1865.

Mrs. Lelia Robinson Sawtelle died at Amherst, Mass., August 10. She entered the Boston University Law School in 1878. Two young women had previously matriculated there, but left before graduating. Miss Robinson took her degree *cum laude* in 1881, graduating fourth in rank in a class of thirty-odd members, the first woman in New England upon whom the degree of Bachelor of Laws was ever bestowed. In the fall of that year Miss Robinson applied for admission to the bar and the court. Chief-Justice Gray, now of the United States Supreme Court, asked to have the point argued, and requested the Bar Association to contest the application. The late ex-Attorney-General C. R. Train presented an able brief prepared by Miss Robinson, which was resisted by two eminent members of the bar, with the result that the application was dismissed. Unable to get into any law office as student or clerk, Miss Robinson opened an office for advice and such law work as her law school diploma permitted her to take. A month later Hon. John Hopkins of Millbury offered a bill to the Legislature admitting women to the bar on the same terms as men. There was a hearing before the Joint Judiciary Committee, at which Miss Robinson appeared. The committee reported unanimously in favor of the bill, and it was passed unanimously. In June of 1882, after passing the bar examination, Miss Robinson was admitted to practice. She continued in active practice in Boston until 1884, when she went to Seattle, Wash., where she engaged in court work. In April, 1890, she married Eli A. Sawtelle, of Boston. During her wedding journey Mrs. Sawtelle was admitted to the bar of the Supreme Court of the United States. She was the author of two books, — "Law Made Easy," "Law of Husband and Wife," — and was one of the two women in America who have thus compiled books upon the law.

Judge Hamilton Barclay Staples died at his home in Milford, Mass., August 22. He was born in Mendon, Worcester County, Feb. 14, 1829. He

attended the academy at Worcester, and then went to Brown University, where he was graduated in 1851; he studied law with the late Chief-Justice Ames of Providence, R. I., and with the late Peter C. Bacon of Worcester, where he was admitted to the bar in 1854. He began practice in Milford, in partnership with the late Gen. A. B. Underwood, and subsequently was in company with Judge Charles A. Dewey and others. In 1869 he removed to Worcester, and formed a partnership with Frank P. Goulding, which was continued until Mr. Staples was appointed a justice of the Superior Court in 1881. He had previously served as district attorney for eight years. Judge Staples was a typical New Englander, serious and thorough in what he undertook, and interested in all local movements that looked to the good of society. He had scholarly tastes, and was prominent in the American Antiquarian Society, to whose proceedings he contributed many valuable papers. The degree of LL.D. was given him by his Alma Mater in 1884.

REVIEWS.

THE AMERICAN LAW REVIEW for July–August contains the usual amount of good solid reading. David Dudley Field contributes an interesting article on "Law Reform in the United States: Its Influence Abroad." Charles R. Pence discusses "The Construction of the Fourteenth Amendment." Irving Browne writes on "Wife-Beating and Imprisonment;" and Lucius W. Hoyt on "Liability for Losses and Injuries to Passengers in Sleeping-Cars." Robert L. Fowler contributes a paper on "The State and Private Corporations;" and William L. Hodge has an interesting article on "Municipal Ordinances for the Regulation of Occupations by Means of Licenses."

THE JURIDICAL REVIEW for July is filled with interesting matter, and this journal is certainly one of the most readable publications which come to us from the other side of the water. The contents of this number include "The Archives of the High Court of Justiciary," I., by Charles Scott; "Lynch," by N. J. D. Kennedy; "The French Bar," I., by G. W. Wilton; "A Forgotten Chapter in the History of the Law," by George Law; "The Administration of Justice in the Levant," by Démétriadés. An admirable portrait of Prof. Alphonse Rivier, Professor of International Law in the University of Brussels, is given as a frontispiece.

"THE WEEKLY BULLETIN" is the name of a new venture just started in Boston. It is designed to furnish an index of the principal contents of the periodical press, and will prove invaluable to the reading public, and especially to those engaged in literary pursuits. The editor is Benjamin R. Tucker, whose name is sufficient guarantee that the work will be well and efficiently done. We wish the new publication every success.

"A Daughter's Heart," by Mrs. H. Lovett Cameron, constitutes the complete novel in LIPPINCOTT'S MAGAZINE for August. The other contents are "Thoreau and his Biographers," by Samuel Arthur Jones; "A Damascus Blade," by Clinton Scollard; "Walt Whitman's Birthday," by Horace L. Traubel; "At a Poet's Funeral," by Anne Reeve Aldrich; "My Adventure with Edgar Allan Poe," by Julian Hawthorne; "A Plea for Patriotism," by Mary Elizabeth Blake; "Re-roasted Chestnuts," by George Grantham Bain; "The Slav and the Indian Empire," by Clarence Bloomfield Moore; "Walt Whitman's Last, — Good-bye, my Fancy," by Walt Whitman; "With the Wits" (illustrated by leading artists).

HARPER'S MAGAZINE for August opens with a remarkably interesting paper on "New Zealand," by Prof. George M. Grant, which is fully illustrated. J. H. Rosny contributes a striking article on the "Nihilists in Paris," with portraits and graphic illustrations. Montgomery Schuyler, in the opening paper of a series of "Glimpses of Western Architecture," describes some of the monumental buildings of Chicago and the peculiar features of their construction. This paper is also amply illustrated. Ecclesiastical London in the times of the Plantagenets is the subject of Walter Besant's third article on London. More than twenty illustrations are given of interesting remains still existing of Plantagenet London. The unique and attractive series of papers on "Some American Riders," by Col. T. A. Dodge, is concluded. Prof. W. G. Blaikie, of Edinburgh, contributes

an interesting paper on "Lord Byron's Early School Days." Dr. Andrew Wilson, F. R. S. E., discusses the troublesome biological question, "What is Inheritance?" John W. Clampitt gives a stirring account of the work of "The Vigilantes in California, Idaho, and Montana." The fiction of the number includes the continuation of W. D. Howells's story, "An Imperative Duty," and of George Du Maurier's "Peter Ibbetson;" a short sketch entitled "Luck," by Mark Twain; and "Zan Zoo," by George Heath.

THE ATLANTIC MONTHLY for August has two notable features besides the serial stories by Mrs. Catherwood and Mr. Stockton. Henry James contributes an admirable short story entitled "The Marriages," and Mr. John C. Ropes has an excellent paper on General Sherman. Edith M. Thomas contributes "Notes from the Wild Garden;" and Olive Thorne Miller, "Two Little Drummers." Miss Harriet Waters Preston and Miss Louise Dodge, under the title of "A Disputed Correspondence," discuss the letters which are said to have passed between Seneca and the Apostle Paul; Wendell P. Garrison has a political article of real value on the "Reform of the United States Senate;" Agnes Repplier contributes a bright paper on "The Oppression of Notes;" and W. D. McCrackan describes effectively "Six Centuries of Self-Government" in Switzerland.

SCRIBNER'S MAGAZINE for August is a "Fiction Number," and contains five complete short stories by Thomas Nelson Page, T. R. Sullivan, A. A. Hayes, Annie Eliot, and John J. a'Becket. Four of the stories are illustrated, each by an artist chosen for his skill in delineating the special characters and incidents which are the features of the tale. This number also contains a long opening instalment of the new serial, "The Wrecker," by Robert Louis Stevenson and Lloyd Osbourne. The action of the story takes place, for the most part, in San Francisco, and in the South Sea Islands, among which the authors have been cruising for several years. This instalment and each of the following will contain a single full-page illustration by William Hole, who illustrated "The Master of Ballantrae." In addition to the abundant and entertaining fiction, this number contains another article in the Great Street series, — "Piccadilly," by Andrew Lang, with many characteristic illustrations. There is also a final article by Prof. John H. Wigmore, on "Parliamentary Days in Japan," with a view of the parliament buildings recently burned, and a modern Japanese political caricature.

THE F. H. Thomas Law Book Co., of St. Louis, have published an amusing poetical satire on trial by jury, entitled a "Diagram of a Modern Law Suit." The author is George W. Bailey, of the St. Louis Bar. This little satire contains much poetry and more truth, and furnishes not only amusement, but considerable food for reflection to the reader.

THE August ARENA is brilliant and unique, and women contributors furnish an interesting array of contents. Miss Amelia B. Edwards writes in a charming manner of her home life; Miss Will Allen Dromgoole contributes a semi-historical story, entitled "Old Hickory's Ball;" Mme. Blaze de Bury discusses the "Unity of Germany." Elizabeth Cady Stanton has a thoughtful article, "Where shall Lasting Progress begin?" Prof. Mary L. Dickinson writes on "Individuality in Education;" Sara A. Underwood relates some "Psychic Experiences;" Helen Campbell describes the "Working-Women of To-day;" and Florence Kelley Wischnewetzky discusses the problem of Education and Crime in New York.

THE August COSMOPOLITAN lavishes a profusion of illustrations upon its readers, every number of its contents being accompanied by artistic pictures. The notable article of the issue is the first part of Amélie Rives's new novel, "According to St. John." The other contents are "The Ducal Town of Uzès," by Thomas A. Janvier; "Placer-Mining," by Joseph P. Reed; "Dissected Emotions," by John B. Roberts; "The Dukeries," by C. S. Pelham-Clinton; "The Court-Jesters of England," by Esther Singleton; "The Woman's Press Club of New York," by Fannie Aymar Mathews; "The Johns Hopkins University," by Daniel Coit Gilman; "Pictorial Journalism," by Valerian Gribayédoff; "A Romance of an Hour," by John Bowles; "Gambling in High Life," by Adam Badeau; "Prince Bismarck," by Murat Halstead.

THE contents of the August CENTURY are as follows: "Portraits of the Emperor and Empress of Germany" (frontispieces); "The German Emperor" (illustrated), by Poultney Bigelow; "Thou reignest still," by Louise Chandler Moulton; "Thumb-nail Sketches" (illustrated), by George Wharton Edwards; "A Common Story," by Wolcott Balestier; "Two Kings," by William H. Hayne; "On the Study of Tennyson," by Henry Van Dyke; "The Squirrel Inn," IV. (illustrated), by Frank R. Stockton; "The Press as a News-Gatherer," by William Henry Smith: "The Eleventh-Hour Laborer," by L. Gray Noble; "Life on the South Shoal Lightship" (illustrated), by Gustav Kobbé; "Play in Provence," by Joseph Pennell; "Alone we come into the world," by Stuart Sterne; "The Little Renault" (illustrated), by Mary Hartwell Catherwood; "On Elkhorn," by Robert Burns Wilson; "Our Summer Migration: A Social Study," by Edward Hungerford; "Le Crépuscule" (from a Painting by Alexander Harrison); "Cape Horn and Co-operative Mining in '49" (illustrated), by Willard B. Farwell; "Gray Rocks and Grayer Sea," by Charles G. D. Roberts; "The White Crown," by Herbert D. Ward; "The Faith Doctor," VII., by Edward Eggleston; "The Clown and the Missionary," by Viola Roseboro'.

BOOK NOTICES.

A TREATISE ON THE MEASURE OF DAMAGES; or An Inquiry into the Principles which govern the Amount of Pecuniary Compensation awarded by Courts of Justice. By THEODORE SEDGWICK. Eighth edition. Revised, rearranged, and enlarged by Arthur G. Sedgwick and Joseph H. Beale, Jr. Baker, Voorhis & Co., New York, 1891. 3 vols. Law Sheep. $18.00 *net.*

This excellent and exhaustive treatise on the Law of Damages has been so long known and so fully appreciated by the profession that it is not surprising that an eighth edition has been found necessary to meet the demands for the work. It is eleven years since the previous edition was issued, and the present revisers have found a vast amount of accumulated material, the embodiment of which in this new edition has extended the work to three volumes. They have also entirely reconstructed the arrangement of the subject, preserving, however, so far as possible, the original text, and clearly indicating any additions or interpolations made by themselves. The rearrangement has been made in a way that seemed most in harmony with the views of the author, and the general plan of the work, as it at present stands, is as follows: In the first volume are given the general principles which govern the rules of compensation in all cases. The second volume embraces all the particular classes of personal actions and actions relating to personal property, whether sounding in contract or tort. The third volume treats of real property recoupment, statutory damages, pleading practice, evidence, special damages, and the relations of court and jury.

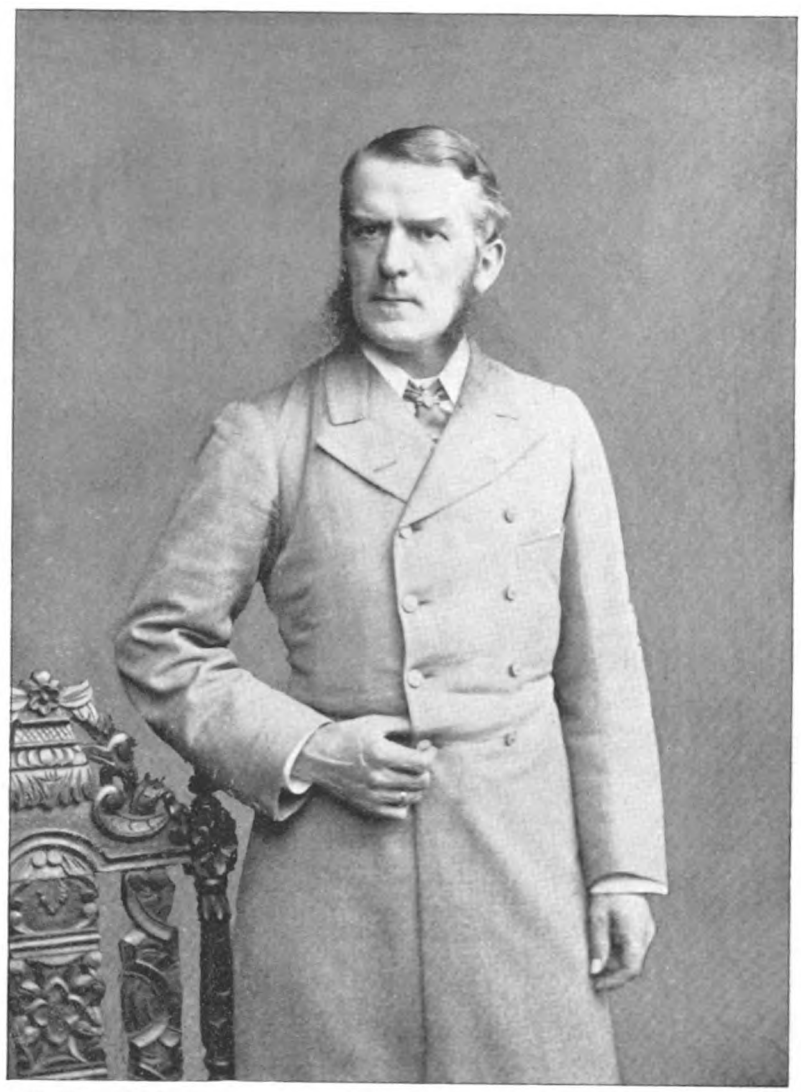
The work of revision has been accomplished in a most admirable manner by Mr. Sedgwick and Mr. Beale. In fact, they have given to the profession a substantially new book, and at the same time have preserved the integrity of the author's work. In its present form the value of the treatise is greatly enhanced, and will, we predict, be more popular with the profession than ever. It is undoubtedly the most complete and satisfactory work on the subject yet published.

NEGLIGENCE OF IMPOSED DUTIES, PERSONAL. By Charles A. Ray, LL.D. The Lawyers Co-operative Publishing Company, Rochester, N. Y. 1891. Law sheep. $6.50 *net.*

This volume is the first of a series of text-books upon the subject of Negligence of Imposed Duties, and will be followed by works on "Carriers" and "Agency," written by the same eminent author. Judge Ray, from his long experience on the bench of the Supreme Court of Indiana, is eminently fitted for the task he has undertaken, and in the present volume has given the profession a carefully prepared and exhaustive treatise upon the subject of imposed personal duties. If the succeeding works evince the same thorough research which marks the volume before us, the series will prove of great value to every practising lawyer.

THE AMERICAN STATE REPORTS, Vol. XIX., 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. The Bancroft Whitney Company, San Francisco, 1891. $4.00 *net.*

Mr. Freeman is an indefatigable worker, and it is astonishing that he is able to maintain the standard of excellence which characterizes everything which comes from his pen. This present volume of the State Reports is in every way the equal of its predecessors. The selections are admirable, and the annotations contain a vast amount of legal treasure



JOHN ANDREW & SON CO.

SIR EDWARD CLARKE.

The Green Bag.

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THE ENGLISH BENCH AND BAR OF TO-DAY.

III.

THE SOLICITOR-GENERAL.

SIR EDWARD CLARKE, the present Solicitor-General, is, in the strictest sense of the term, a self-made man. He was born in 1841 ; his father was a jeweller in Cheapside. He became a student of Lincoln's Inn in 1861, and was called to the bar on Nov. 17, 1864. If report may be relied on, the first years of Clarke's professional life were passed under a cloud of poverty. The gossips of the Temple say that he used to linger in the common room at Lincoln's Inn to avoid the pressing pecuniary demands of his laundress ; and a rumor, that loudly declares itself to be authentic, asserts that the future Solicitor-General was wont to sit in his stockings at one end of his chambers, while a second-class cobbler soled his boots at the other. At length — so the story goes, and we beg our readers to note that we are still dealing with *on dits* — he determined to abandon the bar. An opportunity offered itself. The Civil Service Commissioners announced an open competition for a specified number of Government appointments. Mr. Clarke went up for the examination, and gained the last or the second last place on the list of successful competitors. Then it appeared that the authorities had miscalculated the number of vacancies at their disposal, and that the candidate above Mr. Clarke was the last for whom it was possible to provide a place. The Government had to pay for its mistake, and Clarke was enabled to remain at the bar till his hour came.

In 1877 the *Penge Mystery* was the subject of judicial investigation. Lewis Staunton was tried for the murder of his wife, Harriet; and his brother Patrick, and his mistress, Alice Rhodes, were indicted as his accomplices. Within eighteen months after her marriage, the deceased lady had been taken from her home and put to lodge with Patrick Staunton, while a new house had been provided for Lewis and Alice Rhodes. In Patrick Staunton's house Harriet died, and the prosecution alleged that the prisoners had caused her death by deliberate starvation and neglect. Mr. Justice Hawkins presided at the trial; the Attorney-General, Sir John Holker, appeared for the Crown ; and Clarke was charged with the defence of Patrick Staunton. The prisoners were found guilty and sentenced to death, but the sentence was afterward commuted to penal servitude.

The Penge case was the turning-point in Clarke's career. Sir John Holker, the greatest advocate of his day, ever quick to detect and to welcome ability in others, had been struck by the power with which Patrick Staunton had been defended, and he took his comparatively unknown opponent by the hand. Thereafter Clarke's name is no stranger to the student of our *causes célèbres*. In the same year, for instance, as the Penge case, he was retained for the defence of one of the "Five Detectives," indicted for criminal conspiracy and fraud; and the prisoner that Clarke defended was the only one who escaped the clutches of the

law. We shall allude to some of his other notable appearances at the proper place.

In 1880 Mr. Clarke's political career began. The Beaconsfield-Salisbury "Peace with Honor" ministry was coming near the end of its statutory life, and the Premier was naturally anxious to ascertain the state of public feeling toward himself and his cabinet. A vacancy occurred in the borough of Southwark. Mr. Clarke stood in the Conservative interest; he was opposed by a Liberal and a Labor candidate, but polled more votes than both his rivals together. [1] Previous by-elections had made the Earl of Beaconsfield think of appealing to the country; the result of the poll at Southwark determined him to do so, and Parliament was dissolved. The Government had surprised the people, and the people surprised the Government. Not only was the Conservative Ministry swept out of power, but even Southwark had changed its mind; Mr. Clarke was unseated, and for the time being his political race was run. In 1885, however, he became member of Parliament for Plymouth (which constituency he still represents), and confidently expected the Solicitor-Generalship. But he was doomed to disappointment; and Sir John Gorst, now Under-Secretary of State for India, received the coveted prize. Mr. Clarke's resentment found expression in a letter to his constituents, in which he showed how keenly he had felt the slight thus put upon his party and professional claims.

In 1886 the Solicitor-Generalship and the honor of knighthood were conferred upon him. Lord Salisbury has never made a more deserved or a more successful appointment. Imperturbable in demeanor, trenchant in style, effective in delivery, and endowed also with that "infinite capacity for taking pains," wherein genius is sometimes said to consist, Sir Edward Clarke is a feared and respected member of the House of Commons. With the exception of Mr. J. P. B. Robertson, the Lord Advocate of Scotland, no other lawyer in the House has made a more brilliant parliamentary reputation in so short a time.

As a *nisi prius* advocate, the Solicitor-General is perhaps the only counsel at the bar who can face Sir Charles Russell with success. In the trial of Mrs. Bartlett [1] (April 12–17, 1886) for the alleged murder of her husband by chloroform poisoning, these two great common-law lawyers were opposed, and the victory remained with Clarke. An eminent American ambassador once said that a man who never made mistakes seldom made anything; and no one will suspect us of a desire to belittle Sir Charles Russell if we insist that in the case of Reg. *vs.* Bartlett, he fell into two errors of judgment: (1) In the first place, although Mr. Clarke had called no evidence for the defence, the Attorney-General claimed and exercised a right of reply. At one time all counsel instructed by the Treasury were held to be entitled to a reply, whether a prisoner had called any witnesses or not; but in recent years this privilege was restricted to cases in which the Attorney or Solicitor-General conducted the prosecution in person. Now, when Mrs. Bartlett was on her trial, Sir Charles Russell was Attorney-General, and was prosecuting in that capacity. He was therefore strictly within his rights in replying to the speech for the defence. But the jury seem to have imagined that the prisoner was being subjected to some hardship by the Attorney-General's course of action, and we doubt whether this impression was altogether removed by the elaborate explanation of the law on the question with which Mr. Justice Wills found it necessary to preface his charge. (2) The Attorney-General's second blunder was far more serious. In opening and in atttempting to prove the case for the prosecution, he alleged in substance that the chloroform had been administered while the deceased was in *a state of unconsciousness*; and it was to the

[1] Clarke, 7,683 votes; Liberal, 6,830; Labor candidate, 799.

[1] Report of the Trial, with preface by Edward Clarke (Stevens & Haynes, London).

destruction of this theory that Mr. Clarke's cross-examinations and the first part of his speech were directed. During the delivery, however, of the speech for the defence, Sir Charles Russell appears to have hit upon a new solution of the problem in issue; namely, that the chloroform might have been swallowed by the deceased in a glass of water while in *a state of consciousness*. Before Clarke had concluded his address the Court adjourned for lunch; and during the interval the Attorney-General brought his fresh explanation of the "administration" difficulty under the notice of his opponent. Mr. Clarke made no allusion to it in the latter part of his speech. Then Sir Charles Russell's turn came. To the surprise of everybody he proceeded to lay his afterthought before the jury! Mr. Clarke emphatically objected, and Mr. Justice Wills duly observed, in the course of his summing up, that the case must be decided on the issues upon which it had been fought throughout. The Attorney-General's mistakes, a brilliant defence by Mr. Clarke, and the intrinsic weakness of the case for the prosecution secured the acquittal of the prisoner. The jury found that although there were circumstances of grave suspicion, the evidence was not strong enough to justify a conviction. By English law, this is a verdict of "not guilty; in Scotland it would have been "not proven."

In 1887 Sir Charles Russell and Sir Edward Clarke were once more opposed, in Allcard *vs.* Skinner (Law Reports, 36 Chan. Div. 145), — one of the most remarkable suits in modern times. The facts were as follows: In 1868 Miss M. A. Allcard, a young lady of property, was introduced by the Rev. D. Nihill, her spiritual director and confessor, to Miss Skinner, the lady superior of a Protestant institution known as "The Sisters of the Poor." Mr. Nihill was one of the founders and also the spiritual director and confessor of the sisterhood, which was an association of ladies who devoted themselves to good works. Miss Allcard became an associate of the sisterhood. In 1871, having passed through the grades of postulant and novice, she became a professed member of the society, and bound herself to observe (*inter alia*) the rules of poverty, chastity, and obedience by which the sisterhood was regulated, and which were made known to her when she became an associate. These rules were drawn up by Nihill. The rule of poverty required the member to give up all her property, either to her relatives or to the poor or to the sisterhood itself; but the forms in the schedule to the rule were in favor of the sisterhood, and provided that property, made over to the lady superior, should be held by her in trust for the general purposes of the sisterhood. The rule of obedience required the member to regard the voice of her superior as the voice of God. The rules also enjoined that no sister should seek advice of any extern without the superior's leave. Within a few days after becoming a member, Miss Allcard made a will, bequeathing all her property to Miss Skinner; and in 1872 and 1874 she handed over and transferred to this lady several large sums of money and railway stock of which she had become possessed. In May, 1879, she left the sisterhood, and immediately revoked her will, but made no demand for the return of her property until 1885, when she commenced an action against Miss Skinner, with that view. The legal ground for the action was an allegation that the transfers in question had been made while the plaintiff was under the paramount and undue influence of the defendant, and without any impartial or separate advice. Sir Charles Russell and Mr. Finlay (whose careers we will sketch in subsequent papers) represented Miss Allcard. Sir Edward Clarke was leading counsel for Miss Skinner. Mr. Justice Kekewich, before whom the action was tried, and the Court of Appeal (Lord Justice Cotton dissenting) held that Miss Allcard's claim — although it might have been successfully asserted at the time when she left the sisterhood as regards all property then remaining unexpended in Miss Skinner's hands — was barred by laches and acquies-

cence. The judgments in this case, and it may be added the speeches of counsel (Sir Edward Clarke's has been published separately) form a valuable monograph on the modern law of "undue influence."

The Solicitor-General's appearance in the libel action, brought by Mr. W. O'Brien, M. P., against Lord Salisbury, is too recent and well known to require more than passing mention.

Sir Edward Clarke is the author of the standard treatise on the Law of Extradition. The guerdon of his long years of distinguished service will surely be a seat in the Court of Appeal, if not in the House of Lords.

The Solicitor-General, like Sir Richard Webster, has fine musical taste; and on this point the two law officers are said to be amiably jealous of each other. LEX.

THE HOLIDAY OF MORPHEUS.

By Wilbur Larremore.

BEHOLD the drowsy god hath passed this way
Upon his breezeless autumn holiday,
Stealing from out the ebon House of Sleep
"Amid the bowels of the earth full steepe,"
Blinding the sky from would-be wakeful folk
With effluence like neither cloud nor smoke.
I know he hath been near, the air is full
Of potion sweet that dulls the ears like wool.
Along the dusty ways the golden-rod
Hangs torches for the gropings of the god,
And wayside wine for him fills many a globe,
And hills are purpled bearing up his robe.

THE JURY SYSTEM IN CIVIL CASES.

By Alfred Russell, LL.D.

(*From an address delivered before the American Bar Association at Boston, August* 27, 1891.)

IN its existing practical operation it would seem as if the jury system in civil cases were purposely contrived to produce delay and uncertainty, particularly taken in connection with the division of the sessions of courts into terms. It is not convenient to discuss this division of the subject now with full elaboration. I am among those who believe that this system has outgrown its usefulness. We have no crown, no aristocracy, no established church, no servile judiciary, no press censorship, no limit to the discussion of the acts of our rulers, no restriction of public meetings for reform, no hindrance to universal suffrage or universal education; and it is time that we should have no jury in civil cases. This institution grew up alongside of those other institutions which we have repudiated, and as a necessity to protect the masses in their personal and property rights against the privileged. No necessity whatever of that kind exists here. I understand, indeed, that the English Bar are now quite generally against the continuance of the institution in England.

The jury is an illustration of what John Stuart Mill calls "the influence of obsolete institutions on modern ideas," and which, he says, "perpetuate in many of the greatest concerns a mitigated barbarism; things being continually accepted as dictates of nature and necessities of life which we should see to have originated in artificial arrangements of society long since abandoned and condemned." The jury, to my mind, is one of those things.

Nor is the jury any longer a means of instruction for political or democratical duties. The platform and press are sufficient instructors. Indeed, if they are not, why saddle the burden of such instruction upon litigants?

Suitors with honest causes now avoid juries, as a general rule, if possible, but with an ill cause almost invariably demand a jury; and it is proverbial that before a jury we gain the causes we expected to lose, and lose those we expected to gain.

Chambers of commerce and manufacturers' associations in cities establish boards of arbitration, in order to keep their commercial controversies away from the ignorant and pitch-penny determinations of the juries which come into our courts, and away from the frightful array of new trials, overturned verdicts, bills of exceptions, proceedings for tampering, and the like, which face the ordinary litigant in the ordinary jury case.

Men competent to sit as jurors almost universally escape the duty.

In spite of the glowing eulogies of the institution constantly heard, the fact remains that under existing conditions, especially in urban communities, the constitutional right of jury trial in civil cases inevitably operates, not only to produce the greatest delay, but also to insure absolute uncertainty.

The main utility of the jury at present is, that it forces settlement out of court, to avoid the oppression incident to it.

The enormous expense of summoning and keeping jurors is, of itself, a potent reason for the abolition of the system. If a tithe of that expense could be devoted to paying judges properly, the very best legal talent in the country could generally be secured for the bench, and would stay permanently upon the bench, and away from the service of corporations or any other pursuit. And the minds of the judges would not be kept off their cases, and their independence menaced, by pecuniary cares.

Every lawyer of experience knows that a trial by jury depends principally upon man-

agement, and that a judicious smile or well-timed joke may carry a dubious cause or destroy a meritorious one, and it is to be especially noted that this necessity for resorting to artifice has a demoralizing effect upon the profession itself.

Among the body of the people in all parts of the country it is found that the jury method of settling facts among litigants is the subject of jest and ridicule. As Brougham said, the schoolmaster is abroad. Almost every intelligent citizen who watches our courts is opposed to the system, especially if he finds it necessary to go to law himself.

The truth is, that the jury system in civil cases is more of a fetich than the compulsory study of Greek in colleges. Nothing can better illustrate the difficulty of dislodging any inveterate custom than the retention of this system. Although imbedded in our constitutions, public opinion, influenced by the bar, may change them as it made them. The tax-paying part of the public would at least concur. That part rarely sits on juries, but often suffers at their hands.

It is a mistaken idea that the disposal of questions of fact is, even now, principally by jury. In wide regions of inquiry, the contrary is the case; and I avail myself of the enumeration of Mr. Justice Bradley, in 1882, in considering a question of the ascertainment of fact, in a matter of depriving a counsellor of his reputation and means of livelihood, without a jury. He said: "The important right of personal liberty is generally determined by a single judge, on a writ of *habeas corpus*, using affidavits or depositions for proof, when facts are to be established. Assessments for damages and benefits, occasioned by public improvements, are usually made by commissioners in a summary way. Conflicting claims of creditors, amounting to thousands of dollars, are often settled by the courts on affidavits or depositions alone. And the courts of Chancery, Bankruptcy, Probate, and Admiralty administer immense fields of jurisdiction without trial by jury."

If we seek damages for a trespass or a fraud, we have a jury sitting with the judge; but, on the contrary, if we seek to enjoin the same trespass, or the operation of the same fraud, we hold the judge competent to find the same facts, without the delay, the uncertainty, and the expense of a jury.

If objection is made to the one-man power of the judge, what shall we say of the one-man power of the twelfth juror?

Let us be rid of the delays and uncertainties inevitable from setting aside verdicts because there was no evidence; or because against evidence; or because the damages were excessive, so that the judge may himself find a verdict, actually just, in a reduced amount, by the contrivance of giving a new trial unless the plaintiff will remit. Let us be rid of the ignorances, the prejudices, the compromises, the friendships for parties, the bribery and the disagreements of the jury, which assimilate a legal inquiry to a game having about as many elements of certainty as the roulette table.

It is universally agreed that the jury, not to be absolutely unjust, must be largely controlled by the judge, who may show them substantially what to do, and how to do it, and may give them his opinion upon the question of fact which they are instituted and organized to determine. Let us have the judge's opinion outright, and to begin with; not suggested to a jury, nor recommended to them, nor slowly filtered through them. Let us have the saving of time in introducing testimony; the short and pointed arguments; the conclusion reached upon the logical bearing of the proof, by a trained and honest picked man, which we get before a court without a jury. Let us follow the example of the Scots and the French, and let the petty jury go the way of the grand jury, which has been done away with in many States, and which was formerly deemed as essential as the jury now is.

Mentioning these views to a distinguished brother lawyer, he said: "But there are many cases where juries make the conceded law bend to the equity of the case." In my

view, true as this is, it is an unanswerable argument against the institution; for it renders litigation absolutely uncertain, and makes that not to be law for one man which is law for another.

With the disappearance of the jury in civil cases, nine tenths of the will cases and the accident cases, and the like, would also disappear from our court calendars. Some sources of professional income would be dried up, it is true. But we must remember that the profession was made for the public, and not the public for the profession.

Already in a majority of the States, and also in the Federal Courts, by legislation secured through the influence of the profession, questions of fact are now determined by the judge, either upon waiver of the jury by both parties, or unless one of the parties may demand a jury, in a certain restricted way. And, consequently, in many of the States juries are now seldom called. This change is but the entering wedge, and abolishment is coming; and it will arrive whenever the profession demands it. And if the profession does not secure the change, then it is responsible for the delay and uncertainty which the change would rid us of. In Garland's case, Mr. Justice Miller truly said that for ages past the members of the profession have been powerful for good or evil, and mould public sentiment; and he gave his opinion that even the late Civil War might have been prevented by the influence of the lawyers in the States where it arose. The truth is, I am very much afraid, that some lawyers are in favor of retaining the jury for the very reason that they know its abolition would inevitably shorten and diminish litigation, and make its result more certain; and, consequently, also lessen legal business.

But we know that it is hardly fifty years since wager of battel was lawful; and only about four times fifty since torture was a recognized method of arriving at facts, and sanctioned by the highest intellects, such as Bacon himself; and thus we may gather hope that the remaining mediæval method in courts may soon depart, — the jury in civil cases.

THE LAST APPROVER'S DUEL.

IN his admirable work on "Trial by Combat," Mr. Neilson gives the following interesting account of what was probably the last Approver's Duel. It took place in the year 1455 or 1456, and at that time the Approver had already fallen into great disrepute, and a general abandonment of the system speedily followed.

Whithorn, a thief, was imprisoned at Winchester. To save his life he made a series of appeals against honest men, some of whom were hanged. "And that fals and untrewe peler hadde of the kynge every day i. d. ob." So this false "peler" continued for almost three years drawing his three half-pence a day and making false appeals. At last one that he appealed said that he was false in his appealing, and that he would prove this with his hand, "and spende hys lyfe and blode apone his fals body." The judge, according to Gregory's report, laid down most peculiar law. Full courteously instructing the parties as to the conditions of an approver's duel, he explained that if the "peler" prevailed he would go back to prison, but would fare better than before, as he would be allowed twopence a day during the king's pleasure. The combatants, he said, must be clad all in white sheep's leather, both body, head, legs, feet, face, hands, and all. The staves, three feet long, were to be of green ash, "the barke beynge apon." At one end each staff was to have "a horne of yryn, i-made lyke unto a rammys horne, as

scharpe at the smalle ende as hit myght be made." Then they must fight fasting. And indeed, as Gregory says, it is too shameful to rehearse all the conditions of this foul conflict. But, most singular of all, was the judge's law, when he told the defendant that if in the duel he slew that "peler," he was to be hanged for manslaying, "by soo moche that he hathe i-slayne the kyngys prover!" Nor should the slain man have Christian burial; he should be cast out as one that wilfully slew himself.

James Fisher, the accused, the "meke innocent," as Gregory sympathizingly calls him, did not shrink from battle even on these hard terms, and the day was fixed. "Hange uppe Thome Whythorne," said the people; for he was too strong to fight with James Fisher, the true man, with an iron ram's horn. But although the judge had pity, the battle must needs be fought.

Duly apparelled in sheepskin and armed with their formidable staves, appellant and appealed entered the place of battle near Winchester,— the "peler" entering from the east side, the other from the southwest. Full sore weeping, as the touching account of Gregory records the duel, the defendant entered with his weapon and a pair of beads in his hand, and he kneeled down upon the earth toward the east, and cried, "God marcy and alle the worlde," and prayed every man's forgiveness, "and every man there beyng present prayde for hym."

Then the approver cried out, "Thou fals trayter, why arte thou soo longe?" The defendant rose, and with the words that his quarrel was faithful and true, and that in it he would fight, he smote at the "peler," but broke his own weapon with the blow. One stroke only was the approver allowed to make at the defendant; then the officers took his weapon away too. A long time they fought with their fists and rested, and fought again and rested again, and then in Gregory's expressive phrase, "they wente togedyr by the neckys."

With their teeth they tore each other like dragons of the prime. Soon their leathern coats and the flesh beneath were all "torente," and the end seemed to have arrived when "the fals peler caste that meke innocent downe to the grownde." But in the wrestle, more by hap than strength, "that innocent recoveryd up on his kneys, and take that fals peler by the nose with hys tethe, and put hys thombe in hys yee, that the peler cryde owte and prayde hym of marcy, for he was fals unto God and unto hym."

So the duel ended, and the judge pronounced sentence upon the approver, whose fate Gregory piously recorded thus: "And thenn he was confessyd ande hanggyd, of whos soule God have marcy. Amen."

The victor was set free, but the memories of that terrible hour seem to have darkened his life. He became a hermit, and erelong he died. Gregory's moving story, with its warm sympathy for the accused and its hearty detestation of the accuser, is a good index to public feeling on the subject at the time. The prayers of the people were not with the approver.

THE SUPREME COURT OF NEW JERSEY.

By John Whitehead, Esq.

III.

JAMES SCHUREMAN NEVIUS became an Associate Justice in 1838. He was born in Somerset County in 1786. His ancestry, both paternal and maternal, were to be found among the patriots of the Revolution. He graduated from Princeton College in 1816, was licensed as an attorney in 1819, as a counsellor in 1823, and was appointed serjeant-at-law in 1837. He resided, after he came to the bar, and practised his profession at New Brunswick. At the death of Judge Thomas C. Ryerson, he was elected an Associate Justice, which position he held for fourteen years. In 1852 the office was in the gift of the Governor, under the new Constitution. That officer, when Judge Nevius's second term expired, was opposed to him in politics; and according to the custom of those days, the Governor selected a gentleman of his own political party to fill the vacancy. Fortunately for the jurisprudence of the State, that custom is not now followed; and to this, in some measure, is due the high character of the judiciary of New Jersey. Judge Nevius was a highly respectable judge, and many of his opinions were very strong. There however was no judge on the bench who was so often found dissenting from the other judges, and the bar did not place the fullest confidence in his decisions. He had the honesty to avow, and sometimes very pointedly and strongly to express, his adverse sentiments

He will always be remembered by the few who now survive his time and recollect him, as the fun-loving Judge, full of wit, quick at repartee, abounding in anecdote, and who was always the life of any circle, wherever he might be found. His love of humor sometimes placed him in most unpleasant positions. This story is told of him: He was on a North River steamboat, and stepped up to the office to pay his fare. Between him and the captain stood, as he supposed, a well-known friend, with his back toward him. His supposed friend had laid his pocket-book in front of him and was settling his fare. The Judge passed his hand over the shoulder of the owner of the pocket-book, seized it, and quietly passed it behind his own back. His consternation must be imagined, it certainly cannot be described, when the face of an entire stranger was disclosed. Expostulation, explanation, and entreaty were all in vain. The stranger demanded that the thief should be instantly arrested and held in custody, until he could be delivered to the proper authorities for punishment. Fortunately some mutual friends were present, who, after enjoying the situation at the expense of the practical joker caught in his own trap, explained matters, and the judge was released from his embarrassing position. It is very doubtful whether the lesson learned on this occasion taught him caution. His love of humor never deserted him, and nothing delighted him more than to gather with friends and with quirp and jest pass away an hour. With all this he was a man of dignity, and could, whenever circumstances required it, preside at a court with all the solemnity befitting the time and his high office.

Upon his withdrawal from the bench, Judge Nevius removed to Jersey City and attempted to resume his practice there; but he was not successful. His health soon failed, and he died in 1859.

Ira Condict Whitehead was a Morris County man, born near Morristown, April 8, 1798. In early youth he showed a strong bias for literary pursuits. His father was a farmer, of rather moderate means, but, anx-

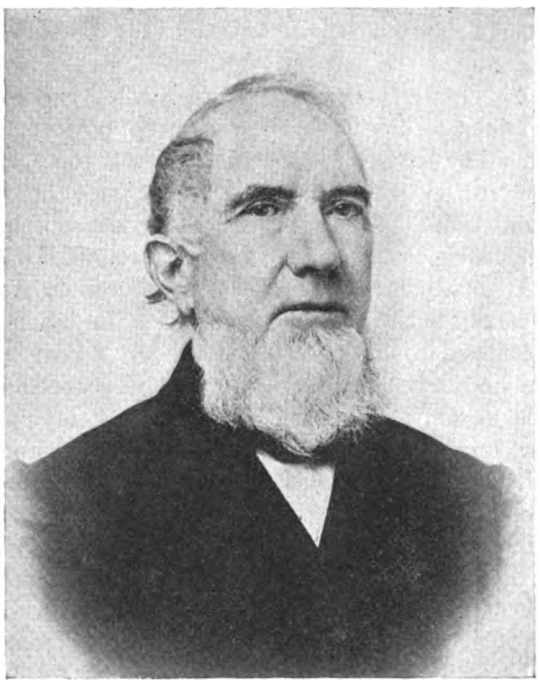
ious that this son should become a professional man, gave him every possible advantage. He was prepared for college in the Academy at Morristown, under the care of an able and successful teacher, whose memory still survives in that town as a most distinguished educator. Mr. Whitehead entered the Junior class at Princeton College in 1814, and graduated in 1816, with a creditable record. Among his classmates were some very distinguished men, — McDowell, Governor of Virginia; Judge Nevius of the New Jersey Supreme Court, already noticed in these sketches; Senator Butler of the United States Senate; Bishop McIlvaine of Ohio; President McLean of Princeton College, and others. After graduating Mr. Whitehead taught school for two years, part of that time in the Academy where he himself had been a pupil. He then entered the office of Joseph C. Hornblower, afterward Chief-Justice of New Jersey, and was licensed in 1821 as an attorney, and in 1824 as a counsellor. He began the practice of his profession at Schooley's Mountain, having his office in the building called the Heath House, well known as a place of fashionable resort. He remained here for a short time only, perhaps for two or three years, when, at the request of George K. Drake, afterward Associate Justice of the Supreme Court of New Jersey, and who was then in full practice at Morristown, he removed to that place and entered into partnership with that gentleman. From that time until his death he continued to be a resident in Morristown.

The partnership with Mr. Drake did not long exist. Mr. Drake was appointed Justice in 1826, when of course the business connection between the two gentlemen ceased, and Mr. Whitehead continued the practice alone. He very soon gained the respect and confidence of the community by his great integrity, and secured a very large clientage by his strict attention to business, and devotion to the interests of his clients. He had no particular specialty in his practice, — county lawyers could not become specialists, — but his services were very often required by his numerous clients, as trustee, executor, and guardian. For these positions he was peculiarly equipped, being a careful, prudent man, of great business capacity and thoroughly trustworthy.

On the third day of November, 1841, the term of Judge Ford expired, and Mr. Whitehead was elected to fill the vacancy on the Supreme Court Bench. He assumed the duties of the position at the time when there was an array of the ablest and most brilliant lawyers that were ever found in the history of New Jersey; in fact, no abler lawyers ever existed anywhere. These men appeared before him and argued their causes. In many respects this was an advantage to the new Judge. He had the benefit of their wisdom, of their experience and their great abilities. But it was a severe ordeal for him. He must measure swords with these expert gladiators in the mental arena.

His first experience in a murder trial was a most peculiar and an exceedingly trying one, — the case of Thomas Marsh, already noticed in the sketch of Chief-Justice Hornblower. The counsel for the prisoner — a father and son — were two of the ablest men at the Essex County Bar. The father had been an opposing candidate for the nomination of Judge, and was very much exasperated by his defeat. He was an impulsive, high-spirited, quick-tempered man. Influenced by his zeal for his client, and perhaps actuated by other motives, he gave way to his passion, and indulged in a course of conduct which obliged the Judge to order him into arrest for contempt of court. No one regretted the circumstance more than did the offending lawyer, for with all his faults he was a high-toned, honorable man. The forbearance, the dignity, and Christian bearing of Judge Whitehead were remarkable, and, under the circumstances, it was a most trying ordeal. Before the close of the trial and during the summing up of the testimony by the senior counsel of the prisoner, he

manifested unmistakable evidence of aberration of mind. This placed the Judge in the most delicate position. The manner in which through the whole trial he had met the difficulties of the case had elicited universal respect, but here was a new dilemma, to meet which there could have been no possible preparation. It was met, however, in a manner which only increased the admiration of those present. Marsh was convicted; the verdict was satisfactory, so far as the guilt of the prisoner was concerned, although the evidence against him was entirely circumstantial. But the Judge was not satisfied. The defendant had not had the benefit of all the appliances for defence which he ought to have had, and his sense of justice was aroused.



IRA CONDICT WHITEHEAD.

The sound common-sense of Judge Whitehead made him a very valuable addition to the bench. His opinions were always carefully prepared after the most patient investigation and careful research, and were always regarded with great respect. The earliest delivered by him was in the case of Den *vs.* Allaire, which was a most important case, involving many intricate and abstruse principles of law. The cause was argued by the most eminent counsel in the country. The opinion of the court, which was unanimous, was delivered by the Judge, and showed an immense amount of labor and a thorough examination of the subject.

All cases presented to Judge Whitehead received the most patient and industrious investigation, and his decisions found in the reports only serve to enforce the respect that is due to a learned and laborious jurist and impartial judge.

He served only one term; when that expired, the Governor of the State was a Democrat, and although greatly desirous of reappointing Judge Whitehead, he yielded to the demands of his party, and a Democrat succeeded.

The Judge returned to his practice in Morristown with considerable success, but, having secured a competency sufficient for his simple habits of life, he finally accepted a seat on the bench of the Common Pleas of Morris County, where he served for one term. He then retired from active practice, confining his business to the care of the many estates of which he was executor and trustee. A few years before his death he suffered from a slight attack of paralysis, and finally died of apoplexy in 1867.

Thomas P. Carpenter was born in 1804 in the southern part of the State. His father, who had the charge of one of the glass-works at Glassborough, died when he was very young, and his grandfather took him to his home and provided for his support and tuition. He received the advantage of a liberal education, and after graduation began the study of the law in the office of John Moore White, afterward an Associate Justice of the Supreme Court. He was licensed in 1830, and in 1838 he was made Prosecutor of the Pleas for Gloucester

County. His term of office was marked by a celebrated trial, already noticed, which created the greatest excitement at the time, known in criminal annals as the Mercer murder case. Mr. Carpenter appeared in this case as the counsel of the State, and prosecuted the indictment with great force and ability. Mercer was acquitted, but it was not the prosecutor's fault.

In 1845 Governor Stratton nominated him for an Associate Justice, and he was confirmed by the Senate. The circuit over which he presided was one of the largest and most important in the State. He was an able lawyer, and his opinions commanded the respect of the bar. The style of his writing was peculiarly smooth and classical. He was a fine scholar, and found time, notwithstanding the onerous duties of his office, to keep himself informed on all the literary topics of his time. He served but one term, and after that expired returned to his practice, which became large and remunerative. He died in 1876, perhaps as well known as any other citizen of New Jersey.

He was a most genial, kind-hearted man, sympathetic, and benevolent. His face was an inspiration, bearing upon every lineament the marks of the man who was at peace with himself and all his fellows.

The Randolph family of New Jersey has been one of the most distinguished and influential in the State. It has given to the country many men who have aided the Republic in times when citizens of wisdom and nerve were needed. Among those who sprung from this race and who have been foremost in the politics and jurisprudence of the State was Joseph F. Randolph, who became an Associate Justice of the Supreme Court in 1845. He was born in New York City in 1803, was admitted to the bar in 1825, and began practice in Monmouth County. He was not a graduate of a college, but he hardly needed the culture gained in any university, as he was an enthusiastic student and reader. His father was a clergyman, and died just about the time his son was expecting to enter college. By this event he was burdened with the responsibility of caring for others; and his generous nature responded to the call, although it deprived him of a cherished intention.

Early in life his abilities as a lawyer became appreciated, and he received, when quite a young man, the appointment of Prosecutor of the Pleas. For six years, from 1837 to 1843, he was a member of Congress. In 1838, when the election of representatives gave rise to the famous "Broad Seal War," he was the only Whig candidate who was certainly elected and consequently took his seat without opposition. In 1844 he became a member of the Constitutional Convention, in which body he was very influential and where he exerted himself to secure as perfect an organic law as possible. In 1845 he was appointed an Associate Justice, and was continued in office for one term of seven years. As a lawyer and judge he was laborious in his search for every point in the cases submitted to him, and his conclusions were generally sound and correct. His opinions were sensible, well reasoned out, and the result of an honest and severely industrious search for every principle involved in the cause. His natural literary taste, aided by his studies and reading, was of material use to him in the preparation of his opinions.

At the expiration of his term of office of Justice he resumed the practice of his profession at Trenton, with very great success.

In 1855 he was one of the revisers selected by the Legislature, to revise the statutes. While on the bench he delivered an opinion in the case of Gough *vs.* Bell, which settled the law in New Jersey on the subject of riparian rights. This opinion was opposed strenuously at the time; but it is the law at present, and it is believed will remain so for all time to come.

The College of New Jersey offered him an honorary degree, which he declined. This honor was well merited, as Judge Randolph became known as a scholar of more than ordinary merit. After he left the bench he

resumed his practice in Trenton with very great success, but finally removed to Jersey City, where he died in March, 1873.

Henry W. Green succeeded Chief-Justice Hornblower in 1846. This eminent jurist has occupied the two highest judicial positions in the courts of New Jersey. Justice cannot possibly be done to him and his memory in the short space necessarily allotted to him here.

E. B. D. OGDEN.

He was born near Trenton in 1804. After receiving the most careful preparation, he entered Princeton College, and graduated in 1820, at the unprecedentedly youthful age of sixteen. He was a born lawyer, and in no other profession could he possibly have attained such eminence as he did as Counsellor, Chief-Justice, and Chancellor. After graduation he entered the office of Charles Ewing, afterward Chief-Justice. Very little is known of his life as a student, but it can well be imagined how master and pupil must have been drawn together. The young man was always sedate, sober, and studious; his distinguished teacher was the greatest jurist of his time, and amply equipped to direct such an inquiring mind as that which he must have found in his youthful scholar. Young Green was an enthusiastic student, and delighted to dig and delve into the abstruse questions which were ever presented to him in the many cases which came to the office in the extensive practice of Mr. Ewing. His term of studentship was much longer than was required by the rules of the court, as he did not attain his majority until 1825, and could not have been licensed as an attorney until he was twenty-one years of age. In that year he became an attorney-at-law, and three years later a counsellor. He came to the bar fully equipped to meet all the requirements of his profession, by a sound legal knowledge, by an intimate acquaintance with the many abstract principles of the science of which he was to become a most brilliant exponent. The courts soon learned that in the young advocate was one who was prepared to grapple with the principles found in any case submitted to him, and his fellow-members of the bar feared him as a most formidable antagonist. He shortly became a leading counsellor and advocate at the capital of the State, and was employed in almost every cause of importance which came before the courts. His practice was very largely made up of arguments in cases of an appellate character, before the highest tribunals of the State. In submitting his argument it was remarked by older practitioners that he never lost sight of any point in the case which in any way aided him or his client, and it was once jokingly said of him that in preparing a case for argument on a *certiorari* he would present at least fifteen points, one of which and perhaps the last would be conclusive, and the others not at all tenable, but that he argued all alike.

He was a Whig of the old school, and his party hoped to strengthen itself by inducing

him to become a candidate for office. So in 1842 he consented to run for the Legislature, and was elected by a large majority. But he had no taste for any other life than that of a lawyer, and ever after declined any candidacy for office except such as was connected with his profession. In 1844 he was made a member of the Constitutional Convention, in which body he exercised a masterful influence, and aided materially in directing and moulding its deliberations. In 1846 the term of office of Chief-Justice Hornblower expired, and all eyes were turned towards Henry W. Green as the man, above all others, fitted for the place. He was not a popular man; his manners were austere, repulsive to many for their severity; he was a moody man, at times genial and condescending, at others repellent and severe, — so that his appointment was not due to any wave of popular favor. He was eminently fitted for the place of Chief-Justice. Not a breath tarnished his fair name, he was of the strictest integrity, he was a profound lawyer, a learned jurist, of a quick, alert mind, capable of the closest analysis, and able to grasp every point involved in a suit, whether counsel had referred to it or not. Many an astute lawyer, after arguing a case before the court, imagining that he had exhausted argument, was quite astonished and somewhat mortified, that he had not discovered points which the Chief-Justice, in his emphatic manner, would state in his opinion. His decisions were regarded with great favor by the bar, were rarely overruled by an appellate court, and have been frequently quoted with commendation by English courts. His language was clear and lucid and of the purest English, his sentences compact and forceful. His charges to juries were models, easily understood and rarely antagonized.

He remained in office for fourteen years, two full terms, and then Governor Olden, one of the wisest men who ever occupied the gubernatorial chair in New Jersey, elevated him to the position of Chancellor. He filled the Chancellor's place for nearly a full term, when ill-health forced him to resign, and he died in 1876.

He was of a remarkable and dignified presence, full six feet in height, tall, erect, and finely formed. He was not calculated to attract the crowd; his nature was moulded in too noble a form to delight in the society of any other than the intellectual and cultured. He rarely unbent himself from his dignity and reserve, except with a few favored intimates. But he was a grand man, of the noblest qualities, both mental and physical; he heeded the demands of the community upon him as a citizen, and was earnest in many good works, especially those of a substantial, enduring nature. The cause of education received firm and decided support from him in many directions. He was largely interested in the success and in the affairs of his Alma Mater and in the Princeton Theological Seminary. For many years he was a Trustee of Princeton College, and for a long time previous to his death had been President of the Board of Managers of the Seminary.

Elias Boudinot Dayton Ogden was the son of Aaron Ogden, who in his time was one of the most prominent citizens of New Jersey, filling an important office in the Revolutionary army, after the struggle of the Revolution becoming a lawyer of large practice, a United States Senator, and then Governor and Chancellor, besides occupying many other less important positions. His son, who became an Associate Justice and who was generally known as Dayton Ogden, was born at Elizabethtown, as it was then called, in 1800. He graduated from Princeton at the age of nineteen, and immediately began the study of the law. He was licensed as an attorney in 1824, as a counsellor in 1829, and was made a serjeant-at-law in 1837, being the last lawyer in New Jersey who ever received that appointment. When he was licensed he selected Paterson as the place where he purposed to practise, and immediately opened an office at that place. Paterson was then a small struggling town, situate on the Passaic River near the falls on that stream. It was

fast rising into importance from the growing number of its factories. Young Ogden found many competitors for public favor, but he soon placed himself among the best advocates and secured a large clientage. Paterson was then included in Essex County, and the lawyers there resident were obliged to go to Newark, the county-seat, to attend court. Very soon after receiving his counsellor's license young Ogden was appointed Prosecutor of the Pleas, the most important office of the kind in the State. He performed the duties of the position with great assiduity, and evinced talents of more than ordinary character. The criminal business of the county was very large, and required a great part of the time of the Prosecutor for the proper discharge of his duties. It necessarily obliged him to be at Newark four times each year, away from his office and ordinary business. But while Mr. Ogden never failed in the performance of his whole duty as Counsel of the State, he succeeded in retaining all of his private practice; his numerous clients never complained of his inattention to their interests. He was a most industrious and careful practitioner, and ever responsive to the calls of present duty. He filled the office of Prosecutor for two terms with great ability.

HENRY W. GREEN.

The political party with which he affiliated very early recognized his abilities, and required his services in the Legislature, to which he was twice elected.

In 1844, when the best talent in the State was needed, and was selected from both political parties, for the Constitutional Convention, he was made a member of that important body.

In 1848 he was appointed an Associate Justice, and was re-appointed in 1855. These appointments were made by governors of his own political faith; but when his second term expired the executive of the State was politically his opponent, but that governor was Charles S. Olden. He honored himself and Judge Ogden by breaking through the trammels which had hitherto surrounded the governors of New Jersey and restricted them in the selection of judges to men of their own party, and reappointed Judge Ogden.

Judge Ogden was not a man of commanding talents, nor was he a genius; but he was a man of good sound judgment, of sterling commonsense; a painstaking, conscientious judge; genial in his intercourse with the members of the bar and all who approached him, and during his long term of office secured the confidence and respect of the whole community. When his last term expired he removed to Elizabeth and occupied the homestead of his father, Gov. Aaron Ogden, where he was born, and where he died in 1865.

His opinions were sensible, prepared with care, and were evidently the result of full examination. Among them was one, which excited comment at the time, where he denied the right of judges of a State court to inter-

fere for the release of a prisoner held by the judgment of a Federal court.

Lucius Q. C. Elmer was the son of Dr. Ebenezer Elmer, a surgeon in the Revolutionary army, and came of the very best stock in Southern New Jersey. He was born in 1793 at Bridgeton, Cumberland County, where he always resided. He was educated at the University of Pennsylvania. After leaving that educational institution he entered the office of his relative, Daniel Elmer, who afterward became Associate Justice, and who has already been noticed. He was licensed in 1815 as an attorney, and as a counsellor in 1818. He began practice at his native place, and it soon became large and extended into the adjacent counties. It was almost considered in his day to be the duty of every young lawyer to go to the Legislature. He was not an exception to this almost common law rule, and so he became a member of the lower house for four successive terms from 1820 to 1823, and during the latter year was Speaker of the Assembly. In 1824 he became Prosecutor of the Pleas for his native county, and several times performed the duties of that office in Cape May County. During that time he also was District Attorney of the United States for New Jersey. There was very little business requiring his attention in this last-named office. He himself, in speaking of the court, says that he and the son of the Judge, who was the Clerk, together were unable to persuade the Judge to keep the court open more than a day each term. In 1843 he was elected to Congress, and served one term. In 1850 he was made Attorney-General of the State, but held the office only two years, as in 1852 he was appointed an Associate Justice, which position he held for fifteen years. He was a respectable judge, not remarkable for great breadth of mind in his opinions, but always showing in them care and research, and his course as Judge ever commanded universal respect for his conscientious discharge of the duties of his office. His opinions were favorably received, but were not always regarded as reliable as those of some of his fellow-judges. He was a public-spirited man, and supported many of the philanthropical projects of his day. The crowning feature of his character was his strong religious bias, which pervaded his whole life and was carried by him into all its relations.

He was quite an author, contributing occasionally to the literature of the New Jersey Historical Society, of which he was for many years an enthusiastic member. He also compiled a book of legal forms, which was largely used by the profession; he made too a valuable digest of the laws of New Jersey. This work has reached its fourth edition; but the later editions have been called "Nixon's Digest," having received many additions from his son-in-law the Hon. John T. Nixon. He wrote a history of Cumberland County; but the most important of his published works he called "The Constitution and Government of the Province and State of New Jersey, with Biographical Sketches of its Governors from 1776 to 1845." This is a commendable work, full of information, especially of Lucius Quintius Cincinnatus Elmer.

He received the degree of LL.D. from Princeton College in 1865. In 1869 he retired from active life, and died recently at Bridgeton, well advanced in years.

Stacy Gardiner Potts was a Jerseyman by descent through several generations from original settlers in the country in the seventeenth century. The first emigrant of the name was a Quaker from England. With him came Mahlon Stacy. The two families intermarried, and thus the name Stacy found its way into the Potts family. Mahlon Stacy was a large landholder. He bought several hundred acres on both sides of the Assanpink and fronting on the Delaware. In 1714 he sold this land to Col. William Trent, and from him Trenton, the city which was built there and now the Capital of the State, was named. The grandfather of Judge Potts, who was also named Stacy, owned the house where Colonel Rall, commander of

the Hessians quartered in Trenton, was living at the battle of Trenton, December, 1776, and where he died. This house was standing a very few years ago, and was a quaint two-story stone edifice, with small windows and double front door.

Stacy G. Potts was born in 1799 at Harrisburg in Pennsylvania. His father was the owner of extensive tracts of land in Pennsylvania, but his heart seemed turned toward New Jersey. When young Stacy was only nine years old, he and his father travelled on foot to Trenton. The lad was pleased with the place, and declared that he was determined to spend his days there. He was taken by his grandfather, who was mayor of the town, and educated by him. The youth early showed an inclination for literary studies, and indulged his taste to the utmost by the use of such appliances as were afforded him. He was apprenticed to a printer, by some means obtained access to a bookstore, and so indulged in his thirst for reading. He also became a member of a debating club, and improved his style, as a speaker. In 1821 he became editor of a newspaper published at Trenton. By these various means he acquired an excellent literary style, and remedied in a very great degree the defects of his early education. While engaged in his editorial labors he entered the office of Richard Stockton, with whom he remained a short time, and then became a student-at-law with Garret D. Wall, with whom he continued his studies until he was licensed in 1827 as an attorney. In 1830 he became a counsellor. Following the custom so well observed then by young attorneys, he became a candidate for the Legislature, was elected, and at the expiration of his first term was re-elected. He seems to have been satisfied with these political honors, as he never again sought office of that kind. In 1831 he was elected Clerk of the Court of Chancery. This had not been a very lucrative position in the hands of his predecessor; but Mr. Potts not only elevated the office in character, but made it remunerative. He held this place for ten years. During the time he was clerk he compiled an excellent book of chancery practice, much needed at the time and suited to the then present state of equity procedure. It is, however, superseded by another book more fitted for the improved state of the practice. Although not a graduate of any college, Princeton conferred on him the honorary degree of A.M. in 1844.

L. Q. C ELMER.

The statutes of the State were badly arranged in the Digests which had been published, and in 1845 he was appointed, with Peter D. Vroom, Henry W. Green, and William L. Dayton, Commissioner to revise the laws. The gentlemen with whom he was associated were at the front of their profession, and Mr. Potts would not have been made one of this board if he were not fitted for the task. He was intrusted by his fellow-commissioners with the most laborious and by no

means the least important duties assigned to them. In 1852 he was nominated Justice of the Supreme Court, which position he held for one term, and was assigned to a circuit which was one of the largest and most important in the State. Judge Potts's opportunities for acquiring practical preparation for performing some of the duties of his new office had been few. He had very little equipment for the criminal jurisprudence committed to him; but he was quick to learn, and his mental force enabled him almost intuitively to master the abstruser legal principles of cases which came before him. His plain, practical, every-day common-sense was of very great service to him, and he soon became an accomplished jurist. His opinions were marked by his strong bias for what was just. Perhaps his ten years' constant intercourse with equity jurisprudence led him in this direction. It was evident that his desire was to learn what the law ought to be rather than to know what other judges had held in similar cases. He was a simple-minded man, looking always straight forward for a result which would do justice to all, and seeking to find what there was that was right in the cause.

At the close of his term he was quite enfeebled in health, he had, in fact, never been an entirely healthy man, and withdrew from active life, delighting himself in his library and enjoying the comfort and solace to be derived from books, of whose society he was ever fond. He was a kind-hearted, benevolent man, and philanthropic in his nature, interesting himself in charitable institutions. He took a deep interest in the common schools of the State, and at one time drafted a law which was passed by the Legislature and revolutionized the system then in existence. He died in 1865 at Trenton, after a protracted illness, universally regretted.

Daniel Haines during his lifetime filled many important positions in the political and judicial history of New Jersey. He was born in the city of New York in 1801, and came from an ancestry which was known for its sufferings in the War of the Revolution. Stephen Haines, his grandfather, had made himself obnoxious to the British by his patriotic services in the cause of the colonies. One dark night some English soldiers led by Tory refugees from Staten Island surrounded his house, made him prisoner, carried him to New York, and imprisoned him in the infamous "Sugar House." After the battle of Monmouth he was exchanged for a British officer Elias Haines, the father of Daniel, was then a lad of eleven years of age. His mother, Mary Ogden, was the daughter of Robert Ogden, 3d, and the niece of Gen. Matthias Ogden and Gov. Aaron Ogden, all three of whom were well-known patriots of the Revolution.

He was educated at Princeton College, where he graduated in 1820, and at once after graduation entered the office of Thomas C. Ryerson, then a leading lawyer at Newton, Sussex County, and afterward an Associate Justice. He was licensed as an attorney in 1823, as a counsellor in 1826, and was made a serjeant in 1837. He began practice at Hamburg, Sussex County, in the midst of a large agricultural community, but in a small country settlement. Here he secured a clientage of the very best men of the county, who respected him for his integrity and admired him for his sound, sensible methods of business.

Political parties in the early days of his practice were not equally divided in Sussex County; the voters of that county were overwhelmingly friends of General Jackson, one or two townships voting solidly for him. One of these townships was that in which young Haines resided. He shared in the universal enthusiasm, and strongly espoused the chieftain's cause. In 1839 he was brought prominently forward as a candidate for the position of member of the Council, as the State Senate was then called. He was rather averse to accepting the nomination, but it was deemed important that a man of talent and influence should represent the county as a subject of great importance to the community was to be agitated before the Legislature. He was nominated and, of course, elected by a very

large majority. This election was the means of bringing forward this young obscure lawyer from his unknown home in the mountains of Sussex, and eventually of landing him in the Governor's chair, — the only instance of the kind known in the State. In 1840 the "Broad Seal War," already referred to, was waged in New Jersey. The very best minds in the State were enlisted in the argument for the Whig party, which of course sustained the Governor, and young Haines was obliged to measure weapons with these practised and skilled men in the mental arena. He lost nothing by the contest, and was not forgotten by his party. In 1843 the Democrats obtained the ascendency, and he was elected Governor. While the result of this election was greatly due to his character and talents, it is very doubtful whether he would have been successful if the Whig party had not been divided. Be that as it may, he was elected, and elected too because he was a man of ability and integrity. Then the office of Governor carried with it that of Chancellor, and the incumbent was elected by the Legislature from year to year. He was continued in office until the inauguration of his successor, and would have been re-nominated after the passage of the new Constitution, had he not declined. While he was Governor he strongly urged, in messages and by his personal influence, two very important measures, — one, a re-arrangement of the common school system, so that it could be systematized and receive a permanent support; the other, a constitutional convention. He was successful in the convention; and his advice and recommendation for the other measure, although for a time rejected, took root and in due season were followed. In 1847 he accepted a nomination for Governor, then elective under the new Constitution by the people, and for a term of three years. This position was now removed from the judiciary, and its holder obliged to confine himself exclusively to the performance of the duties of the executive.

DANIEL HAINES.

Governor Haines's opinions as Chancellor fill one volume of equity reports, were prepared with the greatest care, and were regarded with high respect.

At the expiration of his term of office as Governor, when last elected, he returned to Hamburg and resumed the practice of the law with very great success.

In 1852 he was nominated by the Governor as an Associate Justice, was confirmed by the Senate, and took his seat on the bench in the month of November of that year. He retained the office for two full terms, of seven years each. He brought to the position great experience as a trial lawyer, having been generally employed in every important cause tried in Sussex County while practising at the courts of that county; a skilled knowledge in the common law science of pleading, a learning which was strengthened by years of ardent and unremitting study; a stern determination to do his whole duty as a judge

without fear or favor; a strict integrity; a character untarnished by a charge of fault; a kind and courteous manner; a willingness to listen, and a broad-minded appreciation of right and wrong. No judge ever sat on the bench who had less of prejudice in his composition, or who was freer from passion.

He filled many positions of prominence not connected with either political or judicial affairs. He was appointed a commissioner to select a site for an insane asylum, and was a member of the first board of managers of that institution; he was also appointed a commissioner to select a site for a home for disabled soldiers, and was one of the first trustees of that organization. When the legislature established a reform school for juvenile delinquents, he was selected as one of the Trustees, was the first President of the Board, and held that position for many years. He took a great interest in prison reform, and was appointed one of the commissioners to examine the systems of state-prisons in New Jersey and elsewhere. In 1870 he was sent to Cincinnati as a delegate from New Jersey, by its Governor, to a National Prison Reform Congress. He represented the United States at the International Convention on prison discipline and reform which met in London in 1872, was Vice-President of the Convention, and presided over some of its sessions in Middle Temple Hall. While abroad he received marked attention from English Judges and other distinguished men of different countries. For many years he was a Trustee in Princeton College. He lived to a green and honored old age, and died recently at his home at Hamburg.

If Peter Vredenburgh had been born in New York City, he would have ranked among the Knickerbockers of Gotham. His birthplace was Readington, Hunterdon County, New Jersey, and he came of a goodly German parentage. His father, whose name he bore, was a physician. Young Vredenburgh graduated at Rutgers in 1826, was licensed as an attorney in 1829, and began practice at Eatontown, in Monmouth County. This obscure village was too circumscribed for a man of his abilities, and he very soon removed to Freehold, the county-seat of Monmouth, where he ever after resided. In 1837, five years after he became a counsellor, he was made Prosecutor of the Pleas, and was continued for fifteen years in the position. He soon took a high rank in the profession; and the leaders of the bar, who perhaps at first were disposed to regard the young beardless attorney with some contempt, learned that in the prosecutor of Monmouth they had an antagonist who was worthy of their highest respect. His manner of performing the duties of this office of counsel for the State in criminal cases not only soon gained him clients, but also the respect and confidence of the community. No man at the bar in New Jersey ever surpassed Mr Vredenburgh in ability to grasp and understand almost intuitively the salient facts in a cause. His power of analysis and of marshalling the testimony of witnesses was wonderful; and if after fully examining a case he was satisfied the defendant was innocent he not only did not press the case, but declared to judge and jury his honest convictions. But on the other hand woe to the defendant whom he believed to be guilty. If he thought the defence was tainted in any way by fraud or was dishonest, he was merciless, and no earthly power could turn him from a pursuit, keen and sure, of the criminal. He was capable of quietly weaving a web of circumstances around the defendant which ended in a complete and swift overthrow of the best-laid and acutest plans to secure acquittal. He impressed juries with his entire honesty of purpose, and they learned to follow his leadings because they knew that if he were doubtful of guilt he would plainly and frankly tell them so. In addition to this keen perception of the workings of human nature, he possessed great eloquence; his was the quiet, calm eloquence of power

and truth urged before his hearers, who appreciated an honest struggle for the right, and were prepared to do what justice demanded. An examination of the reports of decisions in both common law and equity courts will reveal the fact that very soon after he came to the bar in Monmouth he argued almost every case of importance which came before the higher tribunals of the State. He held the office of Prosecutor for three full terms, fifteen years, and left it with a character established for great honesty of purpose, and as possessing one of the very best legal minds in the State.

In 1855 he was appointed an Associate Justice by Gov. Rodman M. Price, who was opposed to him in politics, but, rising superior to the trammels of party, in this instance selected the very best material he could find to fill the place. At the end of his first term Governor Olden reappointed him, so that he held the office for fourteen years. His decisions were regarded as very able, and held in the highest esteem. His power of analyzing human testimony, of reconciling inconsistencies in evidence, of marshalling facts and showing their relation to each other, were never surpassed by any judge. The celebrated Meeker will case gave full evidence of his power of mind in all these directions. This cause occupied the time and attention of the Courts of New Jersey for many years. It involved a large amount of property, and was fought with the greatest pertinacity. The ablest counsel in the State were employed on one side or the other. The cause came up before the Supreme Court on a motion for new trial, and its report occupies over one hundred printed pages. Judge Vredenburgh was intrusted by the court with the examination of the evidence in the cause, and the work was well done. From the conclusions at which he arrived there was no escape; his deductions were forcible, his logic was irresistible, and the reader rises from a perusal of his opinion amazed at its power, astounded at the apparent intimate knowledge the Judge seemed to have of the motives, the wishes, and the fraud and chicanery, the untruthfulness, or the honesty of the witnesses.

EDWARD W. WHELPLEY.

He had a fund of quiet humor, sometimes rising to the height of absolute and pure wit. He rarely exhibited this in any of his utterances on the bench; but he could not resist sometimes the impulse to break through the dignity of a judge and indulge in his natural propensity. A slight touch of this appeared in his decision in a bastardy cause. The putative father, who was the appellant, objected that the Quarter Sessions had seen fit to change the order of the Justices, and had not either overruled or affirmed. In commenting on this the Judge remarked: "I find the Justices of Monmouth, in general sessions in 1795, relieving the township by fining the mother and putative father for the use of

the poor, and in two cases in 1701 varying their order, in one case by adding ten lashes on the bare back for having a white child, and thirty lashes, in the other, for having a mulatto; so that the prosecutor should deem himself fortunate that the sessions, instead of diminishing his fine, had not enlivened the proceedings by inserting some of their old variations."

Judge Vredenburgh was on the bench when the civil war broke out. He was a believer in the Republican party, and, of course, supported the war. In Monmouth County there were many ardent Republicans, and some citizens who favored secession. A few fiery patriots, who could not brook any deviation from the strict line of the duty which in their opinion was due to the government, resented some demonstrations in favor of the rebels, and proceeded to extremities which were not sanctioned by the law of the land They presumed on the known political pro clivities of the Judge, but they soon learned to their cost that he was not and would not be swerved from the discharge of his duty by any considerations. In his cool, quiet, but decided and forceful manner he charged the Grand Jury against these infractions of law, and soon taught the hot-headed patriots that they must obey the law of the land. For this wise and fearless action he was de nounced in unmeasured terms by some whose folly ran away with their wisdom; but calmer and soberer second thoughts convinced the thinking community that the Judge was right, and he soon stood higher than ever in the confidence and respect of the people.

When his second term expired he resumed the practice of law; but his health soon failed, and he was obliged to relinquish his business His son who bore his name, an able and courageous young officer, was killed during the war. This terrible loss added to the malady which seemed to be sapping his health. He sought a more genial climate, hoping for restoration, but in vain; he died at St. Augustine, Florida, in 1873.

The Ryerson family has given to the State many distinguished men whose lives have added lustre to the history of New Jersey. Of these no more honored name is to be found than that of Martin Ryerson. He was the son of Hon. Thomas C. Ryerson, who has already been noticed. The original ancestor, who settled on Long Island, was called Martin Ryertse, and the name Martin has been kept up since his time uninterruptedly by the family, who long since changed the name Ryertse to Ryerson. Martin Ryerson, who was an Associate Justice, was born at Hamburg, Sussex County, in 1815 His mother was a daughter of Gov. Aaron Ogden, a hero of Revolutionary times, and he was her eldest son. He received an excellent preparatory education, and being a very apt and diligent scholar was enabled to enter Princeton College at a very early age, from which institution he graduated in 1833. He became a student in the office of his father at Newton, but desiring a more extended opportunity of obtaining the knowledge of the practical part of the profession, he removed to Trenton, and became a student in the office of Garret D. Wall, a leading member of the bar in the State, and finally finished his studies in the office of Governor Pennington at Newark. He was licensed as an attorney in 1836, and as a counsellor in 1839. He at once opened an office in Newark, and although finding himself confronted with some most formidable rivals, he was soon found in the foremost rank of advocates, and secured a numerous and respectable body of clients. He very soon, however, removed to Newton, in his native county, and there practised his profession with very great success. With the exception of a few years, he resided at Newton during the rest of his life; those few years while he was justice, he spent in Trenton In 1849 he was elected to the lower house of the Legislature at a time when an election to that body was an honor, when men of character and talents were selected for the position. He found there Edward W Whelpley, who was afterward Chief-Justice, and who was Speaker of the

Assembly. In 1844 he was a member of the Constitutional Convention, and aided materially by his wisdom and good judgment in the perfecting of the Constitution, prepared by that body, composed of the very best men of the day. In 1855 he was made an Associate Justice; but he held the position only three years, when he was obliged to resign in consequence of ill health. In 1873 his reputation as a sound jurist had become national, and he was made one of the judges of the Alabama Commission; but after a service of two years he was obliged to resign from that body. He was often called upon to serve his State in positions where talents of a peculiar order were required. But in the latter part of his life, when these honors came oftener, he was obliged to refuse them all. He died on July 17, 1875, at his residence in Newton.

GEORGE S. WOODHULL.

When in full practice it is said that he prepared himself for the trial or argument of a cause, by first writing out his adversary's brief and then demolishing it by his own; and those who had an opportunity to judge declared that the opposing brief as it came from his hands for this purpose was generally better and stronger than the one actually written by his adversary. In the trial of a cause he was a formidable opponent; he seemed always prepared for any and every point which could be brought against him. He was never caught unprepared; his mind was peculiarly clear, calm, and judicious. No man, probably, ever sat on the bench with a cooler head and a better balanced mind. He was in every sense a model judge. His opinions were always listened to with the greatest respect. If there were any one feature of his mental fabric more prominent than any other, it was his great energy of character. Notwithstanding his continuous ill-health, he was enabled through this indomitable energy to accomplish wonders. His correspondence, especially during the civil war, was enormous; he was not a politician in the ordinary sense of that word, but he was a high-minded, whole-souled patriot, and, impelled by his love of country, he was constantly devising plans through which to serve the Republic, and these plans were universally acknowledged to be the very best which could be concerted. He was a man of enthusiasm in whatever he undertook, and he never engaged in any enterprise without first maturely considering all the arguments for and against it. Once having given it the benefit of his support, he threw himself into the matter with all the force of his nature.

Edward W. Whelpley was a Morris County man, born at Morristown in 1818, and descended from the very best ancestry ever found in New Jersey. His father was William A. Whelpley, a practising physician of great talent and high character; and his mother was a daughter of Gen. John Dodd, of Bloomfield, in Essex County, New Jersey. The Dodd family has given some most remarkable men to New Jersey, in all the ranks of cultured,

educated society; as lawyers, as professors in colleges, as clergymen, as scientists, and in business. It is noted for one characteristic which seems to have been inherent in all its members, — a taste and a talent for mathematics.

Young Whelpley was prepared for college at the schools in his native place, which were of a very high order. He entered Nassau Hall, at Princeton, very early in life, and graduated at the unprecedentedly youthful age of sixteen. His friends then thought him too young to begin study for any profession, and he taught school for about two years. He then entered the office of his uncle, Amzi Dodd, one of the most prominent lawyers in Newark. This relative died before his studentship expired, and he finished his studies with Amzi Armstrong, one of the acutest-minded men who ever practised at the bar in New Jersey. He was licensed as an attorney in 1839, and as a counsellor in 1842. He first opened an office in Newark, where he remained only a year or two. The Hon. Jacob W. Miller, of Morristown, in 1841 was elected to the Senate of the United States, and needed some one to take charge of his large practice, and he offered Mr. Whelpley a partnership. The offer was accepted, and the young attorney at once removed to Morristown, where almost with a bound he reached in an incredibly short time a very high place at the bar. There were then to be found in Morris County some of the brightest legal minds in the State. It would have been very difficult for a young man to have met such astute-minded men and have held his own against them had he not been well equipped, both by native talent and by study; but young Whelpley was equal to the exigencies of his position, and was able to cope successfully with his older and more experienced brethren.

It was not long before his fellow-citizens, appreciating his worth and fully understanding what an addition he would make to the law-making power of the State, called him from his office and from his practice to the duties of a legislator. He had given them a signal evidence of his ability in the direction of political affairs. He was a politician, but in the best signification of that word, and took a deep interest in the politics of the Republic, and kept himself informed on all of the stirring questions of the day.

A large public meeting of the adherents of the political party to which he was opposed, was attended by him. The principal speaker was a gentleman older than Mr. Whelpley, and a man of large mental capacity, who afterward rose to the highest judicial position in New Jersey. He was rather profuse in his challenges for contradiction to his statements, and Mr. Whelpley took advantage of the speaker's defiances and propounded several questions to him. After a few interruptions of this kind the orator intimated that his questioner should have an opportunity, after he had finished, to reply. At the close of his speech he gracefully turned to Mr. Whelpley, and said, "Now, sir, if you wish, you can be heard." The circumstances and the occasion impelled a reply. With paled cheeks and compressed lips, but with blazing eyes, he ascended the platform. His opponent was too much of a gentleman to have permitted any interruption, or there might have been trouble. Fortunately for Mr. Whelpley, there were some citizens present of his own way of political thinking, who sustained him by voice and cheers. At first they were dismayed, somewhat fearful that the young man could not successfully meet the arguments of his shrewd and talented antagonist. But he was not long on the platform before both friend and foe were convinced that he was master of his subject. The result was that his effort was of such a character that the meeting dispersed overwhelmed by the arguments of the man thus unexpectedly thrust upon it, and young Whelpley became the acknowledged leader of his own party in the county. He was eagerly sought for as a speaker at all important meetings of the party to which he was attached, and so soon as the proper opportunity came was nominated and elected

in 1848 a member of the Assembly from Morris County. He served twice in this responsible position; during his second term being elected Speaker. He never again became a candidate for political honors, but applied himself diligently and resolutely to his profession, in which he became eminent and very successful.

In 1858 Martin Ryerson resigned his office of Associate Justice, and the Governor selected Mr. Whelpley to fill the vacancy. This selection was acknowledged by all to be exceedingly proper, and one of the best that could have been made. He held the position until 1861, when Henry W. Green, then Chief-Justice, was made Chancellor, and Judge Whelpley was selected as the head of the Court to succeed Chancellor Green. Very soon after he was raised to this responsible post he sickened with that terrible malady, Bright's disease, from which he never recovered. He, however, continued to discharge the duties of the high office to which he was so recently elected, until about two months before his death. In the month of February, 1864, in the prime of his manhood, in his forty-sixth year, he died, after the intensest suffering, calmly and bravely meeting his end, which for months he knew was approaching.

After this brief and imperfect sketch of this illustrious man, it is well to pause a moment and think of his shining virtues, his great intellect, his many-sided character, and his noble nature. View him from any standpoint, as a man, as a citizen, as a jurist, as a lawyer, and he was great. But in these sketches he is to be spoken of as a lawyer and as a judge.

He was in every respect a great lawyer, and possessed nearly, if not quite, all of the characteristics of a consummate jurist. He was a clear thinker, of a cool dispassionate judgment, with a power of analysis which enabled him to grasp all the points in any case submitted and give them their due proportions and their appropriate relations. He had an acute and intuitive perception of the principles of legal science which never failed him, and a perfect control of himself which kept him entirely free from any prejudice, and forced every faculty of his nature to submit to intellectual leadership. His habits of close thought and logical reasoning gave him a great mental grasp, which enabled him to gather up all the legal principles involved in cases before him and use those principles with unerring effect. His arguments were compact, lucid, and convincing. He had strengthened all these mental gifts by severe study and intellectual training, and had not disdained the lighter studies found outside of his chosen pursuit.

In addressing juries he seized every salient fact in the evidence, marshalled all the testimony, so that it was presented, connected in all its parts, to the mental vision of jurors with such irresistible vigor that they were forced to admit its power. He was not a great orator, with grace of delivery, with voice and gesture; but his diction was admirable, his words were well chosen, always appropriate, his style always forcible; he was never redundant, rarely impassioned, but able, if he chose, to rise to great heights of eloquence. He met the requirements of the intellect and of the judgment, and never stormed the heart with appeals for sympathy. He was always listened to by jurors; they could not help listening, — he commanded their attention, even of the dullest of them. But it was before the bench that he shone the brightest, and it was in that arena that he won his highest renown. The judges ever heard him with the profoundest respect, and they never failed to award him their admiration, even if they did not agree with him.

In two cases before the Court of Errors, the highest appellate court in the State, he accomplished what no other lawyer, before his time or since, has ever been able to do. In both cases he carried his appeals by inducing the lay members to vote with him and overrule the law judges. One of these cases was so interesting and peculiar

that it deserves a passing notice. A mortgagee found it necessary to use his mortgagor as a witness in a cause in court. Under the old common law then in force, the mortgagor could not be used as such witness if he were interested pecuniarily in the event of the suit; so a release of the fullest character was executed under seal, and delivered to the mortgagor. The bond and mortgage were assigned, and a foreclosure begun in the Court of Chancery. The mortgagor pleaded the release, and the Chancellor held that the assignees of the mortgagee could not go behind that instrument; that it was a perfect answer to the foreclosure, and that the bill must be dismissed. The complainant appealed, and on the decision five of the lay judges voted to reverse the Chancellor overruling the law judges, and the decree dismissing the bill was reversed.

He had some characteristics as a practising lawyer which deserve notice. He was always fair in his treatment of his brethren at the bar. No technicalities were ever resorted to by him, to the personal disadvantage of other attorneys; he never lost sight of the rights of his clients, nor of his duty to them; but he scorned to secure those rights by doing an injustice. He never favored a litigious suitor; he honored his profession too highly, loved it too well to make it, or its appliances, subservient to the malice or to the freaks of those who sought his services. In the conduct of causes he did his whole duty to his clients, but never by any unfair means. If he could only succeed by a resort to measures which had even the semblance of unfairness, he would rather suffer defeat than be successful. As a counsellor, he was wise, prudent, and honest. He never urged a client to litigate doubtful claims.

He was ambitious for judicial honors, and when they came to him they found him ready to face the responsibilities of the position, because he knew what was in him and appreciated his own capabilities and he knew that he was fully prepared. He was equipped by study, by severe thought, by constant discipline, and by a training of mind and heart which fitted him for the place. He was a born judge, and by his mental constitution and his moral attributes was fitted for the place; but he ever made his heart subservient to his mind. His judgments were based upon results reached through his intellectual efforts, and yet no man had a higher appreciation or a keener intuition of the demands of true morality, and of that high-toned moral sense which should ever characterize the judge in all his decisions. Above all other considerations this question most influenced him in all his judicial acts: Is it right?

His personal appearance was imposing; he was full six feet in height, with clear cut features, a full dark eye, dignified in manners, but always approachable to all. While so intense a student of profound legal principles, he was an eager reader of general literature, and kept himself fully abreast with all the topics interesting to such a mind as he possessed. His memory, which had an iron grasp, enabled him to retain all that he studied worth remembering.

When death came and struck down this shining mark, the citizens of the State of all classes were moved with one common sorrow; the great men of New Jersey came in crowds to his funeral, and surrounded his bier with grief-stricken hearts. In token of their respect the courts adjourned their sessions, after the unanimous passage of resolutions embodying the highest encomiums of the deceased judge; the Legislature, in both of its branches, attested by resolutions their appreciation of his worth, and appointed special committees to attend his funeral. By one common consent it was acknowledged that a great man had fallen.

William S. Clawson was elected an Associate Justice in 1859, but was in office less than two years, so that his opportunities for the display of his abilities as a judge were few, and very little can be recorded of him.

He was born in 1816, at Woodstown, New

Jersey, where his father was a distinguished physician for many years. His early education was gained in the schools of his native village, but he was prepared for a collegiate course at Lawrenceville. He entered the college at Newark in Delaware, where he remained for two years, and then joined the junior class in Princeton and graduated in 1838. After graduation he became a student-at-law in the office of Francis L. MacCullough, one of the leading lawyers of Salem, and was licensed as an attorney in 1841, and as a counsellor in 1844. He spent some years of his early manhood in agricultural pursuits, and so did not become prominent at the bar as early as he would otherwise have done had he devoted his whole time to his profession. Mr. Clawson soon after he was licensed opened an office in his native town, where he continued to live until his death. His practice must necessarily have been limited, as Woodstown was a small, straggling country village, of less than a thousand inhabitants; situated ten miles from Salem, the country-seat. It had no mechanical nor manufacturing interests, and the community in and around the town was composed mostly of farmers; consequently very little litigation could have arisen. His father was an influential man; and a brother, who also lived at Woodstown, was a leading citizen in the county, and became a member of Congress. The young attorney had therefore the benefit of this family influence, which must have aided him materially. He could not, however, have succeeded as he did, were it not that his native ability and integrity of character supplemented all outside aid. He became so prominent in his profession, however, that in 1847, when Richard P. Thompson, who had been Prosecutor for Salem County, was appointed Attorney-General, he was selected to fill the vacancy thus caused in the Prosecutorship. He performed the duties of this office ably and diligently, and so satisfactorily that in 1859 Governor Olden selected him as an Associate Justice. The appointment was made in deference to a demand that some representative from that part of the State where he lived should be placed upon the bench, and Mr. Clawson was the choice of those who seemed most to have a right to be heard upon that subject. The first judicial district, composing the extreme southern counties, was assigned to him. He died in June, 1861, in the second year after his appointment.

It was generally supposed that he was a victim, with so many others, to the mysterious and insidious disease which attacked many guests of the National Hotel at Washington, who attended the Inauguration of President Buchanan. Mr. Clawson was one of these guests, and never after this visit to Washington was in his ordinary health.

He was not a great lawyer, nor perhaps would he have been equal to the task of performing the duties of an associate justice in a large and important circuit, nor of grappling with the varied and complicated legal questions which are so constantly arising from the ramified and perplexing relations of the business of the present. But he was a man of excellent judgment, of good, sound common-sense, and of sterling integrity. He brought to his office a determination to do his duty and his whole duty. If industry, honesty, and strict attention to the duties of his position, combined with fair abilities, were all that was necessary to have made a good judge, then William S. Clawson succeeded.

It must be remembered, when criticising him and his efforts as Judge, that during all the time he was in office a slow and lingering disease was carrying him to an early grave, and that he should not be weighed in the same balance with other men whose strong, vigorous nature was not disturbed by a lurking disorder which was sapping the fountains of life.

John Van Dyke was born at Lamington, in New Jersey, early in 1807. His father, who was a farmer of moderate means, was a descendant of one of the many Germans

who settled in that part of the State in the beginning of the eighteenth century. He could not afford his son the advantage of a classical education, and so the youth was forced to content himself with such training as could be gained in the schools of the day and of the place, and that was none of the best. But he made the most of his advantages by application and industry, and when he was released from parental rule, finding himself with no other means of obtaining a livelihood than continuing the life which up to that time had been spent on his father's farm, he put to use the acquirements he had gained in school and became a teacher. He engaged in this occupation for a very few years, and then went to New Brunswick, a green country lad, with no family or other influence to aid him in the struggle. He felt acutely his want of classical training, and appreciated the effect it might have on his professional life if he should choose one. But he was energetic, and had confidence in himself and his future. In 1832 he entered the office of James S. Nevius, who was then one of the prominent lawyers of Middlesex County and afterward an Associate Justice of the Supreme Court, and was licensed as an attorney in 1836 and as a counsellor in 1839. In 1841 George P. Molleson, one of New Brunswick's lawyers and then Prosecutor for Middlesex County, was appointed Attorney-General. Mr. Van Dyke at that time was associated with Mr. Molleson in practice; and when that gentleman became Attorney-General, he sought to succeed him in the Prosecutorship. He was successful, and held the office for one term. He was diligent in the performance of his duties, and gained a reputation which materially aided him in his professional career. During the time he held the office a terrible crime was committed in New Brunswick, which created the greatest excitement. A man named Peter Robinson murdered Abraham Suydam, the President of the Farmers' and Mechanics' Bank of New Brunswick, and a very prominent citizen. Robinson was indicted, tried, and convicted. The trial was a remarkable one. Robinson was defended by able counsel, and full opportunity was given to the young Prosecutor to show what there was in him. He was put upon his mettle, and appreciated the possibilities there were for him in the case. He represented the State and conducted the prosecution, with the aid of the Attorney-General. His manner of presenting the case gave promise of the young man's future, especially his peculiar ability in marshalling and presenting the facts of a cause to the jury.

In 1847 he was elected to Congress, and served for one term. It was at a stirring time; the country was then at war with Mexico, and sharp and stormy debates agitated Congress. Mr. Van Dyke took part in these debates, and at one time offered a resolution relative to the war which provoked comment and some sharp criticism. While serving as a representative, he met William A. Newell, afterward Governor, and became very intimate with him. In 1859 Newell became Governor of New Jersey, and in the distribution of offices did not forget his friend and fellow-Congressman. Van Dyke was ambitious for office, but he aspired to that of Attorney-General. Newell had the faculty of disappointing his friends, and Van Dyke was not the only one of them whose fair hopes were blasted by the failure of the Governor to respond to what seemed just claims upon his friendship. Mr. Van Dyke undoubtedly felt himself better qualified to perform the duties of adviser of the State than those of judge; but Newell appointed him associate justice, and he accepted, taking his seat on the bench in 1859.

He was not well equipped for this position; he had not the legal learning, nor the judicial mind, nor the analytic power, which are requisites in the character of a good judge. But he did have other attributes which were equally essential. He had

great industry, untiring energy, and an earnest desire justly and faithfully to perform the duties of his position. His mind was a growing one; it had the power of expansion, and he became, before his term of office expired, a sound, excellent judge. He had one faculty, which perhaps he derived from his German ancestry. He could dig and delve into the mines of legal lore, and he dug and delved for his own satisfaction, and to aid himself in arriving at a proper conclusion. During the first year or two while on the bench, he wrote very few opinions; but after he fairly felt himself at home he began to assume the full responsibility of his office. He did not always agree with his brethren, and when he did disagree he did not hesitate to put himself on the record, even though he stood alone. He had one faculty in which he had very few, if any, superiors, and that was the power of marshalling the facts of a cause, of grouping them together, and presenting them to a jury with very great power. His style was plain, unvarnished, with few graces of oratory, and not elegant diction; but he overpowered the judgment of his hearer, and forced conviction by his masterly skill in this direction. This faculty enabled him, while on the bench in the trial of causes before him at the Circuit, to enlist the attention of jurors, and enable them to perceive the salient, governing facts in the case. He remained on the bench for one term, and at the expiration of his office removed to Minnesota, where he died.

George H. Brown was so short a time on the bench that but little can be said of him as a judge. During his term of office he was suffering from the effects of an insidious and deadly disease, which prevented him from displaying to the full his capabilities for filling the position for which he was fully equipped.

He was born in 1810, in Somerville, the county-seat of Somerset County. His father, the Rev. Isaac V. Brown, D.D., was a clergyman and a teacher, the principal of a large and flourishing school at Lawrenceville. He was prepared for college under his father's immediate personal supervision, and graduated from Princeton in 1828, when only eighteen years of age, and then assisted his father in his academy. But he was determined to be a lawyer, and two years after graduation became a student in the office of Thomas A. Hartwell, a practising attorney at Somerville. Desirous of obtaining the very best legal education that the country offered, he left Mr. Hartwell's office and entered the Law School Department of Yale College, where he remained a sufficient length of time to fit himself for examination for license as an attorney-at-law in 1835. In 1838 he was licensed as a counsellor, after he had been engaged in the practice of the profession at Somerville for three years. He remained in that place the rest of his life engaged in his profession, until he was appointed an Associate Justice in 1861. The opportunities for a successful practitioner at Somerville were not large; but Mr. Brown from the very first secured the best clientage in the county, and was soon found among those who led the bar. Before his appointment as Justice he had received many honors, political and otherwise, at the hands of his fellow-citizens. Although quite a young man at the time of the Constitutional Convention, he was considered worthy of a place in that conservative body; and when the Constitution, the work of that Convention, was adopted, Mr. Brown was the first Senator from Somerset, under the new Constitution, elected in a county where the majority of voters was politically opposed to him, and which a preceding Legislature had weighted with territory containing a vote which it was presumed would prevent the election of any candidate of Mr. Brown's political belief.

In 1850 he became a member of Congress, but was not returned at the expiration of his term. He did not relinquish his practice while in Congress, but retained as

much of it as possible; and when he surrendered political life and gave his whole time to his profession, he had very little difficulty in securing a return of his many clients. He continued to practise at Somerville until 1861, when, at the elevation of Judge Whelpley to the Chief-Justiceship, Governor Olden, who rarely erred in his appointments, selected him to fill the vacancy thus created. But at that time the fearful disease which finally caused his death, had a firm grip upon him. This disease very soon developed itself after he became an Associate Justice, and he felt it to be his duty to resign, but yielded to the solicitations of his numerous friends, at the bar and elsewhere, who urged him to remain. He was over-persuaded, and reluctantly retained his position against his own better judgment, but soon learned that it would be impossible for him properly to discharge the duties of the position, and he finally resigned and soon after died, in the very prime of his life, and when it seemed that he would become most useful to his State and his fellow-citizens.

The Woodhull family in New Jersey has been remarkable for the piety of its members. It has given to the State many distinguished clergymen, whose memory still lingers in the churches. One of them, the Rev. John Woodhull, D.D., was pastor for thirty years in the historic Tennent Church, near Freehold, and another was settled over several parishes in the State. The Rev. Nathan Woodhull, D.D., held a very advanced place among the clergy of his denomination in the lower part of New York. Yet, strange to say, the family, or at least some of them, claim as their ancestor a warrior of rude Norse stock, who came with William the Conqueror from Normandy and aided him in the conquest of England. Others say that the Norman ancestor came from France before the English conquest, made his way to Wales, was recognized as a noble there, and that one of his lineal descendants came to this country two hundred years ago, settled in Long Island, from whom came the founder of the family in New Jersey. From the New Jersey race, which settled in the State nearly two hundred years ago, came George Spofford Woodhull, who was born near Freehold, Monmouth County, and was the son of John T. Woodhull, M.D., an eminent physician of that county. The family had long been identified with the society and interests of Monmouth, and had given tone and character to its people. The grandfather of Judge Woodhull, the Rev. John Woodhull, D.D., who ministered so long in the Tennent congregation, by his talents and blameless life, had been influential for many years not only in Church but in State. It was under such influence and amid such surroundings that young Woodhull passed his early life and was prepared for his useful and busy career. He received a careful preparation for college at home; but to fit him more perfectly was sent to the Academy at Princeton, where he pursued a special curriculum of study in direct connection with the college, which he entered in 1830, and was graduated with honor in 1833. He entered the office of Richard S. Field, then practising at Princeton, afterward Judge of the United States District Court of New Jersey, and was licensed as an attorney in 1839 and as counsellor in 1842. Immediately after graduation he opened an office at Freehold, and soon gathered around him a very respectable clientage. Family influence, of course, largely aided him, but it would have been of little use to him after a short time if his own talents and character had not been such as to command respect and invite confidence.

Atlantic County had been taken from Gloucester, and made an independent organization. This opened a new field of operations for a young attorney, and in 1850 Mr. Woodhull transferred his office to May's Landing, the capital of the new county. Very soon after this removal the Governor made him Prosecutor of the Pleas for Atlantic. He performed the duties of the position so entirely to the satisfaction of the Governor that

that official, although opposed politically to Mr. Woodhull, made him Prosecutor for the adjoining county of Cape May. He held the positions for two terms, a period of ten years, being re-appointed by another Governor also opposed to him in politics.

In 1866 he was made Associate Justice by Governor Ward, and at the expiration of his first term was re-appointed by a Democratic Governor, although he was a very pronounced and active Republican. He held the office of Associate Justice for two terms, fourteen years in all, retiring from the bench in 1880 and taking up his residence at Camden, where he soon after died.

Judge Woodhull was an exceedingly conscientious judge, avoiding at all times and upon all occasions any possible interference with the just performance of his official acts. He brought to his office an appreciation of the honor which attached to it, and of the manner in which its responsibilities should be met. He was unswerving in his stern determination to do his whole duty, first learning what that duty was; and yet he was one of the most popular judges who ever dignified the bench. This was due to his kindly nature and his courteous manner. He was firm, but his firmness never became sternness nor less urbane when dealing with his brethren of the bar. If in his view duty forbade him to refuse a motion, the counsel who lost could make no complaint of the manner in which his motion was denied. He was well equipped for his high office by diligent study and the experience he had gained in his large practice.

Judge Woodhull was a fair representative of the best class of country lawyers, who sometimes make the best judges. He had been obliged to attend to all kinds of cases, and this had given him a large experience in the class of suits coming before the courts of his extensive and influential district, which was largely agricultural in its interests, with some manufacturing establishments.

He does not seem to have written many opinions during his term of office; but those reported show great labor in preparation, were sound, and expressed with logical conciseness. He was zealous in the performance of every duty assigned to him; was self-poised without conceit, and independent in thought, without the assumption of vanity.

He presided at several very important criminal trials, two of which might be classed among the *causes célèbres* of the State. In one of these he set aside the verdict of the jury, which was very rarely done in the criminal jurisprudence of New Jersey.

Judge Woodhull's personal appearance was very prepossessing. He was fully six feet high, gracefully formed, with large, dark, sparkling eyes, carried himself erect and in a most dignified manner, but easy and free from all affectation. He was the most unselfish of men, delighted in aiding the deserving, and doing kindnesses to all. It may truly be said of him that he was an upright, capable, and conscientious judge.

CAUSES CÉLÈBRES.

XXV.

THE ORDEAL OF BLOOD.[1]

[1820.]

IT is seldom that the history of crime records more singular and startling circumstances than were revealed in the trial of Medad McKay. In many respects he was a singular man, destined to pass through strange ordeals and trials. There were times when he seemed under the control of mysterious agencies, times when he felt a consciousness that something not of earth was behind him, times when "coming events cast their shadows before," and he would be moved by impressions as gloomy as those embodied by Coleridge in his beautiful but weird verse.

When McKay was charged with a horrible crime, he invoked a superstitious ordeal, full of horror, the result of which cast a dangerous shadow upon him when tried for his life. And yet his fate was not always controlled by dark and malignant spirits. In one awful hour of his life, an invisible hand seemed suddenly to reach forth and snatch him from the grave. The superstitious termed this intervention the work of his guardian spirit; the more enlightened attributed it to the ability, skill, and eloquence of the gifted lawyers by whom he was defended.

Early in the year 1820 Medad McKay removed from the county of Cayuga, in the State of New York, to Burns, in the county of Allegany. He had enjoyed many advantages for attaining an education, which he did not neglect. Reading was his favorite pastime, and he loved to plunge into the dark and metaphysical subtleties which the Germans have daringly called forth. But he possessed a desire for knowledge more vague than useful.

At the time of his removal to Burns he was thirty-five years old. A wife, four children, one or two hired men, and a servant constituted his family. Unfortunately he lived unhappily with his wife. So deep and bitter was their quarrel that the neighbors frequently interposed to prevent McKay from inflicting personal violence upon her. At length Mrs. McKay was attacked by a sudden and strange malady, which soon terminated fatally.

Many circumstances connected with her death caused the people in the neighborhood to believe that it resulted from poison administered to her by McKay. So strong was this belief that soon after the funeral of the unfortunate woman, he was arrested, her body exhumed, the contents of her stomach subjected to a chemical analysis, and arsenic detected. At the coroner's inquest, called to view the body and decide upon the cause of the woman's death, an event of thrilling interest occurred, which in the minds of many confirmed belief in the guilt of the accused and operated against him on his trial. McKay did not deny that his wife died from the effects of poison; but he insisted that he had no complicity whatever in the act of administering it to her. She had for years been at variance with one of her sisters who lived near, and McKay accused this woman of the murder of his wife.

McKay had read of the "Death Touch, or the Ordeal of Blood,"—a dark, Druidical superstition, so graphically described by Sir Walter Scott in his enchanting story, "The Fair Maid of Perth." This ordeal originated in the belief that if a person guilty of mur-

[1] By the kind permission of S. S. Peloubet, Esq., publisher of a work entitled "Lawyer and Client," we have been enabled to use much of the material in that interesting volume relating to this celebrated case. — ED.

der touches the neck of the victim with the index-finger of the left hand, blood will flow from the place where the finger rests, in evidence of guilt.

It was doubtless this belief that prompted the conscience-stricken Macbeth, after he had murdered Duncan, to exclaim: "Blood will have blood! Stones have been known to move, and trees to speak. Auguries and understood relations have by magpies, ravens, and rooks brought forth the secreted man of blood."

This ordeal or test McKay proposed should be tried at the inquest by his sister-in-law, alleging that it would decide who was the guilty person; but she declined. He then insisted upon trying it himself. "I insist," he said, "upon being permitted to subject myself to the test of blood; for it will, I hope, convince the public that I am an innocent man, for if I am guilty, my wife's blood will follow the touch of my finger."

The coroner gave his consent, and in the presence of the multitude, amid profound and ominous silence, the suspected man approached the dead body of his wife and placed his finger on her neck. When he withdrew it, a dark, bloody spot marked the place where it had rested. There indeed was the "gout of blood which was not there before," the avenging spot "pleading trumpet-tongued against the deep damnation of her taking off."

McKay had resorted to the test of blood, and it pronounced against him in the blood of his victim. In an instant a ghastly pallor overspread his face. Cold perspiration stood in great drops on his forehead; his heart almost ceased to beat, and, tottering half fainting into a chair, he exclaimed, —

"Oh, oh! there's the blood! there's the blood, the blood, the blood! Oh, my God, my God! there's the blood! But I — I did not do it! I did not do it, I did not, I did not! But oh, how shall I escape, for there's the blood!"

Burying his face in his hands, his frame shook and trembled with emotions that were terrible to behold. Any attempt to describe the effect of this scene upon the spectators would be useless. Had an accusing angel spoken from the skies, or the lips of the dead woman suddenly become voluble, the people could not have been more astonished and startled. To the superstitious this circumstance established the guilt of McKay by proof "as strong as holy writ." But to the more enlightened, to the physicians present, there was a natural cause for this apparently supernatural occurrence.

The corpse had been in the grave two days at least. The part touched by McKay was swollen and tinged with a miliary eruption which rendered the skin soft and yielding to the touch. The man undoubtedly pressed his finger upon the part with some force, causing it to slip from the side of the neck, removing the skin, thus revealing a bloody matter that had gathered under it. This was the explanation reason gave; but it was useless to urge it in explanation to the excited people present. They had heard the prisoner appeal to the awful test, had witnessed the bloody proof of his guilt, and the Touch of Death — the Ordeal of Blood — ran like wildfire through the country.

Soon after this event McKay was indicted for murder; and in June, 1820, his trial took place at Angelica, New York, before the Court of Oyer and Terminer. Ambrose Spencer, then Chief-Justice of the State, presided. The career of Judge Spencer as a judge places his name among the great judicial officers of the nation. On the bench he was grave, dignified, impartial, though often almost imperious. He held counsel to a close consideration of the case under argument, permitted few of those light efforts that strive after effect alone; none of those excursions which produce sensation by a smart antithesis or theatrical flourish.

The prosecution was conducted by John A. Collier, — a name that has added lustre to the legal history of the State of New York.

Vincent Matthews, of Rochester, New York, and John W. Hurlbert, appeared for

McKay. Both of these lawyers stood at the head of the profession. The latter, Mr. Hurlbert, attained a renown so high that in legal history he is styled the Curran of America. The great judge who presided at the trial, the eminent counsel who appeared for the respective parties, the strange circumstances connected with the case, gave the trial of McKay a deep interest.

It was long and tedious, disclosing one of the most wonderful escapes from the gallows on record.

The whole science of toxicology pertaining to arsenious acid, or white arsenic, was examined. As McKay was charged with killing his wife by this poison, all the phenomena attending its operation on the human system were inquired into, leading to many interesting medico-legal questions. Learned and experienced professors of chemistry, skilled in nice analytic tests, were examined and cross-examined.

The suspicious conduct of McKay before and during the illness of his wife was proved. There was also proof introduced by the prosecution tending to show that the accused purchased arsenic of a druggist in a neighboring village, a short time previous to the illness of his wife. The prosecution, however, could obtain no further proof on this point than the fact that the accused had, a day or two previous, purchased some medicine of this druggist. Neither party could prove the nature of the medicine, as the druggist could not or would not say whether there was or was not arsenic sold to McKay on that occasion. Some strange and threatening language concerning his wife was proved to have been uttered by the prisoner. For motive prompting him to the act, the unhappy relations between him and his wife were proved. The people proposed to give in evidence the conduct of the prisoner, and the test of blood which occurred at the coroner's inquest; but this was ruled out by Judge Spencer.

Hurlbert and Matthews exerted all their powers in the defence of their client. The blood spot on the neck of the deceased following the touch of McKay had prejudiced the community strongly against him. This joined with the other strong circumstantial evidence against him rendered the defence apparently desperate.

Hurlbert's cross-examination of the professional witnesses was conducted with so much ability, was balanced and pointed with so much medical and chemical knowledge, that to those unacquainted with him the lawyer seemed at times to be lost in the doctor of medicine or the professional chemist.

His address to the jury was one of the ablest efforts of his long and distinguished career at the bar. Always laborious in preparation of his materials, luminous and forcible in their arrangement and use, strong in argument, deep in thought, critical in the analysis of the evidence, he was peculiarly happy in the application of all these qualifications to the defence of his client.

The argument of Mr. Collier was equally powerful. As a legal orator he possessed that mysterious power sometimes called magnetism. An attractive delivery secured him the attention of his hearers. He seldom indulged in superfluous flights of eloquence; but if there was anything in the range of legal literature he desired to use in his argument, he always had it in its appropriate place, using it with much of the elegance of Choate and the logic of Webster.

Collier dealt with startling emphasis on the enormity of the offence, on the ease and secrecy with which it can be committed, and wove into his argument with great effect the history of the Italian poisoners, and the fatal but mysterious manner in which they murdered their victim by subtle poison. He contended that very many of the sudden deaths that occur are the result of some potent but subtle poison. He pictured with thrilling effect the anguish of the dying woman, tortured with internal fires, burning with unquenchable thirst, and racked with fearful convulsions; the husband of her youth — her natural protector — watching

with indifference her dreadful suffering, coolly awaiting the time when the poison he had administered to her should do its fatal work.

In commenting upon the test of blood, he did not seize the superstitious views of that circumstance. He contended that McKay himself did not believe in the test, but proposed it for the purpose of inducing the people to think him innocent, since he dared to invoke it so boldly.

"Gentlemen," continued Mr. Collier, "it was not the blood of his victim that followed his murderous hand, revealing his guilt on the way; the sight of the corpse of his murdered wife touched his conscience. It was conscience, that sure and awful accuser, pursuing him with sleepless vigilance, that caused the cry of agony and remorse, the pallor and the tremor. His guilty secret was disturbed, and like a raging devil within him it compelled him by his actions and words to confess his guilt, even while attempting to deny it."

After an able and lucid charge from the judge the case was given to the jurors, who, after several hours' absence, returned into court with a verdict of "guilty."

As the words of the verdict fell from the lips of the foreman, McKay with a cry of agony fell fainting to the floor. He was with some difficulty restored to consciousness, and remanded to jail until he gained sufficient strength and fortitude to undergo the awful sentence.

He was brought into court the next morning. Collected and firm he took his seat in the prisoner's box. All evidence of the weakness and terror that so suddenly overcame him on the announcement of the verdict had passed away; but the lines around his mouth — the unmistakable figures in which mental suffering writes itself — were visible to all. But there was no forced and convulsed effort vainly masking the terror and the pang. He had brought himself to submit to his fate with a courageous but despairing heart.

Mr. Collier moved that the sentence of the court be passed upon the prisoner.

"Medad McKay," said Chief-Justice Spencer, in that voice which once heard was never forgotten, "what have you to say why sentence of death should not now be pronounced upon you?"

To this question McKay replied: "I have nothing to say, except I am not guilty. I could say more, but it would do no good."

During this scene Mr. Hurlbert was seated at a table on which the papers of the district attorney lay in a loose bundle, and his eye accidentally rested on the writ by which in those days the jurors were summoned. Carelessly taking up the paper, he glanced at the filing, and laid it on the table again. In this movement the writ became partly unfolded, revealing the caption on the inside. Rapidly running his eye over this, he discovered that the seal of the court, which the law then required should be affixed to the document, was missing. With nervous energy that attracted the attention of many within the bar, he seized the writ again. Hastily reading it over, with a strange, startling expression on his face, he sprang to his feet just as the judge commenced the death sentence, and the voice of John W. Hurlbert fell upon the almost breathless audience like a clap of thunder at noon-tide, exclaiming, —

"Stop, your honor! for heaven's sake, stop! I desire to be heard before your honor proceeds!"

The Chief-Justice paused. His heavy brow darkened. With a look of surprise and indignation he said, "What is the meaning of this interruption, sir? Do you, Mr. Hurlbert, do you intend to trifle with this court, and at this time? I am astonished, sir!"

"I never trifle with any court, sir, — never, never. I hold your honor in too high esteem to oppose here a factious word or objection; but a matter has this moment come to my knowledge to which it is my duty to call the attention of the court, and I beg your honor to hear me. The issue of life or death hangs on what I desire to say."

"The court will hear you, sir," said the judge, in a softened voice.

"I hold in my hand," said Mr. Hurlbert, "the writ by which the jury in this case was summoned here, and that writ has no seal of the court affixed to it; and I believe, sir, that this renders all the proceedings of this trial null and void. I therefore desire to move in arrest of judgment at this time."

The manner in which the judge listened to the counsel exhibited the emotion which it caused him; while the counsel for the people, startled and astonished, gazed at the writ.

Judge Spencer took his seat, and leaning his head upon his hand, remained a few moments in deep thought.

To the bar and spectators the scene had become one of intensified interest, and the silence of death pervaded the court-room.

McKay still stood in the prisoner's box, lost in wonder. Hope seemed suddenly springing from the very caverns of death, while the form of his counsel appeared to him like the angel of deliverance snatching him from the gallows.

"Great God!" he thought, "is my life to be spared after all? The scaffold, the halter, the death struggle, the cold damp grave, the creeping worm, — am I to escape all these horrors?" and in imagination he was again in those fields where all those things are free. He was brought back from these reflections by the judge, who directed him to take his seat.

"What answer have you to the point now raised by the defence, Mr. Collier?" asked the judge.

Collier, though taken by surprise and evincing some nervousness, gave able answer. He insisted that as the prisoner had appeared and challenged the jurors without making the absence of the seal to the writ a ground of challenge, he had waived all objections. Again, by proceeding to trial without raising this objection in any form, he had waived all error.

On the other hand, the counsel for the defence contended that nothing could be taken against the prisoner by implication, and it could not be presumed that he had waived any of his rights; that as this was a capital case, the want of seal on the writ could not be cured by stipulation; that writ without a seal was no *venire*, consequently the prisoner, though he had been tried before twelve men, had not been tried by a jury, hence his conviction was a nullity.

The judge decided to suspend the sentence of McKay until after the determination of the question at a general term of the Supreme Court, and he was remanded to jail.

The case was removed to the Supreme Court by a *certiorari*. It was argued in Albany in 1820. Thomas J. Oakley, then Attorney-General, appeared for the people, and John L. Talcott conducted the case for the defence. After arguments of surpassing ability and power, the verdict against McKay was set aside. Chief-Justice Spencer, in an able opinion, sustained the position assumed by the counsel for the defence, and directed a new trial.

On the 20th October, 1820, McKay was again brought to trial. After another long and tedious contest, he was fully acquitted upon grounds almost as providential as those which saved him on the first trial.

Before the second trial occurred, the impression made on the public mind by the spot of blood, the touch of doom, had faded away, and he was tried without the superstition that shadowed forth his guilt.

MEDIÆVAL PUNISHMENTS.

By Charles S. Martin.

ACCORDING to the literature of the Middle Ages, torture was either *preparatory* or *previous;* the latter when it consisted of some mode of punishment imposed on the condemned previous to the final farewell, and the former when used for the purpose of eliciting desired information. Hippolyte de Marsillis, jurisconsult of Bologna, mentions fourteen diversions in the way of torture; among them being starvation, stretching the limbs, and applications of hot pitch. But if the executioner was gifted with imaginative power, or if the magistrate desired to vary the monotony of the performance, new means of torture were contrived, and new devices constructed speedily; for example: watering the feet with salt water, and inducing goats to lick them; inserting dice between the skin and flesh; placing hot eggs under the armpits.

In France, where feudal ideas were most perfectly developed, and which possesses and displays a complete history of this period by means of books, prints, woodcuts, miniatures, tapestries, and the like, the tortures varied according to the will of the parliaments. It was a common method in Brittany to compel the prisoner, while tied in an iron chair, to approach gradually a fiery furnace; while Normandy was in favor of using the thumb-screw. Torture was also termed *ordinary* or *extraordinary*, varying with the severity or length of duration; and it was in Orleans that the *estrapade*, or extraordinary punishment, frequently obtained. At Avignon heavy weights and ropes for stretching the body, or parts of the body, were constantly used, while a physician was invariably at hand to test the pulse of the culprit and fix the mark between life and death. The *water torture* prevailed in Paris, and consisted in forcing the victim to drink nine pints of water for ordinary punishment, and twice that amount for extraordinary. This method continued as supreme favorite until dethroned by the *brodequins*. These *brodequins* were a kind of parchment stockings, which fitted admirably when the feet were wet, but when warmth was applied they shrank considerably, and so inflicted severe pain.

If the condemned was fortunate (or unfortunate) enough to have survived the *previous* torture, he was committed to the care of the executioner, — *maistre des haultes œuvres*, — whose duty it was to end his earthly pilgrimage. The executioner has been a unique figure in literature and in life. In Spain, Italy, and France, his very name has been the companion of fear and hate; but in Germany a certain number of executioners gained titled honors. France allowed this personage such taxes as were levied on fish and water-cress, fines on stray pigs, together with the personal effects of the condemned. He was also given the rents which accrued from the stalls situated near the pillory, for it was in this vicinity that the retail fish-trade flourished. In an order of St. Louis we learn that the functions of executioner were performed by women when their own sex was condemned. This privilege was of brief duration, however, and man basked again in the sunshine of monopoly. Damhoudère enumerates thirteen different ways in which the executioner effects the judicial decree of torture; namely, fire, sword, mechanical force, quartering, the wheel, the fork, gibbet, drawing, spiking, cutting off the ears, dismembering, flogging, and the pillory.

Executions were usually preceded by the *amende honorable*, either *short* or *simple*, which occurred in the Council Chamber, where the person condemned was obliged to confess his crime, and ask the forgiveness of God and man. Punishment by fire was

inflicted principally in cases of heresy or blasphemy, and consisted in stripping the prisoner, smearing him with sulphur, binding him to the stake, and after surrounding him with fagots, lighting the pile on all sides. Sometimes strangling preceded the burning, and often the guilty dead were disinterred and forwarded to the stake. Early in the fourteenth century many accused of heresy and witchcraft suffered the penalty of fire, including famous historic names. Under the category of fire comes the *brazier*, the *bassint ardent*, and the ordeal of branding. Decapitation, at first a general method, later became restricted to the nobility, and the skill of the executioner usually rendered such a punishment comparatively painless. The guillotine, now the instrument of death in France, is but a development of sword decapitation, and is the perfection of a machine which was used in Scotland, and at Halifax in Yorkshire, during the sixteenth century. The most cruel punishment was undoubtedly that of quartering. This torture sprang into existence when men's manners and minds were rude enough, and long before the moral law fell a prey to philosophy. In later years it was imposed on regicides only, and as a general thing they were obliged to undergo several lesser fiendish tortures as a kind of introduction to the final barbarism. The *wheel* is interesting evidence of man's ingenuity in devising death-dealing instruments, and as an instance of the sad irony of fate, the wheel always assumed the spectacle of a cross publicly exposing the criminal, "whose limbs had been previously broken alive." Strangling by means of a sudden twist of a rope was termed *garotting*, and this is the method employed in Spain today, although only the nobility are thus favored.

Until the French Revolution the usual mode of capital punishment was that of hanging, and every town possessed its gibbet, attached to which corpses and skeletons dangled. The poet Villon, who narrowly escaped the gibbet, wrote a weird poem on the soliloquy of a skeleton. So we can thank these structures for something. The gibbets — *fourches patibulaires* — were placed invariably near the side of public ways, or on some conspicuous height. Probably the most renowned is that of Montfaucon of Paris, prominent in the criminal annals of France, and erected on the highway leading to Germany. It enclosed a space some forty feet by thirty, and was built of large, rough stones. Sometimes the criminal, while ascending the fatal ladder, was allowed to listen to his favorite instrument as played upon by his friend. Then again the condemned, owing to the phraseology of the sentence, were taken to Montfaucon, living or dead, on a ladder fastened behind a cart. This was known as *trainer sur la claie*. Punishment by the lash admitted of two degrees; first, that administered in private by the jailer as a corrective, and, secondly, that inflicted publicly, which was both ignominious and painful. When it was desired to set the mark of infamy on some unfortunate, he was conducted to the *pillory*, — a mode of punishment which survived the Middle Ages many years. In addition to the foregoing penalties may be mentioned the *Arquebuscade*, designed to parcel out divine justice to the military; the *Pal*, the *Chatouillement*, the *Pain of the Cross*, flaying alive, and lastly drowning.

And now a few words as to prison adaptations and penal sequestration. The same reasons which induced the law-makers of these times to invent tortures and increase the torments, operated to effect severe measures of confinement. There were few, if any, large prisons solely appropriated to the use of a definite jurisdiction; but each administrator of the law possessed a private jail, and his will and pleasure concerning it were absolute.

Sometimes a prison was under the direction and control of a quasi-partnership concern, as witness that one in the Rue de la Tannerie, which was owned by the provost, merchants, and aldermen of Paris, in 1383. It is

said that Paris alone contained twenty-five or thirty special prisons, "without counting the *Vade in pace* of numerous religious societies." Nearly all these abodes, such as the Grand Châtelet, the Petit Châtelet, the Bastille, and the Conciergerie, had subterranean cells, which the light and air rarely visited. In the Petit Châtelet a day's confinement brought with it the blessing of suffocation, for the cells were some thirty feet in depth. While in the Abbey of St. Germain des Prés a man of middle height could not stand erect, and the straw of the victims' beds floated upon the stagnant water. In the Chausse d'Hypocras, a portion of the Grand Châtelet, the prisoners were compelled to float their feet in the water continually. A cell called the *Fin d'Aise* was a rendezvous for reptiles, vermin, and filth, and the inmates were lowered into the *Fosse* by means of pulley and rope. The cells of the Bastille resembled those of the Châtelet. King Louis XI., made immortal by Scott, was skilful in devising atrocities for the purpose of aggravating the fate of the prisoners; and he it was who caused the iron cage to be erected in one of the towers of the Bastille, in which cage Guillaume, Bishop of Verdun, resided for fourteen years. The Leads of Venice was perhaps the most notorious of all the prisons which flourished during these dark days.

The curiosity which leads one to glance at such subjects as punishments and prisons may result in a knowledge of facts possessing little worth; but certainly one gets a clearer prospective of the changed conditions which time effects, for legal decrees and procedure reflect social, intellectual, and moral progress. The difference between quartering and electrocution denotes an advance, a rational progress; but the difference between burning alive and the abolition of capital punishment would be in stricter harmony with the scientific tendency of the times.

LONDON LEGAL LETTER.

LONDON, Sept. 4, 1891.

THE death of Lord President Inglis, Justice-General of Scotland, at the ripe age of eighty-one, has prominently directed public attention to that ancient judicature, the Court of Session. No European tribunal has produced so large a number of quaint and strongly marked personalities as the Supreme Court of Scotland. The native humor, the convivial habits, the drolleries for which the older worthies of the Scottish Bench were notorious, often tended to divert the attention of the public, whom they amused, from the considerable legal attainments which these men possessed. Yet, while so much may be conceded to their professional capacity, no impartial spectator would have pronounced the Court of Session a great court. The judges were generally sound lawyers, and performed their duties with ordinary ability: but until thirty years ago the future of the Scottish judicature was a source of some anxiety to those familiar with its working. In 1858 Mr. Inglis, the then Lord Advocate, was appointed Lord Justice Clerk, and in 1867 he was promoted to the post of Lord Justice General. From the first Lord Inglis gave evidence of remarkable judicial faculty; but after his promotion in 1867, it became recognized on all hands that a lawyer and a judge of the very first rank had appeared. He retained his supremacy to the last, his judgments commanding an acquiescence from suitors and the general public such as in any country is only given to the very greatest judges. It will be known to many of your readers that the title of "Lord," enjoyed by the Scottish judges, is one of courtesy alone; they do not become peers even for life. Another word of explanation may not be out of place. The Court of Session consists, so far as civil matters are concerned, of two branches, — the "outer house" and the "inner house." The Lords Ordinary — that is to say, the judges

of first instance — compose the former; the latter sits in two divisions of four judges each, forming two Courts of Appeal of co-ordinate jurisdiction. The Lord Justice General presides over the first division, the Lord Justice Clerk over the second, the Lord Justice General being President of the Court of Session.

The late Lord Inglis's most celebrated feat while at the bar was his defence of Madeleine Smith in 1857. The prisoner was accused of the murder of one L'Angelier, her lover. The trial excited profound interest. The evidence against the prisoner was almost conclusive; but so extraordinary was the impression produced on the minds of the jury by the speech of her counsel, Mr. Inglis, that they returned a verdict of "Not proven." There can be no doubt that the accused was guilty of an aggravated murder; but she possessed great personal beauty, and, I believe, subsequently married a clergyman in England. The speech in question is unanimously regarded as probably the greatest ever delivered at the Scottish Bar. On the bench Lord Inglis united to his high talents a most engaging suavity of demeanor toward all who appeared before him; he never spared any pains in his endeavor to master the details of the most complicated case. His probable successor will be Mr. I. P. B. Robertson, the present Lord Advocate, an astute lawyer and accomplished counsel, who has made more mark in the House of Commons than perhaps any Lord Advocate since the great Dundas, who held that office in Pitt's administration at the beginning of the century.

Toward the close of the last Parliamentary Session, a motion was made during the discussion of the estimate to reduce the salary of the Attorney-General. This was done to raise the question whether the law officers of the Crown should be allowed to engage in private practice; at present they are, and in the past always have been. It is most proper that they should; the custom almost never leads to any practical conflict between their private and public duties. The matter first assumed dimensions of importance during the Parnell Commission, when the Attorney-General, Sir Richard Webster, held the leading brief for the "Times." Partisan spirit led to a heated discussion as to his relations with the Government on the one hand, and his relations with his clients on the other; the only practical result has been to inaugurate an annual talk on that general subject in Parliament. Some of those who foster the movement aim at a wider innovation than the mere restriction of the law officers to their official salaries; they desire the creation of a Minister of Justice, who would absorb many functions at present fulfilled by the Lord Chancellor, the law officers, and the Home Secretary. I do not think we shall have a Minister of Justice as such for a long time; in England we are not much given to the sudden creation of new offices and novel titles on the ground of mere abstract reasons.

Just now, during the long vacation, there is very little of interest to chronicle. Sir Henry Hawkins, one of the most popular of our judges, has been and remains very seriously ill. Rumors of an approaching general election become more persistent, and the hopes of the Opposition lawyers are rising.

* * *

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.

AN Indiana correspondent sends in the following: —

Editor of the "Green Bag":

The writer was one of a committee on examination of an applicant for admission to the bar of this (Adams) county a short time ago, and the answers of the applicant may be "useless and entertaining" to some of the readers of the "Green Bag." I can assure you they were useless to the applicant for admission to the bar, for he failed to pass muster. The following are a few of the questions and answers which I now recollect: —

QUESTION. What is common law?

ANSWER. Common law is the practice before a justice of the peace.

QUES. What is chancery practice?

ANS. Practice before a jury.

QUES. Who is the master of chancery?

ANS. The foreman of the jury.

QUES. When is a plea in abatement used?

ANS. When you get in a tight place before the jury.

QUES. What is a demurrer?

ANS. An objection.

The committee thought, as the applicant had answered the last question so nearly correct, they had best not proceed any further with the examination. The applicant was instructed, however, to brush up a little in medical jurisprudence, and he would no doubt be able to pass an examination not later than 1900. J. F. M.

THE following correction comes from a Pennsylvania subscriber: —

BUTLER, PA.

To the Editor of the "Green Bag":

DEAR SIR, — In the September, 1891, number of the "Green Bag," in an article entitled "Looked upon with Veneration," is quoted a supposed decision of Justice Mitchell of the Supreme Court of Pennsylvania.

The author has evidently been misled; and knowing that the "Green Bag" would not intentionally mislead its readers, I will give my reasons for calling it "a supposed decision."

The words quoted were used by Judge John I. Mitchell of Tioga County in a recent decision. Justice James T. Mitchell of the Supreme Court of Pennsylvania has never written a decision involving the question of the seal. The similarity in the names of Justice Mitchell and Judge Mitchell is, doubtless, what has given rise to the error. The latest deliverance of our Supreme Court is found in Hacker's Appeal, 121 Pa. St. 202. Decided October 1, 1888. Mr. Justice Clark in his Opinion says "A seal is not necessarily of any particular form or figure; when not of wax, it is usually made in the form of a scroll, but the letters 'L. S.' or the word 'Seal,' enclosed in brackets, or in some other design, are in frequent use. It may, however, consist of the outline without any enclosure; it may have a dark ground or a light one; it may be in the form of a circle, an ellipse, or a scroll, or it may be irregular in form; it may be a simple dash or flourish of the pen. Long *v.* Ramsey, 1 S. & R. 72. Its precise form cannot be defined; that, in each case, will depend wholly upon the taste or fancy of the person who makes it. . . . Whether the instrument is under seal or not, is a question to be determined by the court upon inspection; and whether or not any mark or impression shall be held to be a seal, depends wholly upon the intention of the party executing the instrument, as exhibited on the face of the paper itself."

The signature to the instrument in question in this case was as follows: "In witness thereof I have hereunto set my hand and seal," and to this was appended the signature in the form following: "Ellen Waln —," no flourish of the pen nor anything except the "—" following the name, which was from one sixteenth to one eighth of an inch in length.

The opinion of Judge John I. Mitchell was error. If his opinion, or any such one, should be confirmed by our Supreme Court, it would invalidate the majority of title-papers that have been executed in this State during the last five years at least. Such a decision would be mischievous and against custom, which, with the decisions of our Supreme Court, is the only law Pennsylvania has on this subject.

J. W. HUTCHISON.

THE following list of distinguished alumni of the Michigan University Law School has been kindly prepared for us by a Michigan correspondent: —

Authors: James L High, J. C. Knowlton, A. C. Angell, Lawrence Horrigan, Marshal D. Ewell.

Cabinet Officers: Don M. Dickinson.

Assistant Secretary Interior: Geo. Chandler.

Editors: W. H. H. Beadle, H. H. Metcalf, J. K. Barud, John B. Alexander, Henry S. Dow, C. H DuBois, B. F. Bower.

Speaker of the Michigan Legislature: G. J. Diekema.

Judges Michigan Circuit Courts: Michael Brown, Geo. P. Cobb, Jno. A. Edget, Silas S. Fallas, George Gartner, D. J. Arnold, Chas. J. Pailthorp, Levi L. Wixson, Henry Hart, F. A. Hooker, E. A. Burlingame.

Judges Michigan Supreme Court: Isaac Marston, Jno. W. McGrath.

Judges (other States): Jno. W. Emerson, Mo.; Jas. E. Hawes, O.; W. R. Day, O.; Jos. I. Hoke, W. Va.; D. H. Hammer, Ill., J. H. Cartwright, Ill.; George Chandler, Kan.; John M. Ritter, Kan.; W. D. Decker, Cal.; Jas. F. Hughes, Ill.; J. A. Shauck, O.; Thos. J. Wood, Ind.; R. B. Archibold, Fla.; Geo. Carson, Ia.; L. G. Kinne, Ia., Allen Smalley, O.; James R. Vaughan, Mo.; Patrick C. Dooley, Ark.; Isaac N. Everett, Cal.; Jno. B. Cleland, Ia.; W. M. H. Utt, Ia.; M. P. Kincaid, Neb.; W. R. Day, O.; S. W. Vandivert, Kan.; Charles W. Smith, Kan.; James E. Reddick, Ark.

Judges Supreme Courts: T. J. Anders, Wash.; Wm. Story, Ark.; A. L. Zollers, Ind.; T. L. Noval, Neb.; O. W. Powers, Utah, J. C. Shields, Ar.; Thomas Burke, Wash., J. B. Cassoday, Wis.

Representatives in Congress (Michigan). E. P. Allen, B. M. Cutcheon, Seth C. Moffatt, T. E. Tarsney, T. A. E. Weadock, E. W. Keightly, James S. Gorman, Wm. C. Maybury, J. H. McGowan.

Representatives in Congress (other States). A. J. Holmes, W. I. Hayes, Iowa; J. H. O'Neal, B. F. Shively, Geo. Ford, Ind; Nils P. Hangen, Wis.; J. D. White, Ky.; S. R. Peters, Kan.; Marriott Brosius, Pa.; John C. Tarsney, Mo.; M. M. Boothman, O.; James Laird, Neb.; J. A. Pickler, S. Dak.

Supreme Court Reporters: Hoyt, Post, H. A. Chaney, John W. Kern.

Attorney-Generals (Michigan): Byron D. Ball, I. Marston, M. Taggart.

LEGAL ANTIQUITIES.

WILLIAM THE CONQUEROR'S plan was to have a grand central tribunal for the whole realm, which should not only be a court of appeal, but in which all causes of importance should originate and be finally decided. This was afterward called *Curia Regis*, and sometimes *Aula Regis*, because it assembled in the hall of the king's palace. The great officers of State — the Constable, the Mareschal, the Seneschal, the Chamberlain, and the Treasurer — were the judges, and over them presided the Grand Justiciar. Next to the king himself, he was chief in power and authority; and when the king was beyond the seas (which frequently happened), he governed the realm like a viceroy. He was at all times the guardian of the public peace as Coroner-General, and he likewise had a control over the finances of the kingdom. In rank he had the precedence of all the nobility, and his power was greater than that of all the other magistrates. The administration of justice continued nearly on the same footing for eight reigns, extending over rather more than two centuries. Although during the whole of this period the Aula Regis was preserved, yet for convenience causes, according to their different natures, were gradually assigned to different committees of it, — to which may be traced the Court of King's Bench, the Court of Common Pleas, the Court of Exchequer, and the Court of Chancery.

FACETIÆ.

THE prisoner had just been sentenced to death.

"Your honor is a —— old fool," he said.

"Officer," cried the insulted judge, "arrest that man! Your contempt, sir, must be punished. Sixty days in jail, sir, is the sentence of the court. Not a word. I 'll hear no defence."

NOT long ago a jury went out early in the day on a simple case, and when it came near the time for the court to adjourn, his honor sent for the jury, and asked the foreman if they required any further instruction. "We need no instruction, your honor," replied the foreman, "but here are eleven pig-headed men who won't agree to anything."

SIR GEORGE ROSE had a friend who had been appointed to a judgeship in one of the colonies,

and who afterward was describing the agonies he endured in the sea passage when he first went out. Sir George listened with great commiseration to the recital of these woes, and said: "It 's a great mercy you did not throw up your appointment."

A PRISONER was brought before a Dutch justice in eastern Pennsylvania charged with stealing.

"Guilty, or not guilty?" demanded the justice.

"Not guilty, your honor."

"Den go avay, — vat you vant here? Go apout your pishness!"

NOTES

APROPOS of Hon. Alfred Russell's advocacy of the abolition of the jury system in civil cases, the following remarks of the late Hon. Emory Washburn will be read with interest. They are taken from a lecture delivered by him in the Law School of Harvard University: —

"Nobody can hold the office or character of an intelligent, upright judge in greater respect and veneration than I have been taught to do. The people have no safeguard or protection on which they can so confidently rely, for life or property, as upon an enlightened and independent judiciary. But when men talk gravely of substituting the learning and experience of the court for the good sense, practical experience, and unbiassed instincts of an impartial jury, they do violence to history, and injustice to the cause of personal liberty and right. And while I would not let a jury trench a hair's breadth upon the province of the court, I have no hesitation in saying that for trying and settling disputed questions of fact, through the instrumentality of human testimony, where men and their motives are to be weighed and scrutinized, and balances are to be struck between conflicting witnesses, I had rather trust to the verdict of twelve fair-minded men of average shrewdness and intelligence, in a jury box, than the judgment of any one man trained to the habits of judicial investigation, and accustomed to measure his conclusions by the scale and standard of the law I had rather trust to the honest instincts of a juror than the learning of a judge. Nor do I believe that in the history of the courts of New England there are more instances of mistaken verdicts than of mistaken rulings by the judge The most we can expect from either jurors or judge is an approximation to accuracy in the respective spheres in which they act."

Recent Deaths.

JUDGE BENJAMIN HALL died in Auburn, N. Y., September 6, aged seventy-seven years. He was formerly Governor Seward's law partner, and had held many important positions of trust, — local, State, and national. President Fillmore appointed him to make a compilation and revision of the accumulated official decisions of the attorney-generals of the United States. President Lincoln appointed him Chief-Justice of Colorado, — a position of great peril at the time, he narrowly escaping assassination for a bold ruling; namely, that in cases of armed rebellion against the Government the courts could suspend the issue of writs of habeas corpus. Judge Hall retired from the bench in 1864. He was the author of several volumes on law topics, and a prolific writer, for several years having an editorial position on the "Auburn Advertiser."

HON. ROBERT D. RAY, ex-Chief-Justice of the Supreme Court of Missouri, died on August 26. Judge Ray was born in Lexington County, Ky., Feb. 16, 1817. He graduated from Cumberland College in 1838, and went to Carrollton, Mo., in 1839. He speedily attained a high rank at the bar, and was especially well known for his ability in the many difficult cases arising out of the imperfect and uncertain land-titles in that section of the State. He was a member of the Missouri Legislature in 1846, and of the Gamble Convention in 1861. He remained continuously in the practice of his profession until 1881, when he assumed his seat as a member of the Supreme Court. He withdrew from the bench in January, 1891. (An excellent portrait of Judge Ray was published in the April number (1891) of the "Green Bag.")

HON. OLIVER P. MASON, ex-Judge of the Supreme Court of Nebraska, died August 18. He was a native of Brookfield, Madison County, N. Y., and was born May 13, 1829. His parents were natives of Rhode Island, and of English-Irish descent. He resided at home during his minority, working on his father's farm. He attended the district schools of his neighborhood, also the academy at Hamilton, and the Clinton Liberal Institute, then under the presidency of Dr. Perkins. In 1850 he graduated at the State Normal School at Albany. After about two years' teach-

ing he went on a two-years' tour South, reading law all this time.

In 1854 he returned from the South to Ohio, where he was admitted to the bar in the Circuit Court at Norwalk. In 1855 he removed to Nebraska, and was identified with its interests up to the time of his death. In 1858 he was elected to the House in the Territorial Council. Three times afterward he was elected to the Council, once to fill a vacancy, and twice for a full term. He aided in the framing of the present State Constitution.

In 1867 he ran against William A. Little for Supreme Judge, and was beaten. On the death of Mr. Little, shortly after his election, Mr. Mason was appointed to fill the vacancy, and two years later was elected to fill the same place.

Upon his retirement from the bench he resumed the practice of his profession, and was actively engaged in the same almost up to the time of his death.

Judge Ogden Hoffman, the oldest Federal Judge on the Pacific coast, died August 9. Judge Hoffman was born in New York City on Oct. 16, 1822, his father being the famous Whig leader. He was graduated at Columbia College, and then studied law in Benjamin D. Silliman's office. When the gold fever broke out he went to California, arriving in May, 1850. In the following year President Fillmore appointed him Judge of the United States District Court for the Northern District of California, a place which he held for forty years. Judge Hoffman had passed on many important cases, and he was noted for fairness and conscientiousness. His decisions were seldom reversed.

Hon. Glenni W. Scofield died at his home at Warren, Penn., August 30. Judge Scofield was born in Dewittville, N. Y., March 11, 1817. He was educated in the common schools. At the age of fourteen he started to learn the printing trade, and at seventeen entered Hamilton College, New York; he graduated in 1840. He taught school for two years, — one year in Farquhar County, and another as Principal of McKean County Academy. He studied law while teaching. He was admitted to the bar in 1842. He practised law in Warren, and was appointed District Attorney in 1846 by Governor Shunk. He served two years — 1849 and 1850 — as a member of the Legislature. He was a Democrat until 1856. When the Republican party was formed, he joined that party. He was elected to the State Senate. For a short time he was President Judge of Mercer, Venango, Clarion, and Jefferson Counties. He was a member of the Thirty-eighth, Thirty-ninth, Fortieth, Forty-first, Forty-second, and Forty-third Congresses, aud served on many important committees. He was Register of the Treasury under President Hayes. President Garfield appointed Mr. Scofield Judge of the Court of Claims He resigned in July last.

Judge Lorenzo Sawyer, of San Francisco, died suddenly on September 6. He was born in Jefferson County, N. Y., in 1820. He went to California in 1850, and in 1854 was elected City Attorney of San Francisco. In 1862 he was appointed Judge of the Twelfth District Court, and in 1863 was elected Justice of the Supreme Court of California. In 1869 President Grant appointed him United States Circuit Judge. Through his connection, in his judicial capacity, with the suit brought by Sarah Althea Hill against Senator Sharon, of California, to get a share of the latter's fortune, on the ground that she had been his wife, Judge Sawyer incurred her enmity. In the year previous to the attack made by her husband, Judge Terry, on Justice Field, when Terry was killed by United States Marshal Nagle, she attacked Judge Sawyer in a railway car. Judge Sawyer had long passed the age permitting him to retire, and for some time had contemplated such action. The death of Judge Sawyer leaves the Northern District of California without any Federal Judge, the late Judge Hoffman's place not yet having been filled.

John H. B. Latrobe, the oldest lawyer in Maryland, and widely known as a jurist, author, and philanthropist, died in Baltimore, September 11, aged eighty-nine. Mr. Latrobe was a native of Philadelphia, and was first sent to school in Washington, where his father, who was the architect in charge of the Capitol building, was then living. The War of 1812 caused the suspension of work on the building, and the Latrobe family removed to Pittsburg. Afterward they returned to Washington, and young Latrobe was sent to Georgetown College, and then to the school of Mr. Carnahan, who later was President of Princeton College. He was appointed a cadet

in the West Point Military Academy in 1818; but two years later, when his father died of yellow fever in New Orleans, young Latrobe resigned from West Point, and returned to his mother in Baltimore, entering as a student the law office of Gen. Robert Goodloe Harper. He was admitted to the bar in 1825. The young lawyer employed much of his idle time in literary and artistic labors. While yet a student he began "Latrobe's Justice's Practice," — a work which ran through many editions. In 1828 Mr. Latrobe was engaged as counsel by the Baltimore and Ohio Railroad, and was an honored adviser of the company to his death. The venerable lawyer's greatest achievement was the establishment of the Republic of Liberia in Africa. Mr. Latrobe was President of the Maryland and National Colonization Societies, and it was through his individual efforts that Liberia was established as the "Black Republic." His was the pen that drafted their Constitution, and this Code stands almost entirely unchanged at the present day. Dr. Hall, who went to Africa a short time ago and completed negotiations with local chiefs, who ceded large tracts of land to Liberia, went through Mr. Latrobe's efforts. The King of Belgium continued a correspondence with Mr. Latrobe on the subject of Liberia for a number of years. Mr. Latrobe was one of the party who took the first railroad trip ever made in the world, going from Baltimore to Ellicott City behind Peter Cooper's locomotive. He was also counsel for the first telegraph company ever organized. The Latrobe stove, the model of all fireplace heaters, was one of his inventions. Edgar Allan Poe first came into notice through Mr. Latrobe. A prize was offered by a weekly paper of Baltimore for the best story and the best poem. Many contributions were sent in to the committee, of whom Mr. Latrobe was at the head. The prize for the poem was awarded to the late Prof. J. H. Hewitt, and for the story to Poe. With the Masonic fraternity in Maryland Mr. Latrobe was identified in a conspicuous manner.

REVIEWS.

THE POLITICAL SCIENCE QUARTERLY for September is equally strong on the American and the foreign side. Frederic Bancroft, of the United States State Department, describes "The Final Attempts at Compromise" during the winter of 1860–1861. Thomas L. Greene discusses "Railroad Stock-Watering" and railroad rates. Prof. F. J. Goodnow, of Columbia College, traces the development of "The Writ of Certiorari" in England and the United States. Three articles deal with foreign questions. Prof. Richard Hudson, of the University of Michigan, takes "The Formation of the North German Confederation" as the text for an acute and suggestive criticism of all the legal theories regarding the Federal State. Prof. Ugo Rabbeno, of Bologna, gives an extended résumé of the "Present Condition of Political Economy in Italy." This article contains a mass of information not elsewhere accessible, and will therefore be invaluable to all students of economic science. Finally, Prof. W. J. Ashley, of Toronto University, Canada, subjects General Booth's scheme for the social regeneration of England through Salvation Army "colonies" to a destructive scientific criticism.

THE contents of the September CENTURY speak for themselves, and a mere enumeration of them will be sufficient to show their varied and interesting character. The list comprises the following articles: "A Winter Journey through Siberia" (illustrated), by George Kennan; "The Wood-Nymph's Mirror" (Adirondacks), by Charles Henry Lüders; "The Poems of Thomas Bailey Aldrich," by Frank Dempster Sherman; "To California in 1849 through Mexico" (illustrated), by A. C. Ferris; "Elder Marston's Revival" (illustrated), by Le Roy Armstrong; "Vigilance," by Charlotte Fiske Bates; "The Distribution of Ability in the United States," by Henry Cabot Lodge; "The Squirrel Inn," Conclusion (illustrated), by Frank R. Stockton; "Building," by John Albee; "The Faith Doctor," VIII., by Edward Eggleston; "'Zeki'l" (illustrated), by Matt Crim; "De Morte Beata," by Theodore C. Williams; "Present Day Papers: The Government of Cities in the United States," by Seth Low; "A Painter's Paradise" (illustrated), by Elizabeth Robins Pennell; "Italian Old Masters" (illustrated), by W. J. Stillman; "Treatment of Prisoners at Camp Morton" (illustrated), by W. R. Holloway and John A. Wyeth; "Country Newspapers," by E. W. Howe; "The Possibility of Mechanical Flight," by S. P. Langley.

"CARLOTTA'S INTENDED" is the title of the complete novel in the September LIPPINCOTT'S. Its author, Ruth McEnery Stuart, is well known as the contributor of many clever stories to the leading magazines. This is a story of New Orleans life in the Italian quarter. The hero is an original and amusing Irishman who loves the daughter of an Italian shopkeeper. Some of the secondary figures are members of the dreaded Mafia society. The other contents of this number, worthy of special mention, are as follows: "Julia Marlowe" (with portrait), by Alfred Stoddart; "Real People in Fiction," by William S. Walsh; "A Murderer for an Hour," by Julius Chambers; "A Plea for Helen," by Julia C. R. Dorr; "Derby Day on Clapham Common," by Thomas P. Gill, M.P.; "Society in Different Cities," by Mrs. M. E. W. Sherwood; "Country Roads and Highways," by John Gilmer Speed; "Encouragement for Poets," by Louise Imogen Guiney; "Mrs. Van Brunt's Convert," by Raymond Driggs; "Notes from an Engineer's Camp," by Henry Collins; "His Majesty the Average Reader," by Edgar Fawcett; "The Days that are to Be," by J. K. Wetherill.

THE September ARENA is a remarkably attractive issue of this justly popular review, as will be seen by glancing at the following table of contents: Frontispiece, Rev. Geo. C. Lorimer; "The Newer Heresies," by Rev. Geo. C. Lorimer, D.D; "Harvest and Laborers in the Physical Field," by F. W. H. Meyer, of Cambridge, England; "Fashion's Slaves" (a discussion of woman's dress, with three full-page photogravures and over twenty smaller pictures), by B. O. Flower; "Un-American Tendencies," by Rev. Carlos Martyn, D.D.; "Extrinsic Significance of Constitutional Government in Japan," by Kuma Oishi, M. A.; "The Pope on Labor," by Thomas B. Preston; "The Austrian Postal Banking System," by Sylvester Baxter; "Intermigration," by Rabbi Solomon Schindler; "He came and went again," by Will N. Harben; "An Evening at the Corner Grocery" (a Western character sketch), by Hamlin Garland. The sterling ability displayed in these papers, and the variety of themes discussed, make the September ARENA unusually interesting.

RUDYARD KIPLING is given the place of honor in the September ATLANTIC, and his "Disturber of Traffic" is written with all the vividness and fervor which have characterized his previous works. The other contents of this number are varied and interesting; but the lawyer will be particularly attracted by the article on "Courts of Conciliation," written by Nicolay Grevstad. "The House of Martha," by Frank R. Stockton, and "The Lady of Fort St. John," by Mary Hartwell Catherwood, are continued. Octave Thanet has a second paper on "Town Life in Arkansas;" John Burroughs has left his fields for "A Study of Analogy;" Mr. Bradford Torrey, however, still remains faithful to his rustic haunts in a sketch of "Dyer's Hollow;" John Fiske has a paper on "Europe and Cathay;" a paper on "The Author Himself," by Woodrow Wilson; a charming description of the Japanese Feast of Lanterns and the Market of the Dead, by Lafcadio Hearn, and a review of Mrs. Oliphant's Life of Laurence Oliphant (in itself practically a biographical sketch of that extraordinary man), under the apt title of "A Modern Mystic," are included among the other good things.

SCRIBNER'S MAGAZINE for September contains the fifth and concluding article in the successful Steamship Series, entitled "The Steamship Lines of the World," by Lieut. Ridgely Hunt, U.S.N. This number contains three articles on essentially American subjects, — on "Odd Homes," from the dug-out to the Adirondack cabin; on "China Hunting in New England," particularly along the Connecticut River Valley, with an account of many rare American plates, which it was once the custom to make as souvenirs of important events; and (the third) on the "Present Ideals of American University Life," by Prof. Josiah Royce, of Harvard. Other important articles in this issue are "Browning's Asolo," by Felix Moscheles, the artist, and friend of Browning; a description of "The City of the Sacred Bo-Tree," by James Ricalton; Andrew Lang's "Adventures among Books," — a sort of literary autobiography; the second instalment of the serial story, "The Wrecker," by Robert Louis Stevenson and Lloyd Osbourne, and short stories by Thomas Nelson Page and Charles G. D. Roberts.

READERS of HARPER'S MAGAZINE for September are confronted from the beginning with an embarrassment of riches. The number is opened by

a series of superb illustrations of Shakspeare's "Much Ado about Nothing, — most of them full-page, — from drawings by Edwin A. Abbey. Following this paper is a comprehensive and popular article on the "New York Chamber of Commerce," richly illustrated. The third chapter of W. D. Howells's remarkable story, "An Imperative Duty," presents some highly dramatic scenes. A genuine treat to lovers of literature is offered in the "Letters of Charles Dickens to Wilkie Collins," which are now for the first time given to the public through the editorship of Laurence Hutton. Montgomery Schuyler continues his "Glimpses of Western Architecture," and gives his impressions of the domestic architecture of Chicago. Elizabeth Stoddard writes a pleasant summer story, "A Wheat-field Idyl." Mr. De Blowitz contributes a peculiarly striking article on "Germany, France, and General European Politics," which will doubtless create a sensation wherever it is read. Harriet Pinckney Huse rescues from oblivion "An Untold Story of the Florida War." Frederick Boyle gives a remarkably interesting account of some of the most powerful of the "Chinese Secret Societies." Walter Besant contributes another paper on "London;" nearly a score of illustrations accompany the article. In "Under the Minarets," F. Hopkinson Smith relates his experiences with dragomans, dervishes, and Turkish citizens while sojourning as an artist last summer in the city of Constantinople; and he illustrates his article with a number of beautiful reproductions of his own paintings.

THE September COSMOPOLITAN is truly a "Woman's Number," no less than fourteen of the fair sex appearing as contributors. Lady Dilke describes "France's Greatest Military Artist," Detaille; Eleanor Lewis gives an interesting account of the "Forgotten City" of Solentum; Mary Bawn Ford's article on "Malmaison in the Market" is filled with reminiscences of Napoleon and Josephine; Amelie Rives's story, "According to Saint John," is continued, and is likely to give rise to as much comment as her earlier works. The other contents are: "Inequality," by Katherine Grosjean, "The Ladies' New York Club," by Julia Hayes Percy; "The Evolution of the Society Journal," by Mrs. Roger A. Pryor; "Society Women as Authors," by Anna Vernon Dorsey; "Tattersall's," by Elizabeth Bisland, "Il Mandolenesta," by Daisy O'Brien; "The Romance of Count Königsmark," by Molly Elliott Seawell; "Woman's Share in Russian Nihilism," by Ella Noraikow. All of these articles are superbly illustrated.

BOOK NOTICES.

A TREATISE ON THE LAW OF PERSONAL PROPERTY. By JOSEPH DARLINGTON, LL.D. (Founded on the Treatise of Joshua Williams, Esq.) T. & J. W. Johnson & Co., Philadelphia, 1891. Law sheep. $5.00 *net.*

The original work, by Mr. Williams, on which this treatise is founded, has always been held in high esteem by the profession, though not attaining, perhaps, the popularity accorded to his work on the law of "Real Property." The chief defect, if it may be called a defect, in Mr. Williams's treatise on the law of "Personal Property," was the fact that a large proportion of the text was devoted to summarizing modern English statutory provisions and decisions under them, which had little or any interest for the profession in this country. In the present volume Mr. Darlington has eliminated from the original work so much of the text as is inapplicable to the United States, and has added the latest authorities, English and American, applicable to the law of the subjects treated of in the retained text. He has also added several topics of importance not discussed in the original work. The result is eminently satisfactory, and the work in its present form is most admirably adapted to the needs of the practising lawyer. Clear, comprehensive, concise, and accurate, it may be safely said that it is one of the very best works upon the subject which has yet been offered to the profession.

DIGEST OF LAWYER'S REPORTS, ANNOTATED. (Vols. I. to X. inclusive.) With full Index to Notes, and Table of Cases Annotated. The Lawyers' Co-operative Publishing Company, Rochester, N. Y., 1891.

The possessor of this well-known series of Reports will find this digest invaluable as a means of ready reference to the subject-matter contained in the several volumes. It appears to have been carefully prepared, and the index to the notes is very full and well arranged.

A DICTIONARY OF LAW, containing definitions of the terms and phrases of American and English Jurisprudence, ancient and modern, including

terms of international, constitutional, and commercial law; with a collection of legal maxims, and numerous select titles from the civil law and other foreign systems. By HENRY CAMPBELL BLACK. West Publishing Company, St. Paul, Minn., 1891. Law sheep. $8.00.

We have examined this work of Mr. Black's carefully and critically. We have tested it by comparison with other law dictionaries, and by search for legal terms and phrases but little used and not commonly known, and in every instance it has stood the test. We have, therefore, no hesitation in saying that it is by far the most comprehensive and complete Dictionary of Law yet published. The definitions are concise and reliable, and the book is not encumbered with encyclopedic matter. The Denison index, which is used, gives an additional value to the volume, and greatly aids as a means of ready reference. Mr. Black is to be congratulated for his successful work. He has given the profession a model law dictionary adapted to the wants of both student and practitioner.

LECTURES ON THE CONSTITUTION OF THE UNITED STATES. By SAMUEL FREEMAN MILLER, LL.D., late Associate Justice of the Supreme Court of the United States. Banks and Brothers, New York and Albany, 1891 Law sheep. $5.00 *net.*

Every student of the Constitution of the United States will feel a deep interest in this volume. The late Mr. Justice Miller, at the time of his death, stood confessedly the foremost jurist upon the bench, and anything from his pen must carry unusual weight and authority. The work before us is published from a carefully prepared manuscript of lectures delivered by Justice Miller before the students of the Law School of the National University of Washington in 1889 and 1890. To this material have been added two papers by him on cognate subjects, — namely, an address on "The Constitution and Supreme Court of the United States," and "An Oration at the One Hundredth Anniversary of the Framing and Promulgation of the Constitution." The address and oration were published together under Mr. Justice Miller's supervision during his lifetime. The ten lectures are now published for the first time. The material was placed in the hands of Mr. J. C. Bancroft Davis of Washington; but the duties of editing required only care in insuring an exact reproduction of the thoughts and language of the great judge. Mr. Davis has, however, added brief notes to each of these lectures, and an appendix containing (1) a collated copy of the Constitution, with full reference to the cases in which it has been construed or discussed; (2) a collated copy of the Articles of Confederation; (3) copies of the Randolph draft for a constitution, and of the Pinkney draft for the same.

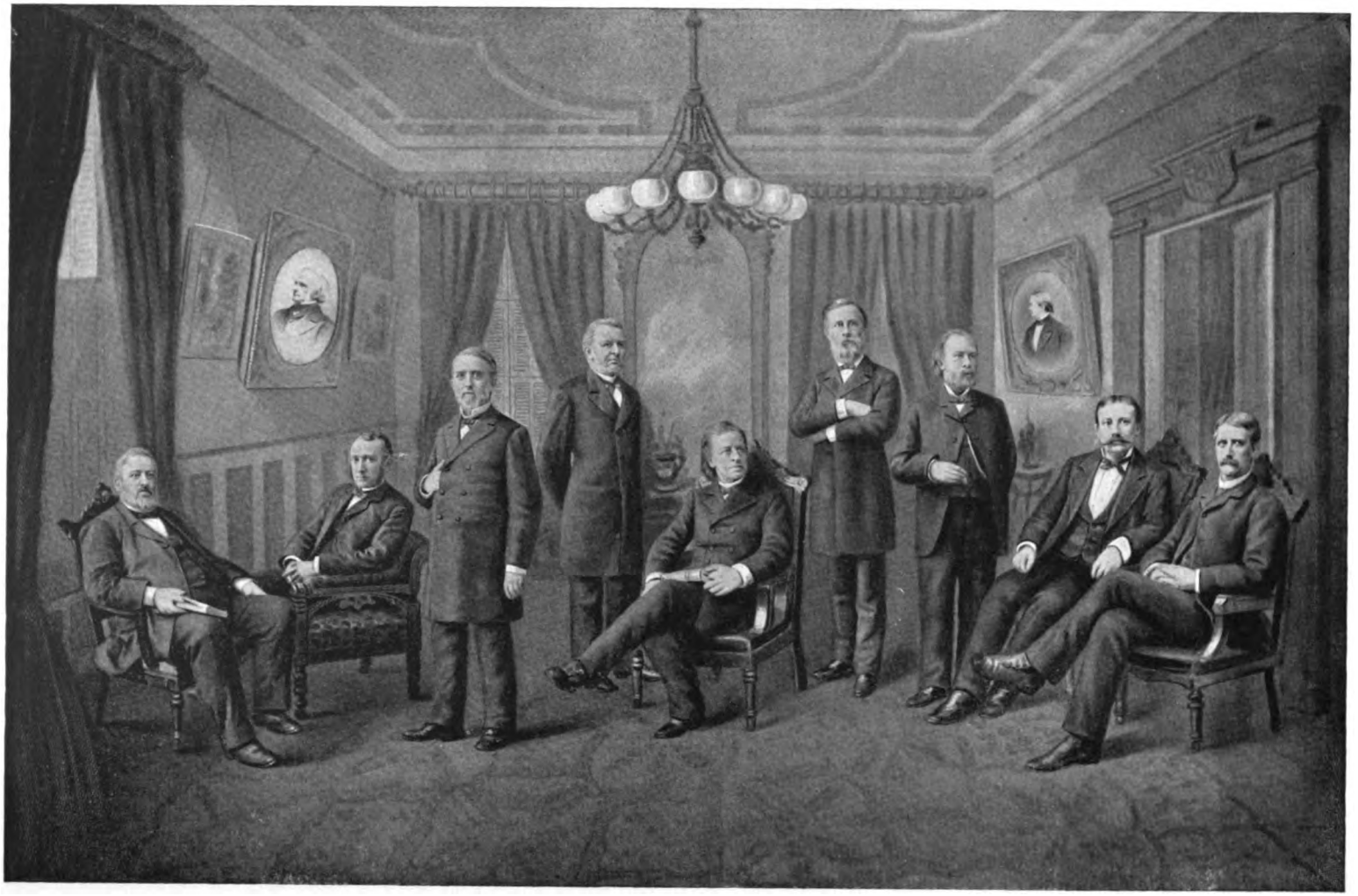
The book, as we have said, will deeply interest all students of American history, and will be fully appreciated, not only by the legal profession, but by the thoughtful layman as well.

A DIGEST OF THE DECISIONS OF THE COURTS OF LAST RESORT OF THE SEVERAL STATES FROM THE EARLIEST PERIOD TO THE YEAR 1888, contained in the one hundred and sixty volumes of THE AMERICAN DECISIONS and THE AMERICAN REPORTS, and of the Notes therein contained. By STEWART RAPALJE. Bancroft-Whitney Company, San Francisco, 1891. Law sheep. 3 vols. $18.00 *net.*

The value of this Digest to the profession can hardly be overestimated, and is second only to the admirable series of Reports whose contents are therein fully and exhaustively set forth. No lawyer of ordinary means can possess all of the State Reports, and, in fact, but few have room for the almost countless volumes of which they are composed. In the "American Decisions and Reports" the wheat has been carefully garnered from these various Reports, and in Mr. Rapalje's Digest is found a key to all the decisions of importance and value to the practising lawyer. For practical working purposes, this Digest is invaluable to the profession, and no legal library can be considered complete without it.

THE LAW OF ELECTRICITY. A Treatise on the Rules of Law relating to Telegraphs, Telephones, Electric Lights, Electric Railways, and other Electric Appliances. By SEYMOUR D. THOMPSON, LL.D. Central Law Journal Company, St. Louis, 1891. Law sheep. $5.00.

The subject of electricity is one which engrosses to a great extent the attention of our courts, and is one which is rapidly growing in importance The present volume is an attempt to state and classify the adjudged law applicable to telegraphs, telephones, electric lights, electric railways, and other electrical appliances, and is, we believe, the first work published devoted exclusively to these subjects. As a law writer Judge Thompson is so well known that anything from his pen is sure to command the respect of the profession, and in this treatise he has fully and exhaustively covered the law, as it exists, regarding electrical appliances The work will add to its learned author's reputation, and will undoubtedly receive the appreciation which it merits.



SUPREME COURT OF NEW JERSEY, 1885.

Justice Parker. Justice Scudder. Chief Justice Beasley. Justice Knapp. Justice Magie.
Justice Dixon. Justice Depue. Justice Van Syckel. Justice Reed.

The Green Bag.

VOL. III. No. 11. BOSTON. NOVEMBER, 1891.

THE SUPREME COURT OF NEW JERSEY.

BY JOHN WHITEHEAD, ESQ.

IV.

JOEL PARKER had in his lifetime a national reputation, not as a lawyer, nor as a jurist, but as a politician and patriot. It will be impossible, in speaking of him, to overlook his political record, although, presumably, these sketches refer only to those of whom they treat as judges. But Joel Parker's life was so important in its public aspects, not only as connected with New Jersey, but also with the Republic, that violence would be done to his memory if nothing were said about his relations, politically, to State and country.

He was born in 1816 in Freehold Township, Monmouth County, from a family long known in the history of that county. His ancestors were among the men who aided their country in Revolutionary times, at the risk of their lives and with the loss of property. His father was an honored citizen of Monmouth, having filled many official positions; and his grandfather was an officer in the Continental army, and served with distinction. Like many other eminent Jerseymen, young Parker was educated at the Academy at Lawrenceville. He graduated from Princeton in 1839, and then became a student-at-law in the office of Henry W. Green, afterwards Chief-Justice and Chancellor, and was admitted to the bar in 1842. He opened an office immediately after being licensed, in his native place, and ever afterwards resided there. Like most other young attorneys, he was led by a natural ambition towards a political life, and until he was seated on the bench, always seemed to have a predilection for politics. But with him this taste did not arise from a grovelling greed for office, but it was the outcome of a high-toned, noble-souled patriotism. He often declined office, much oftener than he sought it; in fact, office sought him, he never solicited it.

In 1844 he threw himself with all the energy of his determined nature into the presidential contest, and being an attractive speaker was in great demand at political meetings. In 1847 he was elected to the Assembly, where, although he was the youngest member in the House, the position of leader of his political party was unanimously conceded to him. It was during this session of the Legislature that he distinguished himself by his efforts to equalize taxation by the passage of a law taxing personal as well as real estate. Whatever may be said of the measure, and its merits are certainly debatable, it is undoubted that the law could not have been passed but for his persistent exertions. At the expiration of his term he refused a nomination to the State Senate, and turned his attention to the care of his rapidly increasing practice.

In 1852 he was appointed Prosecutor of the Pleas for Monmouth County. During his term of office his ability to advise and appear for the State was fully tested. A murder of unusual atrocity was committed; James P. Donnelly, a young man well connected, was suspected as the murderer, was indicted and tried. His relatives and friends were

lavish in their expenditure of money, and indefatigable in their efforts to save him from the scaffold. Joseph P. Bradley, now Associate Justice of the Supreme Court of the United States, ex-Governor Pennington, and Amzi C. McLean conducted the defence. Two of these were then of national reputation; the other a leading lawyer of the county, and no mean antagonist. The cause was tried as only a cause could be tried by such counsel; every point was contested, every fair and honorable advantage seized which could aid the defence. William L. Dayton, then Attorney-General, was associated with the prosecution; but the preparation and management of the case, the arranging of the testimony, the examination of the witnesses, were all intrusted to the prosecutor. The trial lasted nine days; the evidence was largely circumstantial, but notwithstanding the efforts of his distinguished counsel, Donnelly was convicted, and the trial has become one of the *causes célèbres* of New Jersey. The case went to the Supreme Court, and from there to the Court of Errors, on numerous exceptions. It was a desperate battle; the defence was fighting for life, the State for justice and the protection of its citizens. Mr. Parker followed every step in the appeal with pertinacious zeal and marked ability, and gained a high reputation at the bar for the manner in which he performed his duty. His opportunity came, and he seized it. The appeal was unsuccessful, and Donnelly was executed. The result of the trial was warranted by the evidence, and no doubt was ever entertained by any disinterested observer of the entire justice of the verdict of the jury.

In 1854 Mr. Parker was named all over his district as a prominent candidate for Congress, but he decidedly refused to allow his name to be used. In 1858 public attention was again directed to him in connection with the same position; but although an independent man, even in politics, he was loyal to his party, which was then in a peculiar position in the State; and as he deemed that his nomination might possibly create dissension, he again declined. In 1856 he was first prominently named as a suitable candidate for Governor. He refused the honor, named Col. William C. Alexander as a proper person to receive the nomination; and in pursuance of this suggestion, Colonel Alexander was nominated. In 1859, when the people of the State were discussing nominations for the same high position, he was again named, but again positively declined.

In 1860 Mr. Parker espoused the cause of Stephen A. Douglas in his candidacy for the presidency. A curious state of political affairs then existed in New Jersey. There were three Democratic electoral tickets in the field, representing the three Democratic candidates. A fusion was advised by the leaders of the party, headed by the State Executive Committee; but Mr. Parker opposed any fusion, and in his own straightforward way argued that his candidate was the true representative of the party. A compromise, however, at the very last moment was effected; all the Democratic electoral tickets were withdrawn, and one substituted in their place, with three Douglas electors and two of each of the other candidates. Mr. Parker was one of the Douglas electors, all three of whom were elected.

During all these agitations he was steadily gaining clients and largely increasing his practice. He was peculiarly fitted to obtain and hold the esteem of those who intrusted him with their business; his plain, unaffected manners attracted their attention; he was a man of the people, and always easy of access. His care and industry preserved their interests; his integrity invited their confidence, and his success secured their respect for his opinion and faith in his judgment. His strong commonsense, one of his best characteristics, aided him materially in deciding as to the best course to be pursued in doubtful cases.

While thus biding his time, and interesting himself in his practice and protecting the interests of his clients, there loomed

up in the future mighty events which forecasted for him a glorious place in the history of his State and nation. Clouds of disturbance began now to lower ominously in the political horizon. Joel Parker was a Democrat, through and through, every inch of him; but his patriotism rose above party. He deprecated any movement which seemed to commit the people of the North to measures interfering with what the citizens of the South considered their property, secured to them by the law of the land. He would have consented to peace, sacrificed much to secure its continuance, but he would not sacrifice the Union, nor honor, nor the life of the Republic. So, up to the moment when what he deemed rebellion broke out, and the Union and the consequent life of the Republic were at stake, he was earnest and decided, firm and unalterable, in his efforts to avert war. But when war came he uttered no uncertain sound; he wavered not a moment, but with all the force of his energetic nature threw himself into the contest on the side of Union and of the Republic. At the outbreak of the war he was appointed Major-General of the militia of the third division, comprising the counties of Mercer, Middlesex, Monmouth, and Ocean. Charles S. Olden was the Governor, a man of consummate ability, of unerring judgment, and an intense Republican; and Joel Parker was a pronounced Democrat. But the Governor knew his man, did not hesitate to nominate him to the Senate for this most important position; that body promptly confirmed the nomination, and it was the very best selection that could have been made. General Parker seemed ubiquitous; he held public meetings and addressed them; roused the patriotic spirit of the citizens to fever heat; organized uniform companies and impelled them to enlist; he promoted volunteering, and raised more men for the Federal army than any other man, more probably than any other ten men. He upheld Governor Olden in his support of the administration in its efforts to terminate the war. He did not stop to inquire into the merits of the controversy; the time to do that had long since passed.

In 1862 he was nominated for Governor by the Democratic convention, and elected by the triumphant majority of 14,600; the largest ever given in New Jersey for any candidate. Now began a career unparalleled in New Jersey. He became the great "War Governor,"—a name which clings to his memory, and by which he is better known than by any other of his numerous titles. His administration was successful beyond expectation, and is full of historic events which have made it famous. It would be interesting to follow it, but it is impossible to do justice to it in the brief space allotted to the notice of this patriotic Governor.

He saved the citizens of the State from draft; he cared for the wants of the soldier; he established a bureau for them where they might obtain correct information from home and from friends, and through which they might transmit letters and money to their families. He not only provided for the wants of the soldier in active service in the field, but also for the wounded and sick in ambulance and hospital. When Pennsylvania was invaded by Lee, and Philadelphia was threatened, before the citizens of that State had recovered from their fright or had raised a single company of men to defend their homes and firesides, thousands of Jersey troops, impelled by Governor Parker's magnetic influence, were marching through the great city to its relief and on to Gettysburg. The country rang with his praises; President and Governors, Congress and Legislatures, vied with one another in attesting to his ready patriotism and alert action in the cause of the Union. He made the name of Jerseymen glorious. These were but a few of his exertions during the war, and not the best and most enduring are here recorded.

While thus active and energetic in supporting the war, he was frank and outspoken in the expression of his views of certain measures connected with the conduct of the con-

test. He did not believe in the amnesty proclamation, he condemned the Emancipation proclamation; but while he disapproved and condemned, he did not falter for an instant. The war must be sustained; the administration, even if not right in adopting some measures, must be supported; rebellion must be quelled; the Union must be preserved, at whatever risk or sacrifice. So he kept on and never wavered; peace must come; the seceding States must return and resume their friendly relations. Until all that was realized, not a single measure could be abandoned which would aid in accomplishing such desirable ends. If it cost the government the last dollar and the country the last man, the war must go on until honorable peace was gained and the Republic saved. Thus argued this indomitable patriot, and he worked as he talked.

In 1868 the delegation in the presidential convention from New Jersey nominated him for President, and voted for him on every ballot. In 1871, although he had positively declined in 1866, at the termination of his first term as Governor, to be a candidate for any office, he was induced to accept a gubernatorial nomination, and was elected. He retired at the close of his second term with the commendation of all parties as having been most successful in the discharge of the duties of his office. In 1875 Governor Bedle nominated him as Attorney-General, and the Senate did him the honor to confirm the nomination without the usual reference to a committee. He held this position for a few months only, and then resigned it to attend exclusively to his practice. In 1880 he was nominated and confirmed for Associate Justice. In 1887, at the expiration of his first term, he was again nominated to the office and again confirmed.

In estimating Judge Parker as a jurist it must be remembered that his habits of life and thought had not been such as to equip him fully for the position to which he was elevated. His practice had been large, and he had acquired a great experience; but he had been a public man, and had devoted a large part of his life to the public service and in a field of labor where his mind and thoughts had been otherwise directed than to the study of the science of law. Under such circumstances his intellect could not have had that ready grasp of abstruse legal principles so necessary in a judge who is called upon to decide on a moment's reflection during the hurry of a trial. But when Joel Parker became Justice, with his usual honesty of purpose he determined to understand his duties, and knowing them to do his whole duty. A more painstaking, a more careful man never assumed the ermine. He was not a technical judge; while at the bar he had despised that narrow-minded manner of seeking victory in a cause by the elevation of trifles at the expense of honesty and justice. This habit of thought he carried into his discharge of duty as judge. What he sought was principle; the real question with which to grapple with him, both as lawyer and as judge, was: What is right? He was aided materially by his innate love of justice, by his nice perception of the delicate differences between right and wrong, by his strong common-sense, and his admirable judgment of human nature gained by his contact for so many years with all sorts and conditions of men. He was not a genius, he was not a brilliant man; but he had qualifications which in the long run made him a better judge than if he had more shining abilities. He was cool and dispassionate, calm and deliberate, patient and cautious. He was a good listener, except when fraud and chicanery were manifest, and then he was impatient and restive. He had no patience with a litigious party, nor with one who hoped to succeed by technicalities, or who was prosecuting a suit from ill will or for purposes of revenge. His opinions were carefully prepared, and were evidently the result of investigation and study. In his circuit he was idolized, especially by the young members of the bar; kindly by nature, he was courteous to all; generous and frank, he was accessible to all who sought

him for aid or sympathy or for advice. Perhaps no words can better describe his judicial character than those used by one of his eulogists after his death. "As a judge he was painstaking, faithful, and sagacious."

He died suddenly at the house of a friend, in the city of Philadelphia, from apoplexy. His death was mourned as a common loss. The courts, not only of his own circuit, but all over the State, passed resolutions of respect for his virtues; societies and civic bodies met and gave their testimony to his worth.

These sketches thus far have referred to the dead; hereafter they will discuss the living. The rule *De mortuis nil nisi bonum* has often been too generously applied, but no such rule will now be needed. Still the task will be delicate and difficult. It is not pleasant under any circumstances to direct attention to the peculiarities of those who are in active life, to criticise, either favorably or adversely, those who are the objects of respect and admiration. "With charity for all, with malice towards none," with a profound esteem for every present member of the court and an ever increasing pride in the administration of justice in New Jersey and in its judiciary, is the task assumed of speaking of those who now are the honored members of the Supreme Court.

The legal tribunals of the State, for all time, have been worthy of the highest commendation; its judges have been fearless, incorruptible, and able. Especially can this be said of its Chief-Justices, in whose selection since the Constitution of 1776 no mistake has ever been made.

Mercer Beasley, the present incumbent of that high position, is no exception to this rule. He has been in office for more than twenty years, being now in his fourth term. His nomination as Chief-Justice has always been made by a Governor from his own political party; but it would have made little difference, after his first term, what were the politics of the Governor or Senate, as he would undoubtedly have been renominated.

He was born near Trenton, in Mercer County, in 1815, from an excellent ancestry. His father was a distinguished Episcopal clergyman, rector at one time of a parish in Trenton, and for several years President of the University of Pennsylvania; and his mother was a near relative of Isaac H. Williamson, so long Governor and Chancellor of New Jersey. He was educated at Princeton, and after leaving college soon began the study of the law. He had peculiar advantages as a student, as part of his studentship was passed in the office of Samuel L. Southard, and during the remainder of it he was under the charge of Chancellor Isaac H. Williamson. He was licensed as an attorney in 1838, as a counsellor in 1842, and selected Trenton as a location for his office, where he has ever since resided.

At the time Mr. Beasley began practice there were to be found at Trenton some of the best lawyers in the State. Their names have but to be mentioned to secure at once a recognition of their ability. Most of them had more experience in their profession than had the young attorney. At first he seems not to have been ambitious of securing position as a leader of the bar. For several years his name is not to be found in the books of reports; but when once it did appear, it was fully evident that a mind of uncommon strength and brilliancy was exercising its influence in the legal tribunals of the State, and from that time he soon assumed his proper place.

This kind of practice, which seemed to have very largely occupied the attention of Mr. Beasley, equipped him for the performance of the duties of a judge sitting in Bank; so that when he became Chief-Justice he brought to the office a great experience in the examination of cases usually submitted to appellate courts. Whether it fully prepared him for the trial of causes in the circuits, is perhaps doubtful. But whatever may have been his lack of experience at the outset in that direction, he has since become a consummate trial judge.

Long before he was selected for the head of the court he had secured rightfully the reputation of being one of the best special pleaders at the bar. He always delighted in this intricate part of the practice, and has not yet lost his love for it. It was, in the early days of his professional life, still a substantial part of a lawyer's education, but it has now given way to the demands of improvement, and is rarely used. It may seem strange to those who know the Chief-Justice's dislike for technicalities to learn of his early and continuing love for what seems the most technical part of the practice. But special pleading, in the opinion of such lawyers as he, was a science, subject to rule and capable of being reduced to mathematical precision.

He lost nothing by his apparent idleness during the first few years after his being licensed. He was not an idle man, he could not be; and his after life has shown that at some period he has been industrious in studies which have stored his mind with treasures of legal lore which could have been gained only by severe and thorough research. About ten years after he came to the bar he began his career of success as an advocate before the three great courts, and from that time until he was made Chief-Justice was always in demand. There were few causes of importance before the courts at Trenton in which he did not appear. His acknowledged ability, his great experience in the examination and argument of cases before the higher tribunals of the State, and his peculiar fitness for the position were so prominent that when Chief-Justice Whelpley died, all eyes were turned to him as a fit successor to that distinguished man; and in less than fifteen days after the death of his predecessor he was nominated and confirmed. He assumed the position on the 8th of March, 1864; was again nominated and confirmed in 1871; then in 1878, and for the fourth time in 1885, so that he has been in office for twenty-seven years, and his selection, each time, has met with the approval of all classes. He first sat in the Court of Errors in the March term of 1864, and rendered the first opinion reported of that term. The case was one in which an important question of practice arose: Whether writs of error were the appropriate remedy in certain cases. The cause involved principles which demanded from the deciding judge an examination of the history of writs of error. The Chief-Justice was necessarily obliged in the delivery of his opinion to exhibit his great learning, which he did in a most masterly manner. Every opinion delivered at that term, which has been reported, was prepared by him. This early manifestation of industry was a promise of his future action which has been fully performed. The books of reports abundantly show that there has been no more industrious member of the court than he, and that he has done his share of the work of the two tribunals of which he forms so important a part and is so conspicuous a member.

The circuits over which the Chief-Justice has presided have not been the most important in the State; but some weighty causes, both civil and criminal, have been tried before him. But his true place is not in these tribunals. There is not the same opportunity there for him to exhibit his real capabilities as in courts where argument and logic are more predominant, and where he can listen to debates between the master minds of the bar. In the dignified quiet and repose of these higher tribunals he can calmly hear, and with leisure for reflection and time for thought decide, the important issues submitted to him. His written opinions are strong and vigorous, learned and pointed, and display a firm grasp of all legal subjects involved; but they are sometimes somewhat obscure, and need close observation and the strictest attention to grasp fully the meaning. There is a marked difference between the Chief-Justice's written decisions and his charges to juries; his opinions abound with uncommon words, not unfrequently coined from his own fertile brain, while his charges to juries are models of directness and sim-

plicity, are easily understood, and are always directly to the point. They strike the heart of their subject, like the ball which his keen eye and firm hand send with unerring aim home from his favorite rifle. His grasp of mind and reach of thought, coupled with his profound learning, enable him to comprehend the abstrusest legal principles, and it is not uncommon for him to base an opinion upon a point in a cause not touched or noticed by the astutest counsel. He does not disdain to use for his leisure moments the lighter literature of the day, and is an omnivorous reader. His favorite amusement he finds in his workshop, where with the keenest tool, with chisel and lathe, he turns out from his skilful hand artistic carvings in wood. His many years sit lightly on his head, which retains nature's covering with few silver threads; his eye is as bright as ever, and his step as elastic and firm as in his younger days. The bar of his native State are justly proud of their Chief-Justice, and never fear to intrust the interests of their clients in his hands. Not a breath of suspicion has ever tarnished his fair name, and he stands to-day among his peers with an enviable record as a judge and citizen.

There are but two living ex-Associate Justices of the Supreme Court of New Jersey; one of these is Joseph D. Bedle, and the other is Van Cleve Dalrimple. Governor Bedle — for he has held both offices of Governor and Judge — was born at Matawan, Monmouth County, in 1831. His ancestry is of English stock, but he can trace his lineage back through citizens of New Jersey for more than a century and a half. His father was prominent in Monmouth County, having been a Justice of the Peace and a Judge of the Court of Common Pleas for several years. Young Bedle acquired his education by an academic course at Matawan, once known as Middletown Point. Very early in life he became a student-at-law in the office of William L. Dayton, who has already been referred to in these sketches. He does not seem to have finished his whole course with this gentleman, but to have attended a law school in New York for some time, and then to have prepared himself for admission in that State, in the office of Thompson & Weeks, at Poughkeepsie. In 1852 he was admitted as an attorney and counsellor in New York. But he was not satisfied with his prospects in the great Commonwealth, for very soon after being licensed there, he returned to New Jersey, finished his course, as a student-at-law, with Henry S. Little, and was licensed by the Supreme Court as an attorney in January, 1853, and as a counsellor in 1856. He opened his office at first in Matawan, but only remained there for two years, when, seeking a larger field, he removed to Freehold, the capital of the county. Here he soon began to secure a large business, which in time became very lucrative. In 1865 Governor Parker proposed to him that he should accept the position, then vacant, of Associate Justice of the Supreme Court. After some deliberation and much hesitation, he consented, and was commissioned on the 23d of March, 1865. The circuit assigned to him was a very large and important one, comprising the counties of Hudson, Passaic, and Bergen, in which were the populous cities of Jersey City and Paterson. The circuit has since been found to be too large for one judge, and has been divided. Judge Bedle, upon being commissioned, changed his residence to Jersey City, so as to be easily reached by the lawyers who might necessarily seek him in the performance of his official duties. His manner of meeting the responsibilities of his high position was so admirable that at the end of his first term he was renominated and again confirmed without any opposition; in fact, with the approval of all classes in the community. During his first term his name was mentioned in connection with a candidacy for Governor, but without the slightest action of his own. During his second term in 1874, he was again named in connection with the office of chief magistrate of the

Commonwealth, and received a unanimous nomination from the Democratic Convention. He had not sought the nomination, and he did not decline; but he put himself in the dignified position that he would do nothing to aid his election. He was a judge of the highest tribunal in the State; as such judge it was not proper that he should descend from his position and become an active seeker for the suffrages of the people. So he refused to resign as judge, and would take no part in the canvas. Many doubted the wisdom of his decision, and argued that he should resign and become an active partisan. But he was right in his high-minded resolution, and the people appreciated his determination. He was elected over one of the most popular men in New Jersey, by a very large and triumphant majority. His administration as Governor was able, vigorous, and marked by prudence and patriotism, and he retired from the office at the expiration of his term, more firmly than ever intrenched in the admiration and confidence of his constituents.

He was one of the youngest judges who ever sat on the bench, being only thirty-four years of age when nominated. It could not be expected that he would manifest, as a judge, that profundity of learning, that grasp of thought, and that rich experience which can only be gained by long years of practice Judge Bedle took his seat on the bench in the June term of the year 1865, and rendered his first decision at that term. It was given in a very important cause, but there was enough in it to put the young judge upon his mettle, and he fully satisfied his friends of his ability to grapple with such cases as might be submitted to him. His next opinions were given at the November term of the same year, when he rendered several upon the matter of taxation, — a subject which had been and was still a *vexata questio* with the court. The law in several particulars was settled by these decisions, and the members of the court unanimously concurred with him.

His opinions, however, while not profound nor abstrusely learned, yet are able, strong, vigorous, and convincing, and have received the confidence of the bar. He was alert-minded and fertile, and soon learned that to be excellent as a judge he must combine sound argument, quickness of perception, a keen appreciation of the true facts of every cause, with an ability to analyze and promptly select and seize the salient points and principles involved in the cases presented to him. He was a just judge, with one abiding rule, to ascertain the right in a suit, and then dispense justice so that the right might be protected.

He is now in full practice at Jersey City, doing a very large and lucrative business, being counsel for many important corporations. He is one of the most genial of men; his face always wears a smile, and a look into it is an inspiration.

Van Cleve Dalrimple was born in Morris County in 1821. His father was Joseph Dalrimple, long before the community in that county as a man in public life and foremost in his political party. He was for several years a Judge of the Court of Common Pleas. The family, as its name indicates, was of Scotch descent, and traces its genealogy for several generations, through a Morris County ancestry up to the original Scotchman who first settled there. Judge Dalrimple, when quite a lad, determined to become a lawyer, and prepared himself in his education for legal studies. He pursued an academic course in Morristown, and industriously employed all the appliances within his reach in the direction of the bar. At the age of nineteen he entered the office of Henry A. Ford, then a lawyer in full practice in Morristown, and in due course became an attorney in 1843, and a counsellor in 1847. Immediately upon being licensed he opened an office in Morristown, and early acquired a very respectable clientage. His rise at the bar was remarkable for the celerity with which it was gained. Morris County has always been remarkable for its accomplished

lawyers, with whom it was no easy matter to grapple. But Mr. Dalrimple fearlessly entered into the contest, and bravely worked his way against the odds which seemed to be so heavily against him. He accomplished all this by the dint of perseverance and energy, accompanied with untiring industry in the study of the principles involved in causes which were placed in his hands, with great care in the preparation for trials, and unswerving fidelity to the interests of his clients. He was distinguished by the scrupulous attention which he gave to all business intrusted to him.

PETER VREDENBURGH.

In 1852 he was appointed Prosecutor of the Pleas for Morris County, which position he held for five years. In 1866 he was nominated and confirmed as an associate justice, and, at the expiration of his first term, was renominated and again confirmed. He brought to the performance of his duties as judge a cool, dispassionate judgment, great patience, wise deliberation, patient investigation, great learning, and a keen perception of the distinctions between right and wrong. His circuit was not one of the most important; but it was no sinecure, and required great industry and unremitting activity to perform well the responsible duties of his high position. Judge Dalrimple was equal to the situation, and met the approbation of all who practised in his courts.

The strictness of the common law was giving way, when Judge Dalrimple took his seat on the bench, to a new order of thought and practice. Courts were relaxing the iron grasp which that common law, through its subservience for centuries to mere forms, had imposed upon the jurisprudence of the country. In many of the States new codes of law were established which in too many instances disregarded wise principles, created vicious practice, and disregarded old established rules which the wisdom and experience of centuries had pronounced good. In New Jersey the partition wall interposed between equity and the severity of the common law was still preserved; the dogmas which custom and the decisions of courts had formulated were still recognized as wise and just. Yet there was a disposition in the legal tribunals of the State to interject into the administration of justice an alleviation of the hardships imposed by a strict construction of those dogmas. Judge Dalrimple aided in these efforts, and in his decisions ever inclined to the new order of things. His opinions fully demonstrate that his mind had outgrown the bonds which an old-fashioned common-law practice too often fastened upon the lawyer educated in the old schools. He did not stand in the way of the progressive movement, nor did he pursue the course too often followed of an indiscriminate attack upon old, existing practice and forms.

The opinions of Judge Dalrimple are regarded with great respect by the bar. When he retired from the bench he did not return to an active business, but having acquired a

moderate competence sufficient for his simple tastes, is spending his days in a dignified quiet. Unfortunately for the community as well as for himself, he has been afflicted for many years with rheumatic gout, which seems inexorable, and has so crippled his hands and feet that he is laid aside from active intellectual labor. He has a taste and fondness for literature of the highest order, and if he were able would undoubtedly benefit his kind by his intellectual ability to instruct and interest.

Judge Dalrimple carries with him into his enforced retirement the esteem and confidence of his fellow-citizens. A character of the purest integrity gained by him at the bar and on the bench has followed him to these his latter days, and will ever attend him.

When the term of Daniel Haines as associate justice expired, it devolved upon Marcus L. Ward, then Governor of New Jersey, to find a fit successor. Governor Ward was a conscientious man and loved his native State; so he anxiously sought for the fittest man. To his astonishment one or two leading lawyers to whom he tendered the nomination for the vacant position declined the honor; but still more amazed was he when many members of the bar named an attorney practising in the small town of Belvidere as the man best equipped to fill the place. The Governor had never heard of this able lawyer, and knew nothing about him. But this was not remarkable; the chief magistrate of the State had had very little to do with lawyers; he knew all about soldiers, and could name, without much thought or any hesitation, the best fighters in the war which had just closed, for he had been a firm and fast friend of the boys in blue. He soon became satisfied that this lawyer from Belvidere, thus recognized by members of the bar as fully fitted for the office although unknown to him and to fame, was the man for whom he was seeking; and so on the 15th of November, 1866, David Ayres Depue was commissioned, after being duly nominated and confirmed, as an Associate Justice of the Supreme Court; and no better nomination was ever made.

Judge Depue is of Huguenot descent; but when his original ancestor emigrated to this country, or from whence he came, cannot now be ascertained. A family of the name of Dupuis, which is undoubtedly the original method of spelling the name, lived in the western part of the State, near the Delaware River, during the last century. About a hundred and fifty years ago, Nicholas Dupuis was connected with the colonial records of New Jersey. Some member of this family was an ancestor of Judge Depue. His father, Benjamin Depue, a highly respectable citizen, removed from New Jersey to North Bethel, Northampton County, in Pennsylvania, where the future judge was born in 1826. In 1840 Mr. Benjamin Depue returned to Warren County in New Jersey, not to the home of his ancestors, but made his way to Belvidere, the capital of the county, bringing the future judge with him. Young Depue had a careful father, who determined that his son should receive the very best education which could be obtained. Accordingly he gave him the benefit of a thorough academic course, in preparation for a collegiate training. In pursuance of his plan, the father placed his son in Princeton College, where the young man graduated in 1846. In less than ten days after graduation, young Depue entered the office of John M. Sherrerd, then one of the leading lawyers of Belvidere. A very warm friendship sprang up between preceptor and student, which continued until the death of Mr. Sherrerd. This friendship was so strong on the part of the student, that his only son was named after Mr. Sherrerd. That boy is now a young lawyer of great promise, practising at Newark, and is Assistant U. S. District Attorney of New Jersey.

Judge Depue was licensed as an attorney in 1849, and received his counsellor's degree in 1852. He remained for about a year after being licensed in Mr. Sherrerd's office; and then, following the advice of his friend and

instructor that he should become independent and fight his own way, opened an office in Belvidere, and soon gathered around him a circle of warm friends and admiring clients. He had not been idle during his clerkship, but had applied himself industriously and carefully to the study of the law, not alone as the means by which he was to earn his bread, but from a pure love for the science. After he began the practice of his profession, he did not allow himself to be drawn aside by the ambition of acquiring political honors, so common to young lawyers. He was a born lawyer, and delighted in delving into the abstruse principles of legal science. He did not study law simply to use it for the present exigency, nor to prepare himself for future contests, but because he loved its abstract ideas, and revelled in its metaphysics. He soon led the bar in his part of the State, and became known as a highly accomplished lawyer, an astute counsellor, and a powerful advocate. So when in 1866 he became an Associate Judge, he brought to the office an unusual preparation for the proper performance of its duties. He did not seek the nomination, and could in no sense have been considered a candidate. In fact, he wrote to Governor Ward, when he heard that his name was mentioned in connection with the position, that he was not an applicant for the nomination. So soon as he was appointed, he removed to Newark, where he has ever since resided. His circuit at first comprised the counties of Essex and Union, by far the most important in the State. Newark, the largest city in New Jersey, is in Essex; and Elizabeth, an important town, in Union.

JOSEPH D. BEDLE.

Of the characteristics of this illustrious man it is almost impossible to write and do them justice without seeming fulsome. For a quarter of a century he has been the Circuit Judge of Essex County. For a large part of that time that county has comprised all there is of his circuit. Union was long since placed in that of Judge Van Syckel. From the first term of court held by him, Judge Depue fastened himself upon the affection and confidence of the people, and they have never swerved from their loyalty to him. They believe in him; his word is law, his judgment conclusive, his opinion implicitly trusted; juries have an abiding faith in his utterances. It is sometimes amusing to watch the jurors after a wearisome trial, after lawyers have badgered them with their conflicting views, and the time comes for the judge to give his opinion of the case, and see them start from their listless position and become all alive. Now, they seem to say, we shall get at the right of it; now we can learn what is our duty; and so their eyes kindle, their faces are all aglow; and as the words drop in measured tones, each strong and driven home by inexorable logic and convincing argument, they clearly see what their duty is in the case, and what is the law involved. If there be one quality of Judge Depue's mind which is more marked

than any other, it is his ability to set before the judgment of jurors the facts in a case, and apply the law in exactness to those facts. He is so cool, so dispassionate, so free from prejudice, so impartial, that they know that they will be fairly and honestly dealt with, and that they will not err if they follow his lead.

It is charged by some that he is restive in the trial of causes. Perhaps the charge is partially true; but it is the impatience of genius, chafing at the dulness of inferior minds, at the waste of time in the utterance of platitudes of mediocrity, or at unnecessary delay. He is always fair, never impatient when the case demands care and examination. But his quick, alert mind sees the end from the beginning, and he deplores that valuable moments should be wasted in delaying a result which he had already learned was inevitable. So his impressive "Proceed, gentlemen!" means that it is not necessary to spend breath in endeavoring to postpone that which is already determined, or to establish that which is so easily demonstrable.

Judge Depue took his seat on the bench at the November term of the year 1866, but, of course, could take no part in delivering opinions, except such as were oral, and could only listen to arguments. His first opinion was given at the March term, 1867. It was a case of quo warranto, arising upon the school law of the State. The cause was not of any very great importance, but it received, as did every case submitted to him, a thorough and searching examination. His opinions are always exhaustive, and he has the faculty of ascertaining every point there is in a cause.

In 1873 his first term closed, and he was renominated by Governor Parker, who, although politically opposed to him, yet appreciated the importance of retaining him in the judiciary of the State. In 1880 he was again nominated and confirmed, and by a Democratic Governor. His third term expired in 1887, when he was again made an Associate Justice. These reappointments were just tributes to his impartiality, ability, and integrity. He has since his appointment to office never swerved a hair's-breadth from the strict line of duty, by any consideration whatever. When on the bench he knows no friend nor foe, is swayed by no motive other than the earnest, overmastering desire to do justice to all. His keen discrimination and quick intuition enable him to discern at once what is the true path of duty, and he never fails to find and follow it.

With all his mental acquisitions, his intellectual ability, and his profound learning, he is a man of simple and unaffected manners, and is easy of access to all, no matter how poor or humble. He is a great reader, and delights especially in biography; his tastes are scholarly and lead him to the highest order of literature. He dearly loves the society of friends, and will with them unbend himself, in his leisure moments, in humor and discussions of lighter themes than those connected with abstract legal principles. Two colleges in New Jersey have conferred the degree of LL.D. upon Judge Depue, — Rutgers in 1874, and Princeton in 1880.

Early in the last century there came to New Jersey many emigrants from Holland. Among these Hollanders was a family named Van Syckel, which settled in Hunterdon County. Some of the descendants of this family are still prominent in the community, and are distinguished citizens of that county. A small hamlet has received a name — Van Syckel's Corners — which shows the influence they exercised in the county. These emigrants were a sturdy race, fearing God, obeying the laws, and exerting a powerful sway over the community by their honesty and intelligence. They were fit representatives of the Dutch of two centuries before, who, under the leadership of William the Silent, with high-souled courage and an ever-abiding faith in their righteous cause were enabled to defy Spain, and successfully resist the power of the greatest empire then known.

Bennett Van Syckel was the fourth in descent from the original Dutchman of the name who came to New Jersey, and is the third son of Aaron Van Syckel, one of the very best citizens who ever lived in Hunterdon County. Judge Van Syckel was born at Bethlehem, April 30, 1836. He was prepared for college by the Rev. John Vanderveer at Easton, Pennsylvania, and was graduated at Princeton in 1846. After graduation he entered the office of Alexander Wurts, of Flemington. Mr. Wurts was a very excellent lawyer, and young Van Syckel must have enjoyed great advantages for acquiring a practical knowledge of the profession in his office. He was licensed in 1851, and received his counsellor's degree in 1854. Flemington was the county-seat of Hunterdon County, and some of the best lawyers in New Jersey were to be found there. Young Van Syckel had the ambition to place himself in the front rank of his profession. It was an honest ambition, born from a knowledge of his own ability and faith in himself. So he opened his office at once at Flemington, where he knew that he must meet counsel of more experience than himself, and who had had for years a firm hold upon the community. His great zeal in the cause of his clients, his exactness and care in the conduct of business and in the preparation for trial, his knowledge of legal principles, his indefatigable energy, and his unblemished character for integrity soon won for him a reputation which he fully deserved and which secured a large clientage. If he excelled in any one department of his profession, it was in his intimate acquaintance with those principles which governed the law relating to real estate.

DAVID AYRES DEPUE.

In 1869 he was made Associate Justice, was reappointed in 1876, again nominated in 1883, and is now since 1890 in his fourth term of office. His performance of the office of Justice has proved so satisfactory to all persons interested in the jurisprudence of the State, that each reappointment has met with universal approbation. Judge Van Syckel took his seat upon the bench, March 15, 1869, and delivered his first opinion in the Court of Errors at the March term, and in the Supreme Court at the June term of 1869. The case in the latter court involved some very nice principles of constitutional law arising upon the Constitution of 1844. The opinion delivered by Justice Van Syckel was so excellent and so convincing that the bar readily concluded that the right man was in the right place.

The characteristics of Judge Van Syckel's mind are quickness of perception, alertness of decision, and a prompt grasping of the salient features of a cause. The reports of cases in the courts where he sits fully demonstrate his ability and industry.

His circuit is composed of Union and Ocean counties. He is a good trial judge, his decisions are rarely overruled, and great confidence in his correctness is entertained by the lawyers who practise in his circuit.

He is a man of great moral power, and acts conscientiously and firmly from the force of his convictions. He does not keep his finger upon the pulse of public opinion to learn what are its beatings, but fearlessly follows the strict path of duty. His course recently in Union County in pursuit and punishment of pool-sellers and gamblers fully demonstrated that he was determined that offenders against the law should receive their full deserts. With such men as he on the bench, New Jersey will never lose its hold its reputation for strict and impartial justice.

The Scudder family has been prominent in New Jersey for several generations. During the Revolution it furnished many men for the patriot army both as privates and as officers. It has always been influential for good, from the character of its individual members, especially in Mercer County, where many of the name are still to be found. In the early history of the colony and during the War of Independence the family was most numerous in Essex, but in after times it found its way to the neighborhood of Trenton, where it gave tone and character to the community. Edward W. Scudder was born from this race at Scudder's Mills, in Mercer County, near Trenton, in 1822. He graduated at Princeton in 1841; then entered the office of William L. Dayton, afterwards Minister from the United States to France. He was admitted to the bar in 1844, and made counsellor in 1848. So soon as he was licensed he opened an office at Trenton, and almost immediately secured a large practice and of the very best character. The scrupulous care which he gave to the interests of his clients, his great industry, and his integrity secured the entire confidence of a large clientage. His name soon appeared as counsel in the reports of both common law and equity courts, and quite frequently in many important cases.

He was not an aspirant for political honors, but in 1863 was elected to the State Senate from Mercer County, for a term of three years, and was President of that body during the last year of his term of service.

In 1869 he was appointed an Associate Justice, and still holds the position, having been thrice nominated; the last time in 1890. He assumed the duties of his office in March of the year of his appointment, and rendered his first decision in the Supreme Court at the November term and in the Court of Errors at the June term of the same year. His first opinion was delivered in an important case, in which a large amount of property was at stake, and which involved questions of law relative to specific performance of an agreement to convey. It was in the Appellate Court on an appeal from the Chancellor. Judge Scudder met the complications of the case, and unravelled the antagonisms of the evidence with great ability, and fully showed himself competent to meet the requirements of his high office. Since that time he has been a prominent member of both tribunals.

Judge Scudder has been an addition to the strength and dignity of the bench. He represents there the moral force which always attends the presence of a good man, of a conscientious, upright citizen, and of a God-fearing, intelligent Christian. He is not a man of impulses, nor of moods; his temperament is equable, he is peculiarly free from prejudice, and always impartial. The impelling force of his character as judge is his strong, keen sense of the right; he never disregards precedents nor sets aside principles, nor does he overthrow well-settled decisions. His great desire, his controlling impulse, is to learn the right. To do entire justice between man and man, to so interpret the law and apply it that wrong shall be remedied and equity prevail is the main spring of his action. He has impressed himself upon the communities when he has presided at the circuits as a painstaking, conscientious, and industrious officer; diligent in the protection of the interests of the citizen, strict in the administration of justice, swift in the punishment of criminals, but ever tem-

pering the stern demands of an outraged law with mercy, and above all as a just and unbiassed judge. His judgments are sound, and bear the test of severe criticism; his opinions are marked by a clear, lucid style, forcibly expressed, and bear the marks of research and labor. He reasons well, expresses himself strongly and pointedly, and is always evidently swayed by a strict adherence to duty. His character as a jurist and as a citizen may be summed up in one single homely phrase: it is all rounded.

CHARLES GRANT GARRISON.

Manning M. Knapp was born in Bergen County in 1823, and was licensed as an attorney in 1846 and as a counsellor in 1850. He began his practice at Hackensack, the county town of Bergen, where he has always resided.

Bergen County is, and always has been, largely an agricultural county, and its citizens mostly of Dutch descent. The first emigrants, who were of this stock, came to the new county in the early part of the seventeenth century, and were soon followed by large numbers of the same race. At first the settlements were on and near the Hudson River, but gradually they spread into the rich valleys of the Hackensack and the other streams intersecting the county, and there these Hollanders built their quaint, substantial dwellings. As their substance increased, they jostled one another in their various interests, but being law-abiding sought remedy for real or fancied injury by legal measures. They were phlegmatic in their temperaments, and sluggish in all their movements, but they were tenacious of their rights, and once aroused never let go their grip. These characteristics made them the most stubborn of litigants. A Bergen County lawsuit was a synonym for a long and bitter legal battle. In the beginning of the present century and down almost to 1850 the old lawyers from Newark regularly attended each term of the court in that county, and rarely failed to be retained in some important cause. The conditions of trade and of commerce materially changed, however, after the revulsion of 1837, and the volume of legal business was largely diminished before Mr. Knapp came to the bar. Besides, Bergen had parted with a large part of its territory in the formation of Passaic and Hudson counties. The courts, nevertheless, were kept busy, and lawyers were needed to bring suits, conduct trials, and protect the property and interests of their clients. The chances of success for the young lawyer when he opened his office at Hackensack seemed problematical, but he did succeed and obtained a large practice. The stolid and slow citizens of Bergen were discriminating enough to understand and appreciate the merits of the rising attorney, and intrusted him with their business. His practice increased and extended into the higher courts.

In January, 1875, he was nominated and confirmed as an Associate Justice of the Supreme Court. He took his seat at the February term of that court, but does not

seem to have rendered any opinion at that time. His first opinion, as Justice, was delivered in a case upon appeal to the Court of Errors, from Chancery, which involved some questions relative to the law of fixtures. Judge Knapp's argument was exhaustive, has received the approval of succeeding courts, and settled the law in the State. The reports from that time until the present fully show that he has been alive to his responsibilities as Justice, and that he has always been ready and willing to perform his whole duty. His circuit includes only the county of Hudson, the smallest in extent of territory but the second in population and importance. It includes the populous city of Jersey City.

Jonathan Dixon, Jr., was born in England in 1839, but he removed so early to the United States that he has not the slightest trait of language or manner which would indicate his foreign birth. He is, in fact, as patriotic a citizen of the great Republic as any to be found among the native born. He settled early in his life at New Brunswick, and became a member of the family of Cornelius L. Hardenbergh, who had been a lawyer of extensive practice, but had become blind. Young Dixon acted as his personal attendant and amanuensis for several years. In 1855 he connected himself with Rutgers College, and graduated from that institution in 1859. He then entered the office of Mr. Warren Hardenbergh as a student-at-law, and continued his studies with him and with Messrs. Dutton and Adrain, until he was licensed in 1862. He almost immediately removed to Jersey City, and became a clerk in the office of E. B. Wakeman, a lawyer then doing a large business. Mr. Wakeman very soon discovered the fitness of the young attorney for the practice of law, and offered him a partnership, which, however, only continued for one year. In 1865 he received his counsellor's license, and from that year until 1870 practised his profession alone. In 1870 he connected himself with Gilbert Collins, then a rising young lawyer, and continued in business with him until 1875. Such shining abilities and great worth as were possessed by him were soon discovered and appreciated, and he gradually but rapidly grew in public esteem as a citizen and lawyer until he reached a height in his profession which could only be obtained by a man of brains and integrity. He became very early distinguished as a lawyer of great acuteness of intellect. This characteristic, united with industry and perseverance, with strict attention to the interests of his clients and care in all the details of his practice, soon secured for him a very large clientage.

In 1875 he was nominated as an Associate Justice by Governor Bedle, and confirmed by the Senate. He was a Republican, and the Governor was a Democrat; but the worth and fitness of the nominee for the position were too apparent to be overlooked, and party lines were for once disregarded. Governor Bedle honored himself by his nomination, secured for the State the services of an accomplished jurist and an upright judge, and added force and dignity to the bench.

His appointment took effect April 8, 1875, in time for him to be seated at the June term of the Supreme Court, but he does not seem to have then rendered any opinion. In November following, at the next term, he delivered several opinions, all of which fully proved the ability of Judge Dixon to meet and grapple with any cause which might be presented to him. Since his appointment he has been one of the most active members of the courts in which he sits. He is peculiarly adapted for the position of judge. It would be impossible to catalogue all the characteristics which distinguish his fitness; but the following are some, perhaps the most prominent, cool, patient to listen, observant of every point, acute-minded, quick in perception, alert to learn what there is in a cause, profound in his appreciation of the difference between right and wrong, even to the minutest shades, well read in his profession, and capable of analyzing and applying the legal principle

applicable to the case before him; dispassionate, alert in decision, swift in discernment, ready to act on the strength of his own convictions, careful ever to do just what is right, irrespective of public clamor or of personal interest, conservative in thought and action, able to express himself strongly in few words, capable of marshalling human testimony, and of reconciling its apparent inconsistencies, dignified and courteous.

He is a consummate trial lawyer, and has a power of compressing his charges to juries into a few lucid sentences, which, however, are so expressive that juries never fail to understand exactly what is his meaning. His circuit is composed of the counties of Bergen and Passaic. He is now in his third term of office, having been renominated twice, and each time by a Democratic Governor.

While Justice he was nominated by a Republican convention for governor. He did not seek the nomination, and, in fact, was opposed to the candidacy. He therefore refused to resign his office as judge, but was defeated.

In private life Judge Dixon is the most genial of men, delights in the society of friends, and indulges in quiet mirth. He is fond of general reading, and delights in the higher branches of the very best literature.

Alfred Reed was born in December, 1839, in Mercer County. He was educated for college in the very best academies, and in 1859 entered Rutgers College. In 1860 he connected himself with the law school at Poughkeepsie, and in 1862 sought and obtained admission to the bar in the State of New York. He seems, however, not to have been pleased with the practice of the profession in that State, as he returned to Trenton, resumed the study of the law there, and was admitted to the bar in New Jersey in 1864. He became a member of the Common Council of Trenton in 1865, and was made President of that body. In 1867 he was elected Mayor of Trenton, in which capacity he served for one full term. In 1869 he was appointed President Judge of the Courts of Common Pleas and Quarter Session for Mercer County, in which office he remained for five years. On the eighth day of April, 1875, he was commissioned an Associate Justice of the Supreme Court, and took his seat at the June term of the courts of which he thus became a member. At the time of his nomination for this office he was the youngest judge on the bench. In fact, he won all his honors in early manhood. He became President of the Common Council at twenty-six, Mayor at twenty-eight, Law Judge when only thirty, and Associate Justice when just passed thirty-six. But he was fully equipped for all these positions, which he had honored by accepting. He had prepared himself for his law practice by study and research, and his subsequent history has shown that no mistake was made in his elevation to the bench. His first term expired in 1882, since which time he has been again re-nominated and confirmed, and is now serving on his third term.

He rendered no opinion until the November term of the year of his nomination. His first decision was given in a case of not much importance, but it was of a character which enabled the young judge to show his ability and skill. Since that time he has been industriously engaged in the performance of his duties as judge. His circuit is a large one, composed of the four counties of Cape May, Cumberland, Salem, and Atlantic, and he is one of the busiest of the judges, not so much, however, by the importance of the cases brought before him as from the number and frequency of the terms of his courts, of which there are twelve each year in his four counties, in addition to which he is necessarily obliged to attend eight terms in the Supreme Court and Court of Errors, making eighteen terms each year in all. It can well be imagined that Judge Reed has his time well occupied.

His opinions are marked by one peculiarity; he delights to break them up into short, pithy sentences, and his early decisions were easily distinguished, without much examina-

tion, by simply looking at the printed page. He does not seem, however, to have kept up this practice in his later decisions. He is an independent thinker, a forcible writer, and an excellent judge. While a pronounced man in his political views, he never suffers any bias in that direction to warp or control his action as judge. In fact, it is the glory of the bench of New Jersey that no considerations of a political nature ever enter into their action as judges. Of Judge Reed it may be truthfully said that he has met with undeviating respect and confidence from the citizens and from the bar of the several counties where he presides, and that his renomination in each instance was universally approved.

William J. Magie is the son of the Rev. David Magie, D.D., for more than forty years the honored and beloved pastor of the leading Presbyterian Church of Elizabeth, and whose fame as a divine, and as a good man, was in all the churches. Judge Magie was born at Elizabeth in December, 1832, was well prepared for college, entered Princeton in 1852, and was graduated in 1855. In the same year he entered the office of Francis B. Chetwood, one of the best lawyers in Elizabeth; was licensed as an attorney in 1856, and as a counsellor in 1859. His preceptor, appreciating his worth, offered him a partnership, and a connection was formed, when he came to the bar, between him and Mr. Chetwood, which extended over a term of six years. He then, for a short time, practised alone, but soon formed a connection with a Mr. Cross, which continued until Mr. Magie became Associate Justice. For five years, from 1865 to 1870, he was Prosecutor of the Pleas for Union County, which position he filled with very marked ability. His counsel was eagerly sought by many incorporations,—Deposit and Savings banks, railroad and manufacturing companies, and municipal bodies. He was not a politician, although decided in his political views. But in 1875, against his will and despite his better judgment, he was induced, by the strong persuasions of his friends and members of the political party to which he belonged, to accept a nomination for Senator from Union County. That county was then a doubtful one, but Mr. Magie was elected. He held this position for three years, and was a most valuable addition to the Senate, serving the interests of the State and of his constituents with scrupulous care and attention. He took a leading part in all debates of any importance, and was placed on several committees. His course in the Senate was marked by a jealous regard for the honor of his native State, by a constant, manly, and independent action, and by a vigilant guard over the true interests of his party. He disdained all petty devices and mean tricks by which so many politicians seek to advance themselves at the expense of decency and self-respect, and ever pursued a courageously honest conduct. In this way he commanded the respect of all, both friend and foe. In 1880 he was appointed Associate Justice, has been again nominated, and is now serving his second term. He took his seat on the bench at the March term, 1880, of the Court of Errors, and at the June term of the same year of the Supreme Court. His first opinion was read in the Supreme Court in the June term. It was in an important case, arising upon an application for a writ of mandamus. Some very troublesome constitutional questions were presented in the cause, arising upon the very peculiar provisions of the Constitution of 1844. The young judge bravely grappled with all the difficulties in the case, and mastered them with very great ability. There seemed to be very few decisions by which the court could be aided. Judge Magie referred to one case only in New Jersey upon one of the main points raised, and to one other case for some collateral principle. His opinion in this case is a very able one; his arguments were powerful and convincing. He read several other opinions at the same term. Since

that time he has been one of the most industrious of the judges, and has done his full share of the work of both courts.

His circuit is composed of Morris, Sussex, and Somerset. It is not a very large nor important one, but it involves much labor. Judge Magie is an excellent trial judge. His large practice while at the bar, a considerable part of it being the trying of causes before juries, enables him to understand and appreciate the exact worth of human testimony, to apply the principles of law to the evidence, and to lead the minds of the jury in the right direction. He has great force of character, is prompt and decided, dignified and graceful in appearance; he has the force of his own convictions, and is independent in thought. He does not hesitate, if he differ with his brethren of the court, to avow his differences calmly and strongly.

He is a man of ample proportions as well of body as of mind, being full six feet in height, and of admirable presence. His mental make-up is characterized by coolness and a dispassionate mode of thought; he reasons well and logically, has a firm grasp of all subjects which come within the range of his mental vision, and easily conquers all difficulties which may be found in a case demanding his attention. He is of a firm and decided character, free from all affectations, genial and easy of access, of a high-toned morality and acts independently, without regard to mere public clamor or shaping his course by questions of expediency, but according to the strictest principles of right.

There is one gentlemen who, as he enters the Court of Errors and takes his seat as one of the judges of that court, must occasionally have a quiet laugh all to himself. He once in a most summary way overruled a decision of that court, without hearing counsel, or even permitting the court to say a word in its behalf. That tribunal had rendered a decision which excited some comment among members of the bar in New Jersey and elsewhere. A leading law periodical desired an article on the subject, and an audacious law student undertook to demolish the court by writing *his* opinion on the case. The journal published the communication of the student, and sent it out to its subscribers with the indorsement of it which the publication gave. The court, however, did not annul its decree; but this was not because there was no vigor nor sound reasoning in the criticism. It is to be hoped that if the same question should come before the court while that student has a voice in its deliberations, he will use his utmost endeavors to secure a ruling in consonance with his views thus expressed.

Charles Grant Garrison is the youngest Justice on the bench. He was born at Swedesboro', August 3, 1849. His father was the Rev. J. F. Garrison, D.D., a distinguished clergyman of the Episcopal Church, and now a Professor in the University of Pennsylvania. Young Garrison was prepared for college in schools of the church of his father, and was graduated as a physician from the University of Pennsylvania in 1872. He opened an office in his native town, and continued practice until 1876. Preferring the profession of the law, he abandoned a physician's life, and entered the office of Samuel H. Grey, an eminent lawyer in Camden, where he remained until admitted as an attorney to the bar in 1878. In 1881 he promptly applied for and received his license as counsellor. He has not been an aspirant for political office, but has been advanced to ecclesiastical and military honors. In 1882 he was made Chancellor of the Diocese of New Jersey, an office of the highest importance in the Church, equivalent to that of Attorney-General in the State. In 1884 he was made Judge Advocate-General of New Jersey.

Mr. Garrison brought to the practice of the law a well-matured mind, great aptitude to analyze principles, powers of discrimination, and the ability to scrutinize testimony, adapt it to the case in hand, and learn from it what was the real point in the cause. His practice grew on him, and he became so conspicuous a practitioner that at the death of

Joel Parker he was nominated an Associate Justice to fill the vacancy caused by Judge Parker's death. He took his seat at the February term, 1888, but seems to have taken no active part in the rendering of opinions until the June term of that year. He read several decisions at that term, some in quite important causes. From that time until the present he has had his full share of the labors of the courts to which he is attached. His circuit is a large and important one, involving a laborious life for a judge who, like Justice Garrison, is conscientious in the discharge of his duty. It is composed of the three counties of Burlington, Camden, and Gloucester.

Judge Garrison is an excellent trial judge, and presides at the several circuits with great ability and to the acceptability of the bar and of suitors. He has had in his short term of office some most important murder trials, one of which is most mysterious, and where the murderer is still undiscovered. These cases have given full opportunity of testing the Judge's power to grapple with some of the most intricate questions of criminal law. He has shown himself fully able to meet any supposable exigency which may arise.

Judge Garrison is an independent thinker, and does not fail, whenever his mind reaches a conclusion in opposition to the rest of the court, freely to express his opinion. He has stood alone in his views more than once, and has strongly and vigorously put himself upon the record. The cases of Collins *vs.* Voorhees and of Bannister *vs.* Jackson, recently decided in the Court of Errors, are specimens of his mode of reasoning. The Voorhees case involved a question of legitimacy of children born from a marriage contracted during the lifetime of a former wife divorced by a fraudulent proceeding; that of Bannister raised the question of testamentary capacity. Some very good lawyers are inclined to agree with the Judge's views in each case.

Judge Garrison has an alert mind, an incisive method of diction, a strong, vigorous manner of expressing his views, and is a very valuable addition to the courts. He is not contented with the mere study of the abstract principles of law, but strengthens his mental capacity and enlarges his intellectual vision by general reading of the highest and best kind of literature.

A few curious facts connected with the personnel of the Justices of the Supreme Court are worth noticing. Every Chief-Justice since the Revolution, with one exception, — the present incumbent, — has been a Presbyterian. The very great majority of the Associate Justices have also been Presbyterians, and many of them Elders in their churches. Nearly all who were educated at colleges, graduated at Princeton. There have been very few small men, physically, among them. Chief-Justice Hornblower was a small, delicate, slender man; with that exception all have been of good size, well proportioned, strong, and vigorous; and all have been in the full possession of their bodily faculties, none have been lame or halt or blind or deaf. Above all, not one has fallen from his high estate by moral derelictions, but each has sustained a high standard of morality, not only by requiring it in others, but by obeying the laws of the highest integrity. It is not astonishing that with such men the character of the judiciary of New Jersey has stood so high, and that it has achieved so much for good order, justice, and virtue.

MONKEY OR MAN.

ENOCH MORGAN'S SONS' CO. *v.* TROXELL, 89 New York, 292.

By Irving Browne.

[*A trademark on sapolio, representing a man's face reflected in a tin pan, is not infringed by a representation of a monkey holding and looking in a similar object.*]

THE legal rule of trade unfair
Is "Let the purchaser beware;"
But equity in milder school
Adjudicates a juster rule,
To guard the unobservant buyer
Against imposture of the liar
Who forges trademark of his neighbor
And reaps the gains of honest labor.
The resemblance need not be exact;
It is sufficient if in fact
It leads unto the false surmise,
In purchasing of merchandise,
That one is buying goods of Doe
When they are really goods of Roe.

An Indian's head, with ring in ear,
Too closely like a nigger's shows,
Though on the latter there appear
Dependent rings in ear and nose.[1]
But he's a stupid man who can't
A lion from a unicorn[2]
Or lion from an elephant[3]
Distinguish by the tusk and horn.
Saint George a-spearing of the Dragon
May be detected at a glance
From Amazon without a rag on,
A-sticking scorpion with a lance.[4]

[1] Leidersdorf *v.* Flint, 50 Wis. 401
[2] Darling *v.* Barsalow, Can. Q. B., 4 Can. L. News, 37.
[3] Henderson *v.* Jorp, Lloyd's Trademarks, 54.
[4] Myers *v.* Weller, 38 Fed. Rep. 607.

A terrier is surely not
A bulldog apt to be conceived,[1]
But pointer at a porridge-pot
For one at point has been received.[2]
A bee-hive is too much like bell;[3]
But pickaxe on a whiskey label
A sober purchaser to tell
From anchor ought to be quite able.[4]
A pyramid of color red
With Spanish shield placed upside down
Is not confused;[5] not so, 't is said,
Of anchor and the same with crown;[6]
The sun on polish may arise
Unrivalled by the orb of night;[7]
And stars, although of different size,
Shall not obscure the first one's light.[8]

The Morgans sold sapolio
Whose label made attractive show
Of smiling countenance of a man
Reflected in a bright tin pan,
As if observing how the soap
Had realized his fondest hope.
Defendant pictured on his ware
A monkey with his tail in air,
And holding in his hairy paw
An object round, wherein he saw
The image of a grinning face
Grotesque as all the simian race.
The court laid hold upon the tail,
And thought most persons could not fail
To differentiate the goods,
Though scientists believe in woods

[1] Read *v.* Richardson, 45 L. T. Rep. [N. S.] 54.
[2] Browne's Humorous Phases of the Law, p. 363.
[3] Ibid.
[4] McCartney *v.* Garnhart, 45 Mo. 593.
[5] Bars *v.* Dawber, 19 L. T. Rep. [N. S.] 626.
[6] Edelsten *v.* Edelsten, 1 De G., J. & S. 185.
[7] Morse *v.* Worrell, Phila. Com. Pl., 9 Am. L. Rev. 368.
[8] Dixson *v.* Jackson, 2 Sc. L. R. 188.

The human race with tails once gambolled,
And on all-four like monkeys scrambled.
And clung unto the family tree
By caudal prehensility,
Until at last by gradual stages
Their tails sloughed off in course of ages.
So Darwin and Monboddo teach,
And so their devotees still preach;
And so these imitative creatures
Will steal their neighbors' trademark features.
As leading to this legal goal
Was cited Popham *versus* Cole.[1]
Popham made lard, and got his price
By using as an apt device
A hog in fine and fat condition;
But Cole excited his suspicion
By putting on his lard a boar,
Wild, small, and lean, and standing o'er
The figure of a hemisphere.
But this the court held not so near
A likeness as to cheat the buyer;
So Popham's fat was in the fire,
For here the clearly different gender
Helped to absolve the shrewd offender.
As counsel urged, on cider-cask
Crab-apple one may safe portray,
Nor leave of any neighbor ask
Who uses pippin in that way.
There was a world of difference,
But Cole might well have saved expense
By putting globe upon the beast,
And thus suggesting at the least
Ingenious similarity
To primitive cosmogony,
And that on him the earth relied
For all provisions fitly fried.

[1] 66 N. Y. 69; 23 Am. Rep. 22.

LEGAL EDUCATION.[1]

IN view of the attention paid in this country to the science and art of Education in all its branches, and the voluminous literature already accumulated on that subject, it is singular that so little has been said or done for the improvement of a branch so important in its relation to the State and community, and so difficult of treatment, as the proper training of candidates for the bar. The elaborate course of study put forth by Professor Hoffman, of Baltimore, more than half a century ago, still remains almost, if not quite, alone in the field; and that is rather a catalogue of books to be read on the law itself, and the sciences then regarded as part of the necessary equipment of a thoroughly accomplished lawyer, than a discussion of the *rationale* of legal education. The same may be said of most, if not all, of the minor publications on the same topic to be found scattered through the legal journals or in the form of occasional addresses. Even the excellent report made to the American Bar Association in 1879, by the gentlemen who then constituted the Standing Committee on Legal Education,[2] hardly entered upon this part of the subject, except in its warm advocacy of law schools, and of a broad and liberal course of study, covering not only the practical law but the same ancillary sciences of which Professor Hoffman had presented so full a view.

The effect of that report, made twelve years ago, is visible in the increase of law schools since, and in a steady if not rapid growth of the attendance upon them, as compared with the number of students still trained in the old method of pupilage in an office. In a few of these schools the teachers have had the leisure and the preparatory training requisite for careful study of methods of legal instruction, and have made great improvements on the traditional process of reading and reciting the common text-books intended for practitioners' use. But among these there has been no unity of action or interchange of ideas. Their improvements have usually been kept to themselves, not so much by any selfish desire as by the absence of opportunity for public discussion of the subject and comparison of the different theories underlying them. Meanwhile, in the great majority of the schools the instruction has been given by busy lawyers or judges, in hours taken from more profitable or more pressing business, and usually as a generous sacrifice of their own interests to those of the profession and its neophytes.

These have had no time for the formation of new methods or study of the principles on which such methods must rest, even when they had the preparatory training in jurisprudence and the science of the law which such work demands. It is highly creditable to them as a body that the instruction given under such circumstances has been as good and effective as it has; but they themselves have been the first to feel and declare the imperative need of a better system of legal education in the schools, of a closer economy of the student's time as well as an extension in the usual length of the course, and especially of more thorough and systematic attention to elementary law.

The reports made to the same Association by its present Standing Committee in 1890 and 1891 have emphasized these needs and the defects of the present system, and that of this year has made at least a beginning of the work of improvement. The composition of the Committee is a guarantee of their familiarity with the topic, and the unanimity with which their results have been reached is a proof that the report embodies the general sentiment of the pro-

[1] American Bar Association. Report of the Committee on Legal Education at the session of 1891 in Boston.

[2] Composed of Messrs. Carlton Hunt of New Orleans, Henry Stockbridge of Baltimore, and Edmund H. Bennett of Massachusetts.

fession, and not merely the notions of a single mind.[1]

The Committee began their labors of the past year by sending to the Chief-Justice of every State a circular inquiring (1) Whether the law of their State required students to read for any specified time prior to applying for admission to the Bar? (2) Whether a period of study should be fixed by law, and what period is suggested? (3) Whether in their States the inferior courts had power to admit to the bar? (4) Whether they thought it desirable to take from the inferior courts the power to admit to the bar, and lodge it in the courts of last resort, to the end that there might be a uniform standard governing the examination of candidates? (5) Whether they thought advisable the appointment of a commission to hold office for a term of three years, one third to retire each year, the commission to sit at stated times and convenient places for the examination of candidates?

Thirty-five of the Chief-Justices responded to these questions, and their answers as abridged in the report give an interesting *résumé* of the law of as many States on this subject, with not a few valuable and often characteristic comments by the high authorities appealed to. This part of the report cannot well be abridged, and is too long for quotation, occupying as it does twelve pages of the printed report. We can only quote the passage in which the Committee express their sense of the importance of these regulations as to the mode of admission to the bar, in their effect on the standard of legal education.

"It will be seen that a large majority favor both the changes proposed in our preliminary report of last year with respect to the mode of admission to the bar, the vesting of this power exclusively in the highest court of the State, and the provision for a permanent board or a commission of examination, so arranged that only one half or one third of the members are changed at once, and composed of lawyers of the highest professional character and learning.

"There are, indeed, some dissents, especially from the latter proposal, as a needless multiplication of offices, etc. The reason for which the Committee first suggested this plan still seems to them so strong as to make it of almost equal importance with the concentration of the power to admit in the Supreme Court. It cannot be expected that such a court will perform the entire labor; only by such a permanent commission can a high and uniform grade of requirements for admission be maintained. Uniformity is equal justice to all candidates, and this becomes of more and more importance as the standard of qualification is improved. But it is also an indispensable prerequisite of that improvement in methods of instruction which all agree to be needed. Without a thorough, well-considered examination upon principles (that is, upon elementary law, and the science of jurisprudence, the basis of all legal thinking and legal judgment), it will be almost impossible to carry out the best devised reforms in the instruction of law students. Every instructor, whether in a school or in an office, knows how difficult it is to get the majority of students to give thoughtful attention and time to any topic on which they anticipate no examination for admission. It is not merely those who 'cram' or those who have no conception of the scope and extent of a true legal education who are so affected. The ambitious and the idle are alike influenced by this 'fearful looking for of an *examination* to come' which makes them eager to apply all their energies,

[1] The report of 1891 is signed by four members of the Committee, the fifth, Mr. Ashton, being in Europe and having taken no part thus far in the work. Of the four, the chairman, W. G. Hammond, is Dean of the St. Louis Law School, and has for twenty-five years devoted his time to the study and teaching of law in that position or his former one, at the head of the Iowa State Law School. The second, Henry Wade Rogers, now President of the Northwestern University, which has as its law department the Chicago school formerly known as the Union College of Law, was for some years dean of the largest law school in the country, that of Michigan University, at Ann Arbor. Mr. George M. Sharp, whose name is next of the signatures, is a lawyer in active practice at Baltimore (the present Republican nominee for the Attorney Generalship of that State), as well as a lecturer in the Law School of Yale University. The fourth, Mr. George O. Shattuck of Boston, is perhaps the most widely known to the lawyers of the country by his eminent position at the bar of that city, but is also thoroughly familiar with the subject of legal education from his long experience as one of the Overseers of Harvard University.

greater or less as may be, to what will serve them in that final ordeal.

"The college graduates, trained for years in passing 'exams,' are as subject to it as the less schooled, if not from previous habit more so. They mean, of course, to be thorough, to master every topic of a complete legal education. But those on which questions will be asked by the committee must come first; when that ordeal is passed they will have leisure enough to accomplish themselves with branches whose only service to them will be in the actual work that follows the obtaining of the license or diploma.

"But every lawyer knows how very lightly the subjects of elementary law and all such as require a systematic and accurate knowledge of it are passed, almost invariably, by a committee of lawyers taken on brief notice from the busy bar, usually in the busiest days of the beginning of the term, to examine a class of applicants. There is no time to refresh their remembrance of early studies, or to form a careful and just plan of examination. After a very few calls for the definition of this or that term, so put as to involve merely verbal memory, their inquiries are mostly prompted by cases in their recent experience, or by the latest text-books they have read. Too often they are asked almost at random, and deal with a list of scattered points rather than any important and comprehensive doctrine of the law. Almost inevitably they deal with the points contained in recent cases, as most familiar to the questioner; and such law can rarely be elementary or of wide application. The very fact that it has been recently in question shows that the point was not long ago a doubtful one.

"To examine a class of students searchingly and yet justly, so as to learn something more of them than their mere recollection of a few book phrases and a certain aptitude for guessing, is not a light task, and requires careful preparation. The United States is about the only nation in the world, we believe, where it is usually permitted to be done *extempore*; and much of the decline in professional learning and professional character, so commonly lamented, may be traced to this lack of well-trained and vigilant watchmen at the entrance gates.

"By entrusting the duty to a continuous body, whose own rank and interest in the profession shall insure their fidelity to the onerous task, and whose sense of responsibility shall be quickened by knowing that the entire trust is committed to them, and that they alone will be answerable for its due performance, we may hope to secure two most desirable objects, — a careful and exact but equable test of the preparation made for the bar by every young American who claims his native right to enter a noble profession, and, as a consequence of this, a potent and beneficial influence on the minds of other and future aspirants in favor of thorough and systematic preparation."

The report then gives the results of another circular of inquiry sent to the different law-schools of the country, asking for a detailed account of their organization and method of instruction, the number of teachers, students, and graduates, etc. Unfortunately, only sixteen out of a total of over seventy schools thus addressed made reply within the year, and for the statistics given in the report and in the tables printed as an appendix thereto, the committee were obliged to rely chiefly on the returns made to the Bureau of Education at Washington. As these are generally accessible to our readers in the Commissioner's annual Report (the last published volume of which, however, is no later than 1887–88), we quote only the concluding remarks. After showing that only about one fifth of the annual admissions to the bar are graduated from law-schools even now, while both medicine and theology make a better showing, they proceed: —

"The figures given in these tables are instructive, and deserve careful study. They will probably surprise that large class of the community, and even of the bar itself, who think that the law schools have been a chief cause of that overcrowding of the profession in this country, which has been such a subject of complaint. There are probably few law-school teachers who have not heard again and again the remark: 'What in the world will all your graduates find to do?' made with the same air of surprise and regret, whether the graduates' class numbers twenty or twenty-five, as in the majority of schools, or is counted by the hundreds, as in a few of them. It is hoped they will correct the impression still prevalent among those least acquainted with the facts, that the increase of law-schools and the methods pursued in them tend to increase the number of

lawyers by making admissions to the bar easier and the choice of that profession less considerate than under the older methods. . . .

". . . We find that there are almost twice as many theological students in a given year, and four times as many medical students as there are (in the schools) of students of law. There cannot be any great disproportion like this in the number of students at any given time, when the professions themselves are so nearly equal in numbers. By the census of 1880, the last of which the returns are now accessible to us, the total number of lawyers in the country was given as 64,137 (75 of them being females), while the clergymen numbered 64,698 (of whom 165 were women), and the physicians of all schools 85,671 (including 2,432 women).[1]

"It is a fair inference, therefore, that there will be about the same degree of equality in number among the annual aspirants to the three great professions. The medical schools, no doubt, have nearly all of those who study that profession, for in most States the diploma is a prerequisite to a license to practise. This points directly to a number of law students not appearing in the tables, substantially like that derived from the former calculation. Instruction in the schools of the ministry is gratuitous, and there are in most of them funds that give the student considerable aid in defraying his other expenses. Even when this is considered, it cannot entirely account for the fact that there are twice as many students in the theological schools of the country as in those of law, except we allow for a number of law students not in the schools at least approximate to that reached by the other methods. But it does suggest a thought of which our profession cannot be proud. The discrepancy in the number in schools is due to the inducements already mentioned as offered to students of theology. These may be traced, of course, to their endowments and the other forms of Christian liberality toward them. Whence came these? May they not be acccounted for mainly by the profound conviction of the Christian ministry as a professional body that their success as ministers, and that of the great churches they represent, is largely dependent on their thorough preparation for their life-work in the schools, — that this schooling for their chosen work is in the interest not of the student alone, but in that of the whole profession and the entire community? Is not this as true of the bar as of either of the other professions? Can any intelligent lawyer believe that in a popular government like ours the State may properly exclude ignorance and incompetence from preying on the bodies of citizens, but must allow them free scope to prey upon their estates, to introduce quarrel and disorder in their social as well as business relations, and even to make the State itself the object of their spoil? Or have the American Bar, as a body, less interest in the welfare of the community, less pride in the character of their own body than their clerical or medical brethren? If not, why are they the only one of the three ancient professions that has neither invoked public law nor private benevolence against the evils of insufficient professional training?"

[1] Compendium of Census of 1880, tables ciii, civ., pp. 1368, 1378.

A large part of the report is taken up with the consideration of foreign methods of legal education and the lessons to be derived from them. We pass over this part more willingly, because it is confessedly incomplete, and its full consideration is reserved to next year, owing to the number of important countries from which no reply has yet been received to the inquiries of the Committee.

"With respect to modern legal education in foreign countries, the Committee had the good fortune to obtain the assistance of Hon. William T. Harris, Commissioner of Education, and the large means of obtaining information from abroad at his command. Dr. Harris obligingly sent to all the foreign countries with which the Bureau was in communication a list of questions prepared by the Committee, a copy of which will be found in the Appendix to this Report, covering not only the details of legal education, as there conducted, but also the organization and administration of the schools, with a great variety of particular facts, which in the opinion of the Committee might be of service in comparing these systems with our own. To these questions, which were sent early in March of this year, both in English and French versions, a great number of replies have already been received, and others are constantly arriving at the Bureau of Education. Many of them contain full and detailed information in regard to the institutions to which they relate, and some

are accompanied by catalogues and other illustrative matter of the greatest value in giving a clear and comprehensive notion of the entire conduct of legal education in their respective countries. Among those already received we may mention as particularly full and clear those received from Russia, Sweden, Portugal, Denmark, and France, and also that from the Ministry of Justice in Baden, with full reports from the venerable universities of Heidelberg and Freyburg. Most interesting communications also are those from the University of Adelaide, in South Australia, and from the Department of Justice in Brisbane, Queensland.

"But some large gaps still exist in the answers received, which must be filled before anything like a complete view can be given of the condition of legal education abroad, and the possible methods upon which our own improvements could be modelled. The replies from England, from Germany, from Italy, from Spain, from the American countries of the Latin race, and a considerable number of other countries, are as yet too imperfect to be fairly compared with those we have mentioned above."

Although thus reserving for a future report the larger and perhaps the more important part of the entire subject committed to them, (especially the "course of study," which was impliedly promised in their report of 1890), the report makes the following remarks upon method, which will, no doubt, have interest for all who are concerned in the management of law-schools, or interested in the problems of legal education: —

"It is not so much in large additions of new topics to the present course as in better methods of teaching what all will agree to be necessary parts of the student's work, that our present schools may make the most immediate and useful advance. In saying this we would avoid anything like criticism upon particular methods, and especially upon the few teachers who in different schools have attracted attention by methods which they themselves have devised and tested by long experience. Such criticism could only lead to futile controversies. The best test of any method of teaching is that it shall actually teach; that pupils who have gone out from one or two or three years of experience of it have found themselves effectively prepared for the work which lies before them in active life.

"The only method of teaching that deserves entire reprobation is that which encourages or even permits the student to make the entire course a mere exercise of memory, without reflection or judgment, not beginning with the fundamental notions or principles by which all his reasoning is to be conducted in actual practice; but laying up rule after rule, decision after decision, as if they were to constitute the fund of knowledge upon which he had only to draw during his after life.

"Absurd as this method is to any one who knows the daily work of an active practitioner, there is a fatal tendency toward it in much of the school routine, unless the teacher is both able and willing to counteract it. The natural disposition of beginners is to look for rules of law that seem to them practical; that is, those which they can apply without reflection or trouble to the persons and affairs which have come within their own realm of experience. At the same time they are constantly looking for certainty in the shape of a formula which may be applied to any facts, and will fit them without the necessity of modification by other rules. The beginner cannot at first appreciate the truth that the precision and certainty of a legal rule must always depend upon the abstract character of the terms in which it is expressed. The law cannot deal with concrete persons and things, as they are met with in daily life. It must abstract and generalize before it can lay down any uniform rule. It is in reasoning from general terms and principles that the lawyer's work is to be done. No amount of text-book learning, no familiarity even with the cases will avail him, if he cannot reason from one set of facts to another by the use of the exact terms in which the law sums up its principles.

"Moreover, the rules given in our practical text-books, being derived entirely from decided cases, always presuppose a large and important part of the lawyer's work as already done. It seems to be forgotten that this work does not consist entirely in the conduct of litigation. The lawyer who finds at the end of the year that he has not prevented much more litigation than he has conducted, is not doing the proper work of the profession. His first task must be in all cases to so advise his clients that they may keep out of litigation, or, if necessarily involved in it, may end it with the least trouble and expense; but it is not

by the rules found in decided cases that this work is mainly to be done. These differ as widely from the principles which govern the normal relations of one individual to another or to the State, as the physician's nostrums and prescriptions differ from the laws of health. The student must learn the normal law by which all business may be safely conducted, or he cannot safely advise his clients, or even determine, in cases of necessary litigation, what remedies it is best to invoke, or what rules of law will be involved in the final outcome of the case.

"It will be said that unless the schools use the ordinary text-books prepared for practitioners, there will be required either an entire new literature of the law, adapted to the use of beginners, or else an amount of labor and thought on the part of teachers that very few busy men will be willing to give. The objection, if it is one, is well taken. One or the other or both of these things we believe to be indispensable prerequisites of such legal education as we ought to have. This has been shown by the experience of all other civilized nations. School-teaching implies a scientific presentation of the object taught, and this must be given either in the form of books or in the daily work of the teacher himself. The making of such books may not be so profitable to either writer or publisher as that of those which the practitioner uses as the tools of his trade. But it would be a disgrace to the profession to suppose that they will not be forthcoming if the need of them is once fully appreciated. That need is by no means felt in the school alone; the lack of any systematic and logical treatment of the law is responsible for much of the confusion and discrepancy now found in the decided cases, and for the past accumulation of reports which contain them.

"This will always be the result if we are to go on dividing and distinguishing without any thought of consistency between the different decisions, or any effort to present the principles by which such consistency is to be maintained.

"The student finds all practical law, and all the cases which constitute the ultimate authority for the existence of that law, expressed in the form of rights and duties (or wrongs, which are the mere reverse side of rights and duties alike). He should be able, if this theory is true, to reduce these to the laws, the injunctions, and prohibitions in which they originate. His books or his instructor ought to be able to point out to him *first* what is the settled law upon every subject he studies, and *then*, how this law is to be interpreted to meet all possible states of fact. But they do nothing of the kind; or, if they attempt it, they land him in hopeless confusion, with his memory full of rules that must be modified for every new case to which they are applicable. Eventually he learns by experience that it is very seldom he can begin with a settled rule of law, and reason from that to the facts of his case, or even determine in advance what rule will decide it. In the great majority of cases he must begin by reducing the facts of the case to ultimate facts, or such as constitute rights, duties, wrongs, etc., and then infer from these facts the existence or non-existence of a remedy. When his facts come clearly within the definition of a right, etc., he will have no difficulty in stating the law. The doubtful points will be those in which he is uncertain whether they come within one right or another, — whether they constitute one wrong or a different one, — and the answer to these may depend on the definition of a right or wrong, or it may be a question of fact for the jury. But the rules of law proper, which define the relation between one ultimate fact and another, will rarely figure in the process at all, except as they will be implied in the definition of the ultimate facts themselves. And the rule of law which governs the case, the "injunction or prohibition" from which, according to Austin, all these rights and duties depend, instead of being the starting-point from which he reasons, will hardly be visible to him until the end of the whole process. In most instances this rule of law that governs the case will be enunciated for the first time in the judgment, and will differ in some particular from any rule ever laid down before.

"Nor is this only the beginner's experience. The normal form in which all legal doctrine appears to the most learned counsel, or to the most thorough student of its development, as to him, will be that of generalizations of fact known as institutions or relations, rights, duties, wrongs, etc., the mutual connections of which are expressed by rules of law; that these rules may be harmonious and constant, the terms themselves must have a settled meaning. They have such a meaning for the most of their contents; in the majority of actual cases it is plain that the facts come under one or

another generalization; that they constitute a tort, a contract, a crime, a lawful act, as the case may be. But while the general sense of each term is plain, its exact boundaries are not authoritatively defined until actual cases arise calling for such definitions. Along these boundary lines occur the doubtful questions of the law, the controversies whether one definition or the other should embrace a disputed point; and most of the rules of law stated in our books are the answers to these.

"No one lawyer thinks of looking for a text or a rule as the highest authority in any case which is brought before the court. His first object is to ascertain what are the facts upon which his client claims relief or interposes a defence. In these facts there is nothing as yet which suggests a rule of law. They must be reduced to legal or ultimate facts before the law can take notice of them at all. The law, like any other science, does not deal with individual cases, or with what it terms evidential facts. These must be brought under some general conception which the law has made the foundation of a liability before any authoritative rule can take notice of it.

"Hence the work of the lawyer must always mainly be with the legal facts or conceptions in the relations between which the law consists. All his advice to a client, every selection of a remedy, every statement in a pleading, and, in short, all his work of any value to others must depend upon his accurate conception of these ultimate facts, and of the system of rights and duties which they constitute. Hence all study of the law must eventually resolve itself into the definition and contents of these general conceptions. When the student knows exactly what is a contract or a promissory note or a judgment, what is a trespass or a crime, what is a hereditament or a chattel, and so on, he has the material for the work which he is to do in law. The only remaining question is, by what means the thorough mastery of these conceptions, which are really the principles of the law, may be acquired. Can there be any doubt that they should be the first things taught to the beginner? Elementary law is only another name for them, or, rather, for the comprehensive and harmonious system composed of them. That system is harmonious, because all its rules depend on the general conceptions in which the whole people agree. Is it not equally clear that the special applications to particular facts, and especially such parts of them as depend merely upon the decisions of the courts, should be kept back until the principles of law are thoroughly fixed in the mind of the student? With regard to the method of study, it must always depend upon the circumstances of each school, and upon the teachers; but we would strongly recommend that every teacher in a law-school should present an outline of the subject taught, in a printed form, which the students may master as thoroughly as possible, and should occupy the hours spent with the class in such references and illustrations as would aid them in clearly comprehending these fundamental principles, and in sufficient examinations to convince himself that they have done so. The use of cases in illustration of these principles is of unquestionable service, and gives a precision to the knowledge of the student which he hardly could obtain otherwise; but we deprecate the use of cases alone without reference to the fundamental principles of the law of which we believe them to be in all cases the application. The law is not made by cases in any other sense than as every science is created by the thought and experiments of the men who pursue it. The historical growth of the law may undoubtedly be traced more accurately in the decisions of the courts than in any other manner; but the logical unity of the system, and the harmony of one decision with another, present another and different mode of study which it would be very unwise to neglect. The only real test of a rule of the common law must be its consistency with other rules, or the harmony of the entire system. If two rules lead to different results in any case, they cannot both be parts of the common law; and if both are allowed to remain, or be taught as authoritative, the only result must be a discrepancy in the decisions derived from them. For this reason we should urge that both methods of teaching should be employed in their proper relation in the course, — the historical method for the purpose of showing how our present conception of the common law has come to be what it is, the logical method for the purpose of showing the relation of the rules of law to each other, and the mode in which they are all derived from certain great principles."

POETRY AND THE LAW.

IN an article recently published in the "Green Bag," a long list was given of poets and authors who had been in some way connected with the law. At first thought it would seem that no two callings could be more diverse in every respect than Poetry and the Law; and such being the case, it is curious to see how close the connection has been from earliest times between them. Lord Coke, the great English lawyer, boasts that one of his works contains three hundred quotations from the poets; and in another place observes that "verses were at the first invented for the help of memory, and it standeth well with the gravity of our lawyers to cite them." The Greeks looked upon their poets as legal authorities; and it would appear that the poems of Homer were laid on the table of the courts of justice, together with the volumes of their law. The inferiority of the people of Salamis to those of Athens was determined simply on the authority of a passage in the sublime writer; and so when France and Spain disputed about their proper boundaries, the pages of Petrarch the poet were appealed to as a competent authority; and a similar authority was accorded to the Greek tragedians Æschylus, Sophocles, and Euripides, by a law of the Athenians yet preserved. The Roman lawyer constantly appealed to the ancient poets as we should to a statute or a decided case; and quotations from authors of this description are to be found even in their grave legislative ordinances.

Much of the Roman law was reduced from a metrical poem; and we may still refer to the Greek verses of Psellus the younger, for information respecting Roman jurisprudence. The reports of Lord Coke have in like manner been presented to us in a poetical version, while some of the State trials of England, which reflect so much light on her criminal law and its administration, have appeared in the shape of a series of poems. The northern nations employed verse upon almost all occasions. This was especially the case with our Anglo-Saxon ancestors, whose lively imaginations contrasted singularly with the rigor of their climate and the barbarity of their customs, so much so as to furnish something like evidence of their having sprung, as antiquarians surmise, from a race whose original residence was in the warm, glowing regions of the East, — on the banks of the Indus or the Ganges. The ancient law of the men of Kent, by which land was exempted from the penalty of forfeiture when its owner committed a crime, was expressed in the rude distich, —

> "The father to the bough,
> The son to the plough."

While in King Athelstane's grant to the good men of Beverley, which was inscribed beneath his effigy in Beverley Church, we perhaps have the form by which in old days the pious lord emancipated his slaves, —

> "Als free
> I make thee
> As heart may think
> Or eigh may see."

Many of the laws of the Frisians and of the Welsh also assumed the same form, but their poetical structure would disappear in anything like a close translation.

Is there not, too, a real poetical rhythm, uncouth it may be, in the Anglo-Saxon legal proceedings? Listen to one party asserting his claim and the other stating his defence: "So I held it as he held it, who held it as saleable, and as I will own it — and never resign it — neither plot nor ploughland, — nor turf nor toft — nor furrow nor foot-length — nor land nor leasowe — nor fresh nor marsh — nor rough ground nor room — nor wold nor fold — nor land nor strand — wood nor water." The other replies: "Do as I rede thee — keep to thine own — leave

me to mine own — I covet not thine — neither lathe nor land — nor sac nor soc — nor covet thou mine — nought need I from thee — nought did I mean unto thee." The old form of marriage, yet retained in the Episcopal service, is clearly rhythmical in its structure: "To have and to hold, from this day forward, for better for worse, for richer for poorer, to love and to cherish, till death us do part."

We might go on citing similar instances, but we have said enough, we think, to demonstrate the close connection between law and poetry.

THE RIGHT TO PRIVACY.

WHILE neither "useless" nor, perhaps, "entertaining," the opinion of Mr. Justice O'Brien, of the Supreme Court of New York, in the case of Schuyler *vs.* Custis et als., is so edifying to the profession, and covers a subject of such vital importance to every private citizen, that we are induced to give it in full to our readers. The opinion is as follows: —

"This is a motion for the continuance of a preliminary injunction restraining the defendants from proceeding with a project for making and exhibiting a statue of the late Mrs. George Schuyler, who before her marriage was a Miss Mary M. Hamilton.

"Mrs. Schuyler had no children; but the plaintiff, who is a nephew and stepson, brings this action on behalf of himself and all her other nearest living relatives.

"The defendants, except Hartley, who is the sculptor engaged to execute the statue, are members of the Woman's Memorial Fund Association, which has undertaken to raise money by public subscription for a life-size statue of Mrs. Schuyler, to be designated as 'The Typical Philanthropist,' and has publicly announced its intention of placing this statue on public exhibition at the Columbian Exposition to be held in Chicago in 1893, as a companion piece to a bust of the well-known agitator, Susan B. Anthony, which bust is to be designated as 'The Typical Reformer.'

"Neither Mrs. Schuyler in her lifetime, nor her husband after her death, knew or consented to the project; and in view of the attitude assumed by plaintiff on behalf of her nearest living relatives, it must be concluded that so far as the family is concerned, the project is unauthorized.

"The defendants, however, contend that, irrespective of the wishes of the family, they have the right to commemorate her life and worth by a suitable monument, and to that end to receive subscriptions from such of the public as are disposed to give.

"They therefore contend that this action is not maintainable at all; and if it were, its maintenance is against public policy.

"As to the first point, it is urged that an injunction can only be granted in a case where damages could be recovered in an action at law.

"This objection to the granting of an injunction was raised in Pollard *vs.* Photographic Co. (40 Ch. D. 345), and thus disposed of: —

"'But the counsel for the defendant did not hesitate to contend boldly that no injunction could be granted in a case where there could be no injury to property in respect to which damages could be recovered in an action at law. . . .

"'The right to grant an injunction does not depend in any way on the existence of property, as alleged; nor is it worth while to consider carefully the grounds upon which the old Court of Chancery used to interfere by injunction. But it is quite clear that, independently of any question as to the right at law, the Court of Chancery always had an original and independent jurisdiction to prevent what that court considered and treated as a wrong, whether arising from a violation of an unquestionable right or from breach of confidence or contract, as pointed out by Lord Cottenham in Prince Albert *vs.* Strange (1 McN. & G., 25).'

"The claim that the maintenance of the action is against public policy is based upon the argument that a recognition of such a right in relatives might prevent the public from erecting statues to Washington, to Lincoln, or to any other great or distinguished man or woman.

"I think, however, that the true distinction to be observed is between private and public characters.

"The moment one voluntarily places himself before the public, either in accepting public office or in becoming a candidate for office, or as an artist or literary man, — he surrenders his right to privacy *pro tanto*, and obviously cannot complain of any fair or reasonable description or portraiture of himself.

"It has not been shown that Mrs. Schuyler ever came within the category of what might be denominated public characters. She was undoubtedly a woman of rare gifts and of a broad and philanthropic nature; but these she exercised as a private citizen, in an unobtrusive way.

"There is no refutation of the status given her by the complaint, which alleges that 'she was in no sense either a public character or even a person generally known either in the community in which she lived or throughout the United States, but that her life was pre-eminently the life of a private citizen; that she was a woman of great refinement and cultivation; that notoriety in any form was both extremely distasteful to her and wholly repugnant to her character and disposition, and that throughout her life she neither sought nor desired it in any way.'

"Such a person thus described does not lose her character as a private citizen merely because she engaged in private works of philanthropy.

"It is sometimes difficult to determine in individual cases when one ceases to be a private, and becomes a public character. This, however, does not destroy the value of the distinction, nor the grounds upon which it can be supported. It is equally difficult to apply to individual cases the principle of the reasonableness or unreasonableness of certain acts. As stated, therefore, it not having been shown that Mrs. Schuyler was a public character, her relatives have a right to intervene.

"It is true that there is no reported decision which goes to this extent in maintaining the right of privacy; and in that respect this is a novel case. But the gradual extension of the law in the direction of affording the most complete redress for injury to individual rights, makes this an easy step from reported decisions much similar in principle.

"In a recent article of the 'Harvard Law Review' (Dec. 1890, vol. iv. no. 5), entitled 'The Right to Privacy,' we find an able summary of the extension and development of the law of individual rights, which well deserves and will repay the perusal of every lawyer. Among other things it says:

"'This development of the law was inevitable. The intense intellectual and emotional life, and the heightening of sensations which came with the advance of civilization, made it clear to men that only a part of the pain, pleasure, and profit of life lay in physical things.

"'Thoughts, emotions, and sensations demanded legal recognition; and the beautiful capacity for growth which characterizes the common law, enabled the judges to afford the requisite protection without the interposition of the legislature.

"'Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the "right to be let alone." 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-top." For years there has been a feeling that the law must afford some remedy for the unauthorized circulation of portraits of private persons; and the evil of the invasion of privacy by the newspapers, long keenly felt, has been but recently discussed by an able writer.' — Scribner's Magazine, July, 1890: 'The Rights of the Citizen to his Reputation,' by E. L. Godkin, Esq., pp. 65–67.

"Marion Manola *vs.* Stevens and Myers, decided by this court in June, 1890, involved the consideration of the right to circulate portraits.

"The plaintiff alleged that while playing in the Broadway Theatre, in a rôle which required her appearance in tights, she was, by means of a flash light, photographed surreptitiously and without her consent from one of the boxes of the theatre.

"It is true there was no opposition to the preliminary injunction being made permanent; but this court issued one to restrain any use being made of the pictures so taken.

"Pollard *vs.* Photographic Co., already referred to, is another instance where an injunction was issued against the unauthorized exhibition or sale of photographs or other likenesses of private persons.

"These and the celebrated English case of Prince Albert *vs.* Strange (2 De G. & M. 652; s. c. on appeal, 1 McN. & G. 25) are a clear recognition (as shown by the article in the 'Harvard Law Review,' *supra*) of the principle that the right to which protection is given is the right of privacy.

"Upon the facts presented on the motion, and the law applicable thereto, the motion to continue injunction until the trial should be granted."

THE IDENTIFICATION OF CRIMINALS BY MEASUREMENT.

MUCH has been said recently about anthropometry; but few people understand exactly either the system itself or its object. Let us explain the latter first. When the police lay their hands on a criminal or a suspect, it is obviously important to know his previous record, and whether or not he has been convicted before. Previous offenders make this as difficult as possible by giving false names and denying everything. Sometimes, no doubt, they are recognized; but this can only happen in comparatively few cases, and is never a really trustworthy means of identification; for personal appearances change and the memory is treacherous. Many people have been hanged and imprisoned through mistakes in recognition. Photographs, again, are open to the same objection; and further, they accumulate in such enormous numbers that it is impossible to look through them. At the Préfecture de Police in Paris one hundred thousand have been collected in ten years. Now, supposing a man is arrested for theft and gives a false name, he may be an old offender, and his photograph, together with particulars of former offences, may lie there under another name in the pigeonholes among all the rest. To look through them would take a staff of men eight days, and then it might be missed. But by M. Bertillon's system of measurement you can lay your hand on that particular photograph with absolute certainty in five minutes. Or, supposing that the man has not been up before, and that there is no photograph or record of him in the archives, you can establish this fact with equal certainty in the same short time. How it is done may be best explained by describing a recent visit to the Préfecture de Police.

The Measuring Room. — Escorted by an eminent French detective, we were shown up into the room where the measurements of prisoners are taken and the fiches are kept. The fiche is a card about eight inches by six inches, and on which are the prisoner's name, his measurements, any distinguishing marks about him, the particulars of his offences, etc.; and also his photograph in two positions, — full and side face. The chief object of the side face is to get the shape of the ear, which of all features is the one most truthfully given by photography. These cards are disposed in small drawers, which stand on shelves like those of a library, and are arranged in sections according to the measurements. Thus, one main section contains the cards of all individuals with a certain length of head. It is subdivided according to the breadth of head; the subdivisions are further subdivided according to the length of the middle finger; and so on. The measurements are written outside each drawer, so that they can be read at a glance. This will be further explained later on.

The Theory of the System. — Presently M. Bertillon, who had been informed of our visit, and had kindly offered to expound his system in person, entered the room. He is still a young man, and the very type of an accomplished savant, speaking both English and German. The identification of criminals is carried out here under his direction by an able staff of assistants. The theory of the

system is as follows: Certain bones can be measured in the living subject easily and with extreme accuracy. The dimensions vary in different persons within very considerable limits, and they do so in no definite ratio to each other. Consequently, if you take a sufficient number of them, you get an aggregate result, which is true only of that particular individual measured, and of no one else. During the eight years in which anthropometry has been used in Paris, it has been found that no two individuals have the same measurements throughout. The results obtained from a new subject in no case agree with any one of those previously taken, be they never so numerous. In fact, no two people are alike. Further, in the adult these dimensions are stable, changing little or not at all in the course of years. They therefore form a means of absolute identification at any time. The most important are the length of the head, its breadth, the length of the middle finger, that of the forearm, of the foot, and of the little finger. But to be of practical use, the results must be classified. This is done by dividing each set into three groups: Small, Medium, Large. For instance, two sizes of the head lengthwise are made, thus: (1) Those less than 184 millimetres (= $7\frac{1}{4}$ to $7\frac{1}{2}$ inches). (2) Those between 184 millimetres and 189 millimetres (= $7\frac{3}{5}$ inches and above).

Suppose, now, you have a man measured and want to see if he has been up before: you have to find his card among, say, ninety thousand. Take the length of his head; a glance shows that it is 187 millimetres, and consequently comes under group 2. You at once put aside groups 1 and 3, or sixty thousand out of the ninety thousand. Then take the breadth of the head in the same way; this will reduce the remaining thirty thousand to ten thousand. And so on until you come down to a mere handful, when an examination of the minute differences leads you with unerring certainty to the very one you are looking for. By the arrangement of the drawers in groups, already mentioned, the whole search is reduced to a matter of two minutes.

A Striking Illustration.— Having explained the system, M. Bertillon proceeded to illustrate it. A young man, who had been arrested that morning for theft, was called up and measured then and there. The process is carried out by two men, one of whom applies the instruments and calls out the figures, which are entered on a card by the other, precisely as in a tailor's shop. The subject is barefooted and bareheaded. Ten measurements are taken in four minutes; they include those already mentioned, together with the height standing, the height sitting, the length of the arms extended, the length and breadth of the ear. This finished, M. Bertillon, card in hand, interrogated the prisoner.

"What is your name?"

"Albert Felix."

"Have you ever been up before?"

"No, never."

"Quite sure?"

"Perfectly sure," with jaunty confidence.

As the young scoundrel was the leader of a band, this seemed highly improbable.

He was removed, and we proceeded to the search. Section after section of the drawers was rapidly eliminated by comparing the figures on them with those upon M. Felix's card. At last we came to a single drawer, and then down to two cards. If he was there at all, it must be one of these. A look at the first at once showed discrepancies of one or more millimetres under some of the headings; and as the bony measurements are accurate to a millimetre, it could not be this one. There remained one card. M. Bertillon took it up, hiding the photograph on it. All the figures corresponded exactly with those just taken of Felix. He was recalled, and again questioned. He repeated his former statements, but obviously with less confidence. M. Bertillon uncovered the photograph, and there the fellow was to the life, as he stood that moment before us. It was most startling. But the original of the photograph was called Alfred Louis Le-

maire, and he had been in jail two years before. The card bore details of certain scars and marks on hand and body; they corresponded exactly with those on Felix. Our friend the detective edged up and watched the prisoner with professional delight. Again questioned, Felix stuck to his story; but his composure was gone, his eye was troubled, his lips trembled, and the muscles of his face twitched. The photograph was shown him. "Who is that?"

"Not me, some one like me" — but very shakily.

"This is Alfred Louis Lemaire, and he was arrested," etc.

The fellow was down in an instant, as limp as wet paper. "Oui, c'est mon nom;" adding, "I knew you would find it."

The astonishing thing was that out of that great roomful of cards, not a single one corresponded, or anything like corresponded, with the measurements of the youth before us, except that particular one,— his own. Mistake is impossible.

The system has been used in France for eight years, and found to be of infinite service. Russia and some other countries have adopted it; but its full value will not be apparent until it is employed everywhere, and especially in England and America, — the two great refuges of criminals, — for of course measurements can be transmitted by telegraph; and thus identification of suspects established without trouble or delay, — a thing impossible now. — *Chambers Journal*..

SENSATIONAL TRIALS.

MANKIND will study mankind to the end of time, and those whose lives are lived within limits will feel the interest of astonishment or horror or curiosity as to the lives of those who in any way — usually it is a frightfully bad way, but not quite always — have stepped or rushed or fallen outside the lines. Think how you breathe when a window-cleaner steps fairly to the edge of the sill forty feet in the air, and remember that that is the mental position of the millions when any one they know of is on trial for his life, or his existence as a man among fellow-men. Unless something really great in the way of public events — a war, for instance — absorbs all public attention upon itself, the appetite for stories told in courts of justice will not die out or even greatly diminish. They were the enjoyment of the Athenian slave-owners — perhaps the most intellectual class who ever existed — and of Roman plebeians, and whatever survives for centuries dies too slowly for any one generation to expect in its own time a visible and notable decline.

We say this without in the least receding from our old position, that the appetite for sensational trials is in itself a bad sign, and its indulgence almost invariably attended with deterioration. The last generation, which habitually exaggerated the impact produced by every recurring thing, from church-going to the reading of broadsheets, just as we now exaggerate the results of methods of education, and the effects of want and comfort, may have exaggerated in some respects the consequences of sensational literature. As Mr. Spencer tried to explain to the House of Commons' Committee, which sat respectful but incredulous, men are very savage still, and it is probable that the cultivated overrate the impression, whether good or bad, produced by all literature whatever. It takes a hard blow to bruise a rhinoceros, and the effect produced by hundreds of thousands of sermons is so slight that there is reason to hope that the consequences of years of sensational reporting may be slight also. The devotees of respectability are an immense

majority, and their views of things do not change much, for all the blizzards of evening papers which occasionally disturb the surface of the world. Still there are two evil consequences about this appetite for sensational trials about which there can be no dispute, although one of the two may prove to be only temporary. They increase the cleavages of society. Owing mainly to our system of reporting, which is healthily reticent whenever poor men are exclusively concerned — the very worst English trial of our time never obtained one line in a London paper — the trials which are fully detailed are nearly always those of the cultivated, to the increase of the entirely unfounded theory that the cultivated are exceptionally corrupt, and to the creation of a most regrettable impediment in the way of their moral leadership. The uncultured lose reverence for the cultured, and with it half the advantage they might derive from their existence. This phase of feeling will probably pass with the spread of knowledge, as it has passed in Germany and Scotland; but the injury done by the other evil, the habitual dissipation of the mind, must be more lasting. The public is perpetually swallowing mental absinthe till it loses all relish for healthy diet. It will scarcely read anything so dry as political thinking, and for independent reflection it leaves itself no time. Already it demands that its mental bread shall be cut into minute squares, so that it may be swallowed as pills are, without mastication or effort; and presently it will refuse bread altogether, as young men and women do who have indulged for years in a course of exciting novelettes. That is an immense evil, threatening the whole progress of the new generation; and we confess we see no remedy for it, any more than we do for the sale of shilling shockers and penny dreadfuls. It is a mischief of the times, produced by the rushing advance in the means of disseminating knowledge of which some of us are so proud; but though at present incurable, the mischief may at least be acknowledged. — *Spectator.*

FIRST OFFENCES.

THE "London Times" thus comments on an important change just introduced into the French Criminal Administration: "By a law promulgated on March 27th, a great distinction is to be made between first and subsequent offences. The man who is brought up for the first time and found guilty will be sentenced to fine or imprisonment as the nature of his offence demands, but the sentence will not necessarily take effect. The execution of it may be postponed, if the court so determines; and if the offender keeps a clear record for the next five years he will be suffered to escape unpunished. But if during his period of probation he falls again into crime and comes again before the court, his old sentence will be revived, and he will undergo a twofold punishment for his old and for his new offence. Good results are expected to follow from the change, and it may be hoped with reason that they will follow. The distinction in treatment is based upon a distinction which exists in fact. A first offence does not necessarily prove that the offender belongs to what is known as the criminal class. He may have been betrayed into crime under the pressure of special circumstances, or may have given way to sudden temptation by no deliberate choice of his own. To send such a man to jail may have just the effect which a wise legislature would be most careful to guard against. It may introduce him to a life of crime by the stigma which it puts upon him as a jail-bird, and by thus making it very difficult for him to earn an honest liveli-

hood at any time afterward. The new law will work in a direction exactly the opposite. The man who has been let off unpunished, but not unsentenced, will have the strongest possible inducement to keep straight for the future. He will have received a grave warning, and he will know that it will depend upon himself whether the consequences are to end with this. If he has become a criminal, so to say, by accident, the probability is that he will stop short at the first offence. If he is a true criminal, — a criminal by set purpose, a man whose instincts or training lead him to prefer a life of crime, with its shifts and dangers and escapes, to the obligation of steady work, — it is pretty certain that he will make a bad use of the chance allowed him, and that he will suffer accordingly as he deserves. Under the present French system, these two very different orders of men are as likely as not to have the same treatment, and it does not tend to reform either of them. The new law gives them both a chance and an inducement to turn over a new leaf; and if only one of them takes advantage of it, the fault henceforth will be with the man, and not with the law.

The treatment of criminals in this country has been a subject in which sentiment has played much too large a part. In this, as in other matters, public opinon is apt to oscillate between opposite extremes and the law follows opinion, at a distance no doubt, but in the direction of the same end. The old law, before Bentham and Romilly, was brutally and unjustifiably severe. Death was the punishment of some scores of offences, many of them of the most trumpery kind. This method did not succeed in puting down crime. Candidates for the gallows were as numerous as ever, and as Monday morning came round fresh batches of them were turned off. Since that time we have swung round to the opposite extreme, and we have come to allow to habitual crime a practical immunity to which it has no claim of right. The man who comes up again and again for the same offence, and who is no sooner out of prison than he sets to work at once to qualify himself for a new sentence, is suffered to escape on each occasion very much more easily than he deserves. In the cant of the day he has another chance given him, and he uses it exactly as we might expect. In the opinion of some, even of our judges, this is as it should be. An offence, they hold, is blotted out when the appointed punishment has been suffered for it, and it is not to be remembered to the disadvantage of the criminal when he next comes before the court. This is a doctrine to which the whole criminal class would most readily subscribe. It is in their interest that it has been promulgated; since it enables them to live exactly the life which they prefer, with no more than what they accept as the fair risks of their calling. It is well, however, that our dislike of severity has not stopped here. It has found more worthy objects than the irreclaimable scoundrels who offend as often as they have the chance. We have learned, as the French are learning, that first offences may often be lightly visited with no danger to society, and it has been left to the discretion of the court to deal with some of them as the case may be thought to warrant. The fact is that a first offence, even when it has been punished by imprisonment, is ordinarily a last offence. The number of those who are reconvicted does not form a large percentage of the whole. The question suggests itself whether the imprisonment has not been wasted, and whether under the new French system the same result may not be attained more certainly and without the suffering and degradation which imprisonment causes and leaves after it. The experiment is well worth trying, and it is not considered to have failed, as far as it has been tried as yet. It may be extended with advantage to the old as well as to the young. The man who has passed many years of his life without having fallen into crime, and who offends at last, is not likely to be a member of the real criminal class, and he may at least claim the benefit of the doubt. If he

can be let off safely, it will be a gain to society and to himself. In due time he will reveal himself for what he is; and if he makes a bad use of his chance, he ought not to be suffered to escape a second time under the plea of first fault.

Under the new French law, or in any law of the kind, there must necessarily be a very large discretion vested in the court. There are forms of crime to which no leniency can be shown, which carry with them their own evidence of a depravity beyond cure. But in the majority of instances, account ought to be taken of the prisoner's antecedents and of the circumstances under which he has lapsed into guilt. The object of punishment has been very variously stated. If it is to the reform of the criminal that we ought especially to look, the new French law may be thought to have the best prospect of attaining the desired end. If the aim is the safety of society, a system which tends, as we have shown, to reduce the number of criminals, gives no bad security for this. But however leniently the law may deal with a first, or even sometimes with a second, offence, it is mere folly and weakness to show leniency to habitual and systematic crime. The criminal profession is not without charms of its own. Its long predatory war against society has the excitement of the hunter's life, attended by a spice of danger which makes it hardly the less attractive to its true votaries and devotees. Those who have taken it up in earnest are as unfit subjects for leniency as they are hopeless subjects for reform. To catch them and presently let them loose again is only to give them new opportunities for mischief. Such punishment may deter others, but it will not deter them. Their case is beyond cure, and it must be dwelt with on a more drastic plan. Only while they are in prison are they harmless; so that society has no choice except to protect itself by keeping them there, or to put up with the certain consequences of allowing them to go at large." The working of this law will be watched with interest.

LONDON LEGAL LETTER.

LONDON, Oct. 9, 1891.

ANOTHER of the ancient landmarks of London is in course of removal. Clement's Inn, associated by those who know not our city with Shakspeare's "Justice Shallow," is fast disappearing before the workman's axe and hammer; and this quaint vestige of antiquity will be replaced by high-storied buildings of familiar modern aspect. A few of these old inns still survive; and those who wayfaring through the great thoroughfares of Holborn or Fleet Street, have wandered in at their venerable gateways and stood in the old courtyards surrounded by houses scarcely changed through several centuries, have lived for at least a few moments in the past of England.

As was expected, the Lord Advocate for Scotland, Mr. J. P. B. Robertson, has become Lord President of the Court of Session, in room of the late Lord Inglis, of whom I wrote in my last letter.

Sir Henry Hawkins, one of the most popular of our judges, has now almost entirely recovered from the very serious illness which prostrated him during the earlier part of the vacation and caused the most serious anxiety to his many friends. He has benefited very largely by a trip on the Continent. Mr. Justice Hawkins practises frequently on the bench that great gift of cross-examination which was his leading characteristic when at the bar. Over and over again, when the most eminent counsel are browbeating a hostile witness before him without the slightest success, the Judge will put a few quiet questions, stroking his nose with a quill the while, which secure from the witness the admissions denied to a less adroit style of interrogation. I remember being present at a trial which took place not very long ago before Mr. Justice Hawkins. It was essential for one side to prove that a certain person had been drunk at a given time. The man in question had been spending the afternoon and

evening in a public house, drinking with a number of friends; every one of the man's companions testified to their friend's complete sobriety; no effort of counsel could attach the slightest stain of intemperance to the hard-headed boon companion. As the last witness was leaving the box, the judge inquired: "Had your friend spent the whole afternoon and evening at the bar?" The witness: "Yes, my Lord." The judge: "Did you notice any change in his complexion?" Witness: "It was, perhaps, a little redder than usual." The judge: "Was his manner at all excited?" Witness: "Yes, I dare say he was, perhaps, rather excited." The judge smiled at the jury, who in common with every one were convulsed with laughter, and at the close of the trial found a verdict involving the gentleman whose sobriety was at stake with the odor of intemperance.

The members of the Scottish Bar constantly cherish the hope of a change being effected in the system of private bill legislation. At present all Scottish private bills are heard in London, before committees of the Houses of Parliament. Consequently almost the entire legal business connected with them falls into the hands of English counsel who are on the spot, Scottish counsel being only occasionally employed. There is now some faint chance, however, of an arrangement being made to constitute a tribunal in Edinburgh for the purpose of hearing private bills of Scottish origin. It is contended that this would secure an immense saving of expense; but many experts entertain very serious doubts as to whether the resulting economy would be at all considerable. Were such a system introduced, it is calculated that the annual receipts of the Scottish bar in point of fees would be exactly doubled. To the northern practitioner this is of course an inspiring prospect. At the same time no one is agreed as to the nature or constitution of the tribunal which would take over the functions of a parliamentary committee. The fees paid to counsel practising before these committees are enormous. It is not likely that the present standard of remuneration in the case of Scotch business would survive its transference to Edinburgh. If the fees ordinarily paid were cut down to one half, the practitioner would generally be amply rewarded. The present leader of the Parliamentary Bar is Mr. Samuel Pope, Q. C. Mr. Pope is an elderly gentleman, and as he is very stout he is privileged to remain seated while pursuing his professional duties. He is a very powerful and eloquent advocate. His income is estimated at £30,000 a year.

Mr. Pitt-Lewis, an eminent lawyer, has drafted a bill which is exciting a good deal of attention. Its object is to establish a system of district courts which would enlarge and strengthen the scope of the present county court jurisdiction, and remedy the defects of the existing assize system, which deprives the High Court in London of most of the common law judges at various periods throughout the year. A majority of the Judicature Commissioners of 1872, including such eminent names as Lords Hatherley, Selborne, and Bramwell, were in favor of the county courts becoming branches of the High Court, with unlimited jurisdiction; and further the commissioners recommended that the judges of the more important centres should be adequately remunerated, and consequently men of high standing; and that the judges of proved ability should from time to time be promoted to the High Court. The bill in question seeks to carry into effect and develop in detail the principles foreshadowed by the commissioners. It is not probable that the measure will do more than stimulate discussion of the subject with which it is concerned. Changes so radical in our institutions are not generally left in the hands of private individuals. It would be premature to criticise Mr. Pitt-Lewis's proposals. and in detail they would scarcely interest your readers. * * *

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 OUR SUBSCRIBERS.

THE Fine Art Committee of the Boston Athenæum having kindly accorded us permission to copy the famous painting of Chief-Justice Marshall belonging to the Athenæum, we are enabled to make the following attractive offer: —

To every subscriber remitting the amount of his subscription for the "Green Bag" for 1892 *before Jan.* 1, 1892, *we will present a copy of this portrait, mounted upon thick paper, suitable for framing. The size of the picture itself will be about* 10½ *inches by* 17 *inches, and the size of paper on which it is mounted about* 18 *inches by* 25 *inches.*

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We make this offer for two reasons: first, to present our subscribers with a fitting memento of the good-will and best wishes of the publishers of the "Green Bag;" second, to enable us to get our mailing-list for the coming year into shape at as early a date as possible.

JUDGE POOLE, of Ithaca, N. Y., sends us the following specimen of Down East eloquence: —

"Gentlemen of the jury, it is with feelings of no ordinary emotion that I rise to defend my injured client from the attacks which have been made against his hitherto unapproachable character. I feel, gentlemen, that although I am a great deal smarter than any of you, even the judge himself, yet I am utterly unable to present this case in that magnanimous and heart-rending light which its importance demands; but I trust, gentlemen, that whatever I may lack in presenting it will be at once supplied by your own natural good sense and discernment, — if you have got any.

The counsel for the prosecution will undoubtedly attempt to heave dust into your eyes. He will tell you that his client is pre-eminently a man of function, and one who would scorn to bring an action for the mere gratification of a personal curiosity. But, gentlemen, let me cautionate you how to rely on such specious reasoning like this. I myself apprehend that if you could look into that man's heart, you would see there such a picture of moral turpitude and base ingratitude as never before exhibited since the Niagara Fall.

Now, gentlemen, I wish to reason with you for a few moments, and see if I can't warp your judgments into bringing in a verdict for my unfortunate client, and then I will fetch my argument to a close. Here we have a poor man with a numerous wife and child, fetched up and arranged before an intelligent jury, charged with hooking — yes, ignominiously hooking — five quarts of hard cider. You, gentlemen, have been in the same predicament, and know how to feel for my unfortunate client; and I trust, gentlemen, that you will not allow the gushings of your sympathizing natures to be squenched by the surreptitious arguments of my ignorant opponent on the other side.

Now, gentlemen, in the beautiful language of Shakspeare, if you are sure of the guilt of the prisoner, it is your duty to lean on the side of justice, and bring him in innocent.

If you will keep in view this beautiful precept, you will have the honor of making a friend of my client and all his relations. But if on the other hand you neglect this precept, the silent twitches of conscience will follow you over every fair cornfield, I reckon, and my downtrodden and oppressed client will be apt to light upon you some of these dark nights like a cat on a saucer of new milk."

AN eminent lawyer gives the following amusing experience with a jury: —

To the Editor of the "Green Bag":

I have been much interested in the two articles on the subject of trial by jury in your October number; and although the bias of my judgment is on the side of the jury, I will tell you of a case which is as much against my judgment generally as it was against my interest and my judgment particularly. In an action

of small importance before the Superior Court in Boston, I was engaged for the plaintiff. There was something about a horse in the evidence; and I noticed on the jury a good-natured-looking man whom I had seen once or twice in my office, but had never spoken to. The jury found for the defendant. A few days afterward I met in the street the juryman referred to, and he stopped me and very affably remarked, —

"I guess you were surprised at the verdict the other day?"

I confessed that I had been.

"Well," said he, "it *was* rather queer. At first the jury seemed to be all your way, and the foreman said he supposed the only question was about the amount of damages. And it all looked very smooth; but I said: 'I do not believe Mr. S. means to let this case stop here; he means to take it before the Supreme Court. Where there is a horse concerned in a case, there is always a good deal of lard in it; and this is a kind of horse case. I was a justice of the peace once in a country town, and have tried one or two cases myself.' And when I said this, the foreman asked me to come up and sit by him; and I did, and explained to the jury how it was that horse cases had so much lard in them, and that you meant to take the case to the Supreme Court. And after I had talked to them a matter of ten or twenty minutes, they concluded to find for the defendant."

My voluble friend seemed to be "a case of simple fluency," and to be willing to hold me in discourse to an indefinite extent, so that, after being sufficiently amused at his absurdities, I even let him go, or rather released my button-hole, without asking him how or why I should or could have taken the case to the higher court, when that of first instance would have given me all I wanted but for his friendly and most valuable aid.

C. W. S.

LEGAL ANTIQUITIES.

THE term *Advocatus* was not applied to a pleader in the courts until after the time of Cicero. Its proper signification was that of a friend who, by his presence at a trial, gave countenance and support to the accused. It was always considered a matter of the greatest importance that a party who had to answer to a criminal charge should appear with as many friends and partisans as possible. This array answered a double purpose; for by accompanying him they not only acted as what we should call witnesses to character, but by their numbers and influence materially affected the decision of the tribunal. Not unfrequently an embassy of the most distinguished citizens of the province was sent to Rome to testify by their presence to the virtues of the accused, and deprecate an unfavorable verdict. Although in this point of view the witnesses who were called to speak in favor of the accused might be termed *advocati*, the name was not confined to such, but embraced all who rallied round him at the trial.

FACETIÆ.

"ARE you the judge of reprobates?" said an old lady Saturday, as she walked into Judge Monahan's office. "I am judge of probate," was the reply. "Well, that's it, I expect," quoth the old lady. "You see, my husband died detested and left me several little infidels, and I want to be their executioner."

HIS SISTERS.

A LAWYER sat idly in his chair
(As lawyers sometimes do),
Discussing with a learned air
A recent Code Review;
His auditors, some twelve or more
Old barristers, sat near,
Each stuffed with pride and legal lore,
With countenance austere.

The while these astute Solons sat,
It chanced a client came
Whose presence stopped their social chat, —
A crabbed spinster dame.
"These are my brothers in Law, you see,"
Said Smythe, as she passed through;
"For goodness' sake, poor man!" cried she,
"How many sisters have you?"

JEAN LA RUE BURNETT.

"YES," said the lawyer, mopping his brow, "I got him off, but it was a narrow escape."

"A narrow escape? How?" inquired a brother attorney.

"Ah, the tightest squeeze you ever saw! You know, I examined the witnesses and made the argument myself, the plea being self-defence. The jury was out two whole days. Finally, the judge called them before him, and asked what the trouble was.

"'Only one thing, your honor," replied the foreman. 'Was the prisoner's attorney retained by him or appointed by the court?'"

"'The prisoner is a man of means,' said the judge, 'and hired his own attorney.'"

"I could not see what bearing the question had on the evidence," continued the perspiring lawyer; "but ten minutes later in filed the jury, and what do you think the verdict was?"

"What?" asked his companion.

"Why, not guilty, on the ground of insanity."

At a term of the Butler County (Kansas) District Court, a young law student made application to be admitted to practice. The judge appointed a committee of three to examine him, as is usual in such cases. The student passed the examination, and was duly declared a full-fledged lawyer, to the surprise of some of the older members of the bar.

"How was it?" asked one of them.

"Well," replied one of the examining committee, "we asked him about two hundred questions, and he answered every one of them truthfully."

"How was that?" queried the older member.

"He simply answered by saying he did n't know, and he told the truth every time. As truthful lawyers are very scarce in this district, we concluded it would be a good thing to admit him, even if he did n't know any law."

A short time ago an old negro was up before Judge Guerry, of Dawson, charged with some trivial offence.

"Have n't you a lawyer, old man?" inquired the judge.

"No, sah."

"Can't you get one?"

"No, sah."

"Don't you want me to appoint one to defend you?"

"No, sah; I jes' tho't I 'd leab the case to de ign'ance ob de co't."

If Distance lends Enchantment to the View, and the View refuses to return it, will an action for damages lie?

NOTES.

Perhaps the most disgusted man in Somerset County is a Justice of the Peace, who is the owner of a fine garden, the pride of his heart. The other day he was informed that an unruly cow had wrought desolation in his Eden, and he at once ordered the animal sent to the pound. Then he went up to view the wreck, and after noting the vacant places where the beets and corn had been, the trampled-down squashes and cabbages, and the demoralized pea-vines and sunflowers, and ascertaining, as he supposed, the owner of the cow, he made out a writ against that individual, containing, so the Fairfield "Journal" is informed, fourteen different and distinct counts, including trespass, forcible entry, malicious mischief, nuisance, riotous and disorderly conduct, and assault and battery with intent to kill.

It was then that he learned that the trespasser was his own cow, and his ire cooled as he meekly paid a field-driver for getting her out of the pound. — *Lewiston (Me.) Journal.*

About forty years ago a young master-builder who was superintending the erection of some important buildings in Boston boarded at the Marlborough Hotel, and his friends were greatly astonished to find him indicted for petty larceny.

On his trial, the clerk of the hotel testified that one morning, while he was still in bed, the defendant came into his room and took down his watch, which had hung by the wall, and carried it away.

The clerk supposed it was all a joke, and on going downstairs soon afterward, asked for the watch, and the defendant denied that he knew anything about it.

Mr. Choate appeared for the defendant, and cross-examined the witness, who admitted that the defendant had, so far as he knew, an excellent reputation and had been personally a friend of his, and that he should not have dreamed of his committing such a crime if he had not seen what he had, and if the defendant had not denied knowledge of the matter. He was apparently asleep, and allowed himself to appear so, to carry out what he supposed to be the intended joke.

Of course he was very reluctant to think that a friend of his own could be a thief. After pressing him on this point at some length, Mr. Choate asked if

he had not *looked under his pillow*, in order to be sure that he was under no possible mistake, and the *witness admitted that he had.* The defendant was acquitted; but what astonished the clerk much more than that fact was the manner in which he had been brought to say he had looked under his pillow, which he had not done nor thought of doing.

It was afterward found that the defendant had given the watch to a girl to whom he was engaged to be married, but who broke off the engagement as soon as she learned how he had obtained it.

JEREMIAH MASON, the celebrated lawyer, possessed to a marked degree the instinct for the weak point.

He was once cross-examining a witness who had previously testified to having heard Mr. Mason's client make a certain statement, and it was upon the evidence of that statement that the adversary's case was based.

Mr. Mason led the witness around to this statement, and again it was repeated verbatim.

Then, without warning, he walked to the stand, and pointing straight at the witness, said, in his high, unimpassioned voice, —

"Let 's see that paper you 've got in your waistcoat pocket."

Taken completely by surprise, the witness mechanically took a paper from the pocket indicated, and handed it to Mr. Mason.

The lawyer slowly read the exact words of the witness in regard to the statement, and called attention to the fact that they were in the handwriting of the lawyer on the other side.

"Mr. Mason, how under the sun did you know that paper was there?" asked a brother lawyer.

"Well," replied Mr. Mason, "I thought he gave that part of his testimony more as if he 'd heard it, and I noticed every time he repeated it he put his hand to his waistcoat pocket, and then let it fall again when he got through."

Recent Deaths.

HON. DOUGLAS BOARDMAN, Dean of the Law School of Cornell University, died at Sheldrake, N. Y., on September 5. He was born in Covert, Seneca County, N. Y., Oct. 31, 1822. He early determined to fit himself for professional work by a thorough preliminary training. After having passed through the usual preparatory studies, he was for a time a student at Hobart College, but finally entered Yale, from which he was graduated in 1842. Admitted to the bar in 1845, he settled in what was then the village of Ithaca, and was soon in the enjoyment of a growing and lucrative practice. He was first called upon to serve the public in 1848, when he was elected to the office of District Attorney for Tompkins County. The duties of this position, which he held for three years, were performed in a manner creditable to himself, and highly satisfactory to the people, irrespective of party. From 1852 to 1855, inclusive, he was County Judge, and discharged the duties of the trust with marked care and ability. Judge Boardman became a member of the Supreme Court Jan. 1, 1866, and was in service in that tribunal until 1887, when he refused renomination. He was made Dean of the Law School of Cornell University in 1887.

The elements that go to make up a successful judicial career were strikingly exemplified in the life and character of Judge Boardman. He was by nature a judge. His mind was essentially judicial in its make-up. His habits of thought were judicial. Never hasty in his conclusions, he reached a determination only after having examined conscientiously every side of a controversy. He possessed to a large degree what every successful lawyer and judge must have; namely, good commonsense, an ability to meet and deal with the practical affairs of life in a practical and business-like way. Far-fetched theories and wordy declamation met with a cold reception at his hands. These characteristics, which in the work of a lifetime count for more than mere brilliancy, made him a prudent and a safe man, both at the bar and upon the bench. No one could know him without feeling that he was a man in whose judgment confidence could be safely reposed.

(An excellent portrait of Judge Boardman was published in the "Green Bag" for November, 1889.)

HON. HENRY WILDER ALLEN, Judge of the New York Court of Common Pleas, died on October 13. He was born at Alfred, Maine, in 1836, and graduated from Dartmouth College in 1854. After

graduation he went to New York City, where he entered the law office of Clark & Rapallo. He was on the District Attorney's staff after he was admitted to the bar. He remained there two years, and then became a partner of Nelson J. Waterbury. He severed this connection in 1867, when he was appointed registrar in bankruptcy. In June, 1884, Governor Cleveland appointed him Judge of the Common Pleas, to fill the unexpired term of Judge Van Brunt, who had been called to the Supreme Court bench. In the following November he was elected to a full term of fourteen years.

JUDGE LAWRENCE DUDLEY BAILEY, ex-Supreme Judge of the State of Kansas, died in Lawrence, Kan., October 15. Judge Bailey was born in Sutton, N. H., in 1819, of Puritan parents. He read law with Congressman Tappan, of New Hampshire, and was admitted to the bar in 1846. In 1849 he was seized with the gold fever, and went to California by the way of Cape Horn. In California he edited the "Pacific Courier," and took an active part in the formation of a State government. He returned to New Hampshire in 1853, and entered Congressman Tappan's law office. In 1837 he had espoused the cause of abolition, and was a frequent contributor to the "Herald of Freedom" and other similar publications. With the rise of the Kansas troubles, he decided to enlist in the struggle, and went to Lawrence in 1857. After staying in Lawrence a short time, he removed to Emporia, where he wrote several articles for the "Emporia News," published by Senator Plumb, who afterward entered Judge Bailey's law office. In November, 1858, he was elected to the Territorial Legislature. He was appointed Associate Judge of the Supreme Court of the Territory in 1859, and in 1862 was elected under the State Constitution to a six years' term. His opinions are found in the first three volumes of the Kansas reports.

REVIEWS.

AN excellent portrait of Sir James Fitzjames Stephen forms the frontispiece of the October number of the JURIDICAL REVIEW. The high standard of this admirable magazine is fully maintained in its table of contents. Prof. Richard Brown contributes an able article on "Assimilation of the Law of Sale;" James Mackintosh an article on "The Edict *Nautæ Caupones Stabularii;*" Jas. B. Sutherland an article on "Bills of Lading: A Mercantile Revolt," and G. W. Wilton continues his interesting sketch of "The French Bar."

HARPER'S MAGAZINE for November contains much of interest. The most important article is a sketch of Stonewall Jackson, by Rev. Henry. M. Field, which is beautifully illustrated with portraits of that celebrated general, and scenes connected with his life. Constance Fenimore Woolson contributes a second part of "Cairo in 1890," which is also profusely illustrated. "The London of Good Queen Bess," by Walter Besant, contains a great deal of quaint and curious information and many interesting illustrations. The other contents are "The Inn of the Good Woman," by Hezekiah Butterworth; "Dan Dunn's Outfit," by Julian Ralph; "Africa and the European Powers," by Arthur Silva White, and a number of shorter articles.

THE COSMOPOLITAN devotes some twenty-eight pages of its November number to an interesting and beautifully illustrated article on "Chicago," by Col. Charles King. "Massacres of the Roman Amphitheatre," by C. Osbourne Ward, furnishes a feast of horrors, both in text and illustration. General Sherman's letters to his daughter will be read with interest, and form a valuable addition to the literature of the War. Judge Tourgee furnishes a charming story called "An Outing with the Queen of Hearts." Louise Chandler Moulton, Commander Crowninshield, ex-Postmaster-General James are among the other contributors. Gen. Horace Porter's article on Militia Service is worthy the attention of every one interested in the National Guard.

"COUNT TOLSTÓY at Home" is the title and subject of the leading paper in the November ATLANTIC, by Isabel F. Hapgood. There has not been a more vivid or appreciative sketch of Tolstóy yet written. Here is a bit of useful information: the name Tolstóy with the *y* is the writer's own way

of spelling his own name, and not a typographical error. There is the first instalment of a two-part story by Henry James, entitled "The Chaperon," a subject quite to Mr. James's taste. Prof. William J. Stillman's paper on Journalism and Literature will be read with disfavor by the journalist, and by the littérateur with delight. Mrs. Catherwood's agreeable serial is concluded. Lafcadio Hearn has a picturesquely written paper on life in Japan. Louise Imogen Guiney writes interestingly about a forgotten immortal, Mr. James Clarence Mangan. There is a short story of Italian life by E. Cavazza; while the solid reading of the number is further augmented by a second paper on "A People without Law," — the Indians, — by James Bradley Thayer; by S. E. Winbolt's Schools at Oxford; and by some able reviews.

ONE of the most striking articles in the NEW ENGLAND MAGAZINE for November is that by Mr. Frank B. Sanborn, on "The Home and Haunts of Lowell." Mr. Sanborn was a friend of Emerson and Thoreau, and his clever article on "Emerson and his Friends at Concord," in the same magazine, will be recalled by this one on Lowell. The article is illustrated with sketches by clever pencil and pen and ink artists, and a portrait of Lowell, by Rowse, hitherto unknown to the public. An interesting article, supplementary to the one by Mr. Frank B. Sanborn, is "Lowell and the Birds," by Leander S. Keyser. Walter Blackburn Harte makes a plea for a world without books. He thinks that education is not an unmixed blessing, as the greater the intelligence of individuals and peoples the greater is their capacity for suffering. The other contents of this number are varied and interesting. Particularly worthy of mention are Miss Laura Speer's article, entitled "John Howard Payne's 'Southern Sweetheart,'" and Albert Bushnell Hart's discussion of the causes of the defeat of the Confederacy in the War.

SCRIBNER'S MAGAZINE for November contains several notable illustrated articles on countries that are little known to American readers, including the first of several papers by Carl Lumholtz (the author of "Among Cannibals") on his explorations in the Sierra Madre. There is also a striking paper by Napoléon Ney, the grandson of the great Marshal of France, on the proposed Trans-Saharian Railway, which the French Government has approved. Alfred Deakin writes of the great federation movement in Australia, which bears so many points of resemblance to the founding of this Republic. Another illustrated article is "The United States Naval Apprentice System," by Lieut. A. B. Wyckoff, U. S. N. George Hitchcock writes a third paper on "The Picturesque Quality of Holland." A sixth article in the Ocean Steamship series is John H. Gould's description of the "Ocean Steamship as a Freight Carrier." The fiction includes another instalment of Stevenson's serial "The Wrecker," a short story by Octave Thanet; and there are poems by Duncan Campbell Scott, W. V. Moody, Julian Hawthorne, and others.

THE complete novel in the November number of LIPPINCOTT'S magazine is contributed by Mrs. Poultney Bigelow, and is entitled "The Duke and the Commoner." Two articles in this number that will be read with interest are the "Evolution of Money and Finance," by J. Howard Cowperthwait, and "The Restoration of Silver," by John A. Grier. Octave Thanet contributes an interesting story, "The Return of the Rejected;" and George Alfred Townsend gives some of his journalistic experiences in "An Interviewer Interviewed." Among other articles of interest to be noted are "Some Colonial Love-Letters," by Anne H. Wharton, an article embodying specimens of love-letters from William Penn, James Logan, and other worthies; "Association Foot-ball," by Frederick Wier; and "Modern American Humor," by William S. Walsh. Poems are contributed by Clinton Scollard, Barton Hill, Harrison S. Morris, and others.

THE CENTURY has just "come of age," and in its November number begins its twenty-second year with some notable "features." Mr. Cole's engravings of the masterpieces of the Italian painters reaches a climax in the full-page blocks, after two of the Sibyls of Michelangelo, which are printed as a double frontispiece. The feature of the November CENTURY which is likely to attract the most attention is probably the new novel, "The Naulahka," by Rudyard Kipling and Wolcott Balestier, the latter a well-known American now living in London. This is Mr. Kipling's first experience in collaboration, and the story is not only international

in authorship but in plot. The other contents worthy of especial mention are "Southern Womanhood as affected by the War," by Wilbur Fisk Tillett; "A great German Artist, — Adolf Menzel" (illustrated), by Carl Marr; "The Players" (illustrated), by Brander Matthews; "India," by Florence Earle Coates; "What are Americans doing in Art?" by F. D. Millet; "The Hunger-Strike," by Elizabeth W. Fiske; "How Old Folks won the Oaks" (illustrated), by J. J. Eakins; "Brontë," by Harriett Prescott Spofford; "The Autobiography of a Justice of the Peace" (illustrated), by Edgar W. Nye; "Mazzini's Letters to an English Family" (edited by Stephen Pratt), by Joseph Mazzini; "A Rival of the Yosemite, — King's River Cañon" (illustrated), by John Muir; "A Theft Condoned," by Gertrude Smith; "The Food-Supply of the Future," by W. O. Atwater; "James Russell Lowell," by George E. Woodberry; "Lowell's Americanism," by Joel Benton; "The Major's Appointment" (illustrated), by Julia Schayer; "San Francisco Vigilance Committees," by the chairman of the committees, 1851, 1856, and 1877, William T. Coleman.

BOOK NOTICES.

ANNOTATED CONSTITUTION OF THE UNITED STATES. By A. J. BAKER, of the Iowa Bar. Callaghan & Co., Chicago, 1891. $4.00.

Old and firmly established as is the Constitution of the United States, no one subject has probably given rise to more grave questions calling for judicial decision; and with the rapidly increasing wealth and commerce of our country, these questions will continue to arise, and the courts be called upon to settle them.

The purpose of this edition of the Constitution is to furnish to the bar of the nation a complete digest of the decisions of the Supreme Court of the United States, wherein is called in question any of the provisions of the Constitution, arranged under the headings of the several articles, sections, and clauses upon which the decisions are predicated, thereby making a complete and ready reference to the case, and giving the exact point decided in each case, so as to save the labor of searching through numerous and long opinions to find the exact question desired

Mr. Baker appears to have done his work with great care and thoroughness, and this volume will be found invaluable not only to practitioners in the United States courts, but to the profession at large.

IMPORTANT FEDERAL STATUTES, Annotated. Edited by RUSSELL H. CURTIS, of the Chicago Bar. Callaghan & Co., Chicago, 1891. $2.00 net.

The establishment of Circuit Courts of Appeal by Act of Congress has called forth this work of Mr. Curtis's, the principal purpose of which is to place before the profession in an easily accessible form the original evidence from which must be solved the new questions to which the Acts establishing these courts give rise. Those enactments are printed together with the general statutes which govern the appellate jurisdiction of the federal courts, the general practice statutes enacted since the Revised Statutes, and the rules of the Supreme Court. Another purpose of the book is to present in a single volume the more important general statutes which govern the jurisdiction and practice of federal courts, both of original and appellate jurisdiction, and which have been enacted since the publication of the Revised Statutes. In the chapter on the "Jurisdiction of Federal Courts," the author makes some valuable comments, and the conclusions which he draws will be of much assistance in advance of any judicial decisions upon the points involved. The book also contains the Inter-State Commerce Act, as amended in 1889 and 1891.

Mr. Curtis has certainly given the practitioner a very compact and handy guide to practice in the Federal Courts, under the new acts, and his book will undoubtedly be much sought for by those who have occasion to appear before these courts.

INDEX OF CASES JUDICIALLY NOTICED (1865–1890). Being a list of all cases cited in judgments reported in the "Law Reports," "Law Journal," "Law Times," and "Weekly Reporter" from Michaelmas Term, 1865, to the end of 1890; with the places where they are so cited. By GEORGE JOHN TALBOT and HUGH FORT. Stevens & Sons, Limited, and Sweet & Maxwell, Limited, London, 1891. $7.50.

We cannot give a better idea of the scope and intent of this valuable work than by quoting freely from the author's preface. "Any one who has had access to a law library in which the Reports have been 'noted up' by giving at the head of each case references to all later cases in which it has been cited, must be aware of the great help afforded by such notes in the task of searching for authorities. . . . The aim of the present Index is so far as possible to supply the place of such notes. Any one, therefore, who may use this book will be able to trace the history of the treatment of any decision in later judgments, and will be guided by any decision to the later decisions on the same subject, in just the same way as if he had a complete library of

reports, in which, at the head of each case, references were given to all citations of it in judgments reported since 1865." The names of the cases are printed in alphabetical order, in heavy type; and under each such case, in lighter type, references, in order of date, to all the later cases in which it has been cited. The work appears to have been thoroughly and carefully done, and the volume will be of great value and assistance to the profession.

THE AMERICAN STATE REPORTS, Vol. XX., 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. The Bancroft-Whitney Company, San Francisco, 1891. $4.00.

This volume contains selections from the Reports of the following States: Arkansas, California, Colorado, Georgia, Iowa, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Oregon, Pennsylvania, and Wisconsin. Mr. Freeman displays his usual care and good judgment in the selections made, and his annotations are as valuable as ever.

LAYS OF A LAWYER. By WILLIAM BARD MCVICKER. Geo. M. Allen & Co., New York.

A dainty little volume, well filled with choice bits from the pen of a well-known lawyer. Some of the verses have already appeared in "Life" and "Puck," but many of them are new. There is a freshness and charm about Mr. McVicker's poetry which is simply delightful, and one will not lay down this little book until he has read it through from beginning to end.

THE INTER-STATE COMMERCE LAW, together with annotations of cases construing the law, decided by the Interstate Commission, United States Supreme Court, and Federal Courts. By JOHN THEO. WENTWORTH, of the Wisconsin Bar. T. H. Flood & Co., Chicago, 1891.

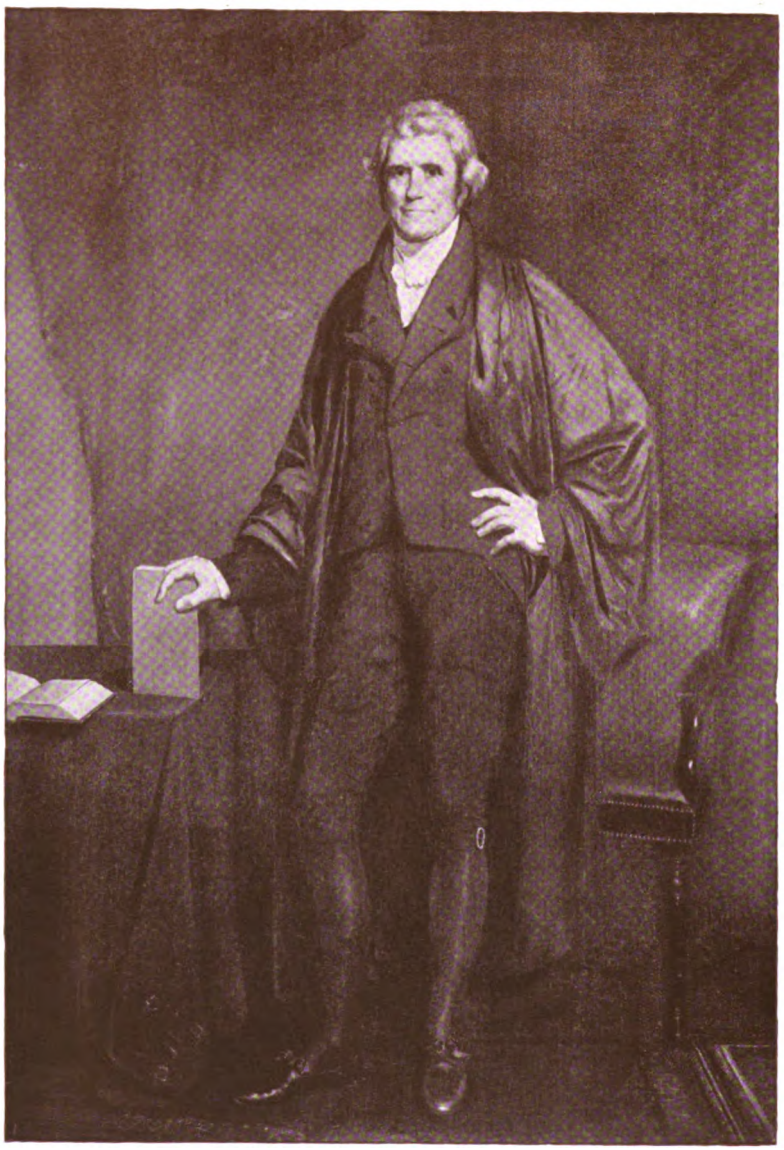
In a compact little volume of some one hundred pages, Mr. Wentworth has embodied the decisions relating to this now important branch of law. To the lawyer engaged in cases upon which this law has a bearing, the work will be of great assistance. Each section of the law is printed in paragraphs, and under each a trenchant statement is given of the points made and construction given by the Commission relative to the subject-matter of the particular paragraph. To this has been added copies of the rules of practice adopted by the Commission in its judicial function, together with notes of cases bearing thereon, cross-references, a table of cases, a table of subjects, and a complete index.

LAWYERS' REPORTS ANNOTATED. Book XI. All current cases of general value and importance decided in the United States and Territorial Courts, with full annotation. By ROBERT DESTY, Editor. The Lawyers' Co-operative Publishing Company, Rochester, N. Y., 1891. $5.00 net.

We have had occasion to say many a good word for this admirable series of Reports, and the present volume only confirms us in the opinions we have heretofore expressed. The publishers are fortunate in having the services of so able an editor as Mr. Desty, whose exhaustive annotations greatly enhance the value of these Reports.

COMMENTARIES ON THE LAW OF PRIVATE CORPORATIONS, WHETHER WITH OR WITHOUT CAPITAL STOCK; ALSO OF JOINT-STOCK COMPANIES, AND ALL OF THE VARIOUS VOLUNTARY UNINCORPORATED ASSOCIATIONS ORGANIZED FOR PECUNIARY PROFIT OR MUTUAL BENEFIT. By CHARLES FISK BEACH, JR., of the New York Bar. T. H. Flood & Co., Chicago, 1891. Two vols. Law Sheep. $12.00.

No work has yet been given to the profession so fully and completely covering the law applicable to private corporations as this treatise by Mr. Beach. As editor of the "Railway and Corporation Law Journal," the author had every opportunity to familiarize himself with the law appertaining to this particular subject, and he has demonstrated that he is eminently fitted and abundantly qualified to deal with all matters relating to this important branch of law. No lawyer who has occasion to make himself thoroughly familiar with the law upon this subject, can afford to be without this valuable treatise. Covering a wider scope than any other work yet published, it brings into prominence many topics which have heretofore been only briefly discussed or barely mentioned, and it is difficult to conceive of any question likely to arise relating to the law of private corporations that is not here fully considered. The arrangement of subjects treated and the division of the work into chapters and sections is admirable, and we know of no law book equalling it in this respect. Some idea of the vast amount of research bestowed by the author in the preparation of this work, may be inferred from the fact that the table of cases occupies over one hundred and fifty pages of the work. We have always felt a great admiration for Mr. Beach as a legal writer, and this work alone would certainly entitle him to a position in the foremost rank of our law-book makers. It should, and we have no doubt that it will, receive the unqualified commendation of the profession.



The Green Bag.

VOL. III. No. 12. BOSTON. DECEMBER, 1891.

CHIEF-JUSTICE MARSHALL.

JOHN QUINCY ADAMS once said of his father that if he had done nothing else to deserve the approbation of his country and posterity, he might proudly claim it for the single act of making John Marshall Chief-Justice; and surely, among the many noble legal minds which have graced the Supreme Court of the United States, Marshall stands out pre-eminently the greatest of them all. "He was born," said William Pinkney, "to be the Chief-Justice of any country into which Providence should have cast him."

John Marshall was born on the 24th day of September, 1755, in the little village of Germantown, in Fauquier County, Virginia. His father was Thomas Marshall, a native of the same State He was a man of uncommon capacity and vigor of mind, and from him young Marshall received the greater portion of his education. John was the eldest son in a family of fifteen children, and of course was the earliest to engage the solicitude of his father. The means of obtaining any suitable education in the little village were at that period scanty and inadequate, and Thomas Marshall was thus compelled exclusively to superintend the education of all his children. How well he acquitted himself of this duty may be inferred from the expressions which in after years frequently dropped from the lips of the Chief-Justice. "My father," he would say, with kindred feeling and emphasis, "was a far abler man than any of his sons. To him I owe the solid foundation of all my own success in life."

At an early age Marshall commenced the study of the law; but before he had obtained a license to practise, the controversy between Great Britain and her American colonies began to assume a portentous aspect; and throwing aside his Blackstone, the youth entered into the contest with all the zeal and enthusiasm of one full of the love of his country and deeply sensible of its rights and its wrongs. In 1775 he was made a lieutenant of a company of minute men, and from this period he remained constantly in service until the close of the year 1779. Retiring temporarily from active service, Marshall attended the course of law lectures of Mr. Wythe at William and Mary's College, and in the summer of 1780 he was admitted to the bar. In October of the same year he returned to the army, and continued in the service until after the termination of Arnold's invasion of Virginia. He then resigned his commission, and settled down to the practice of his profession. His wonderful intellectual powers and his profound legal knowledge soon gained for him a wide reputation, and he speedily rose to high distinction at the bar. In the spring of 1782 he was elected a member of the State Legislature, and in the autumn of the same year a member of the State Executive Council. He continued in political life, holding various offices in his native State, until 1796.

In 1796 he visited Philadelphia to argue before the Supreme Court the great case of Ware *vs.* Hytton, which involved the question of the right of recovery of British debts which had been confiscated during the Revolutionary War; and about the same time he defended the policy of the Mission to England and the treaty of peace negotiated

by Mr. Jay. These two arguments made him famous throughout the country, and his reputation became national.

About this period President Washington offered him the office of Attorney-General of the United States, but he declined the honor. Upon the recall of Mr. Monroe, as minister to France, Washington earnestly solicited Mr. Marshall to accept the appointment as his successor; this office he also declined, and General Pinckney of South Carolina was appointed in his stead. The French government refused to receive Mr. Pinckney; and Mr. Adams (who had then succeeded to the presidency), in 1797, appointed Mr. Marshall, General Pinckney, and Mr. Gerry envoys extraordinary to the court of France. Mr. Marshall accepted the appointment; and while, as is known, the mission was unsuccessful, Marshall won universal admiration for the consummate skill with which he prepared the official papers addressed to that government on that occasion.

On his return home he resumed his professional practice; but he was again diverted from it by a personal appeal from General Washington, who earnestly insisted that he should become a candidate for Congress. Reluctantly yielding to the wishes of Washington, Mr. Marshall became a candidate, was elected, and took his seat in Congress in December, 1799. While he was yet a candidate, President Adams offered him the seat on the bench of the Supreme Court then vacant by the death of Mr. Justice Iredell. He at once declined it.

In the memorable session of Congress, 1799–1800, Mr. Marshall took his full share in the debates, and was received with a distinction proportioned to his merits. In May, 1800, without seeking the office, he was appointed Secretary of War; but before he was called upon to enter upon the duties of the office, the rupture between the President and Colonel Pickering took place, and Mr. Marshall was appointed Secretary of State in the stead of the latter. The affairs of this department he managed with great ability and success. On the resignation of Chief-Justice Ellsworth, Mr. Marshall was appointed in his place, and having been unanimously confirmed by the Senate, he was on the 31st of January, 1801, commissioned as Chief-Justice of the United States. He was then only forty-five years of age. From this time until his death, in 1835, he remained in this high office.

Of the work of Marshall upon the bench volumes might be written; but his decisions need no encomium, they speak for themselves. Hon. E. T. Phelps, in an address delivered before the American Bar Association, fittingly says of the judgments of Marshall: "Time has demonstrated their wisdom. They have remained unchanged, unquestioned, unchallenged. All the subsequent labors of that high tribunal on the subject of constitutional law have been founded on, and have at least professed and attempted to follow them. There they remain. They will always remain. They will stand as long as the Constitution stands; and if that should perish, they would still remain to display to the world the principles upon which it rose, and by the disregard of which it fell."

THE GIANT BRAKEMAN.

By Irving Browne.

[*The court will take judicial notice that no man can sit four feet eight inches high. Hunter* v. *New York, etc., R. Co.*, 116 *N. Y.* 115.]

HUNTER, a brakeman on the top
Of freight-car speeding o'er the rail,
Was brought to an unpleasant stop
By blow which laid him bloody, pale,
And almost lifeless on the ground,
Where subsequently he was found.

'T was in a tunnel that he lay,
Wherein some low arch-fiend had reared
An arch of brick in such a way
That from the top of cars appeared
Of space in which to stand upright
Just four feet seven inches' height.

This arch hit Hunter on the head
While on the car he sat him down,
And felled him to the ground like lead,
With gash an inch below his crown,—
At least such was his evidence;
Of standing he made no pretence.

Of Hunter's height there was no proof;
The judge unto the jury said,
"You must determine if that roof
Could possibly hit Hunter's head."
The twelve, impartial, true, and good,
At Hunter looked, and said it could.

Brown, J.

Now *this* court knows a thing or two;
This story is too big a boo.
To sit and butt the roof of hall
Four foot seven above his seat,

A man must needs be nine feet tall;
Such man we never meet.

CHORUS OF JUDGES.

No mighty Hunter, well says Brown,
Has ever reared so high his crown.

BROWN, J.

The tallest man in history
Was Frederic's Scottish giant;
Eight feet three inches high did he
Exalt his poll defiant.

The skeleton of Irish Bierne,
Adorning Surgeons' College,
With eight feet stature takes next turn
Within authentic knowledge.

CHORUS OF JUDGES.

No man can sit four feet eight inches high;
So he falls short of a recovery.

BROWN, J.

We take no stock in Pliny's tale
Of eight-foot Arab chief,
And Buffon's wonder-stories fail
Of rational belief.

CHORUS OF JUDGES.

Unless a man sits moderately short,
He 'll seek in vain for standing in this court.

BROWN, J.

So on the whole we 're nothing loath
To let Reed's doughty client
Go back again to get his growth
Or prove that he 's a giant.

" Haight, Justice, did not sit;" but should he try,
He could not sit four feet eight inches high.

They made no note of Phillips Brooks,
  Of Harlan or of Gray,
The giant of religious books
  And biggest of JJ.

Giant Despair and Jack's big foe,
  And him whom David smote, —
The first were ne'er in any show,
  The last was too remote.

This case would naturally seem unique;
  But then another judge, by any flight,
Could not imagine such a curious freak
  As man of nineteen feet seven inches' height.[1]
But on the other hand a court has thought it wrong
To say a woman's foot is not eight inches long.[2]

JAPANESE JUSTICE.

ON my way to Aoyama, on the morning of the Imperial birthday, I naturally met many native friends, and among them one — the junior judge of the Tokyo Court — the *rencontre* with whom suggests a few remarks about Japanese justice and Japanese courts of law. Of late, in connection with the burning question of treaty revision, and the deep disinclination which some foreigners evince to come under Japanese jurisdiction even as the price of the complete and friendly opening of the Empire, I have been studying a little the methods and character of the Nippon criminal code. Thus I was recently in the court of the judge as a spectator, and, being politely invited to sit on the bench, watched with much advantage for a whole morning the procedure. It was a Criminal Court of First Instance, and the judge had on one side of him a secretary, on the other a registrar, all alike dressed in European frock-coats and side-spring boots. The

[1] "It only remains for me to say that we are entirely satisfied by the evidence before us that the open iron bridge, of which the plaintiffs complain in their bill, will not, in any material respect, impair the plaintiffs' use of the alley, and never can do so until some one whose stature shall exceed nineteen feet and seven inches shall have occasion to enter the alley on the plaintiffs' business." Thayer, C. J., Common Pleas of Pennsylvania, in Patterson *v.* Philadelphia, etc. R. Co.

[2] Tallman *v.* Met. El. R. Co. 121 N. Y. 119. In Gurley *v.* Pacific Ry. Co., Missouri Supreme Court, April 13, 1891, the Court observed: "How a man of ordinary stature, walking between two ordinary freight cars, could have the fleshy portion of his leg from his thigh down, eight or nine inches, mashed by the bumpers or draw-heads, is beyond our comprehension. We regard this statement, as appears by the record, so contradictory to general knowledge that no court is bound to accept it." Citing the principal case: "To have received the wound the plaintiff did, in simply walking between the cars, if the cars were the ordinary freight-cars, plaintiff must have been of remarkable stature. It may be, on another trial, some intelligent explanation may be given how this wound could have been made; there is certainly none in this."

building itself exteriorly is plain, but characteristic and Oriental, with a dodecahedral tower and spiked roof-ridges. Inside it was simplicity itself — the floor matted, the walls whitewashed, the furniture either of the commonest wood or the cheapest upholstery. The public, which did not attend, and seldom does, had its own benches behind the front seats reserved for the prisoners. At the side of the square apartment was a form reserved for women prisoners, who are never numerous, — for women here seem hardly ever to do anything particularly wrong, leaving that and all other selfish and brutal habits to their "lords and masters." In front of the judge's green baize desk was a bar and a table, to which each prisoner advances when his or her turn arrives. The judge, with black hair cropped close, colored necktie, and tightly buttoned coat, took his place unsaluted; and the policemen on duty, in a uniform something like a yachting suit with brass buttons, bearing the Imperial chrysanthemum, and peaked caps, — never removed in court, — brought in the batch of offenders, roped two and two with box-cord, and manacled. There were eleven men and boys, and one woman; and as they entered the court and took their seats in a long row on the front bench, the police-officers unfastened each pair of handcuffs, and neatly twisted the confining rope round and round the neck or wrist of each malefactor. When the eleven sat in a rather ill-looking row, facing the judge, and one observed that but two officers stood in the court, and two more only sat in cane-chairs by the door, the thought arose that escape by that open door into the bright sunshine outside, and thence into the busy bazar, would be a very simple and easy feat. But Japanese prisoners are wonderfully polite, amenable, and reasonable. They bow to their custodians, and these to them; assist offended justice in the most submissive manner; and are on terms of almost exquisite good-breeding with the court and the officials from the time of capture to that of sentence. As one of a manacled couple approached the precincts of justice, the rope on his wrist galled a little, and with a bow he called his guards' attention to the fact, saying, as the officer adjusted first his blue spectacles and then the knot, "Give me your honorable pardon. I cause an interruption." "*O jama itashimas*, — Oh dear, no!" replies the police-constable. "*O Kinodoku sama*, — The honorable deep regret!" "*Do itashimaskite*, — Don't so much as mention it." There they were at last, all safely ranged fronting the judge, — ten men and a boy, and at the side of the court the woman, her head hanging down and face constantly concealed, but not handcuffed or roped up like the others; merely an officer with a sword following her. Only one or two countenances among the accused could be styled "bad." Some were decidedly quiet, good-looking individuals of the lower orders, and there was one offender who, like Bardolph, had stolen the pyx from an altar, — in the shape of a silver utensil from a Buddhist temple, — but his mild, innocent aspect made one think he might plead that he was not so much a thief as a too enthusiastic and unreflecting collector of curios. One by one they were called in front of the judge, whereupon the secretary read the indictment, and for the most part the prisoners pleaded guilty, and received their sentences forthwith in the form of three or four months' imprisonment, together with a more or less heavy fine, and *kaushi*, — that is to say, police surveillance, and loss of civil rights for six subsequent months. Japanese justice is administered after the French mode. Mr. Chamberlain, in "Things Japanese," justly says:

"The system of trial, as well in civil as in criminal cases, is entirely inquisitorial. It was so in Old Japan, and is so in France, whence modern Japanese law comes. Formerly no convictions were made except on confession by the prisoner. Hence the use of torture, now happily abolished, and a tendency, even in civil cases, to suspect guilt in the defendant, although the theory is that the defendant must be presumed innocent until actually

proved to be the contrary. In this characteristic Japan but conforms to her continental models, and indeed to the universal usage of mankind, with the solitary exception of the English. The judge conducts the trial alone. All questions by counsel must be put through him. Counsel do not so much defend their clients as represent them. They even testify for their clients, strange as such a thing must sound to English ears. Another peculiarity is that husband and wife, parent and child, master and servant are prohibited from appearing as witnesses against each other.

When about half the eleven male criminals had been disposed of,— all of them pleading guilty, to gain the easier judgments of the First Court, — Tochida Tori was called to the bar. She had never once lifted her head during the proceedings, and stood before the judge in an attitude of shame and hopelessness while the secretary read aloud how she had stolen thirteen *sen's* worth of *manjo* — a kind of cake — and a measure of sugar, which she had sold for four *sen*, and with the money — about twopence — bought a bowl of rice. When asked by the judge if the charge was true, she murmured, "*Sayo de gozaimas*," and to all other questions uttered only a hopeless "He, he!" His honor made short work of her, adjudging as the measure of her crime one month's imprisonment with hard labor, a fine of a few *yen*, and *kaushi* during six months. With the hysterical tremor which denotes great emotion in a Japanese, she turned, and was led away by an officer. In the adjournment which ensued I ventured to ask the judge whether, since it was a first offence, and the woman had evidently been driven to her sin by extreme want, I might be permitted to pay the fine and promise her some help on emerging from gaol. The indulgence was easily granted, and Tochida Tori was presently brought back from prison in charge of a stern policeman in blue spectacles, with a sword and a note-book. She stood before me in the same attitude, probably believing something worse than her sentence was coming from the junior judge at my side. Then this little dialogue ensued, as I was allowed to address her, —

"Oh, Tori San! how many times have you stolen cakes and sugar?"

"Never before, Danna Sama."

"Why did you do it this time?"

"I had run away from home, and my little money was gone. I was very hungry, I had no friends, and I took the first thing I could and sold it to buy *gohan*."

"Shall you steal again when you come out?"

"I would rather die than be again where I am to-day; but I shall not come out, because I have no money and nobody to pay the *bakkin*."

"Well! here is the *uketori*. Your fine is paid, and when you come out of prison you must come to this address, and we will try to find you work."

Then she looked up. A comely countenance, full of sorrow, shame, surprise, and just one gleam of joy through the tears filling her eyes, to show that she was glad to find an unexpected friend. Yet the gleam was worth a good deal more than many *yen*, and as, in Sydney Smith's words, "A never sees B in trouble without wanting C to help him," I arranged afterwards with our good archdeacon — the friend of all his poor Japanese neighbors — to find some work for poor Tochida Tori when she emerged from her captivity. — EDWIN ARNOLD (in *Daily Telegraph*).

NATHAN DANE.

By Henry A. Chaney.

[The eminent Dr. Thomas Addis Emmet, of New York, himself the grandson of a distinguished lawyer, is known to have interested himself for years in collecting the portraits of early American statesmen, and in perpetuating them, where there was a risk of their ultimate loss, by causing them to be reproduced. The accompanying portraits of Dane, Kean, and Carrington are from etchings made by his order; and it is to his generosity that the "Green Bag" is indebted for their use. A large oil painting of Dane hangs in the Law School at Cambridge. The likeness of Melancton Smith, which is kindly furnished by his granddaughter, Mrs. Elizabeth S. Martin, of Green Bay, Wis., is from a rude drawing which was found in 1839, and which her husband, the late Morgan L. Martin, Esq., caused at that time to be engraved by Rawson, Hatch & Co. The picture of Governor Foote is from an oil painting owned by his son, Mr. John A. Foote, of Cleveland, who most obligingly caused it to be photographed for the use of the writer of this article. — Ed.]

THERE was living in the Massachusetts town of Beverly, within the memory of men still active, a deaf old lawyer who wore to the end of his long life the costume of the last century, and whose name was Nathan Dane. This man was in some sense the Father of American Jurisprudence; the three conspicuous acts of his career, though distinct in themselves, all went to the foundation of such a system of American law as would help to make the young Republic a leader among the nations In his youth he had drafted the most famous statute in American history; in his later years he prepared the first great compend of American law; and the crowning act of his last days was the endowment of a Harvard professorship from which have proceeded most of the leading treatises in American jurisprudence. Judge Story has said that the doing of these things was "glory enough for one man in one age;" John Quincy Adams declared that Liberty and Law were "associated till the judgment day with the name of Nathan Dane;" and it was one of Webster's periods that the authorship of the great Northwestern Ordinance would make that name "as immortal as if it were written on yonder firmament, blazing forever between Orion and the Pleiades." Where now are these splendid prophecies? It came to pass, instead, that within fifty years from his death, though the influence of his college chair was unabated, scarce one collegian in fifty so much as knew his name; his ponderous digest had long since been displaced by its successors; and the honors that belonged to him for his famous statute had been torn from him and given to another. His fate was like that of the new-slain knight in the border ballad: —

> "His hound is to the hunting gone,
> His hawk to fetch the wild-fowl home,
> His lady's away *with another mate.*
> . . . . . .
> O'er his white bones the birds shall fly,
> The wild deer bound, *and foxes cry.*"

Dane was born on the 29th of December, 1752, in the village of Ipswich, Mass., where the first of his family in this country had settled as early as 1638. He worked as a farm-hand for his father until he was twenty, and then in eight months and with but little aid fitted for Harvard College, where he was graduated in 1778, with a record of superior scholarship, in the same class with the father of George Bancroft. Then he taught school, and meantime studied law with William Wetmore, Judge Story's father-in-law. As a student, he was one of the first subscribers to a Philosophical Library, started at Salem by Dr. Manasseh Cutler and others. He is said to have come quickly into a profitable practice, but he kept his cases out of court as far as possible; and his course in this respect

was followed for the most part by the conspicuously able Essex bar, in which he was a leader. At least one anecdote survives to certify to his ingenuity as a trial lawyer. He had to defend a man charged with the then capital crime of setting a dwelling-house on fire in the night-time. He saved his client from death by producing a calculation from President Willard of Harvard, which showed that the morning twilight had begun to break a few minutes within the utmost limit of the time to which the prosecution could confine the commission of the act.

NATHAN DANE.

He was in the Massachusetts Legislature at thirty, and continued there for three years, when he was sent to the Congress of the old Confederation, in the same delegation with John Hancock, Nathaniel Gorham, Theodore Sedgwick, and Rufus King, all but one of whom were considerably older than he; King was three years younger. The General Court kept him in Congress until the Confederation had practically come to an end, and was about to be followed by the government of the Constitution. It was during this period, therefore, and at the age of thirty-four, when he framed the immortal statute that was to serve as a constitution for the Northwest. The stand he took with reference to the formation of the Federal Constitution has misled the historian McMaster into calling him "the most bitter and acrimonious anti-Federalist" in Congress. The fact is that he was always a Federalist; even his record on yeas and nays shows that he had invariably held to the idea of national unity and supremacy, and his connection with the Federal movement was perfectly consistent with this record.

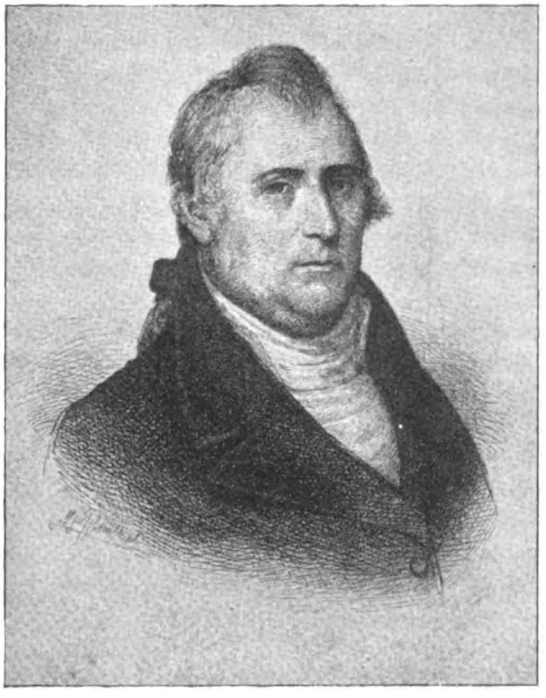
The facts were these: The first strong impulse toward the present form of government sprang from the needs of trade, one of which was that the States should recognize each other's right to share freely and equitably in such common facilities of commerce as the use of navigable streams. To bring this about, commissioners from some of the States met at Annapolis late in the summer of 1786. There were only a dozen of them, and they came from only five States. They could not of themselves do anything decisive, and so they adjourned after signing a report in which they suggested the *concurrence* of the respective States in the appointment of commissioners to meet in the following May at Philadelphia, there to consider the state of the country, devise such further provisions as may seem "necessary to render the Constitution of the Federal government adequate to the exigencies of the Union," and report such an act for that purpose to Congress as, "when agreed to by them, and afterwards confirmed by the legislatures of every State, will effectually provide for the same." They sent copies of this to Congress and to the different executives; and some of the States, without waiting for any congressional action, pro-

ceeded to choose delegates to the proposed convention.

Now, the last clause in the old Articles of Confederation, after solemnly declaring that they "shall be inviolably observed by every State," added: "Nor shall any alteration, at any time hereafter, be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every State." Among the Annapolis commissioners were three of the foremost lawyers in America, — Egbert Benson and Alexander Hamilton of New York, and Edmund Randolph of Virginia. Madison was also a commissioner; and both he and Benson were elected to the next Congress, before which their report was destined to come. It is not to be supposed that as lawyers they intended any such irregular action as the calling of a convention without the sanction of Congress; and how any lawyer then or now, or any one of common-sense, could expect such action to be acquiesced in by a Congress that was presumably sworn to maintain the articles, it is hard to see. Dane did not acquiesce, nor did King at first. Some time in October both went home, and harangued the Massachusetts Legislature to such effect that no appointment from that State to the proposed convention was then made. The movement, however, under Madison's impulse in Virginia, gathered irresistible headway. Virginia chose her delegates, and was followed by New Jersey, Pennsylvania, North Carolina, and Delaware. King, though still protesting that his opinion as to the legality of the measure was unchanged, ceased then to oppose the shape it had taken; but Dane, whom nothing could shake when his mind was made up, continued to act upon the theory that the right way was the only way, and finally succeeded in his effort to bring the movement under the sanction of Congress. He was himself the chairman of the general committee that on the 21st of February, 1787, reported to that body that they "strongly" recommended to the different legislatures to send forward delegates. The proceedings then taken show plainly enough where he stood on the main question. The New York members, who were under instructions, and among whom was Benson himself, proposed a substitute resolution that should state it to be the purpose of the Convention to revise the Articles of Confederation, and report to Congress and the States such alterations as it might judge necessary. The Federalists consented to this; and such men as King, Madison, Benson of course, Meredith of Pennsylvania, and Dr. Johnson of Connecticut, afterward President of Columbia College, all voted for this substitute. But out of the eleven members of the grand committee present, only five voted for it; and these were Dane, Cadwallader, Smith, Grayson, and Few. The other six voted against it; and if it is true, as Madison says, that the report of the grand committee was adopted in the committee itself after a good deal of difficulty, and by a majority of only one, it looks as though Dane had given the casting vote in favor of the initiatory Federal measure. The New York substitute was lost, and Dane then offered what was probably a compromise resolution; for, when finally agreed to, after some amendment, it recited the substance of the substitute.

Madison could never get it out of his head that Dane was hostile to the Federal idea, and in the private journal that he kept of the debates in Congress he records that he "was at bottom unfriendly to the plan of a convention." And again, in the early fall, when the completed work of the Convention was submitted to Congress, Madison, who was a member of both bodies, wrote to Washington and Jefferson that certain hostile ideas which had created difficulties in the Convention had made their way into Congress, and were patronized chiefly by R. H. Lee and by Dane, who had made a very serious effort to embarrass it, because they held it improper for Congress to take any positive agency in subverting the Articles under which it acted. This may all have been so

without convicting Dane of anti-federal ideas, or of anything worse than a wish to strengthen the national system by methods that were consistent with the existing organic law. The Philadelphia plan meant a total revolution in the Federal system, and until it should be carried out, the Congress was the only custodian and trustee of national interests. It does not appear that Dane ever antagonized the Constitution itself; he voted for its submission to the people,[1] and for taking steps to put it in operation;[2] and it is, perhaps, to the purpose to add that when it was laid before the Massachusetts convention, which approved it by the close vote of 187 to 168, the delegates from his own town supported it.



EDWARD CARRINGTON.

It was during this same summer of 1787 that he gave its final form to the ordinance for the government of the Northwest Territory. The subject was not a new one; Congress had experimented on it repeatedly. A plan that Jefferson had made in 1784 had been adopted, but it never went into operation; and in 1786 a committee of which Monroe was chairman made another. It had not been a very pressing matter, for the Territory itself was a howling wilderness, with no particular need until now for any system of government. The reason why it was needed now was that there was a prospect of an immediate immigration of settlers from New England. A large joint-stock company, including many Revolutionary veterans who had long been petitioning Congress for a grant of bounty lands, was offering to buy fifteen hundred thousand acres in Ohio if satisfactory terms could be had. They had sent to New York, as their agent, the Rev. Manasseh Cutler, a townsman of Dane's, and a man of multifarious gifts, for he was a doctor as well as a clergyman, had studied law beside, and to crown all, was a natural politician. He kept so minute a diary that every step of his journey and almost every detail of his business can be followed in its pages.

There had been no quorum present in Congress since the 11th of May. But on the 4th of July seven States were represented; and as Gen. Arthur St. Clair, its president, was away, William

[1] 4 Journals of Congress, 782. [2] Ibid. 827.

EDWARD CARRINGTON of Virginia, the chairman of the Ordinance Committee, was afterward conspicuous as foreman of the jury that tried Aaron Burr. At twenty-seven he was lieutenant-colonel of the artillery regiment commanded by Benjamin Harrison. Strongly attached as he was to Hamilton, he was of course a Federalist; and it is remarkable that in a letter to his friend, written as early as 1794, he expressed the conviction that Southern politics tended to disunion. When the breach came, the Carringtons, like Scott and Thomas, St. George Cooke, Strother, and Minor Botts, were among those true Virginians to whom loyalty must have meant a passionate devotion to their country far beyond the mere sentiment that prevailed where majorities made it easy. It does not appear that he was a lawyer; but his brother Paul, and Paul. Carrington, Jr., were both judges. A son of the younger Paul was Gen. Edward C. Carrington, who took part in the War of 1812; and the latter's son and namesake, Gen. Edward C. Carrington, an officer in the war with Mexico, was district attorney at Washington during the Rebellion. The original of the portrait hangs in his country residence, Charlton Heights, Branchville, Prince George's County, Maryland.

Grayson of Virginia was chosen chairman. On the afternoon of the 5th Cutler drove into New York in his gig. Next morning he delivered his petition, in behalf of the Ohio Company, for the purchase of Western land, and he proposed terms and conditions for such purchase. He dined that day with Mr. Dane. A committee was at once appointed to agree on terms, and report. Next day, which was Saturday, and again on Monday, he consulted Hutchins, the official geographer of the United States, about a location. On Monday afternoon he talked over terms with the committee, but to so little purpose that the prospect of closing a contract seemed very small. But on this day Richard Henry Lee, having arrived from Virginia, took his seat in Congress; and this day also the question of a territorial government was referred to a reconstructed committee of which Lee was made a member. The other members were Edward Carrington, the chairman, also a Virginian; Dane, of Massachusetts; Melancton Smith, of New York; and John Kean, of South Carolina. All of these but Carrington and Lee had dealt with the subject before, at some time or other; and indeed all of the present Congress who had ever been upon any of the committees that had canvassed it previously were on this committee, except those who were absent at Philadelphia in the Constitutional Convention.

The Committee must have worked with remarkable expedition, for under date of the 10th Dr. Cutler made this entry in his diary:

"As Congress was now engaged in settling the form of government for the Federal Territory, for which a bill has been prepared and a copy sent to me with leave to make remarks and propose amendments, which I had taken the liberty to remark upon and propose several amendments, I thought this the most favorable time to go on to Philadelphia. Accordingly, after I had returned the bill with my observations, I set out at seven o'clock."

So it seems that the day after the committee was appointed, they had a bill drafted — or, what is more likely, they took Monroe's draft, — and Cutler had looked it over. But while the question of the government was pending, the main business of his trip was in abeyance; and being an inquisitive as well as a very learned man, he took the opportunity to run over to Philadelphia, where he might see the aged Dr. Franklin, the first philosopher of his time. The Federal Convention that had now met for the framing of a National Constitution was also there, with Washington presiding over it, and most of the greatest statesmen of the country among its members. What took place while he was gone is told by Nathan Dane in a letter written on the 16th to his former colleague, Rufus King, who was now a delegate at Philadelphia. It seems to have been in answer to a request from King to "give him an account of what they were doing in Congress." He said: —

"We have been employed about several objects, the principal of which have been the government enclosed[1] and the Ohio purchase; the former, you will see, is completed, and the latter will probably be completed to-morrow. We tried one day to patch up M[onroe]'s p[2] system of W[estern] government; started new ideas, and committed the whole to Carrington, Dane, R. H. Lee, Smith, and Kean. We met several times, and at last agreed on some principles; at least, Lee, Smith, and myself. We found ourselves rather pressed. The Ohio company appeared to purchase a large tract of federal lands, — about six or seven millions of acres, — and we wanted to abolish the old system and get a better one for the government of the country, and we finally found it necessary to adopt the best system we could get. All agreed finally to the enclosed plan, except A. Yates. He appeared in this case, as in most others, not to understand the subject at all."

The intelligent Yates was from New York, and enjoyed the distinction of being the only man in Congress who voted against the adoption of the Ordinance. The other members were so acquiescent that when the committee

[1] He enclosed a copy of the bill.

[2] Perhaps he began to write "plan" and changed the word to "system."

reported its bill on the 11th, it was immediately read the first time; the second time on the 12th; the third and last time on the 13th; was put upon its immediate passage, and passed at once by the unanimous vote of the eight States present, save that of the aforesaid Yates. Dr. Cutler came back on the 17th, and on the 19th recorded in his diary that he —

"called on members of Congress very early this morning; was furnished with the ordinance establishing a government in the Western Federal Territory. It is in a degree new modelled. The amendments I proposed have all been made except one, and that is better qualified. It was that we should not be subject to continental taxation unless we were entitled to a full representation in Congress. This could not be fully obtained, for it was considered in Congress as offering a premium to emigrants. They have granted us representation with the right of debating, but not of voting, upon our being first subject to taxation."

MELANCTON SMITH.

Cutler's diary, full as it is, makes no further allusion to the Ordinance, but tells in graphic detail how he had to work to get his land scheme through. In this he met an amount of opposition such as there is no hint of in connection with the Ordinance; and he betrays a little of his nervous strain in recording a suspicion of Dane, of whom he notes that he "must be carefully watched, notwithstanding his professions." It is enough to say, however, that he succeeded, and that the Ohio purchase garrisoned the Northwest for freedom, and the Ordinance for the government of that territory was the great charter of its liberties. Indeed, it came in later years to be known as the Ordinance of Freedom.

Like Magna Charta, it included two classes of provisions, — the one of local and temporary application, and the other a statement of various great principles. The "temporary parts," as Dane afterward called them, embraced the scheme of territorial government, and this did not vary much from one that had been reported in May. The rest was embodied in what were called Articles of Compact, — the compact being between the people of the Territory and the General

MELANCTON SMITH was the oldest of the Ordinance Committee. He was sixty-three; Lee, fifty-five; Carrington, thirty-eight; Dane, thirty-four; and Kean, thirty-one. He had been sheriff in 1775, was afterward in Congress and in the New York Assembly, and late in life was made circuit judge; his business, however, had been that of a merchant. Politically he was a follower of his friend George Clinton, and was an anti-Federalist; one of the grounds on which he opposed the Federal Constitution was that provision which gave the slaveholders a three-fifths representation on account of their slaves. Born on Long Island, of Quaker antecedents, his posterity have been famous in war; his son, Col. Melancton Smith, was in the defence of Plattsburgh; his grandson, the present Rear Admiral Melancton Smith, commanded the "Mississippi," under Farragut, in the advance on New Orleans. The first Melancton died in 1798, being the first of the yellow fever victims in New York that year. The only known portrait of him was a pen-and-ink sketch, found forty years after his death, in an old trunk; on it were the words: "Mr. Smith — 1787 — C. Congress." How interesting it would be to know which one of his colleagues it may have been that scrawled this undeniably striking likeness!

Government, — and it is these which give the whole document its historic importance. These articles fixed a definite rule, which no legislation could vary, on certain subjects. They protect religious liberty and popular education; assert the right to *habeas corpus*, trial by jury, common-law procedure, due process of law where land or liberty or goods are at stake, full compensation for property taken or services exacted, bail in all but capital cases, and proportionate representation; they insist upon the freedom of all navigable streams, and enjoin good faith toward the Indians, the preservation of peace with them, and a strict observance of their property rights; they forbid immoderate fines, unusual punishments and slavery, the enactment of any law which shall interfere with contracts already in existence or with the primary disposal of the public land by the United States; they also forbid the taxation of the national domain, and any disproportionate taxation of non-residents; and they declare that the Territory shall always be part of the United States and subject to a republican form of government, and that its inhabitants shall be taxable for their proportion of government expenses, though levied by the local legislature.

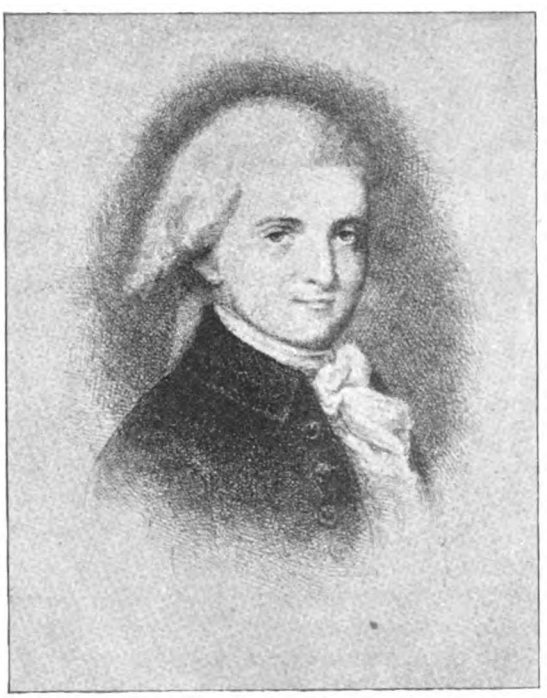
No one at the time claimed any credit for the statute. Lee, in a note to Washington, two days after it was passed, briefly explained the stringency of its provisions, on the ground that a strong-toned government seemed necessary "for the security of property among uninformed and perhaps licentious people." Dane excused it to King as the best they could do under the circumstances. Grayson, in writing to Monroe on the 8th of August, admits that the Ordinance was "something different from the one which," says he, "you drew; though I expect," he adds, "the departure is not so essential but that it will meet your approbation." It was not until forty-three years had passed that the question who drew it was raised at all; then, in the great debate on Foote's resolution, Webster, in his famous reply to Hayne, made a passing allusion to Dane as the author of it, and Benton retorted that it was really the work of Thomas Jefferson. Dane was still living at the age of seventy-eight. Webster sent him a copy of his speech; and Dane, in acknowledging it, said that whenever he himself had written or spoken of the formation of the Ordinance, he had mainly referred to the Articles of Compact, — not to the temporary part, in the formation of which, in 1786, Mr. Pinckney, himself, and, he thinks, Smith, took part. He adds: —

"So little was done with the Report of 1786 that only a few lines of it were entered in the Journals. I think the files, if to be found, will show that report was re-formed, and temporary parts added to it by the Committee of '87; and that I then added the titles and six articles, five of them before the Report of 1787 was printed, and the sixth article after."

In an appendix to a supplementary volume of his "Abridgment," which he published soon afterwards, Mr. Dane put a short note explaining the formation of the Ordinance. In this he says that he took from Jefferson's plan the provisions that the Territory should always be part of the United States, subject to the Articles of Confederation and to congressional legislation; that its inhabitants should pay their share of federal debts; that the territorial legislatures should never interfere with the primary disposal of the soil by Congress, nor with any regulations Congress should make to secure *bona fide* purchasers in their title, nor tax the lands of the United States, nor over-tax non-resident owners. As for the "*temporary* organization," which, he says, was not deemed an important part of the Ordinance, none of it was in Jefferson's plan; but he himself, with a little help from Pinckney, drafted it in 1786. His own invention, he adds, "furnished the provisions respecting impairing contracts, the Indian security, and some other smaller matters." Other portions of the Ordinance were taken mainly from the Constitution and laws

of Massachusetts, "as any one may see who knows what American law was in '87." These "other portions" included the rules of descent and "all the *fundamental perpetual articles* of compact, except as to slavery, Indian titles, and contracts." As to the article on slavery, he said, in his letter to Webster, that he had ever been careful to give Jefferson and King their full credit in regard to it; and he had said forty-three years before in the long-forgotten letter to King himself, —

"When I drew the Ordinance (which passed, a few words excepted, as I originally formed it), I had no idea the States would agree to the sixth article, — prohibiting slavery, — as only Massachusetts, of the Eastern States, was present, and therefore omitted it in the draft; but finding the House favorably disposed on this subject, after we had completed the other parts, I moved the article, which was agreed to without opposition."



JOHN KEAN.

These were plain enough statements; and they leave no room for historic speculations. But after another interval, — oddly enough, of forty-three years again, — President Joseph F. Tuttle, of Wabash College, made the suggestion, in certain historical papers of his, that the credit given to Dane should be shared by Cutler. This suggestion was based on a tradition in the Cutler family that the provisions for maintaining religion and learning and forbidding slavery were mainly due to their ancestor's influence. In 1876 Mr. William F. Poole had an elaboration of this theory in the April number of the "North American Review," but carried it to the radical extent of giving all the credit to Dr. Cutler. His paper seems to have misled almost every writer on the subject since, including Mr. Bancroft and John Fiske; but there is really no evidence to sustain it.

Apparently the last thing that Dane ever thought about was the preservation of any record of his own acts. Fitful glimpses may now and then be had of him from other sources, and they disclose a man always busy, but always ready to lend a hand. He was one of the founders,

JOHN KEAN of South Carolina, like his colleague Carrington, had seen service in the Revolution; Kean had also been in the prison ship. It is an odd thing that these two members of this little committee, neither of whom was known as a lawyer, were both matrimonially connected with the very head of the judiciary; for Carrington married Miss Ambler, a sister of Mrs. Marshall, and Kean's wife was Susan Livingstone, a cousin of Mrs. Jay. Mrs. Kean's father was Peter Van Brugh Livingstone, a rich merchant of New York, and a brother of Gov. William Livingstone, whose famous mansion, "Liberty Hall," was bought by Mrs. Kean, and descended to her son, John Kean, the father of the late Mrs. Hamilton Fish. This handsome portrait was etched from a miniature that Mrs. Fish used to wear, set in a bracelet. Kean never went back to South Carolina; after his term in Congress he was one of three commissioners to settle the accounts between the general government and the individual States; the other two were General Irvine, of Pennsylvania, and Woodbury Langdon, who was one of the early New Hampshire judges. When Kean died, in 1795, he was cashier of the United States Bank at Philadelphia. His widow, who used to be known as Mrs. Livingstone Kean, married in 1800 the celebrated Count Niemcewicz, who came to this country with Kosciusko and some years later returned to Poland, where he took part in the revolution of 1831.

besides being president, of the Massachusetts Society for the Suppression of Intemperance, and he contributed to its support. That was the first association of its kind that ever was organized. He was a patron of the Massachusetts Agricultural Society, and a member of the Massachusetts Historical Society, the Essex Historical Institute, and the American Antiquarian Society. In the winter of 1787 he acted as moderator of the Beverly town-meeting that voted the Essex bridge, the first great engineering triumph of its kind in this country. In 1789 he was one of the passengers in the first paddle-wheel steamer in American waters, when it made its trial trip from Danvers Iron Works to Beverly. Between 1790 and 1798 he was in the Massachusetts Senate at various times for five sessions. In 1794 he was made justice of the Court of Common Pleas, but he resigned without taking his seat, although he had qualified. He may have preferred the task that was given him in 1795, as a commissioner to revise the laws of the Commonwealth. In 1797 he drew, it is supposed, the important report which is printed with the Massachusetts statutes of that year, whereby academies of higher education were virtually established as a part of the public school system. In 1802 he was a corporator in a turnpike company. During the embargo times he gave effective support to a society that he had established for furnishing employment to men and families that had depended on the shipping interests. In 1811 he was on a commission to revise and publish the charters theretofore granted. The next year he had to republish the general statutes, and he was also a presidential elector, in which capacity he voted, though a Federalist himself, for DeWitt Clinton. The main question in New England at that campaign was whether there should be another war with the mother-country; and when Madison, who was elected, forced on the disastrous and unnecessary contest now known as the War of 1812, the feeling against the Government was so strong as to lead to that famous Hartford Convention which later malcontents affected to regard as setting the example of disunion. It is altogether likely that if some of the younger men had got control of it, there might have been some colo: for this slur; for Dane himself went to it, as

SAMUEL AUGUSTUS FOOTE.

SAMUEL AUGUSTUS FOOTE has no proper connection with this sketch beyond this, that the controversy over the authorship of the Ordinance of 1787 was first provoked by the debate on that harmless-looking resolution of his, that the sale of the public lands should be suspended. But as this debate was on the whole the most famous that has ever been held in Congress, and as it called forth Webster's masterpiece, it is interesting to see the face of the man who set such forces in motion. He was himself a youngster of but seven when the great Ordinance was adopted, and he was graduated at seventeen from Yale. He was in one house or the other of Congress most of the time from 1819 to 1834, and he then became governor of Connecticut. He was a merchant by occupation, and not a lawyer, and one of his sons was that great admiral whose cannon opened the Tennessee for Grant. This excellent portrait of Senator Foote is photographed from a painting now owned by his son, John A. Foote, of Cleveland, Ohio.

he told the father of Robert C. Winthrop, "to prevent mischief," and when he came back he said that if certain persons could have had their own way and carried the measures they proposed, he did not know "where we should have been. I rejoice," said he, "that I went to Hartford and helped to avert danger." Under the restraining influences of such men as he, the conclusions unanimously reached by the twenty-six members were crystallized in a report that was firm, straightforward, temperate, clear, and logical. It reviewed the conduct of the administration toward New England, described the consequent helplessness of that section in the face of war, recommended certain measures of present relief, and suggested as a future safeguard a number of constitutional amendments. Dane was one of a committee of seven appointed to draw up a statement that should illustrate the principles and reasons which had led the convention to the results they had agreed on. While they were engaged on this, however, the peace commissioners at Ghent were signing the treaty that closed the war. The year after, when President Monroe was making his Northern tour and stopped at Beverly as the guest of Israel Thorndike, Mr. Dane was the local magnate selected to make the President an address of welcome.

In 1816 he was one of a committee appointed by the Legislature to report on a proposed revision of the probate law; and in that year also Harvard made him a Doctor of Laws. His deafness meanwhile so grew on him that he could not hear debate; but when the Massachusetts Convention of 1820 was held for revising the State Constitution, he was chosen a member for the prestige of his name, although it was understood beforehand that he would not attend it. With all his experience in making, compiling, revising, and codifying laws at the formative period of American jurisprudence, and that, too, not only in Congress but in a State that was to set the model, to a great extent, for later law-making throughout the North, and in which, also, the spirit of republican institutions was better understood, perhaps, than anywhere else in the country, — and with the special study which he says he had made from his youth, of the development of law in America, there could hardly have been any man so well qualified as he to construct the first great digest of our statutes and decisions. Like Viner, he used the proceeds of the sale of his "Abridgment," in endowing the professorship that bears his name at the Harvard Law School. The endowment was based on the two conditions that Joseph Story should be the first incumbent of the chair, and that every one who filled it should publish some work upon the law. Viner's professorship gave to the world one unique work, — the matchless Commentaries of Blackstone, — but Dane's has poured forth a profuse stream of treatises, including most of the best-known text-books; for Story's dozen volumes were followed by Greenleaf's standard work on Evidence, and that by another flood of books from Parsons, to be followed by the scant but philosophical productions of Langdell. Dane himself left one other ponderous composition, which remains in manuscript, — a series of essays on many subjects, under the title "A Moral and Political Survey of America." Indeed, for the last twenty years of his life, he never spent less than twelve hours a day in his library; and this does not except Sundays, although he never stayed away from church, impossible as it was for him to hear a word of the sermon. One cannot help smiling at the evident sincerity with which the old man told Dr. Peabody that he ascribed the preservation of his working powers to his having always rested on Sunday; for instead of devoting that day to law and American history, it seems that he gave it to the critical study of the Scriptures in Hebrew and Greek, and to the reading of sundry Christian Fathers in their original tongues. It may well be imagined that he kept late hours; he gathered his material with the aid of a common-place book, and he is reported to have said that "reading right forward was heavy work," but

by extracting and minuting he could sit up till midnight.

Dr. Peabody says that Mr. Dane was hospitable and generous, and that he lived elegantly. This does not mean, however, that he was addicted to the pleasures of the table; for when he dined with President Quincy, on the occasion of the dedication of Dane Hall, at Harvard, he said, on being urged to have some dessert, that he would so far depart from his invariable rule as to take three almonds. He had no children of his own, and he educated various relations, or else established them in business; he adopted as his son his nephew, Joseph Dane, who was graduated from Harvard in 1799, and became a Congressman from Maine. There is one little scrap of contemporary characterization from the pen of John Lowell, the poet's uncle, who wrote of him to Timothy Pickering, at the time of the Hartford Convention, as follows: "He is a man of great firmness, approaching to obstinacy; singular, impracticable, and of course it must be uncertain what course he will take. Honestly, however, inclined." Lowell was one of those fiery Federalists who feared that the members of the convention were not of the kind that were calculated for bold measures. As extreme age drew on, Mr. Dane used to test the condition of his faculties by noticing, while reading the newspapers, whether their contents interested him as readily as they formerly had, and whether he comprehended them as promptly. It does not appear that any mental failure showed itself, and even the paralytic stroke which preceded his death some three months left his mind unclouded and still intent upon his usual subjects. He died at Beverly, on the 15th of February, 1835, at the age of eighty-two. His venerable wife, who for fifty-five years had been his companion, survived him.

CAUSES CÉLÈBRES.

XXVI.

DUMOLLARD.

[1862.]

THE neighborhood of Montluel — a small town about twelve miles from Lyons, on the road to Geneva — enjoys a traditionary ill-repute. Across the plain of Valbonne, on which it stands, may be seen the glimmer of two white houses, — the Great and Little Dangerous, — so called from having been in former days the scene of many deeds of lawless violence. The country around is broken, sparsely inhabited, and dotted with patches of dense and sombre woodland, sometimes reaching almost to the dimensions of forests. A better locality no robber could desire.

On the 8th of February, 1855, some sportsmen, threading the thickets of Montaverne, came on the corpse of a young female, covered with blood, which had proceeded from six terrible wounds in the head and face. The body was stripped, and had been subjected to gross outrage. A handkerchief, collar, black-lace cap, and a pair of shoes were picked up close at hand. By the aid of these things the deceased was soon identified as Marie Baday, late a servant at Lyons, which city she had quitted three days before. She had stated, as the reason for her departure, that a man from the country had offered her a good situation in the neighborhood, provided she could take it at once. Precisely similar proposals had been made, on the very same day, to another servant-girl, Marie Cart; the agent being a country-looking man, aged about fifty, and having a noticeable scar or swelling on the upper lip. Marie Cart postponed her answer until the 4th of March, — a circumstance which probably induced the suspected person to address himself, in the interim, to Marie Baday.

On the 4th of March the same man called again upon Marie Cart, who finally declined his offer, but introduced him to a friend of hers, Olympe Alabert, — also a servant, — who, tempted with what she considered an advantageous proposal, closed with it, and left Lyons under the guidance of the supposed countryman. Night was falling as they entered the wood of Montaverne, in which, a few days before, the body of Marie Baday had been found. Acting on a sudden impulse, induced, perhaps, by the gloomy solitude of the place, the girl quitted her conductor, and sought refuge in a neighboring farm.

At this point — strange as it seems, considering on what a stratum of crime they had touched — the discoveries of the police ended for that time.

In the month of September following, a man, answering in every point to the former description, induced a girl, named Josephte Charlety, to accompany him to a pretended situation as a domestic servant, and both left the city together. Their way led through cross-roads, until, night coming on, the girl, — like Olympe Alabert, — oppressed with a nameless terror, fled to the nearest house.

On the 31st of October the wolf again visited the fold, and selected Jeanne Bourgeois, another-servant girl. But once more an opportune misgiving saved the intended prey. In the succeeding month the wolf made choice of one Victorine Perrin; but on this occasion, being crossed by some travellers, it was the wolf who took to flight, carrying with him the girl's trunk, containing all her clothes and money. None of these incidents seemed to have provoked much attention from the authorities, and horrible deeds actually in course of commission were only brought to light by the almost

miraculous escape of another proposed victim, Marie Pichon.

On the 26th of May, '61, at eleven o'clock at night, a woman knocked wildly at the door of a farm, in the village of Balan, demanding help against an assassin. Her bruised and wounded face, torn garments, shoeless feet, all bore testimony to the imminence of the danger from which she had escaped. Conducted to the brigade of gendarmerie at Montluel, she made the following statement, listened to at the subsequent trial with breathless interest: —

"To-day, at two o'clock, I was crossing the bridge La Guillotière, at Lyons, when a man I had not before observed, but who must have been following me, plucked my dress and asked me if I could tell him in what street the Servants' Office was situated. I mentioned two, adding that I was myself about to visit the latter. He asked if I were in search of a place. 'Yes.' 'Then,' said he, 'I have exactly the thing to suit you. I am gardener at a château near Montluel, and my mistress has sent me to Lyons with positive orders to bring back a house-servant, cost what it may.' He enumerated the advantages I should enjoy, and said that the work would be very light, and the wages two hundred and fifty francs, besides many Christmas-boxes. A married daughter of his mistress paid her frequent visits, and always left five francs on the mantelpiece for the maid. He added that I should be expected to attend mass regularly.

"The appearance, language, and manner of the man gave me so strong an impression of good faith, that without a minute's hesitation I accepted his offer, and we accordingly left by the train, which arrived at Montluel about nightfall, — half-past seven. Placing my trunk upon his shoulder, he desired me to follow, saying we had now a walk of an hour and a half, but that by taking crosspaths we should quickly reach our destination. I carried in one hand a little box; in the other my basket and umbrella. We crossed the railway and walked for some distance along the parallel road, when the man turned suddenly to the left and led me down a steep descent, skirted on both sides by thick bushes. Presently he faced round, saying that my trunk fatigued him; that he would conceal it in a thicket, and come back for it with a carriage on the morrow. We then abandoned the path altogether, crossed several fields, and came to a coppice, in which he hid the trunk, saying we should presently see the château. After this we traversed other fields, twice crossing over places that looked like dried-up watercourses, and finally, through very difficult ways, rather scrambling than walking, arrived at the summit of a little hill.

"I must mention something that had attracted my attention. Throughout the walk my guide seemed remarkably attentive, constantly cautioning me to mind my steps, and assisted me carefully over every obstacle. Immediately after crossing the hill I spoke of, his movements began to give me uneasiness. In passing some vines he tried to pull up a large stake. It, however, resisted his efforts, and as I was following close on his heels, he did not persevere. A little farther he stooped down and seemed to be endeavoring to pick up one of the large stones that lay about. Though now seriously alarmed, I asked, with all the indifference I could command, what he was looking for. He made an unintelligible reply, and presently repeated the manœuvre. Again I inquired what he was looking for, — had he lost anything? 'Nothing, nothing,' he replied; 'it was only a plant I meant to pick for my garden.' Other singular movements kept me in a state of feverish alarm. I observed that he several times lagged behind, and, whenever he did so, moved his hands about under his blouse, as though in search of a weapon. I was frozen with terror. Run away I durst not, for I felt he would pursue me; but I constantly urged him to lead the way, assuring him I would follow.

"In this way we reached the top of another small hill, on which stood a half-built

cottage. There was a cabbage-garden and a good wheel-road. My very fear now gave me the necessary courage. I resolved to go no farther, and at once said, 'I see you have led me wrong; I shall stop here.' Hardly had the words left my mouth when he turned sharply round, stretched his arms above my head, and let fall a cord with a running noose. We were at this moment almost in contact. Instinctively I let fall everything I carried, and with both hands seized the man's two arms, pushing him from me with all my strength. This movement saved me. The cord, which was already round my head, only caught and pulled off my cap. I shrieked out, 'My God! my God! I am lost!'

"I was too much agitated to observe why the assassin did not repeat his attack. All I recollect is that the cord was still in his hand. I caught up my box and umbrella, and flew down the hill. In crossing a little ditch, I fell and bruised myself severely, losing my umbrella. Fear, however, gave me strength. I heard the heavy steps of the murderer in pursuit, and was on my legs again in an instant, running for life. At that moment the moon rose above the trees on my left, and I saw the glimmer of a white house on the plain. Toward this I flew, crossing the railway, and falling repeatedly in my headlong course. Soon I saw lights. It was Balan. I stopped at the first house. A man ran out, and I was saved."

Such was Marie Pichon's narrative. The authorities, now fully aroused, at once commenced a searching inquiry. Ultimately the eye of justice rested on a certain small house in the little hamlet of Dumollard. Village gossip spoke unreservedly of the skulking nocturnal habits of its master, — the stern, unsocial manners of his wife. Their name was the same as the village, Dumollard: a very common name in that district. The man had a peculiar scar or tumor on his upper lip.

The magistrates at once waited upon Dumollard, and requested an explanation of the employment of his time on the day and night of the 28th of May. The answers being evasive, and certain articles in the house wearing a very suspicious look, Dumollard was given into custody, conveyed to Trevoux, and instantly identified by Marie Pichon as her assailant. Meanwhile a search in his house resulted in the discovery of an immense accumulation of articles, evidently the produce of plunder, — clothes, linen, pieces of lace, ribbons, gowns, handkerchiefs, gloves; in a word, every species of articles that might have belonged to girls of the servant-class. Very many of these bore traces of blood; others had been roughly washed and wrung out. These objects amounted in all to twelve hundred and fifty. "The man must have a charnel somewhere," said one of the searchers.

It was next ascertained that in November, '58, Dumollard was seen to alight one evening at the station of Montluel, accompanied by a young woman, whose luggage he deposited in the office, saying that he would call for it next day. It was never claimed.

"On the night you mean," said the wife of Dumollard — who, after the search in the house, had been likewise taken into custody, and now showed a disposition to confess — "Dumollard came home very late, bringing a silver watch and some blood-stained clothes. He gave me the latter to wash, only saying, in his short way, 'I have killed a girl in Montmain Wood, and I am going back to bury her.' He took his pickaxe, and went out. The next day he wanted to claim the girl's luggage, but I dissuaded him from doing so."

In order to verify this statement, the magistrates, on the 31st of July, '61, repaired to Montmain Wood, taking with them the two accused. For some hours all their searches proved fruitless, the woman declaring her inability to point out the precise spot, and the man preserving a stolid silence. At length some appearance of a tumulus was detected among the bushes, and a few strokes of the pickaxe made visible some bones. A

circular trench was then carefully dug, and a perfect female skeleton uncovered. The skull presented a frightful fracture. Under it was found some brown hair and a large double hair-pin.

The prisoners were now brought forward, and confronted with the silent witness.

The woman having volunteered further confession, the party now went to the wood Communes, also near Montluel; but night coming on, investigation was deferred till the next day. A great part of the next day was passed in fruitless search, when, just as the party prepared to return to Montluel with the view of organizing explorations on a large scale, Dumollard suddenly declared that he would himself point out the place they sought.

He thereupon guided them to a spot about fifty yards deep in the wood. Here they labored for another hour with no better success, until one of the officers noticed a slight displacement of the soil, presenting some small fissures from whence flies were issuing. Above this spot two little shrubs, evidently placed by design, had taken feeble root.

A stroke of the spade laid visible the back of a human hand. Presently the body of a young female, in complete preservation (owing to the character of the soil), was exposed to view. The corpse lay on its back, the left hand on the bosom, the fingers clutching a clod of earth. Appearances favored the frightful conclusion that the victim had been buried while yet alive and conscious.

The bearing of Dumollard in the presence of this new and terrible accuser was as calm as ever. Not the slightest trace of emotion was perceptible on his stolid features. It was observed, nevertheless, that he studiously avoided looking, as it were, on the face of his victim. The magistrates seized the moment to impress upon him the inutility of any further attempt to evade justice, and invited him to make a full confession. After a few moments of seeming irresolution, he commenced the following recital: —

"One day in December, '53, I was accosted in Lyons by two individuals of the farmer class, whose manner and appearance won my unlimited confidence. After treating me to wine at a neighboring tavern, they invited me to stroll on the quay, asked me a multitude of questions, and finally proposed to me to enter their service. I inquired the nature of the work required of me. 'The abduction of young women,' was the reply. 'You shall have forty francs for every "prize," and if you remain with us twenty years, we will guarantee you a hundred thousand francs.'

"Such a proposal seemed far too advantageous to be treated lightly," continued Dumollard. "They gave me the necessary instructions, which were simple enough. I was merely to look out for young females in search of situations, offer them first-rate wages, and conduct them beyond the town.

"A week later we commenced operations on the Place de la Charité. My first attempt failed; but the second woman I accosted listened to my story, accepted the pretended situation, and accompanied me from the town. At the end of the suburbs my two employers met me. I pretended to have forgotten something, and, telling the girl these gentlemen were friends of mine, requested her to go on with them, promising to overtake them at Neyron. I lingered about the spot for three hours, when the men returned, and handed me a parcel, saying it was a present for my wife. Opening it, I found a gown and chemise, both stained with blood. I recognized the dress of the woman I had brought, and demanded what had become of her. 'You will not see her again,' was the only reply.

"On the way home I washed the clothes in the fountain at Neyron, and gave them to my wife, saying I had purchased them at Lyons.

"I never knew the exact place in which they murdered the girl, but I think it must have been near the bridge Du Barre, and that they flung the body into the Rhone. I think so, because one day in the ensuing

summer, while crossing that bridge in their company, one of them remarked, 'We have sent two bodies under this bridge already.' And this I understood to imply two other murders, anterior to that I have mentioned.

"Nothing remarkable happened until February, '55, when my two friends met me by appointment at a wine-shop, and brought with them a young female of dark complexion, with whom and the men I set forth, and proceeded as far as the road leading from Miribel to Romaneche, which passes through the wood. Here I sat down, declaring I would go no farther. They tried to persuade me to proceed, but finding me determined, presently pursued their way, taking with them the girl.

"I waited two hours. No cry reached my ears. Still I had a presentiment of something wrong. The men returned alone, saying they had left the girl at a farm. As they brought no clothes with them, I was inclined to believe their story. We then parted, and I returned home. [This was, no doubt, the unfortunate Marie Baday.]

"Nothing occurred for two years, during which I had occasional interviews with my two friends; at length, in December, '58, I fell in with them on the Quai de Perrache. They told me they had something on hand; would I come? I consented, and they left me; presently returning with a young girl, with whom we started by the rail for Montluel. It was dark when we arrived; and the men, taking me aside, requested me to guide them to some secluded spot, indicating the wood of Choisy. I told them it was too close to the high-road; it would be better to go on farther. Presently we reached the edge of Montmain Wood. That, I told them, would do.

"They left me seated by the roadside. Soon I heard one loud scream, about three hundred yards distant; then profound silence. In a few minutes the men returned, bringing a silver watch and some clothes. I told them I had heard a scream, and asked if she had suffered much. 'No,' they answered; 'we gave her one blow on the head, and another in the side, and that did the business.'

"We knew that the body of Marie Baday had been found, and it was judged prudent to bury this new corpse. I therefore ran to my house for the tools, and at the same time gave my wife the watch and the clothes, which were stained with blood. She asked me whence they came? Thinking that if I accused others she would not believe me, and relying, like a fool, on her discretion, I replied that they had belonged to a girl I had killed and was about to bury in Montmain Wood. I then went back to my friends, who dug a shallow grave and concealed the body, while I sat by."

This was the victim — never identified — whose skeleton was exhumed, as before mentioned, on the 31st July, '61.

Dumollard referred to certain other attempts which had failed, owing to the suspicions of the intended victims, and continued: —

"I must speak now of this girl, Marie Eulalie Bussod, whose body lies before us. I accosted her one day on the bridge La Guillotière, and asked her if she would accept a good place in the country, offering two hundred francs. She required two hundred and ten, and we went to the residence of her sister to discuss the matter, where I agreed to her terms. At the end of a week I returned, and escorted her to the station at Brotteaux, where I had, in the interim, desired my two employers to meet me. They came, and I introduced them to Marie Bussod as friends and neighbors of mine, who would accompany us some little distance after quitting the rail.

"It was dark when we reached Montluel, and I had to act as guide, carrying the girl's trunk. 'What a lovely creature!' whispered one of my friends to me as we set out.

"I led the way toward the wood Communes, — a wild, retired spot, — following a path, almost obliterated, toward Croix-Martel. Here I hid the trunk among some bushes,

assuring the girl I would return for it in the morning.

"Somehow, at this point my courage failed me. I told my friends I could go no farther; at the same time, however, pointing out to them Communes Wood, which lay but a few paces distant. In two hours the men returned, bringing some clothes and a pair of gold earrings, which they gave me for my wife. I inquired what they had done with the girl? 'Oh,' said one, 'she got two blows on the head, and one in the stomach. She made no great outcry.' I then went home for a spade; and the men buried her here, as you see.

"Marie Pichon would inevitably have suffered the same fate, had not my two employers failed me at the appointed place. I did not wish to do her any harm. On the contrary, finding the men absent, I wished to get rid of her and, to frighten her, threw my arms (not a cord, as she affirms) round her neck. I was glad to see her run away. 'At least,' I thought, 'they'll not get *this* one!'

"Some days later, finding an inquiry on foot, I judged it prudent to destroy the effects of the girl Bussod and those of Pichon, and, assisted by my wife, buried them accordingly in the wood des Rouillonnes.

"Now I have told all. I have nothing more to add."

It is almost needless to mention that the two mysterious persons on whom he affected to lay the burden of these atrocious crimes had no real existence. Unable to resist the proof of his own complicity, Dumollard saw no hope of escape save in conjuring up some individual more guilty than himself.

The trial commenced on the 29th of January, 1862, at the assizes of the Ain, sitting at Bourg: the woman Dumollard being included in the act of accusation.

The proceedings commenced at ten o'clock, under the presidency of M. Marillat, of the Imperial Court of Lyons; the Procureur-General on his right, the Procureur-Imperial on his left, and the magistrates of Bourg, Trevoux, and Montluel on the bench behind.

A short pause, and the prisoner appeared, escorted by four gendarmes, his wife following.

"There he is! There he is!" murmured the assembly.

"Yes, here I am!" retorted the prisoner, waving his hat, as a popular candidate might at an election.

He was placed on a bench at a little distance from his wife, and had the appearance of a hale rustic of fifty or thereabouts; his hair, beard, and mustache thick and dark; his nose aquiline; eyes blue, round, and very prominent; his whole expression singularly calm and self-possessed. The swelling on his upper lip, by which he had been more than once identified, was very apparent. He had told the jailer that it was occasioned by the sting of a poisonous fly.

The phrenological development of this man presented some extraordinary traits. The skull, enormously large at the base, sloped upward and backward, until it terminated almost in a cone, — a point too acute to be appreciated without passing the hand through his thick hair. The organs of destructiveness, circumspection, and self-reliance exhibited the most marked development. In front the skull, rapidly receding, presented, indeed, a "forehead villanous low." From the root of the nose to the root of the hair, it did not exceed three inches. The organs of comparison, causality, ideality, etc., were all but imperceptible; nay, in some instances, presented an actual depression. In a word, the cruel, brute-like character of this head was due rather to the absence of almost *every* good feature than to the extreme development of the bad. It was a type of skull commonly found among nations yet beyond the pale of civilization.

The jury having been impanelled and the indictment read, the examination of witnesses began. Nearly seventy answered to their names, and their testimony more than substantiated the horrible charges laid at the

door of this monster in human form. But throughout the trial Dumollard preserved an almost exasperating *sang-froid*, and was apparently the most unconcerned person in the court-room. None of the terrible details of his crimes affected him in the slightest, and his chief anxiety seemed to be to be protected from a draught of air which annoyed him, and to satisfy his hunger, which he did with the appetite of an ogre.

The examination of the fifty-third witness produced a most painful scene. This was Josephte Bussod, sister of the murdered girl, who, with two other sisters, appeared in deep mourning, and testified the most profound grief. It was necessary that she should identify the clothes of the deceased; and as each familiar garment stained with her blood was in turn held up, the tears and sobs of the witnesses redoubled, and deeply affected the auditory. The prisoners alone preserved their calmness.

"Do you recollect this dress?" asked the President of Dumollard.

"Oh, perfectly."

"And you, Marianne Dumollard?"

"Of course; I have worn it."

"Have you not also worn a cap with marks of blood?"

"Certainly not. I should have *washed* it," said the woman.

"You fully recognize the prisoner?" asked the President, of the weeping witness.

"Recognize him!" shrieked the poor girl, wringing her hands with wild passion; "the miscreant, the monster! He killed my sister, my poor Eulalie! But it is I too, — *I* that am guilty. Oh, *mon Dieu, mon Dieu!* I believed him, I trusted him! I made her go with him, — to death, to death! and *what* a death!"

She was carried out fainting. A gentleman sitting near stated that since the discovery of her sister's fate she had never ceased to accuse herself in this manner as a sort of accomplice.

It was four o'clock on the fourth day when the jury withdrew to their consultations. The prisoners were removed, and groups forming in every part of the court eagerly discussed the case.

In the mean time the individual most nearly concerned was taking refreshment and chatting easily with those around him; but he neither addressed nor even looked at his wife, who sat at a little distance, weeping bitterly.

Two hours and a half had elapsed, when the door leading to the jury-chamber swung open, and the twelve re-entered.

The verdict was rendered amidst a solemn silence. Both prisoners were found guilty, with extenuating circumstances in favor of the wife.

For the first time during the proceedings, Dumollard's coolness seemed to desert him. His countenance became perfectly livid; his eyes glared wildly round. At this moment, perhaps, the full horror of his position first revealed itself to his stubborn intelligence. There occurred, too, one of those dramatic pauses which give time for a scene of peculiar interest and solemnity to impress itself ineffaceably on the memory. Throughout the dimly lighted court nothing was to be seen but bowed heads or stern, still faces, waiting for the word of doom; not without a sense of that humiliation which even in the very act of justice confesses with reluctance the possibility of guilt so monstrous in the human form.

The President, after reading the articles applicable to the case, pronounced the fatal judgment, — Martin Dumollard to the pain of death, the execution to take place at Montluel; Marianne Dumollard to twenty years' imprisonment and hard labor.

That night the condemned murderer slept tranquilly, though for the preceding four his rest had been broken by convulsive tossings to and fro.

"Well, Dumollard, how goes it?" said his advocate, entering his cell next morning.

"As one who expects to die," was the answer.

"It remains then to make a good end; let that be the first expiation of your crimes."

Neither to such exhortations, nor to the earnest counsels of the excellent Abbé Beroud, Vicar of Bourg, who paid him many visits, did the unhappy wretch give any heed.

"I shall do nothing with him," said the good priest, mournfully. "The mind is too coarse and brutified. It is not with him as with others, where darkness and light are at least mingled in the soul. Here it is one profound obscurity."

Nevertheless he did not relax his efforts; and as Dumollard exercised his right of appeal to the Court of Cassation, opportunity was not wanting.

On Friday evening, the 7th of March, the guillotine was taken from the vaults below the Palais de Justice, placed upon an immense car, and transported to Montluel, whither a large detachment of Lancers had already proceeded, to preserve order among the immense multitudes that came flocking from every part of the country. At four o'clock that same evening, the criminal received intimation that he must die on the morrow. He turned deadly pale, but soon recovered his habitual indifference, and only replied that it was what he had expected. His confessor was then introduced, and remained with him half an hour. About to leave, he suggested to the condemned man that the time had arrived when, if ever, he should exchange forgiveness and reconciliation with his wife, offering at the same time to obtain permission for his release from irons.

Dumollard assented, and the interview took place immediately, — the male prisoner remaining calm and unmoved as ever, the woman deeply agitated. After this, the two sat down to partake of their last meal together, — an abundant supper, provided at the cost of the good priest, who, though it was fast day, permitted them, "in the present conjuncture of circumstances," to eat what they pleased. Of this license Dumollard availed himself to the utmost limit of human appetite. Beef, pork, cutlets, and especially puddings, disappeared under his efforts with a rapidity that struck with amazement the spectators of that gloomy feast. He seemed to consider the time too precious to be wasted in conversation, but nevertheless found opportunity now and then to address a word of comfort to his wife, whose sobs interrupted the repast.

"Patience, patience; you are fretting about me, but it is a waste of grief; you see *I* don't care. As for you, you have to remain twenty years in prison. Be careful of the little money I shall leave you. Take some wine now and then. But mind! on your liberation, do not go back to Dagneux, where your family would not welcome you; remain at Dijon. By the by," he added, as if an important idea had struck him, "don't forget to reckon with Berthet; she owes you for so many days' work; that will be seventeen francs, less five sous."

It was half-past one in the morning when the prisoner entered Chalamont, a mile or two short of Montluel; and here the crowd had become so dense as to create some difficulty in passing. Yells and execrations resounded on every side. Some women forced their way up to the vehicle, flashing their lanterns into the face of the criminal. The Abbé Beroud warmly remonstrated, rebuking their indecent curiosity, and exhorting them to be satisfied with the act of justice about to be done. Thus through masses of living beings, miles in length, the cortége approached Montluel.

The scaffold had been erected during the night, in the widest piece of public ground, — the Place Bourgeat, — and now stood ready, in the centre of a perfect forest of bayonets and drawn sabres. Beyond the military square every visible inch, from ground to chimney-top, was packed with living beings.

Dumollard had alighted at the town-hall, and was warming himself comfortably at the fire in the council-chamber. A magistrate

present exhorted him to confess whatever remained upon his mind in reference to the crimes for which he was to suffer. The criminal made no other reply than, —

"I am innocent. It is unlucky, but I am sacrificed for the guilt of others."

One final effort to obtain confession, or at least admission of his guilt, met with the former result; and this extraordinary offender, persevering to the last in his war with justice and society, marched forth to his doom.

The shout that rent the air as he appeared might have been heard for miles. The silence that succeeded was the more appalling. Dumollard's lips moved as though in prayer. The priests bent forward, caught, and earnestly re-echoed the solitary accents, —

"Jésus! Marie! Pray for me!"

He knelt for a moment on the lower steps of the scaffold, and the Abbé Beroud offered to his white lips the symbol of divine mercy. Then the executioners helped him up the remaining steps, tied him to the plank, pushed the latter to its place. Quick as lightning the axe descended, and in a few seconds head and body lay together in a rude coffin, the body to be interred in an obscure nook of the cemetery at Montluel, the head to be sent to the phrenological professors at Lyons. There was scarcely time for a trace of blood to become visible. Never was the merciful death of the guillotine more skilfully administered; never was death punishment more richly deserved than by the French wolf, Dumollard.

WIDOWS AND WIVES.

By R. Vashon Rogers.

"BE wery careful o' widders!" was the advice Mr. Weller, Senior, gave on one occasion to his hopeful son, Sammy. The law has in many ways followed the suggestion. King Ethelred II., who died in 1016, while on the throne of Mercia passed a law saying that people should "not too often oppress widows and stepchildren, but willingly gladden them."[1] Widows' weeds were not in those old days expected to be long-lived: the aforementioned king said: "Let every widow who conducts herself lawfully, be in God's 'grith' [peace or protection] and the King's, and let every one continue XII. months husbandless; afterwards let her choose what she herself will."[2] Cnut (the gentleman who got his feet wet by the rising tide) passed a similar enactment, and, knowing well the feminine mind, he added: "And if the widow within the space of a year choose a husband, then let her forfeit her 'morgengyfu,' and all the possessions which she had through her first husband; and let the nearest kinsman take the land and possessions which she had before, and let him (the husband) be liable in his 'wer' to the King, or to him to whom he may have granted it. And though she be taken forcibly, let her forfeit the possessions, unless she be willing to go home again from the man, and never again be his. And let not a widow take the veil too precipitately."[1] Some of our widowed readers may say, "Willingly would we forfeit our morgengyfu — whatever that may be — for Number Two." So we must say that it was the "morning-gift," the gift which the husband gave to the wife the morning after the marriage, in token of satisfaction with his choice; and on his death it became her separate property. The "wer" which the second husband had to pay for his too successful and precipitate wooing was the price

[1] Ancient Laws of England, Ethelred, ch. 6, § 47.

[2] Ibid, ch. 5, § 21: ch. 6, § 26.

[1] Laws of King Cnut, Secular, 74.

at which his life was valued, and which, in the event of his being slain, had to be paid by the slayer to his relatives, and which he himself was condemned to pay if proved guilty of certain offences. It varied with the rank of the individual.

This idea of a widow choosing whom she would, as if it were always leap-year with her, has fortunately gone out. In Scotland, in the thirteenth century, if the chosen man declined to marry his chooser, he was heavily fined, unless he could prove that he was betrothed to another woman.

Apparently in Wales, according to the laws of Howel the Good, the marriage fees were lightened on a woman's second attempt in the matrimonial lottery; for we read that the bard, called the Chief of Song, who had to sing whenever the King or Queen desired, was entitled to a bridal present from every maiden when she married, but he was to receive nothing at the wedding feast of women who had been married before.[1]

In strong contrast to the laws of the early English, is the decision of that old Indian lawmaker, Menu, who said, "Let a woman emaciate her body by living voluntarily on pure flowers, roots, and fruits; but let her not, when her lord is deceased, even pronounce the name of another man. . . . A second husband is not allowed to a virtuous woman."[2] As we all know, the Hindoo laws are hard on women; the Brahminical lawyers objected to their succeeding to property, because they were not competent to perform the religious rites required of heirs. One authority, however, points out that a woman might do some acts of a quasi-religious character; *e.g.*, she may dig tanks.[3] In Bengal Proper a childless widow is entitled to the enjoyment of her husband's property, under certain restrictive conditions, for her life. As marriages among the upper classes of Hindoos are very commonly infertile, a large part of the soil is in the hands of such widows as tenants for life. The Suttee, or widow-burning, when the English entered India, was a constant and almost universal practice among the wealthier classes; and as a rule, it was only the childless widow, and never the widow with infant children, who burned herself on her husband's funeral pyre. The widow was made to sacrifice herself, that her tenancy for life might be got out of the way, and the husband's relations succeed to the property. The Brahmins exhorted her to the deed, because they disliked seeing any woman enjoying property; and the relatives because they began to enjoy the possessions as soon as her life was over. According to the Gentoo law, "it is proper for a woman, after her husband's death, to burn herself in the fire with his corpse: every woman, who thus burns herself, shall remain in Paradise with her husband three *crore* and fifty *laes* of years [*i. e.* thirty-five million years: quite enough for most husbands and wives!]. If she cannot burn, she must ever preserve an inviolable chastity."[1]

Perhaps we have been a little too previous in taking up the subject of widows in the first place; let us go back and see whom a man might marry in the good old days. King Ethelred said: "Let it never be that a Christian man marry within the relationship of VI. persons, in his own kin, that is within the fourth degree: nor with the relict of him who was so near in worldly relationship: nor with the wife's relation, whom he before had had. Nor with any hallowed nun, nor with his godmother, nor with one divorced, let any Christian man marry; nor have more wives than one, but be with that one as long as she may live: whoever will rightly observe God's law, and secure his soul from the burning of hell."[2]

Menu, in his advice to Cœlebs in search of a wife, says that a man should studiously avoid, among others, the families, be they ever so rich or great, which have thick hair on

[1] Dim. Code, B. I. ch. 25.

[2] Sir W. Jones, vol. iii., Laws of Menu, ch. ii. §§ 157, 162.

[3] Mitakshara, ii. 1, 22–24.

[1] Halhed's Gentoo Code.

[2] Laws of Ethelred, vi. § 12.

the body; and forbids him to marry a girl with reddish locks (!), or one with no hair, or one with too much of that adornment, or one immoderately talkative, or one with inflamed eyes. He was particular, too, about the names, differing from the man who thought a rose would smell as sweet by any other name; he says, let not the regenerate man marry a girl with the name of a constellation, or of a river, or of a barbarous nation, or of a mountain, of a winged creature, a snake, or a stag, nor with any name raising an image of terror. Let him choose for his wife a girl whose form has no defect; who has an agreeable name; who walks gracefully like a phenecopteros or like a young elephant; whose hair and teeth are moderate, respectively, in quantity and size, and whose body has an exquisite softness.[1] Having found this elephantine, phenecopterotic paragon, according to the Indian laws, — fortunately such a creature had not the right to pick and choose her bipedal mate, — let us see how among the early English the betrothal took place.

In the laws of Edmund (circa A.D. 946) we read: "If a man desire to betroth a maiden, or a woman, and it so be agreeable to her and her friends, then it is right that the bridegroom, according to the law of God, and according to the customs of the world, first promise and give a 'wed' (pledge) to those who are her 'foresprecas' (spokesmen); that he desire her in such wise that he will keep her, according to God's law, as a husband shall his wife; and let his friends guarantee that. After that it is to be known to whom the 'foster-lean' (the money pledged to the wife's family) belongs: let the bridegroom also give a 'wed' for this; and let his friends guarantee it. Then, after that let the bridegroom declare what he will grant her, in case she choose his will, and what he will grant her if she live longer than he. If it be so agreed, then it is right that she be entitled to half the property, and to all if they have children in common, except she again choose a husband. Let him 'confirm' all he has promised with a 'wed,' and let his friends guarantee that. If they then are agreed in everything, then let the kinsmen take it in hand, and betroth their kinswoman to wife, and to a righteous life, to him who desired her, and let him take possession of the 'borh' (surety) who has control of the 'wed.' But if a man desire to lead her out of the land, into another thane's land, then it will be advisable for her that her friends have an agreement that no wrong shall be done to her; and if she commit a fault, that they may be nearest in the 'bot,' if she have not whereof she can make 'bot.'"[1]

[1] Laws of Menu, ch. ii. §§ 7–10.

Even in those old days a man occasionally left his intended in the lurch, but an action for breach of promise was not necessary to fix the damages. King Ine, of the West Saxons, about 688, commanded: "If a man buy a wife, and the marriage take not place, let him give the money, and compensate and make 'bot' to his 'byrgea,' as his 'borgbryce' may be."[2] Just fancy that! Causeless desertion made a man liable to pay to the woman's relatives not only the "mundium" (a sum payable to the family of the bride for transferring the tutelage over her to the family of the husband), but a compensation besides, as well as indemnification to his surety.

The marriage over, the next question is, How were the parties to behave? Menu says, never let the wife separate herself from her husband (no trips to Europe or summer resorts were approved of by that old sage!). "She must always live with a cheerful temper, with good management in the affairs of the house, with great care of the household furniture, and with a frugal hand in all her expenses. Him to whom her father has given her . . . let her obsequiously honor while he lives, and when he dies let her never neglect him. Though he be inobservant of approved usages, or enamoured of another woman, or devoid of good qualities,

[1] Secular Laws, §§ 1–7.
[2] Ancient Laws, King Ine, 31.

yet a husband must constantly be revered as a god by a virtuous woman. A faithful wife who wishes to attain in heaven the mansion of her husband must do nothing unkind to him, be he living or dead. When the husband has performed the nuptial rights, with texts of the Veda, he gives bliss continually to his wife here below, both in season and out of season, and he will give her happiness in the next world. No woman can sacrifice apart from her husband, nor can she perform any religious rite, or fasting; as far only as a woman honors her lord, so far is she exalted in heaven. A woman is never fit for independence: let the husbands consider this as the supreme law ordained for all classes, and let them, how weak soever, diligently keep their wives under lawful restrictions. Let the husband keep his wife employed in the collection . . . of wealth, in purification and female duty, in the preparation of daily food, and the superintendence of household utensils. Women have no business with the texts of the Veda: this is the law fully settled. Day and night must women be held by their protectors in a state of dependence; but in lawful and innocent recreations, though rather addicted to them, they may be left to their own disposal."[1] For the fair sex these laws must have been what Huckleberry Finn considered the statements in "Pilgrim's Progress," — "interesting but tough." According to Solon, no married woman could go out at night without a lighted torch before her chariot, nor leave home with more than three garments. (This present commentator does not know whether this means, clad in three articles, or with three changes of raiment.) Greek wives were guarded and watched in doors and out by duennas and old men.

Among the Kaffirs a married woman is cut off from all intercourse, not only with her father-in-law, but with all her husband's male relations in the ascending line. She is not allowed to pronounce their names, even mentally; and whenever the emphatic syllable of either of their names occurs in any word, she must avoid it, by either substituting an entirely new word, or at least another syllable, in its place.[1]

Per contra, according to Diodorus,[2] in Egypt the ladies had great privileges, and at the time of the marriage an agreement was entered into to the effect that the wife should have control over her husband, and that no objection should be made to her commands whatever they might be. But when Diodorus lived the fate of Ananias and Sapphira was not generally known. Possibly, however, the women were supreme in the management of the house and in the regulation of domestic affairs. Even in this enlightened century, among the Arab tribes of Upper Egypt, at the marriage-feast, the unfortunate groom undergoes the ordeal of whipping by the relatives of his bride. This is sometimes exceedingly severe, being administered with a lash of hippopotamus hide; and if the bridegroom wishes to be considered a man of gallantry, he must receive the chastisement with an expression of enjoyment.[3]

The Welsh laws of Howel the Good paid particular attention to women, both married and unmarried; under them the ladies were not allowed to squander their substance. But to a certain extent one might be neighborly. We read that the wife of a privileged man could lend her shift, her mantle, her head-cloth, and her shoes, without the consent of her husband, and might give away her food and drink, and lend the furniture of the house unrestrictedly. The wife of a taeog (a churl) could not give anything, nor lend it without the consent of her husband, excepting her bonnet, her sieve, and her riddle, and those only to the distance she could be heard calling with her foot upon the threshold.[4] The Vendotian Code differs slightly on this latter point, saying: "She

[1] Laws of Menu, ch. ii. §§ 149–156: ch. ix. §§ 2, 3, 6, 11, 18.

[1] Maclean, Kaffir Laws and Customs.

[2] Diodorus, i. 37.

[3] Sir S. Baker, Nile Tributaries of Abyssinia, p. 125.

[4] Gwent. C. B. II. ch. 29.

can give nothing but her headgear; and lend her sieve, and that as far as her voice can be heard from the dunghill requesting its return."[1] The statutory value of a sieve, a riddle, and a bonnet was each a penny.[2]

A woman was not allowed either to buy or sell, unless she was a proprietrix.[3] If a wife uttered a harsh or disgraceful word to her husband, she had to pay him three kine as camlwrw, for "he is her lord;" "or he might strike her three blows with a rod, a cubit long, on any part he chose, except the head." If a man beat his wife without cause, he had to pay her saraad (a fine for an insult) to her according to her station.[4] A husband had a right to beat his wife for three things without giving her saraad: first, for giving away anything which she ought not to give; second, for being detected with another man in a covert: and third, for wishing drivel on his beard.[5] Under the Koran a man might rebuke, imprison, or scourge his wife. In India a husband could chastise his wife with a rope, or a small shoot of cane.[6] In both England and France a like wholesome discipline was permitted. Old Mat. Bacon says: "The husband hath, by law, power and dominion over his wife, and may keep her by force within the bounds of duty, and may beat her, but not in a violent or cruel manner: for in such case, or if he but threatened to beat her outrageously, or use her barbarously, she may bind him to the peace by suing a writ of supplicavit out of Chancery, or may apply to the spiritual court for a divorce *propter sævitiam*."[7]

"Tout mari peut battre sa femme quand elle ne veut pas obeir a son commandement, ou quand elle le maudit, ou quand elle dunant, pourvu que ce soit moderement et sans que mort s'ensuive."[8] Even a drunken and insolent wife cannot now be violently beaten in Massachusetts; and Emily Emma Maude Jackson has shown that the law in England is not what it used to be.[1]

For every offence a woman committed in those Arcadian days in Wales her kindred had to pay as for a man, unless she was in Hymen's bonds; then her husband and herself had to pay her camlwrw and her dirwy (fines, the former of three kine or ninescore pence, the latter of twelve kine, or three pounds).

The three peculiars of a woman are — so saith the Code of Howel Dha — her cowyll, her gowyn, and her saraad; the reason these three are called three peculiars is because they are the three proprieties of a woman, and cannot be taken from her for any cause: her cowyll is what she receives for her maidenhood; her saraad is for every beating given her by her husband (except for the three things), and her gowyn is, if she detect her husband with another woman, let him pay her sixscore pence for the first offence, for the second one pound: if she detect him a third time she can separate from him, without losing anything that belongs to her; and if she endure without separation, after the third offence, she is not entitled to any satisfaction; and the property she may obtain for the above three things is to be apart from her husband.[2]

Flirting was not looked upon with any favor by the eye of Howel's laws. If a married woman gave a kiss to any man other than her own, it was an odious deed, and the husband could repudiate her for it; and she forfeited the whole of her rights by giving the kiss, for that and nothing more. The man who got the sweet morsel had to pay the husband two thirds of his saraad (fine for insult), and that whether the kiss was given to her unawares, or what way soever: he also had to pay her the fourth part of her saraad, "unless it be in the play which is called

[1] Book II. ch. 1, § 39.
[2] Ven. C. B. III. ch. 22.
[3] Ven. C. B. II. ch. 1, § 60.
[4] Dim. C. B. II. ch. 18, §§ 5, 6.
[5] Ven. C. B. II. ch. 1, § 39.
[6] Sara, ii. 230; Menu, Private and Criminal Laws, 299.
[7] Bac. Abr. tit. Baron and Feme, B.
[8] Legouve, n. 148.

[1] Com. *v.* McAfee, 108 Mass. 458; Reg. *v.* Jackson (1891), 1 Q. B. 671.
[2] Ven. C. B. II. ch. 1, § 39.

rope-playing, or at a carousal, or when a person arrives from a distance." If the man denied giving a kiss, he could absolve himself by giving the oath of seven men; and the fair one could prove her innocence by the oaths of seven women, and her own nearest relatives could be pressed into the service.[1] In the West, Miss Cracker recovered $2,000 from a railway company for half a dozen kisses given her — *invita Minerva* — by a conductor.[2] A married woman might attack her husband's concubine with her hands if they met; and even though the poor concubine died, no compensation was required.[3]

If a husband took another wife after parting from the first one, Number One was free to marry again. Following this very just provision, however, comes one which must have been rather hard on the lady, and reminds one of the adage of "Many a slip 'twixt cup and lip;" it ran thus: "If a man parts from his wife and she be minded to take another husband, and the first husband shall repent having parted from his wife, and overtake her with one foot in the bed and the other outside the bed, the first husband is to have the woman."[4] In view of this one would expect husband Number Two to lock his door the first night.

Chastity was highly prized among the Welsh. If one supposed to be a maid was given in marriage and was not one, the groom could not repudiate her, nor take away any of her due, if she shared his bed for a single night. If, however, he protested her frailty as soon as known, the law allowed her to be exculpated by the oath of seven persons, including her mother, her father, her brothers, and her sisters. If she was not so absolved, the law was rude enough to say, "let her shift be cut off as high as her hips, and let a yearling steer be put in her hand, having his tail greased with tallow; and if she can hold him by his tail, let her take him in lieu of her share of the argyvren (a maiden's paraphernalia); and if she cannot hold him, let her be without anything."[1] If a woman cohabited with a man without the sanction and blessing of Mother Church, and he deserted her, upon complaint made by her to her kindred and to the courts, she — so runs the Gwentian Code, — is "to receive, for her chastity, a bull of three winters, having its tail shaven and greased and then thrust through the door-clate; and then let the woman go into the house, the bull being outside, and let her plant her foot on the threshold, and let her take his tail in her hand, and let a man come on each side of the bull with goads to propel the bull; and if she can hold the bull, let her take it for her wyneb-werth (a fine payable for insult) and her chastity; and if not, let her take what grease may adhere to her hands."[2]

A woman might leave her husband if he was leprous, or had fetid breath, or was incapable of performing his marital duties; and leaving him for any of these reasons, she was entitled to have the whole of her property. If by dying husband and wife parted company, the latter was entitled to have everything in two portions, except the corn; no wife in the world was to have a share of the corn, except an espoused wife. If by dying and living they separated, the sick aided by the confessor divided, and the healthy one chose her part.

It is amusing to read the way the goods and chattels had to be shared between husband and wife when they parted after a seven years' matrimonial alliance. "The swine to the husband, and the sheep to the wife; if there are only one kind they are to be shared; and if there be sheep and goats, the sheep to the husband, the goats to the wife; if there be only one kind, they are to be shared. Of the children, two shares to the father, and one to the mother; the oldest and the youngest to the father, and the middlemost to the mother. The household furniture is to be thus shared: all the milking

[1] Ven. C. B. II. ch. 1; Dim. C. B. II. ch. 18.
[2] Cracker *v.* Chicago & N. W. Ry., 36 Wis. 657.
[3] Dim. C. B. II. ch. 8, § 61.
[4] Ven. C. B. II. ch. i. § 18; Dim. C. B. II. ch. 18, § 29.

[1] Ven. C. B. I. ch. 1, § 27. [2] B. II. ch. 29, § 42.

vessels, except one pail, go to the wife; all the dishes, except one dish, go to the wife; and those two to the husband; the wife is to have the car and the yoke to convey her furniture from the house. The husband is to have all the drinking vessels (!); the husband is to have the riddle, the wife the small sieve. The husband is to have the upper stone of the quern, and the wife the lower. The clothes that are over them belong to the wife; the clothes that are under them belong to the husband, until he marries again; and after he marries, the clothes are to be given up to the wife; and if another wife sleep upon the clothes, let her pay 'wyneb-werth' to the other. To the husband belong the kettle, the bed coverlet, the bolster of the dormitory, the coulter, the fuel-axe, the auger, the settle, and all the hooks, except one, and that one to the wife. To the wife belong the pan, the trivet, the broad-axe, the hedge-bill, the plow-share, all the flax, the linseed, the wool, the house-bag, with its contents, except gold and silver; which, if there be any, are to be shared; the house-bag is the hand-bag. If there be webs, they are to be shared: the yarn-balls to the children, if there be any; if not, they are to be shared. The husband is to have the barn, and all the corn above ground and under ground; the husband is to have all the poultry, and one of the cats, the rest belong to the wife. The provisions are to be thus shared: to the wife belong the meat in the brine, and the cheese in the brine; and after they are hung up they belong to the husband; to the wife belong the vessels of butter in cut, the meat in cut, and the cheese in cut; to the wife belongs as much meal as she can carry between her arms and knees, from the store-room into the house. To each of them belong their clothes, except their mantles; the mantles are to be shared. Their debts, let them pay in equal shares. If the husband be privileged, let him show his privilege before the sharing; and after he shall have obtained his privilege, let there be a sharing, as we have said above." [1]

In the Welsh Anomalous Laws we read: "Whoever would prosper, let him avoid loving three things over much: woman, and ebreity, and sleep." [2]

After quoting this good advice and reflecting on all the absurdities aforesaid, we cannot more fitly conclude than in the words of one of George Eliot's characters: "However, I 'm not denyin' that women are foolish; God Almighty made 'em to match the men."

[1] Ven. C. B. II. ch. 1, §§ 2–8.
[2] B. V. ch. ii. § 153.

THE MONARCH OF THE FORUM.

CRASSUS was dead, Cotta an exile from Rome, and Hortensius in the zenith of his fame, when the youthful Tully first entered that arena where he was destined so soon to carry off the palm from all competitors. Not long before this there had been a period of much public excitement and agitation at Rome, and all who were candidates for the high honors of the State were compelled to court the favors of the sovereign people by animated harangues, which they almost daily addressed to assembled crowds. Such were Metellus Celer and Varius and Carbo and Pomponius and Caius Julius, who from the Rostra declaimed to the populace. Below them stood a youth of spare and meagre frame, whose long, thin neck was eagerly stretched forward, as he endeavored to catch every word that fell from the speaker. Who would have recognized in his pale, consumptive figure the future orator of Rome? Yet that was Cicero, whose health was then weak and delicate, and who constantly attended these meetings,

attracted by the spell of that eloquence of which he was one day to be himself such a mighty master. But he was no idle spectator. He read hard, and devoted a part of each day to writing, that he might accustom himself to accurate and rapid composition.

The advantage of this habit to a speaker was strongly felt by him. He says that by writing on a subject we pay more than ordinary attention to it, and thus many things present themselves to the mind which we should otherwise let slip. Besides this the most appropriate words and sentences occur to us while we bestow careful attention upon our style, and we learn to arrange our thoughts in the best order. A habit is thus engendered of employing always the most apt and striking language; and a speaker who has been accustomed to make use of his pen will, when he is obliged to utter anything extempore, be able to do it with the same correctness and grace as if it had been previously composed. The impetus given will, in fact, continue. Cicero illustrates this by the elegant simile of a vessel retaining her onward way after the rowers have ceased their stroke, from the mere impulse previously communicated. These are valuable hints from such a teacher, and would be acted upon much more generally if it were not for the reason which he himself suggests, — the disinclination which men feel to undertake the labor of such a course of preparation.

Cicero studied civil law under the able guidance of Q. Mucius Scævola, whose house was thronged by clients who resorted to the great jurist for advice in legal difficulties. At the same time he refreshed and enlarged his mind by attending the lectures on philosophy which were given by Philo, the leader of the new academy, who had been driven from Athens by the war which Sylla carried on against Mithridates in Greece. And in order to prepare himself for practice at the bar, he received instruction from Molo the Rhodian, once a distinguished advocate, but now teacher of the art of oratory at Rome. During this period legal proceedings were almost at a stand-still, while armed factions were contending for the mastery; but calmer times succeeded, and for three years the city enjoyed a hollow but undisturbed tranquillity. Many, however, of Rome's most eloquent sons — Sulpicius, Catullus, Antony, and Julius — had perished in the civil war, and their place was ill supplied by such speakers as Antistius, Piso, Pomponius, and Carbo, who now enjoyed, after Hortensius, the chief practice of the courts. Cicero tells us that he devoted himself during these three years, night and day, to the most severe and unremitting study, keeping one object steadily in view, and directing all his energies to the cultivation of eloquence, the absorbing passion of his life. Diodorus the Stoic taught him logic, and he daily declaimed in the presence of some friend, sometimes in his native language, but more frequently in Greek, with which tongue he was perfectly familiar, and which enabled him to transfer some of its rich luxuriance to the more unadorned and meagre Latin.

Such was the training by which Cicero sought to qualify himself for success in his career; and he might justly say that when he commenced practice he required little instruction from experience, but was already equal to the conduct of the greatest causes.

Cicero was proud of his vocation. He applied himself to it with untiring assiduity, and had a lofty idea of its requirements. "I," he said, when contending with Cæcilius for the right of conducting the prosecution against Verres, "who, as all are aware, have had such practice in the forum and in trials, that none or few of the same age as myself have been engaged in more causes, and who devote all the time which I can spare from the service of my friends to the studies and labors of my profession, in order that I may be better prepared and readier for practice at the bar; I, notwithstanding this, — so may the Gods be merciful to me! — declare that whenever I think of the mo-

ment when I shall have to rise and speak in defence of a client, I am not only disturbed in mind, but tremble in every limb of my body." If such was the avowal of Cicero, what must at times be the feelings of less gifted advocates, when called upon to defend liberty or life, where the result is so often determined by the manner in which they acquit themselves of their task?

It was his favorite theory that no limits could be assigned to the knowledge necessary for an *orator*. According to his own magnificent conception of his office, "I will pronounce him to be a complete and perfect orator who can speak on all subjects with variety and fulness." This, of course, even in the time of Cicero, was impossible; and now that the empire of science and art has been so immeasurably extended, the mere attempt to grasp at universal knowledge would only render the sciolist ridiculous. The days of Admirable Crichtons have gone by, and a man must think himself happy if he can, by severe and patient application, make himself master of only a small domain in that ample territory. But yet in a modified sense it may be truly said that there is no part of knowledge of which an advocate can with safety be wholly ignorant. For it is hardly possible to name a subject which may not fall within the province of judicial inquiry in a court of law. "What treasures of science," says D'Aguesseau, "what variety of erudition, what sagacity of discernment, what delicacy of taste, is it not necessary to combine in order to excel at the bar! Whoever shall venture to set limits to the knowledge of the advocate has never conceived a perfect idea of the vast extent of his profession."

But how is this multifarious knowledge to be acquired? The process of obtaining it is much less difficult than at first sight appears. Cicero himself furnishes us with the key by which the storehouse is to be unlocked: *Ipsi omnia quorum negotium est, consulta ad nos et exquisita deferunt.* In every cause which he undertakes, the advocate has at his command the services of those who are interested in the result, and who procure for him information from every available source. Those who have devoted years of toil and study to some particular department of art or science, exhaust as it were their treasures before him; and transfuse into him, for the time, the knowledge which they possess. It is his duty to employ skilfully the materials which are provided for his use, and weave them into a plain perspicuous statement, so that they may be presented to the minds of the court or jury in a clear and intelligible form. If the most ingenious mechanician, unaccustomed to the art of speaking, were to rise in a court of law to assert or deny the infringement of a patent, the chances are that he would not succeed in making himself understood. And this is one of the many reasons why, independent of legal mysteries, it is necessary that masters of the art of tongue-fence should exist in every civilized community.

When raised to the highest offices in the state, Cicero gratefully acknowledged that he owed his elevation, "after much toil and many perils," to his success at the bar as an advocate. — *Hortensius.*

LEGAL INCIDENTS.

IX.

THE BEST WITNESS.

By J. W. Donovan.

THERE is scarcely a lawyer of any practice who cannot relate cases of circumstantial evidence, of convictions of innocent men, of hair-breadth escapes, of romantic incidents. This case is a combination of all these elements in one.

In a little hamlet near Socoro, in the early eighties, lived a family of New Mexicans who frequently quarrelled over their drinks and drank over their quarrels, to the disgrace of the settlement.

Threats of violence and actual violence had more than once been witnessed; and the sudden disappearance of Agnes Shapero, with the arrest of her husband for her murder, soon after confirmed the belief that the guilty party was in prison.

On his hands were deep scratches, and marks of a quarrel, and a sharp encounter. On his axe were stains of blood; in his possession was a torn under-vest of a woman. The tragedy had occurred after dark, as the sounds of a quarrel had reached the ears of many neighbors, who had heard such disputes too often to take much note of them.

To add to the interest of all, was the finding of the woman's body in the Rio Grande River near by, not long after. The burial, the partial identification, and even the guilty actions of the accused, tended to confirm the theory of deliberate murder.

The prisoner's counsel had but one defence, and clung to it, — mistaken identity of the person, — or the body of the person murdered, — for the remains were somewhat blackened and doubtful of recognition. The sounds of the conflict, the previous contentions, the disappearance of the murdered woman, were clearly established. The accused was almost hopeless, for even he believed he was guilty.

So guilty and halting was his statement that his counsel dared not call him as a witness; and the arguments had well advanced, when a rustle of excitement occurred near the door, and a woman hurriedly entered and rapidly walked forward in sight of the jury, and was quickly recognized as the very victim who was believed to have been murdered, and who in a few broken words related how she had fled the country into Old Mexico, and hearing of the trial returned to the relief of her husband.

On taking the stand "in her own behalf," she testified that she and her husband, on the night in question, had quarrelled over their drinks, and she had rushed into the river to escape her enraged partner, who madly followed her, and seized her, and held her under water till he believed her to be dead; and when she regained consciousness, she escaped into Mexico.

Without this witness the prisoner must have been convicted, and surely hanged, and to cap all, would have gone to his death of disgrace with the belief that he had actually killed his wife as the circumstances indicated, and would have confessed to the crime of murder from the gallows.

WIGS AND GOWNS.

IN the life of every man, we are told, one moment stands out pre-eminent in joy. Where is that happiest time in the career of a barrister? Does it come when he receives his maiden brief, or when he obtains the earliest verdict in his favor? On neither of these occasions, delightful as they are, does the fullest measure of bliss fall. The precious moment comes when the barrister dons his wig and gown for the first time. As the crisply curled wig closes round his head, an unknown thrill of delight rushes through his brain, stirring up visions of massive trees of legal knowledge bearing upon their spreading branches golden guineas galore. At the first touch of the brand-new gown his mind becomes a panorama of a successful career at the bar; the paper-crowded table of the busy junior, the dignified appearance of an eminent Q. C. addressing a jury, the comfortable proportions of a seat on the bench, and the unsurpassable glory of the woolsack, — his thoughts revel in these delights. How brilliant the prospect is! What smiling eyes hope has! Once more he looks into the mirror; he fondly shifts his wig to the position on his forehead that has commended itself last to his fancy, and arranges again his beautifully starched bands with devotional care. He is happy in the boundless possibilities of his position.

The magic touch of wig and gown! It exists at the end as well as in the beginning. Few know of the reverence with which old barristers regard their professional head-gear. It is the symbol of their labors, the cherished relic of their wars of argument in court. As the feeble old man, too weak and deaf to go into court, opens the tin box in which his wig lies, and holds it fondly with his shaking hand before his fading eye, he thinks of the days of his vigor, of the time when he argued boldly with judges and pleaded eloquently with juries, and his thoughts hallow the time-stained wig with their pathos. Not long ago such a barrister in his last hours desired to see his wig and gown before he died. They were fetched from Lincoln's Inn, and held before his eyes, and a long-lost smile lit up his face. He asked in almost lifeless tones to have them put on, and anxious not to cross even one of his last wishes, his relatives at his bedside did as he bade them, and gently raising his weary head from the pillow, they placed the ragged wig upon it, and hung the rusty gown upon his shoulders. His head sank back upon the pillow, and his eyelids closed. Suddenly his eyes re-opened, his head was raised, and his dry lips moved. "May it please your Lor—" As these words fell feebly from his lips, his weary frame sank back once more. His soul was before the Great Judge of all men.

We give these instances of the attachment that barristers display towards their wigs and gowns in order to remove an impression existing in certain quarters that Q. C.'s and juniors regard their professional head-gear as an inconvenient appendage, and that they would willingly dispense with it. The self-constituted philanthropists who manufacture this opinion probably derive their conclusions from observing barristers remove their wigs from their brows in hot weather. Undoubtedly the temptation to dispense with the head-gear on an excessively sultry day in the summer is a very great one; but the advocates of these days are so attached to their wigs that they resist this temptation far more successfully than the last generation of lawyers. In the "Times" for 24th July, 1868, may be found this interesting paragraph, which amply proves our last statement: —

"During the last two days the learned judge and the bar have been sitting without their wigs; and, in opening a case, Sir Robert Collier called attention to the innovation, and

apologized for not appearing in full forensic costume. His lordship said he had set the example of leaving off the wig in consequence of the unprecedented heat of the weather, as he thought there were limits to human endurance. Sir Robert Collier expressed a wish that this precedent might be generally followed, and hoped that the obsolete institution of the wig was coming to an end, — a hope in which many members of the bar heartily concur."

Twenty-two years have passed away since this delightful scene occurred in the Court of Probate and Divorce, and the example of Sir J. P. Wilde and the hope of Sir Robert Collier remain unfollowed and unfulfilled. The greatest iconoclast that has appeared on the bench since that interesting occasion is Mr. Justice Vaughan Williams, who appeared in the vacation court the other day with his breast unadorned by bands. So far from proposing to put an end to "the obsolete institution of the wig," barristers frequently discuss the various theories that have been started in explanation of its origin. What a standing subject for debate is the lapel, the little triangular piece of stuff which hangs from the back of a junior's gown! What learned statements respecting this mysterious bag-like appendage we have heard from the lips of young advocates, whose antiquarian researches are illumined with the ruby light of a glass of wine! There are two great theories connected with the lapel, and each has its advocates, who never fail to fight with enthusiasm.

It is contended on one side that the lapel is a diminutive representation of the hood which barristers wore before the introduction of wigs and hats, the hood being fastened to the gown in order that it might not be lost when taken off in court. It is argued by the opponents of this view that the lapel is a wallet. It is divided, as our readers know, into two compartments, one of which is open, and the other enclosed. It is capable of holding small articles, such as money; and this is the object that the exponents of the wallet view perceive in it. In the olden times barristers were supposed to give their services gratuitously. They were above the guineas for which their successors fight; in a literal sense, they were above price. But the suitor who enjoyed the services of one of these high-minded advocates invariably slipped an *honorarium* into the little bag behind his back; and we can readily imagine the eagerness felt by this great-souled practitioner to take off his gown in his chambers and see what sum had been put in.

Such is the interminable discussion that rages among antiquarian lawyers respecting what, after all, is a very little thing. But the whole gown is the subject of dispute. Everybody who has been inside a court of law has doubtless wondered why a junior's gown differs so widely in shape from other legal robes. The gowns of judge, Q. C.'s, solicitors, and ushers are, except so far as material is concerned, alike. They all have the square flaps by the neck and the hanging sleeves by the side; and it is concluded from the similarity of the gowns worn by these four different officials that their gowns are the truly legal ones, and that the junior's gown has come from the Universities, in which surmise there is probably much truth. However, it is quite clear that silk gowns have long been appropriated to appointments under the crown, which explains the silk attire of judges and Q. C.'s.

About the head-gear of the higher branch of the profession less mystery prevails. For instance, the full-bottomed wigs, of which there is such an imposing array in the courts, were the full-dress wigs of all gentlemen in the time of Charles II., to whom belongs the honor of introducing them into England. At one time, too, juniors encased their heads in them. Kettleby, the barrister immortalized in Hogarth's works, was the last junior to wear one. Since his time custom has confined full-bottomed wigs to the occupants of the bench and the leaders of the bar, — a fact for which juniors have every reason to be thankful;

for anything more uncomfortable and ugly than a full-bottomed wig has never been designed for the head of a human being.

Portraits of judges before the Restoration show that their ancient lordships wore no wigs, but contented themselves with a coif, or velvet cap, or dignified their heads with a three-cornered hat. It is sometimes said that the judges of our own time should improve upon this old custom of relinquishing their wigs in favor of their natural hair. We will not stay to inquire into the unknown quantity which their lordships would have to be in favor of; but we earnestly hope that judges and barristers will long continue to keep their horse-hair on, and to preserve the impressive appearance, the picturesque dignity, and desirable distinction bestowed upon our courts by wigs and gowns. — *Law Gazette.*

LONDON LEGAL LETTER.

LONDON, Nov. 4, 1891.

THE long vacation ended Michaelmas Term was ushered in with the usual pageantry. The Lord Chancellor entertained the Judges and Queen's Counsel to breakfast — a late one, by the way — at the House of Lords; and thereafter our judicial lawgivers and eminent advocates journeyed in state from Westminster to Temple Bar, marching in procession up the long and stately Central Hall of the High Court of Justice, — the judges to their respective courts, the counsel to their briefs. A large concourse of ladies and the general public invariably graces these proceedings; for even in England the Lord Chancellor in his robes of state, preceded by the mace, the pursebearer, and attended by the rank of his official retinue, the judges following, — those of Appeal and Equity in black and gold, those of the Queen's Bench in scarlet and ermine,— is not a spectacle to be enjoyed every day. There is every prospect of a busy session; cause lists in all departments are very full, and before next autumn the profession will have reaped another ample fruitage. Attention has been directed to the extraordinary diminution which has taken place in the number of applications for new trials. There are only ten this term; formerly there would have been between seventy and eighty. The reason for this is probably the fact that new trial applications are now heard by the Court of Appeal; until quite recently, when an act was passed affecting the charges, they were disposed of by a Divisional Court. A Divisional Court consists of two judges, whose function may roughly be described as that of hearing inferior appeals. There is no doubt that the courts are increasingly anxious to discourage new trials; which are perhaps as often as not merely vexatious.

In my August letter I alluded to the new scheme of legal instruction which has been launched by the Council of Legal Education. Among the new teaching functionaries whom the scheme establishes are six "readers," at a salary of £350 per annum. It was certain that competition for these posts would be severe, but no one was prepared for the solid legion of seven hundred applicants which the junior bar has furnished. What a vision of unemployed talents this presents, — young fledglings with their wigs still spotlessly white, a few college honors and prizes in the background, struggling for a leadership with gray-haired men whom thirty years of patient and unremunerative study has never brought nearer to fortune; many, it need hardly be said, possessed in but small measure of the very special qualifications required by those who would engage in the rare art of imparting knowledge to others. These appointments are only for a period of three years.

It is now that Legal Debating Societies recommence their discussions. The most prominent are the Hardwicke, the Union, and the Westminster. The first mentioned society restricts its membership to barristers; but in the Union and Westminster, although barristers very largely predominate, any one, whatever his profession or business, is eligible as a member. The debates are on general topics; purely legal disputation is left to one or two less known debating bodies. The Hardwicke and Union meet in the Inner Temple Lecture Hall; the former is the

largest at present, and frequently secures immense attendances by inviting prominent people such as Mr. Booth, "General" of the Salvation Army, to speak. The Union is a very vigorously conducted society, and contains a number of first-rate speakers. Among its past presidents have been Sir Henry James, Q. C. M. P., Mr. Gainsford Bruce, Q. C. M. P., and many other distinguished men. In its long history the Union has passed through alternations of fortune, sometimes prosperous, sometimes depressed; but it now bids fair to attain a very eminent success. The Westminster meets in the West End, — formerly in Pall Mall, now in Piccadilly. It is the august debating society, the model of all that is gravely eloquent in public speech; impatience of the irrelevant, eagerness for solidity of matter, and precision in treatment are among the high-sounding qualities which the atmosphere of this Society seems to generate. The young debating desperado who bethinks him to startle the sobriety of the Westminster with some rude shaft of wit feels the springs of his inspiration freeze within him as he perpetrates for the last time amidst the grimmest silence the rhetorical outrage.

I fear taxation and its incidence are scarcely matters that fall within the scope of a legal letter; however your readers will permit me slightly to divagate. For long the increase in London traffic has at certain times during the day rendered some of our leading thoroughfares almost impassable. Public opinion had gradually attained a certain unanimity as to the means which should be adopted to alleviate this state of affairs. The creation of new streets, and the widening of old ones commended themselves as obvious courses to every one. Our County Council, giving voice to popular demands, had resolved on a number of far-reaching improvements. The widening of the Strand, the construction of a new street uniting it with Holborn, both of them forming two great parallel arteries through which the traffic of the city flows eastward and westward, were the more notable of a series of proposals which seemed at last within reach of fulfilment. Estimates for the work had been invited and tendered, when, to the surprise of every one, the County Council declined to proceed with the enterprise, on the amazing ground that it would be unfair to do so until there has been a readjustment of the incidence of taxation. The explanation is that a majority of the present Council are extreme radicals, who entertain fiscal designs upon the colossal rent-rolls of the great ground landlords; they think that these great rent-rolls should bear a larger share than they do at present — considerable as that is, directly or indirectly — of the burdens of taxes and local improvements. Of course this is not the place to enter into the merits of so large a question; it suffices to remark that many years will pass before the fiscal changes so ardently desired by our so-called reformers take place; the justice of even their partial adoption being extremely doubtful, so that the action of the Council, if it were corroborated by their successors, would indefinitely postpone exigent public improvements for purely visionary reasons. Almost every one condemns the policy pursued by the majority of the County Council.

Society is looking forward with great curiosity to the result of a petition for judicial separation which the young and charming Lady Russell is bringing against her husband on the ground of cruelty. Lord Russell is quite a young man, not yet thirty, a radical, and I believe also a vegetarian. He was a notable figure at Oxford a few years ago, and is a grandson of the great Lord John Russell of Reform Bill fame. The case is said to be a very painful one; strong efforts will be made to have it heard *in camera* when it comes on for trial next month.

The only legal news from Ireland to record is the administration to Mr. T. M. Healy, M.P., of a severe horsewhipping by a Mr. Macdermott, nephew of the late Mr. Parnell. Ere your readers peruse these pages, both sides of the Atlantic will be equally familiar with the details of this ludicrous episode.

* * *

The Green Bag.

PUBLISHED MONTHLY, AT $3.00 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.

ANOTHER year of prosperity has been vouchsafed to the "Green Bag;" and we desire, in closing this our third volume, to extend our most hearty thanks to our kind friends who by their suggestions and contributions have done so much to advance the interests of the magazine. Starting as we do upon our fourth year with a subscription list which has more than doubled within the past twelve months, we are confirmed in our belief that this new departure in legal literature is appreciated by the profession, and that the bright and humorous side of the law has attractions which are not lost sight of by those devoted to its sterner and more austere phase.

We shall continue in the future as in the past to endeavor to relieve the dull tedium of the routine legal work of our readers by still supplying a fund of "entertaining" and "interesting" literature. Whether or not it will be found "useless," depends upon the signification our readers attach to this word.

We are promised many articles for the coming year which cannot fail to be appreciated by the profession, and we can safely say that Volume IV. (1892) will be more attractive than any we have yet issued.

With best wishes to all our subscribers for a happy and prosperous New Year, we again thank them for their kindly aid and encouragement in the past, and trust that these manifestations of their interest may be continued in the future. We shall do our best to merit them.

WE repeat the notice published in our November number: —

TO OUR SUBSCRIBERS.

The Fine Art Committee of the Boston Athenæum having kindly accorded us permission to copy the famous painting of Chief-Justice Marshall belonging to the Athenæum, we are enabled to make the following attractive offer: —

To every subscriber remitting the amount of his subscription for the "Green Bag" for 1892 *before Jan.* 1, 1892, *we will present a copy of this portrait, mounted upon thick paper, suitable for framing. The size of the picture itself will be about* 10½ *inches by* 17 *inches, and the size of paper on which it is mounted about* 18 *inches by* 25 *inches.*

This portrait will be a valuable addition to every lawyer's picture-gallery, and is in itself worth the entire price of the subscription.

The frontispiece of this number is a reproduction of the painting of Marshall, and will give our readers an idea of what the larger portrait which we offer them will be.

We make this offer for two reasons: first, to present our subscribers with a fitting memento of the good-will and best wishes of the publishers of the "Green Bag;" second, to enable us to get our mailing-list for the coming year into shape at as early a date as possible.

THE anecdote of Jeremiah Mason published in our November number calls forth the following communication from an esteemed correspondent:

Editor of the "Green Bag":

DEAR SIR, — Reading in "Notes" in "Green Bag" for November an incident given as taking place in the practice of Jeremiah Mason, and knowing the case in which the facts occurred, I am sure some mistake has been made in quoting, and take this opportunity of correcting.

The facts are these. One Brown had taken from one Bramble a bond to pay said Brown $100 a year for life. After a while Bramble began to persuade Brown to cancel said bond for a definite sum, but

Brown would always refuse. It was Bramble's custom to indorse the annual payments on the bond. At next payment Bramble indorsed, not $100, but $1,000 as paid on the bond, adding, "in full consideration of and cancelling this bond." Brown, not being able to read or write, signed the indorsement by making his mark, and the bond was kept by him. When Brown demanded payment the following year, the other contended that he owed nothing, citing the indorsement of the previous year.

Brown consulted *Mason*, but finding him retained by *Bramble*, went with his story to *Webster*, who, putting faith in his story, entered into the fight, which came on at Exeter, N. H. There was at that trial a witness for Bramble by the name of Lovejoy, who, it appears, was a "chronic" witness, appearing in nearly every case held in the neighborhood. A friend of Brown seeing Bramble in conversation with Lovejoy noticed that the former gave to Lovejoy a paper, and informed Webster of the fact just before the trial.

Lovejoy's testimony seeming to Webster somewhat unnatural, Webster came to the conclusion that said paper given by Bramble must contain the evidence, or rather testimony, which Lovejoy was supposed to give.

Webster says: "There sat Mason, full of assurance, and for a moment I hesitated. Now, I thought, I will make a spoon or spoil a horn. I took the pen from behind my ear, drew myself up, and marched outside of the box to the witness-stand. 'Sir,' I exclaimed to Lovejoy, 'give me the paper from which you are testifying.' In an instant he pulled it out of his pocket; but before he had it quite out he hesitated, and attempted to put it back. I seized it in triumph. There was his testimony in Bramble's handwriting."

The end was that the case was settled on terms dictated by Webster. — *Harvey's Reminiscences*, pp. 67-73.

Hoping that you may find the above a correct "correction," I am Yours truly, J. G. O.

To the Editor of the "Green Bag":

DEAR SIR, — As the "Green Bag" gathers up trifles from all sources, it must not neglect its own pages. On page 512 of the November number we are told that "a few *curious facts* connected with the personnel of the Justices of the Supreme Court (of New Jersey) are worth noticing, . . . none have been blind or deaf. *Above all*, . . . each has sustained a high standard of morality, not only by requiring it in others, but by obeying the laws of the highest integrity." Not only been able to see and hear, but have actually been honest men! *Curious*, is n't it? Yours truly, M.

WE will bind parts of Vol. III. for our subscribers, in half morocco, for $1.50. Parts to be delivered to us at sender's expense.

LEGAL ANTIQUITIES.

"TWENTY-FOUR pence," we are told in the Dimetian Code, "is the worth of the blood of every kind of persons; thirty pence was the worth of the blood of Christ; and it is unworthy to see the blood of God and the blood of man appraised of equal worth; and therefore the blood of man is of less worth."

FROM the same code we also learn that "the worth of a conspicuous scar upon a person's face is six-score pence; if it be upon his hand, three-score pence is to be paid; thirty pence is to be paid if it be upon the foot. If a person be struck upon his head so that the brain be seen, or if he be stabbed in the body so that the bowels come out, or if the thigh bone or the arm bone of a person be broken, for each three pounds; for he is in danger of his life by every one of them."

FACETIÆ.

THERE 'S ROOM AT THE TOP.

"THERE 's room at the top," young Blackstone is told;
So with a stout heart and confidence bold,
He eagerly enters to strive in the race.
And bravely he runs, ne'er quitting his aim,
Till age dims his eye, and his limbs become lame,
And deep lines of care are seen in his face.
That treacherous phrase still rings in his ears,
And could he but add, say, a score to his years,
He might, in the end, reach that coveted place!

BELLEVILLE, ILL., Oct., 1891.

THE following incident took place in a Kennebec County, Maine, court only a few days ago. A divorce case was on trial before a jury, the wife being the libellant, and among the witnesses called in her behalf was her bright boy of fifteen years. The wife's father had died in Hartford, Conn., some months before, leaving her some property, — a fact

which the libellee had been at the time very anxious to ascertain, but which the libellant and her family had purposely kept from him. The counsel for libellee knowing this fact, in order to throw discredit on the truthfulness of the boy witness, cross-examined him upon it, and with this result: —

QUES. After your grandfather's death, did you not tell your father that he was still alive?

ANS. No, sir, I did not.

QUES. Do you swear that you did not tell him so?

ANS. Yes, sir, I do.

QUES. Did you not have some conversation with your father upon the subject?

ANS. Yes, sir, I did.

QUES. What did you tell him?

ANS. He asked me something about it, and I told him *Grandfather had a long job down in Hartford.*

SQUIRE M——, an elderly man, but a young justice, called at a friend's office one morning, and with much gravity announced: "Judge, I dropped in to get a p'int of law. I want to know the law consarnin' a-puttin' of a badly spiled tarrupen in a neighbor's churn. I 've got Hinnen's 'Justices' an' the Code, an' I 've sarched both from kiver to kiver, an' I don't fin' nuthin' under neither head." *Harper's Magazine.*

"LOOK here," said the wrathful young lawyer, "I thought you swore to give a verdict in accordance with the facts?"

"Wal," answered the juryman, thoughtfully, pulling his beard, "the facts did n't turn out as I expected 'em to."

MANY good stories are told of Sergeant Arabin, who was a commissioner of the Central Criminal Court in London.

He once said to a witness: "My good man, don't go gabbling on so. Hold your tongue, and answer the question that is put to you."

Arabin prided himself very much on possessing the faculty of recognizing faces he had once seen, and the result was that he often claimed old acquaintanceship with the rogues and thieves that were brought before him. A young urchin who had been found guilty of some petty larceny came up for sentence.

"This is not the first time," said the judge, "I have seen your face, young gentleman, and that you have seen mine. You know very well we have met before."

"No," said the boy, who began to whimper; "it 's the first time I was ever here, your worship. I hope you will have mercy, my lord."

"Don't tell me that," said Arabin; "I can't be deceived. Your face is very familiar to me. — Do you know anything of this youngster, officer?"

The officer answered: "Oh, yes, my lord; he 's a very bad boy, a constant associate of thieves. He 's been very badly brought up, my lord. His mother keeps a disreputable house in Whitechapel."

"Ah!" said Arabin, "I knew I was right. I was quite sure your face was well known to me."

AN amusing incident occurred a number of years ago, when Judge Lindley was on the bench. Lawyer Garvey had a case before him, and Judge Lindley made a ruling that practically amounted to throwing the counsellor's client out of court. After a gasp of surprise, Mr. Garvey asked, —

"Am I correct in understanding that the court has ruled against me?"

"You are, sir," answered Judge Lindley.

Garvey again repeated the question, and with some heat the judge informed him that if he understood the English language he certainly understood that the ruling was adverse.

"Well, well," said Garvey, with a sigh of resignation, "I hope, for the credit of the court, it will never be noised abroad."

LAWYER. Now, Mr. Jenks, I want you to tell me the truth without any evasion. Had you or had you not had any altercation with the prisoner before this event you speak of?

WITNESS. Well, to tell the truth, we did go into the bar and take something, but I don't think that was the name of it.

A STORY is told of a distinguished lawyer in the "Boston Gazette." One time a physician came to him in great distress. Two sisters living in the same house had babes of an equal age who so resembled each other that their own mothers were unable to distinguish them when they were together. Now it happened that by the careless-

ness of their nurses the children had become mixed; and how were the mothers to make sure that they had received back their own infants? "But, perhaps," said the lawyer, "the children were n't changed at all." "Oh, but there 's no doubt that they were changed!" said the physician. "Are you sure of it?" "Perfectly." "Well, if that 's the case, why don't you change them back again? I don't see any difficulty in the affair."

"THIS makes the third time that you have appeared before me charged with begging on the streets," said the Judge, "and I shall have to send you up for thirty days."

"Please don't do it, Judge," sobbed the woman. "I have a large family to support, and what would my husband and my children do if you were to send me up?"

"Your husband? Have you indeed a husband?"

"Yes, your honor," said a man, stepping forward from the crowd. "I am her husband, and I want to ask you to be lenient with her. She makes out like she 's too sick to work; but if you let her off this time, I 'll see to it that she works in the future and supports her family."

"I don't think you will," said the Judge. "In fact, I am going to let the woman go, and send you up for six months as a vagrant. You have no visible means of support."

And the man muttered as he was marched out: "No visible means of support! Good Lord! Ain't my wife in court?"

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NOTES.

As an example of euphemism, the verdict of an Omaha, Neb., coroner's jury probably stands alone. It was impanelled to take action on the case of a negro who had been hanged by a mob; and after a careful review of the facts, which were admitted, it brought in a verdict that the man had been "frightened to death by unknown persons." — *Exchange.*

THE celebrated Jeremiah Mason was once waited upon by the president of an insurance company, a somewhat pompous gentleman, who wished to consult him upon a question of law. The counsellor pointed him to a chair, and went on to finish a letter he was writing, which he at length sealed and handed to a messenger. Then turning to his client, he said, "Mr. B., I must be in court in twenty minutes. Please to state the facts in your case as tersely as you can, and I will give you my best attention." But Mr. B. could not help stating his own views of the law as he proceeded, and it was pretty obvious that he would not be able to finish his statement within the time allowed. The old lawyer sat silently, but subirascing vehemently the while, till the twenty minutes expired; and then, taking out his watch, he rose to depart and said, "Good-morning, Mr. B. Were you *always* such a damned fool?" Mr. B. was not pleased at this, and he innocently complained of it to a friend, from whom at second hand the writer derived it.

When, at one time, the proceedings of a court which he was attending near an establishment of certain Shakers in New Hampshire were not interesting to him, Mr. Mason was invited by Judge Warren to visit that institution, and they rode over to it. On arriving and knocking at the door, they were met by one of the brethren. Judge Warren said that if it were agreeable they would like to look over the interesting establishment. The Shaker gave no answer, but gazed intently at the very tall and portly figure of Mr. Mason. The judge repeated his request a second time in vain, the doorkeeper still staring at his huge visitor; and when it had been again vainly repeated, Mr. Mason's patience gave way, and he rapped out, "Damn your soul, Sir! can't you speak?" "Friend," said the quiet janitor, "by thy looks and thy *language*, I take thee to be Jeremiah Mason." As the gentleman had by this time grown old and become pious, and was very much ashamed of his regretted habit of swearing, the scene had to drop at once, and the judge hurried his friend to their chaise and departed.

On another occasion, when in the trial of a cause the presiding justice interposed a question to the witness on the stand, Mr. Mason rose and said: "Stop a moment, Mr. Witness. If it please the court, I should like to know on which side this question is asked, — if on our side, we don't want it; if on the other, it ain't competent."

JAPANESE justice as dealt out in some sections of the country has the effect of making business in

the courts very dull. At a little place called Akilas the following scene occurred recently: The magistrate ordered a prisoner to be brought in with the prosecutor and witnesses. The culprit was charged with stealing two yens, about $1.60.

"What have you to say?" asked the magistrate.

"The prisoner stole my money," answered the prosecutor.

"What do the witnesses say?" inquired the magistrate.

"I saw him in the act," was the reply of each one.

Then the magistrate said to the prisoner: "Four weeks' imprisonment for stealing; I will send the prosecutor to jail one week for not being smart enough to keep his own money, and sentence the witnesses for the same time for not minding their own business."

IT must be a human frailty to delight in lawsuits. Some people seem to find their chief pleasure in being miserable over them. The Buffalo "Courier" cites an instance of litigation long drawn out. The suit is that of Polen against Bushnell, now before a referee in New York, and it is enjoying the twenty-seventh year of its continuance. During its progress death has overtaken the defendant, the original referee, four judges, three county clerks, and the original parties in interest. The present referee has been engaged on it seventeen years, and the present stenographer eleven years. One lawyer has been in it from the start, but he has grown so deaf that he has to call in other lawyers to help him. The notes of one of the stenographers were found in the Kings County poorhouse, of which the stenographer was an inmate, and the lad who was sent to subpœna him is now a middle-aged man. The interest on the sum originally claimed would have twice doubled it since the case began. The costs involved are greater than the original claim, and there is nobody to whom the judgment can be paid if one is secured. But the case may outlast another generation.

LAYMEN often wonder at the wrangling of counsel about the form in which a question should be put, one form being eventually decided by the court as proper and the other improper, while as a matter of fact the interrogatory so far as the witness is concerned is the same in either case, and the answer and its effect on the jury also the same; but as showing that there is danger in not carefully formulating a question, the following instance is to the point: —

The action was one of tort, and a medical witness had testified that the injury to the plaintiff was in his opinion likely to prove a permanent one. Counsel for the defence, who by the way is one of the most brilliant and successful at the bar, at the close of a pretty rigid cross-examination put the following question, —

"Doctor, are there not many cases recorded where persons who have been bedridden for years have suddenly been cured, miraculously as it were, by the laying on of hands, and have arisen and taken up their beds and walked?"

The doctor, evidently well read in the Scriptures, after an instant's delay to insure attention, replied, —

"Well, sir, at this moment I can recall but *one* well-authenticated case."

There was amusement throughout the court-room, and the examination stopped there.

Except for the *form* of the question the doctor would not have had his chance.

"RESPECT for the laws;" that 's the English expression. They so venerate the laws that they never repeal them. It follows, often, that they don't execute them. An old law falls into desuetude like an ancient maiden; but they don't kill the one any more than they kill the other. They cease to practise them; that 's all. They leave both free to believe themselves young and beautiful, dreaming that they are alive. This politeness they call respect for the laws. — *Victor Hugo.*

A MINNEAPOLIS lawyer entered a demurrer to an indictment against a prisoner charged with having shot several fine hogs belonging to a neighbor, on the ground that the shooting of the animals increased their value, as it saved the owner the expense of killing them.

IT would excite no little laughter now-a-days to see an advocate setting out for court attended by a long train of clients and admiring friends, and escorted to his home after the labors of the day amid their congratulations and applause. Yet this was the ordinary case at Rome, where, as it was the

usual custom to appear in public with a crowd of parasites and retainers, such marks of popularity occasioned no surprise. But even in cold, decorous England, one instance at least of this enthusiasm has been known. After the trials of Hardy, Horne Tooke, and Thelwell, and their triumphant acquittal through the splendid advocacy of Erskine, his horses were taken from the carriage, and he was drawn home by the mob with tumultuous cheers.

We are unable to give the name of the author of the following singular address to the jury: "Gentlemen of the jury, you are impanelled here to try a cause of the vastest importance to this community. The defendant has been guilty of a crime and cruelty unequalled in the annals of crime, which show him to be the most carniferous wretch that walks this celestial football. Gentlemen, when I think of it, I can scarcely help gushing out in a flood of tears, and crying out with one of the Apostles, 'Oh that my head was waters and my eyes a fountain of tears!' While this poor unoffending hog, whose only bad trait was an innocent waggishness, and that confined to one of his extreme extremities, was quietly nipping the miserable grass that grew in the defendant's miserable pasture, thinking of no harm, this cruel monster, armed with a deadly gun loaded to the muzzle with missiles of death, stealthily approached his unconscious victim, and discharged the whole deadly contents of that still deadlier gun right into his solar system, and, with one fearful squeal of agony, he fell dead on the ground!"

Recent Deaths.

In the death of Isaac Marston, ex-Judge of the Supreme Court of Michigan, that State loses one of the most prominent members of its bar. Mr. Marston was born at Poyntzpass, Ireland, on Jan. 2, 1839. At an early age he emigrated and came to Michigan, where he hired out as a farm laborer and got a little schooling. He graduated from the Law School in 1861. After being admitted to the bar, he finally went to Bay City, where he speedily rose in his profession, and in 1872 he was a member of the State Legislature. In 1874 he was Attorney-General of the State, and in 1875, upon the resignation of Judge Christiancy, he was appointed to a place on the Supreme Bench, where he remained for eight years. He resigned in 1883, and resumed the practice of the law in Detroit.

[An excellent portrait of Judge Marston, accompanied by an interesting sketch of his life, was published in the September (1890) number of the "Green Bag."]

Francis Brooks, a prominent Boston lawyer, died October 28. He was born in Medford, Nov. 1, 1824, and came of distinguished ancestry, being descended in a direct line from Rev. John Cotton, the famous Puritan divine, and is connected with all the great families that have figured in the early history of New England.

His mother was Elizabeth Boott; his father, Edward Brooks, one of the founders and the first President of the General Theological Library; his grandfather was the well-known Boston merchant, Peter C. Brooks, in his day the wealthiest man in the country. Rev. Edward Brooks, his great-grandfather, was Librarian of Harvard College previous to the Revolution, an active participant in the battle of Lexington, and afterward in 1777 Chaplain of the Continental frigate Hancock, which was captured by the British, who treated the prisoners with such severity and hardship that Chaplain Brooks died shortly after his release as the result of his sufferings.

The family has owned and lived upon the same estate since 1679, when Caleb Brooks came to Medford from Concord and settled upon a lot of 404 acres that had been bought by his father, Thomas Brooks, in 1660, from Edward Collins, one of Governor Craddock's partners, and the executor of his will. This Thomas Brooks was the first of the name in New England, having settled in Watertown in 1631, removing to Concord in 1637, where he held important offices among the early settlers. Previous to 1854, Mr. Brooks was known as Francis Boott Brooks, and graduated from Harvard College Law School, Class of 1846.

Mr. Brooks represented Medford in the Legislature in 1862. He has also held honorary positions on State Boards, and always took an active interest in educational and philanthropic matters. In 1871 he was sent with Edmund Dwight to distribute the Boston French relief fund among the suffering peasantry in the neighborhood of Paris.

REVIEWS.

OWING to the early date at which we go to press with this number, we are obliged to defer notices of December issues of the Magazines until January.

BOOK NOTICES.

A SELECTION OF LEADING CASES IN THE COMMON LAW. With notes. By WALTER SHIRLEY SHIRLEY. Fourth Edition by RICHARD WATSON, LL.B. Stevens & Sons, London, England. Cloth. $4.80.

These leading cases, selected by Mr. Shirley, have long been most favorably known to the profession, and have been of the greatest assistance to students. The selections are numerous, and all of them "leading" cases; while the notes, evidently prepared with much care, add greatly to the value of the work. Shortly after the publication of the third edition, the learned author died, and the present edition has been carefully revised by Mr. Watson. Numerous decisions and statutes of recent date have been incorporated, and many new citations of cases are given. In its present form the book is deserving of unqualified praise, and we commend it especially to the consideration of teachers and students in our law schools.

SUSPENSION OF THE POWER OF ALIENATION AND POSTPONEMENT OF VESTING, under the Laws of New York, Michigan, Minnesota, and Wisconsin, with an Appendix containing the corresponding statutes concerning suspension in the States of California, Idaho, Indiana, Iowa, Kentucky, North Dakota, and South Dakota. By STEWART CHAPLIN, of the New York Bar. Baker, Voorhis, & Co., New York, 1891. Law sheep. $4.50.

This treatise will be found of especial value to practitioners in the States to whose statutory provisions it has particular reference. The subject is one of great importance, and one involving many nice legal points, and has been very fully and exhaustively treated by Mr. Chaplin. Many years ago the State of New York abandoned the common law of perpetuities and kindred subjects, and instituted an entirely new system, which has since been adopted, in nearly all important respects, by the States of Michigan, Minnesota, and Wisconsin. The radical changes thus introduced have rendered inapplicable, to a large degree in these States, the text-books and reports embodying the earlier law; and this treatise of Mr. Chaplin's will supply a long-felt want.

NEW COMMENTARIES ON MARRIAGE, DIVORCE, AND SEPARATION, AS TO THE LAW, EVIDENCE, PLEADING, PRACTICE, FORMS, AND THE EVIDENCE OF MARRIAGE IN ALL ISSUES, ON A NEW SYSTEM OF LEGAL EXPOSITION. By JOEL PRENTISS BISHOP, LL.D. T. H. Flood & Co., Chicago, 1891. Two vols. Law Sheep. $12.00.

The first of Mr. Bishop's legal writings, a treatise on "Marriage and Divorce," published nearly forty years ago, brought the learned author at once into prominence, and his subsequent works have advanced him to the foremost rank of our legal writers. This new work, besides covering the same field as the author's former treatise on the subject, whereof it is in a measure a reconstruction, includes also Breaches of the Marriage Promise, Seduction of the Wife, Seduction of the Husband, and various minor topics. The entire subject is brought down to the present date, and is treated from the standpoint of to-day, as though the author had never before written upon the subject. These "New Commentaries" are intended to be an exemplification of Mr. Bishop's "New System of Legal Exposition," by which he hopes to introduce the practitioner to available methods of investigation and labor productive of higher results than have been common heretofore. The system certainly has the charm of novelty; and if it will accomplish all that Mr. Bishop claims, the practitioner can go into court with an absolute certainty as to just how his case will be decided. The germ from which this great result is to grow is contained in the principle that "*Truth, alone and unadorned, with no shadow of contiguous error upon its visage, is usually recognized alike by all men; and the principal reason why differences arise is because it has never thus been distinctly and accurately seen.*" By the new system of Mr. Bishop's, we are to be enabled to see the plain, simple, and unadorned truth. 'T is a consummation devoutly to be wished. "This system," to quote the author's words, "consists, to state it briefly, of carrying each question into the light of, first, the entire subject; secondly, the entire legal system; thirdly, those laws of our earthly existence which man has no power to change; and lastly, those technical rules which have become established through the judicial doctrine of *stare decisis*; then, of introducing into the problem all the considerations which are relevant, and *especially* not overlooking any; and thereby determining and writing down what in fact the judicial mind of our own country and age, when

duly made cognizant of all, will hold upon the several questions. It follows no opinion of any preceding writer or judge which an examination shows to be contrary to the reasonings and settled doctrines of the law; and especially it never introduces any opinion or reasoning of the author, but states instead the law's reasonings and conclusions as every judge will hold them on being duly enlightened from the bar. For it recognizes the fact that while the past lives in its translated wisdom and reason, its inert, dead forms are buried, and the dealings of practitioners and judges are exclusively with the present and future. It does not attempt to bend or seduce away any mind from former convictions; its aim is the far higher one, — to induce, by all justifiable persuasions, the reader *to look*, not solicitous about the result of the looking. It recognizes the fact that our conflicts of judicial opinion do not result in any considerable degree from real differences, but almost entirely from the *overlooking of things* by judges who, if they had all before their thoughts, would decide in harmony."

Without expressing ourselves as to the result of this new system of legal exposition, we cannot too highly praise this work as a legal treatise. It is a mine of legal information upon the subject treated, and is the ablest exposition of the law of Marriage, Divorce, and Separation yet published.

THE SUPREME COURT OF THE UNITED STATES: Its History, by HAMPTON L. CARSON, of the Philadelphia Bar; and its Centennial Celebration, Feb. 4, 1890, prepared under direction of the Judiciary Centennial Committee. John Y. Huber Co., Philadelphia, 1891. Cloth. $10.00.

In selecting Mr. Carson for the task of preparing a volume which should fittingly commemorate the centennial celebration of the Supreme Court, the committee having the matter in charge certainly made a most wise and happy choice. The superb work now before us, the result of his labors, is a tribute to our highest tribunal of which both the author and the profession may well feel proud. Its importance and value can hardly be overestimated, being as it is the first complete history of the Supreme Court ever published. While Mr. Carson has not attempted to write a treatise on constitutional law, he has given a clear and interesting account of the sources of the jurisdiction of the court, the establishment of the court itself, and then, dividing his subject into epochs, he traces its history to the present time. Its most important decisions are recalled and commented upon, and many interesting incidents are reverted to. Brief but admirable biographical sketches are given of all Chief and Associate Justices, displaying a vast amount of research and investigation by the learned author. The text is in fact a mine of valuable information, and the reader cannot but feel a glow of pride as he traces the growth and development of our Supreme Tribunal from its inception down through its eventful century of existence.

To all this valuable collection of historical facts has been added a collection of illustrations unequalled in any work yet published. FIFTY-THREE superbly etched portraits, executed by the well-known artists, Max Rosenthal and Albert Rosenthal, of Philadelphia, adorn the pages of this work, forming a complete collection of portraits of *every* Chief and Associate Justice who has occupied a seat upon the Supreme Bench. Autographs taken from original letters are appended to all these pictures. The prints alone are worth many times the price of the book. Taken as a whole, no work has ever been offered to the profession which possesses such intrinsic value; and the lawyer who once sees it will not rest easy in his mind until he makes himself the fortunate owner of a copy.