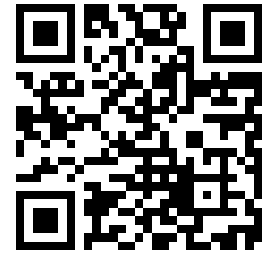
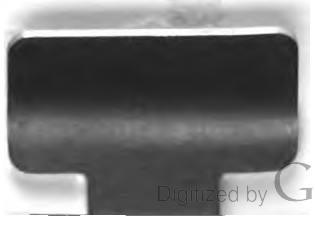


The Green bag

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



THE

GREEN BAG

A Useless but Entertaining Magazine for Lawyers

EDITED BY HORACE W. FULLER

VOLUME I

COVERING THE YEAR

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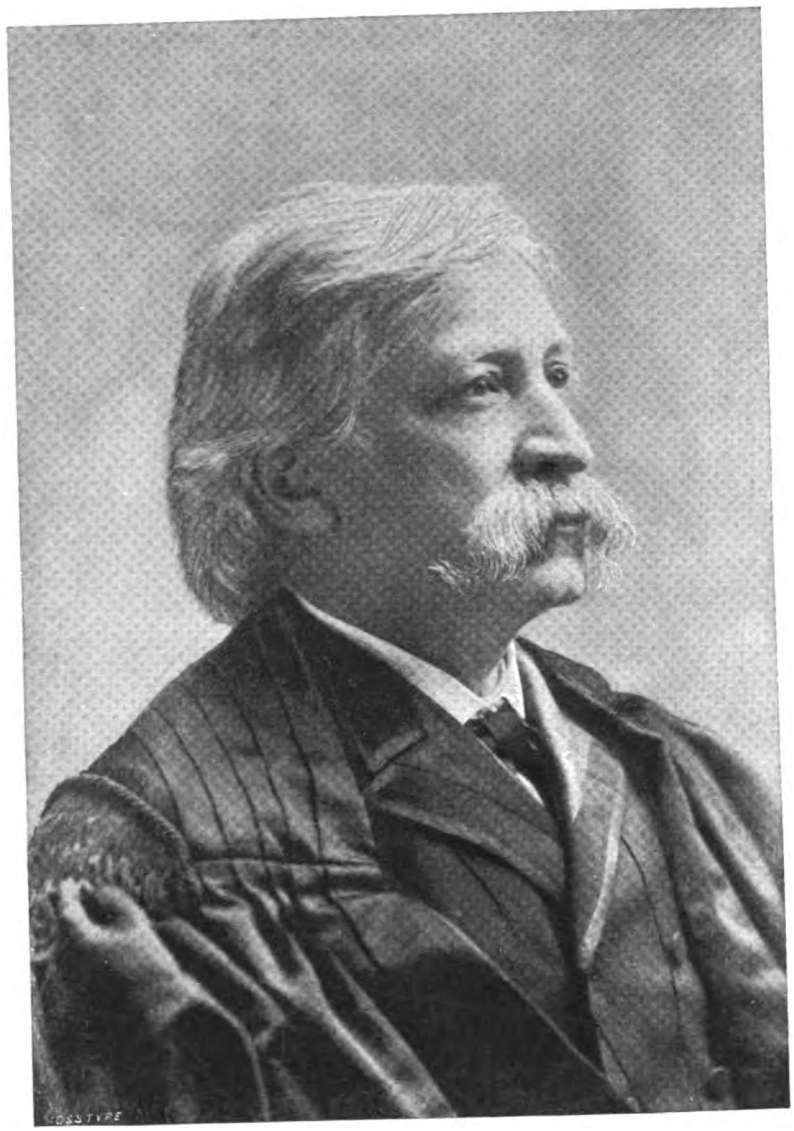


The Green Bag.

VOL. I. NO. 1. BOSTON. JANUARY, 1889.

CHIEF JUSTICE FULLER.

AS questions are frequently asked respecting the ancestors or progenitors of Melville Weston Fuller, the present Chief Justice of the United States, it may not be amiss to refer to a little of our New England history. About the year 1632 there came to this country Rev. Thomas Weld, a graduate of Cambridge University, England; a prominent and influential man, who became the first minister of the first church in Roxbury (now a part of Boston), and was "the preacher" there when Eliot the apostle was "the teacher." His son, Rev. Thomas Weld 2d, in 1642, was settled in Dedham, and his son, Rev. Thomas Weld 3d, was settled in Dunstable; and both were prominent and respected. The last-named of these was the father of the famous Habijah Weld, who for fifty-five years was the settled minister of Attleborough. He is described, in "Dwight's Travels in New England," as an orator of great virtue and power, a perfect Boanerges in the pulpit, and was honored and beloved by all who knew him. He was born Sept. 2, 1702; and as his father died a few weeks after his birth, the mother gave him the Hebrew name "Habijah," which signifies, "God is my father."

Hannah Weld, one of the daughters of Habijah, married Rev. Caleb Fuller; and Elizabeth Weld, another daughter, married John Shaw, of Barnstable, in 1764, from whom the late Chief Justice Shaw, of the Supreme Court of Massachusetts, descended: so that the Chief Justice of the United States and the late Chief Justice of Massachusetts are both descendants of that celebrated Puritan preacher.

The father of Caleb Fuller was Rev. Daniel Fuller, who graduated at Yale in 1721, studied for the ministry, and in 1725 preached in Windsor and afterwards at Wellington, Conn., and died Dec. 9, 1758. He was a distinguished citizen of Dedham, a large land-owner there; and in 1702, and for five years, was one of the selectmen of that town, and a representative of the town in the General Court in 1723 and 1724. He married Esther Fisher in 1668, who was the sister of the great proscribed patriot and bold captain Daniel Fisher, of Dedham, who, in 1682, was the Speaker of the General Court, and was prosecuted by the British Government for sedition. He was the Daniel Fisher who "hated the tyrant" Sir Edmund Andros, then governor, and in the midst of an excited and turbulent mob in Boston seized Andros by the back of the neck and led him pale and trembling through the angry crowd, from the house of Mr. Usher to Fort Hill; thus securing him as a prisoner and saving him from further violence.

The grandfather of Rev. Daniel Fuller was Thomas Fuller, who in 1642 was a leading man in Dedham; a selectman of the town in 1663, and for fourteen consecutive years. He married Hannah Flower in 1643, and died Sept. 28, 1690.

The Rev. Caleb Fuller graduated at Yale in 1758, was made A.M. in 1762, and was settled as a minister for some time in Hanover, N. H.; but owing to a weakness of the throat gave up preaching, and died there at a good old age, in 1815, honored and beloved. His son, Hon. Henry Weld Fuller, grand-

father of the Chief Justice, was born at Middletown, Jan. 1, 1784; was a classmate and intimate friend of Daniel Webster at Dartmouth College, and was originally named for his grandfather "Habijah," but his name was afterwards changed to Henry Weld. He was a sound lawyer, and for many years and at the time of his death a judge of probate in Kennebec County, Maine. He married Esther Gould, a sister of the poetess, Hannah Flagg Gould, and died Jan. 29, 1841. The volume entitled "The Courts and Lawyers of Maine" says of him: —

"His practice was extensive and profitable, and he had one of the largest dockets in the county. He was much valued for his integrity, hospitality, warmth of heart, and kindliness of manner. A man of great public spirit, and his death was a great loss to society."

He resided at Augusta, Maine, and was greatly interested in its growth.

Frederick Augustus Fuller, son of Henry W., was born at Augusta, Maine, Oct. 5, 1806; studied law at the Harvard Law School and with his father, and was a sound lawyer, and for a long time chairman of the County Commissioners of Penobscot County. He was the father of Chief Justice Fuller, and died Jan. 29, 1849. He married Catherine Weston, a daughter of Hon. Nathan Weston, an eminent judge of the Supreme Court of the State of Maine, being associate justice from 1820 to 1834, and chief justice from 1834 to 1841.

Such are some of the antecedents of our new chief justice which tend to show the general characteristics of his ancestry. We will now come to the man himself.

Melville Weston Fuller was born in Augusta, Maine, on the 11th day of February, 1833. At the age of sixteen he entered Bowdoin College, graduating in 1853. He began the study of the law in the office of his uncle, George Melville Weston, at Bangor. He also attended a course of lectures at the Harvard Law School. In 1855 he commenced to practise in Augusta, entering into partnership with his uncle, Hon. Benjamin A. G. Fuller, with whom he also at the same time edited "The Age," then one of the leading Democratic papers in the State. In 1856 he was elected to the Common Council of Augusta, and became its president, performing also the duties of City Solicitor. Although but twenty-three years of age, he had already developed remarkable qualities as a lawyer and an enviable position at the bar of his native State was assured him, when he determined to go West. He therefore resigned his position in the Council, and before the year 1856 had closed he had settled in Chicago.

There his abilities were speedily recognized, and he at once established a practice which continued to grow until he soon stood in the foremost rank of the profession. His most famous case was that which was known as the "Cheney case," in which an ecclesiastical council undertook to discipline Bishop Cheney on a charge of canonical disobedience. Mr. Fuller appeared in defence of the Bishop, and displayed such a knowledge of ecclesiastical law and such a familiarity with the writings of the Church Fathers as to astonish even the well-trained churchmen before whom the trial was had. His argument of this case before the Supreme Court of Illinois, to which tribunal the matter finally went, has been pronounced a masterpiece of forensic skill and eloquence.

His practice has been a general one; and a marked characteristic of his legal methods has been the thoroughness with which his cases have been prepared. Although possessed of quick perceptive faculties and working with facility and ease, he studied his cases closely and carefully, and always went into court fully armed for the contest. As a fluent, earnest, and convincing advocate he had few equals. Always dignified and courteous, never descending to unfairness or trickery, he won alike the respect of the court and the esteem of his associates at the bar.

Of late years Mr. Fuller has had an exten-

sive practice in the Federal Courts; and it is a curious coincidence that in the first case heard before the late Chief Justice Waite when he went upon the bench (Tappan *v.* Merchants National Bank) Mr. Fuller, who succeeds him, was of counsel. That was in 1874; and since that time, and for some years before, scarcely a term has passed in which he has not had a case upon the docket.

In 1861 he was a member of the convention called to revise the constitution of the State of Illinois, in which he took an active part and by his legal abilities rendered marked services. In 1862 he was elected to the Illinois legislature, in which body he served one term.

Mr. Fuller is a man of scholarly habits, and some of his more important arguments are mines of philosophical research. He is familiar with several continental languages, and is a ripe scholar in the classics. He will bring to the high position to which he has been appointed a rare culture and such attainments as few lawyers possess. Socially he is a gentleman of courtly dignity and presence, with a kindly, amiable manner indicative of a warm heart and generous impulses.

The appointment of Mr. Fuller has been most favorably received by the legal profession throughout the country. Even his strongest political opponents were among the first to recognize his eminent fitness for the position. Called in the vigor of his manhood from the active practice of the bar, a lawyer of wide experience and commanding position in his profession, and a citizen of the highest personal character, he will undoubtedly prove a worthy successor of Jay and Marshall and Taney and Chase and Waite.

THE WHITE CHAPEL TRAGEDIES.

UP to the present time the perpetrator or perpetrators of that series of murders known as the Whitechapel tragedies are still at large; and so far as public information goes, no important clew to his or their whereabouts has been found. The London populace has displayed its habitual characteristics in connection with these crimes. There has been the usual unreasoning panic, — excusable, perhaps, among the wretched women who belong to the class from which the several victims have seemingly been chosen; barely excusable, too, on the part of the people who reside in the districts where such daring assassinations have occurred; but surely in no degree to be justified in the case of the educated and reasoning citizen at large, or in the case of any section of the metropolitan press. On the subject of the murders the London public has produced a greater quantity of egregiously foolish utterances, in the different shapes of rumor, comment, and so-called suggestion, than could have been collected from a similar number of people in any part of the world. It has also, as a matter of course, blamed the police; while at the same time it has, doubtless with the best intention, done probably as much as in it lay to increase the difficulties in the way of detection. All this was to be looked for. It constitutes one of the most formidable difficulties with which the police are confronted in a case of the kind. And it is hardly to be wondered at, in the circumstances, that many of those engaged in the detection of crime should be willing to dispense with the slight assistance which is to be gained by partially taking the public into their confidence, since it is so disproportionate a compensation for what is thereby lost.

The fact, however, that the murderer or murderers have still to be tracked out is an in-

structive one. For several weeks all the skill and all the effort of a great system of police have utterly failed to connect any one with a series of atrocious murders, committed not in solitary places, but in one of the most densely populated districts of London; not in the recesses of some lonely wood, but on the public streets of the largest city in the world. The murderer has succeeded in avoiding suspicion during all this time. No doubt the very immensity of the population may be an element of safety to the guilty person in such a case. If he once get clear of the immediate vicinity of his victim, concealment and escape are obviously more easy amid such a throng, even should he have been momentarily seen in suspicious circumstances. But should no one have seen the deed, and should no one have seen the murderer near the spot, even for a moment, it is not unlike the proverbial looking for a needle in a haystack to begin to seek for him among some hundreds of thousands of men, not to mention the watching of all the countless egresses from the neighborhood.

Yet, after making due allowance for these considerations, it is surprising that, in the present cases, there has been a failure to discover the perpetrator or perpetrators of the deeds; for they have not been ordinary murders. They have not been simple in their character or bare of particulars. Not only are the details as revolting as any which the records of medical jurisprudence contain; they are also marked by certain characteristics which at first sight would seem to afford a peculiarly strong likelihood of the crimes being cleared up. The very number of the crimes, the almost exact repetition of the murderer's procedure in each, the similarity of hour and circumstances, the elaborate mutilation of the bodies, the selection of victims from one sex and class only, and the like, — these things might not unnaturally be expected to give some clew. Yet this abundance of circumstances gives none. That all these facts will be strong links in the chain of circumstantial evidence hereafter is almost certain. But something further must first emerge before they can be of use in connecting a criminal with the crimes. So far from giving a clew, they would seem to conspire to baffle the police, who, to judge from indiscriminate arrests and wholesale search, are not yet on the track.

It may not be amiss to consider for a little some of the peculiar features of these murders, in view of the theory which has been put forward and widely favored, that they are the handiwork of a homicidal maniac. Without at all prejudging the case, we may discuss shortly how far the facts give color to this explanation, and how far they consist with alleged instances of this monomania, — the *monomanie meurtrière* of the French alienists.

In so far as possible we shall, in these few remarks, avoid touching on the question of the reality or non-reality of what is known by the various names of Affective Insanity, Moral Mania, and, in the language of Pinel, who first maintained its existence, *Manie* (*ou Monomanie*) *sans délire*. This derangement is defined by Pritchard as consisting in "a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect or knowing and reasoning faculties, and particularly without any maniacal hallucination." The reality of such a state has been maintained, though with certain qualifications, by such distinguished alienists as Pinel, Esquirol, Georget, Gale, Rush, Pritchard, Ray, and Professor Maudsley. Yet many call that reality in question, and deny the existence of an irresistible criminal impulse in minds otherwise sound. "Public writers and lawyers," says Dr. Maudsley, "naturally jealous of the application of the doctrine to excuse crime, have rejected and reviled it as a dangerous and absurd legal crotchet; having been probably the more moved to do so because they perceive that, if it be admitted, they will be impotent, by reason of their ignorance of insanity, to put a proper check upon its appli-

cation." It is better not to expose one's self to the reproach of this too keen controversialist in a place where there is not space to defend one's position. So we pronounce neither on the one side nor the other. M. Breschet remarks that the line of demarcation between depravity and madness is very difficult to draw. This is sufficient for us. It is also the gist of the matter. For, admitting, for the moment, the existence of a pathological phenomenon of a perversion of the affections without a derangement of the intellect, there is a further question, not to be settled off-hand by mere generalities: Ought such a form of mental disorder to involve irresponsibility for crime in the same way as intellectual disorder? Even Professor Maudsley shrinks from answering this universally in the affirmative, and considers the admission of a modified responsibility, according to the special circumstances of the case, to be "the truest justice."

It was the very atrocity of the Whitechapel murders that gave rise to the theory of their being the work of a madman. It is not a novel line of reasoning, this. Georget, when dealing with the notorious case of Antoine Leger, who was tried in 1824 for the violation and murder of a girl of twelve, remarks: "The more strange and unheard of a crime is, the less need one seek for its cause among the ordinary motives of human actions." Only let the deed be surpassingly barbarous, and the ordinary mind will at once leap to the conclusion that it was a maniac who wrought it. Its very wantonness and shocking brutality are considered inexplicable on any other hypothesis save that of an unhinged and disordered mind. Now, the inference is quite fallacious. There are many extraneous considerations to be kept in view, — as, for example, that the mutilation may be a mere ruse in order to mislead the investigators, or even, should the culprit look so far ahead, to give color to a plea of insanity when things reach that pass. But putting such aside for the present, it is rash to conclude that there is any limit to the depravity of human nature. From this ground of sheer brutality by itself no inference of madness ought ever to be drawn. Some of the most barbarous murders on record have been perpetrated by admittedly sane men, — men on whose perfect soundness of mind no doubt has ever been cast. Nor is it to be forgotten that an ordinary execution in this country of ours in bygone times was certainly not inferior in savagery to these London outrages. Disembowelling and plucking out the heart while the victim still breathed, and quartering after death, were regular practices, sanctioned by public opinion, ordained by men whom we still count enlightened. It cannot be pretended that these, continued for centuries, were evidences of insanity on the part of the people who permitted their infliction. They were evidences of the coarse and brutal side of human nature, — sane and sound human nature, — which it is the function of criminal law to repress. Uncivilized savages, too, of our own time still revel daily in atrocious cruelties, even to hear of which makes one shudder. Yet we do not stamp these races as universally mad and irresponsible. No more is mere barbarity when displayed in our own time and country to be regarded as necessarily a symptom of mental derangement, or of anything but great depravity. The mutilation of the bodies of these wretched women in East London, taken by itself, is no indication whatever of insanity on the part of the perpetrator or perpetrators of the deeds.

It is said that the hypothesis of insanity as an explanation of these startling crimes is borne out by the apparent absence of anything like an adequate motive.

The circumstances certainly point to none. The existence of the customary motives to murder seem to be negatived by all that is known. The object cannot have been robbery or gain; the poverty of the murdered woman in each case negatives that. Assassination can scarcely have resulted from an impulse of sudden anger; the very number and similarity of the crimes negative such a

possibility. As unlikely is it that the motive was a long-cherished revenge; the fact that the butchery was practised, not on an individual or set of individuals, but on the members of a class (apparently on such members merely as chance threw first in the murderer's way) seems to negative that idea. The suggestion that the crimes were committed for the sake of obtaining from the bodies a certain organ to be sold for scientific purposes is, of course, untenable. The state of the market for such articles negatives the hypothesis. One fails to descry any motive. But this failure is no ground for inferring insanity, and it would be dangerous to so regard it. Apparent absence of motive is no criterion. No doubt, in cases of alleged kleptomania this element is of first importance. If a person in comfortable circumstances financially, with the means even of giving charity to others, secretly fill her pockets with bread at the table of a friend (as in an authentic case, recorded by Dr. Rush), certainly the absence of reasonable motive is all but conclusive of an irresistible propensity to steal. But in this respect the crime of theft stands absolutely alone. And even in the case of theft, were the article stolen anything but a commodity readily obtainable in quantity by the wealthy purloiner, — were it, for example, a curio or article of virtu, — mere affluence would not infer absence of motive.

In the case of any other crime, it is the extreme of rashness to conclude that motive is absent, because it is unascertainable, and even defies conjecture. If one but practise a little introspection, the variety and the apparently trifling nature of the motives which sometimes actuate man, even in innocent matters, must strike him. Further, that these secret springs of action should be obscure to others must appear quite natural. In this respect of want of adequate motive the London tragedies would be hard to bring within the category of so-called *moral* mania. *Intellectual* derangement might account for them so far as this point is concerned. Absence of reasonable motive and presence of unreasonable motive — the play of hallucinations and delusions — may turn out to be a plausible explanation. But in so far as motive goes, the theory that these crimes are the results of *monomanie sans délire* seems untenable.

They bear no resemblance to the few instances of this alleged disease recorded, and repeated in every medical treatise on the subject. A sudden and "unaccountable" desire to take life, — a wife waking in the night with an irresistible impulse to kill the husband at her side, with no reason for it, and in spite of a strong affection for him; a servant, while undressing a child of whom she had charge, being struck with the whiteness of its skin, and thereby possessed of an impulse to murder it, and so forth, — an inexplicable craving, which is not persistent. But here we have something different. The impulse was to all appearance sustained, — unless, indeed, these various murders turn out to be the work of several individuals, and those unconnected with each other, the later cases being the result of a morbid imitation of the earlier. It was not a sudden flash out of a propensity to kill. It was persistent or recurrent. A most common evidence of this so-called insane and irresistible impulse is the voluntary confession of the act. Immediately the impulse is gratified it seems to pass off, and the murderer quietly surrenders himself to the proper authorities. This is a strong argument in favor of the insane nature of the impulse. It will, we believe, be acknowledged by medical observers to be the fact, that of those alleged homicidal maniacs who fly after committing the murder, all show unmistakable symptoms of intellectual insanity. On this ground alone, then, we are forced to the conclusion that the apparent absence of motive in these London murders is not to be explained on the irresistible impulse theory, and that the case is outside the category of "moral mania."

The craft and cunning evinced in the murders in question seem little to consist with

insanity. The rash and uncalculating act of the lunatic is not here. No doubt there are on record a few isolated cases of considerable caution being shown on the part of insane homicides; but we are not acquainted with any which approach to the present in display of prudence and circumspection. The craftiness of the author or authors of these deeds is astounding; and the highest tribute to it is the fact that all attempts at detection have been made in vain hitherto. There is, first, cool and deliberate preparation. There is then a careful selection of time and place, — darkness and seclusion. There is the choice of a class of victims which, of all others, can most readily and as a matter of ordinary course be decoyed away alone to a secluded place of the kind, and at such an hour. The actual execution of his foul purpose must have been swift and dexterous, and shows coolness of hand and steadiness of purpose. Then all traces of the crime must have been removed from the assassin with great skill and foresight. The perfect circumspection which has characterized his subsequent movements, and has secured complete concealment for him hitherto, has been skilful in the extreme, and must have been previously devised. Lastly, the daring shown in the repetition of the atrocities (assuming them for the moment to be the work of one hand) is only to be equalled by the caution shown in refraining from any too foolhardy attempt to repeat them where detection was imminent.

These things are all markedly in the direction of disproving insanity. Dr. Ray, in contrasting the sane criminal with the insane, remarks: "The criminal lays plans for the execution of his designs; time, place, and weapons are all suited to his purpose; and when successful, he either flies from the scene of his enormities, or makes every effort to avoid discovery. The homicidal maniac, on the contrary, consults none of the usual conveniences of crime; he falls upon the object of his prey, oftentimes without the most proper means for accomplishing his purpose, and perhaps in the presence of a multitude, as if expressly to court observation, and then voluntarily surrenders himself to the constituted authorities."

It has been pretty generally thought that the fact that the victims were all women of loose character presents a difficulty in the case; and that this, taken along with the particulars of the mutilation, indicates the presence of an erotic element. This is open to doubt. For one thing erotic and homicidal tendency do not seem to have been found to co-exist. But the inference seems superfluous, too, in order to explain the choice of such a class as victims. The true explanation is probably that which we have indicated above; namely, that members of this class were more easily and unsuspectingly lured away to a lonely place. — *Journal of Jurisprudence.*

FRONT AND REAR.

IRVING BROWNE.

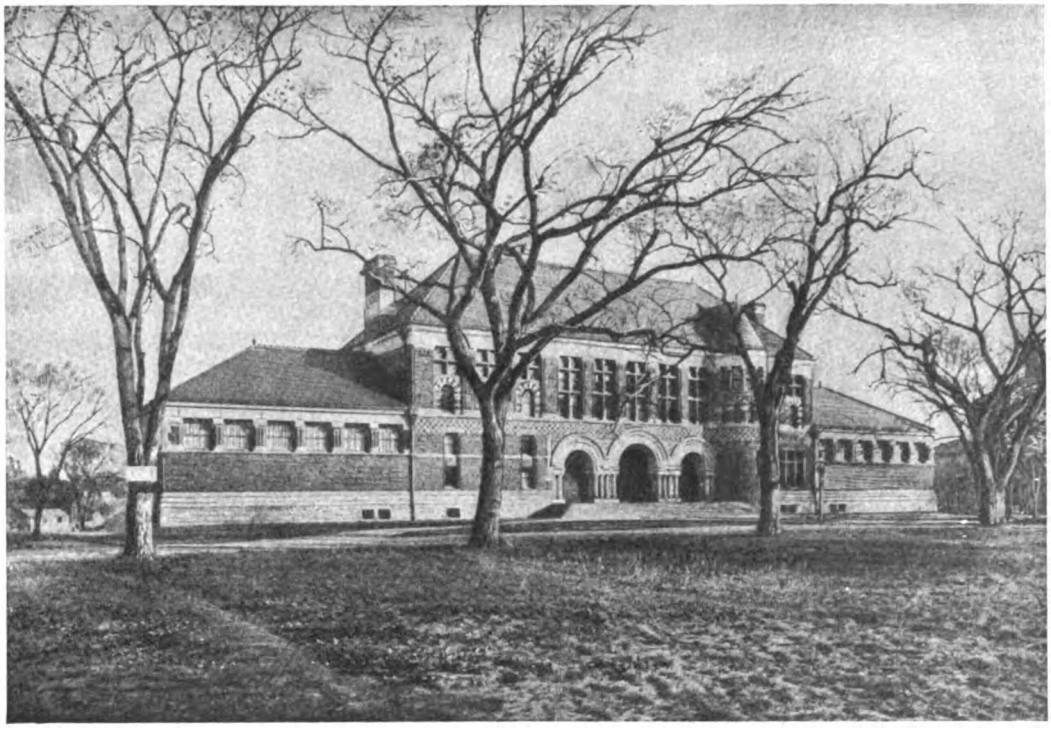
MY mansion's front has great plate glass,
Through which I see the people pass
In showy state;
Along the glittering avenue
The bright procession streams in view
Early and late.

In furs and silks, with languid stare,
Drawn by the plumed and jingling pair,
The matrons ride;
The liveried flunkies on the box,
As smart and vain as turkey-cocks,
Reflect their pride.
The tight-breeched youth, escorting drags,
Go bumping past on bang-tailed nags,
And grin in pain;
They look on those who walk at ease
Where they and not their horses please,
With high disdain.
The dude limps by with monstrous stick;
His legs are thin, his head is thick,
His mien exotic.
The frizzled girl, on wabbling heels,
Stepping as if on wriggling eels,
Smiles idiotic.
The women saunter three abreast,
Talk all at once, and push the rest,—
Of gowns they talk.
The red-faced *bonne*, with stiff white cap,
With babe in carriage deep in nap,
Takes up the walk.
The brokers pass, with clean-shaved faces;
They talk of politics and races,
And what "it cost;"
They brag of bets that they have laid,
And tell each other what they've made,—
Not what they've lost.

My mansion's rear has windows small,
Which overlook the houses tall,
Backed up to view,
In which these pompous people live;
And what my casual prospects give
I'll tell to you.
The area walls, with moss o'ergrown,
The broken stairs, the old shoes thrown
At cats belated;

Linen of various shapes and sexes,
Hung out to dry, my vision vexes,
By wind inflated.
With slattern dress and unkempt hair,
The matron, dawdling in her chair,
O'er novel weeps.
With pipe in mouth and hod on shoulder,
The flunky, who in front was bolder,
Up ladder creeps.
A girl with hair in pins — oh, shocking! —
Is darning on a thin-legged stocking:
I 'm sure she 's thirty.
Without a cap, the *bonne* from Cork
Over the coals is hard at work,
And very dirty.
The dude, with suffering grimace,
And razor scraping beardless face,
Long time has stood.
The youth who cantered on the course
Is on another kind of horse, —
He 's sawing wood.
The smug-faced broker, I 'm afraid,
Is flirting with his nursery-maid, —
He chucks her chin;
He little dreams his jealous wife,
Ready to take the hussy's life,
Is peeping in!

And so the scene kaleidoscopic
Shows forth the never-failing topic,
Humanity,
And gives to satirist and preacher
A text for every humble creature
On vanity.
The proverb says all would deride
Him who should "plane the underside
Of a barn floor;"
But in society, as in war,
'T is well to watch with constant care
The postern door.



AUSTIN HALL.

THE HARVARD LAW SCHOOL.

Louis D. Brandeis.

THE much-debated question, whether the law school or the lawyer's office affords the better opportunity for legal training, may well be considered settled. Undoubtedly each offers advantages which the other does not possess. All lawyers concede that a short apprenticeship in the office of a practitioner is valuable; but a thorough knowledge of legal principles is essential to higher professional success, and this knowledge, which under all circumstances is difficult of acquisition, can rarely be attained except as the result of uninterrupted, systematic study, under competent guidance. For such training, the lawyer's office seldom affords an opportunity. That this is now the prevailing opinion among lawyers is shown by the growth of law schools in the United States, and the introduction in England of systematic instruction in the common law, both at the Universities and at the Inns of Court.

It is but a century since the first school for instruction in the common law was founded. The Harvard Law School, the oldest of all existing institutions devoted to such education, is scarcely seventy years old. Its age, the eminence and ability of its instructors and the excellence of its methods made it a potent factor in the struggle to establish the value of school training. Now that the battle has been won, it may be interesting to consider the condition of legal education at the time the Harvard Law School was founded, and the development of the school itself.

The elaborate system for acquiring a knowledge of our law, which prevailed in England at the time of the settlement of the Colonies, and which Lord Coke has so graphically described in his preface to the Third Reports, fell into disuse there soon after his time. In America nothing similar ever existed. There was little need of lawyers in the early days of American life, when the barrister was apt to be regarded as a barrator. But during the movement which culminated in the independence of the Colonies the law became more and more a subject of general interest. Already before the Revolution, Blackstone was found, it is said, side by side with the Bible in the houses of laymen. With a growing respect for the knowledge of the law, the lawyers grew rapidly in number and importance. Still, no means had been provided of training the aspirant for the bar. Here, as in England, the student learned what he could by reading and re-reading the few text-books then existing, by listening to the conversation of lawyers, and by watching the proceedings of the courts. After his admission to the bar, the young lawyer doubtless learned, as he does now, by that most expensive method of instruction, — his own mistakes.

Professor Greenleaf describes the method of study which he and Judge Story pursued as follows: "We both commenced the study of the law many years since, amidst the drudgery and interruptions of the lawyer's office, perusing with what diligence we could our Blackstone, Coke, and other books put into our hands." This sort of legal training, which may have been adequate at a time when the scope of the common law was narrow and the reported cases comparatively few, naturally proved itself inefficient when the commercial development of England and America brought with it a corresponding increase in legal principles and in litigation. The inadequacy of such training was particularly obvious in the United States, where the varying decisions rendered in the different States — grafted as they were upon the English stock — had resulted frequently in a less homogeneous development of the law. The evils of the existing means of legal education being greater in America and the conservative force of tradition less, it is natural that the reform should have been inaugurated here. Even prior to the organization of the Harvard Law School in 1817, systematic instruction in the common law had been given in America. A professorship in English law is said to have been established at William and Mary College in Virginia as early as 1782. In 1790 a law professorship was established in the College of Philadelphia, and James Wilson — one of the Associate Justices of the Supreme Court of the United States — was appointed the first professor. Judge Wilson prepared a series of lectures designed to cover three courses. The first was delivered in the winter of 1790–1791, and a part of the second course was delivered the following winter. In April, 1792, the College of Philadelphia and the University of Pennsylvania were united under the name of the latter; a law professorship was created in the new university, and Judge Wilson was appointed to fill the chair; but for some reason no lectures on law were delivered there for many years. Judge Wilson's law lectures were published in 1804 — after his death. These early professorships cannot be considered as in any sense establishing law schools or separate departments of universities. Besides, like the law schools at Litchfield, Conn., and Northampton, Mass., — the early competitors of the Harvard Law School, — they were soon abandoned.

The school at Litchfield, which was the first regular school for instruction in the English law, was founded by Tapping Reeve, author of the treatise on "Domestic Relations." When, in 1798, Mr. Reeve was appointed Associate Justice of the Superior Court of Connecticut (of which bench he subsequently became Chief Justice), Hon. James Gould, author of the work on "Pleading in Civil Actions," took an active part in

the management of the school. These gentlemen, together with Jabez W. Huntington, who became an assistant upon Judge Reeve's retirement, were the only instructors whom the school ever had; and in 1833 it was discontinued, after a life of fifty years. During most of that time the reputation of the school was high. In 1813 it was attended by more than fifty students, and the aggregate membership during its whole existence exceeded one thousand. 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. The method of instruction at Litchfield in 1831 is thus described in an official publication: "According to the plan pursued by Judge Gould, the law is divided into forty-eight Titles, which embrace all its important branches, of which he treats in systematic detail. These Titles are the result of Thirty years' severe and close application. . . . The lectures, which are delivered every day, and which usually occupy an hour and a half, embrace every principle and rule falling under the several divisions of the different Titles. These principles and rules are supported by numerous authorities, and generally accompanied by familiar illustrations. Whenever the opinions upon any point are contradictory, the authorities in support of either doctrine are cited, and the arguments advanced by either side are presented in a clear and concise manner, together with the Lecturer's own views upon the question. In fact, every ancient and modern opinion, whether overruled, doubted, or in any way qualified, is here systematically digested. These lectures, thus classified, are taken down in full by the students, and after being compared with each other, are generally transcribed in a more neat and legible hand. . . . These notes thus written out, when complete, are comprised in five large volumes," etc. Mr. Huntington held examinations, every Saturday, upon the lectures of the preceding week, consisting "of a thorough investigation of the principles of each rule," with "frequent and familiar illustrations, and not merely of such questions as can be answered from memory without any exercise of the judgment." Mr. Reeve's lectures were accompanied by more of colloquial explanation. A Moot Court was held at least once in each week.

JOSEPH STORY.

The school at Northampton was founded in 1823 by Judge Samuel Howe, who had once been a pupil at the Litchfield School, and his former law-partner, Elijah H. Mills, a lawyer of extensive practice, and a United States Senator from Massachusetts. In 1827 Mr. Mills's law-partner, John Hooker Ashmun, was added to the list of instructors. The prominence of Judge Howe and of Senator Mills, and the great legal ability of Mr. Ashmun gave the school a high reputation; but this, too, appears to have been in the strictest sense a private school. Its average attendance numbered hardly more than ten; and in 1829, when Mr. Ashmun accepted a professorship at Cambridge, the school was

discontinued. The method of instruction adopted at Northampton seems to have resembled that at Litchfield. The professors read written lectures, of which the students were supposed to take copies, and there were less formal oral lectures and recitations.

The Harvard Law School had its origin in a gift of Isaac Royall, a prominent citizen of Massachusetts, who died abroad in 1781. In his will, made in England in 1779, whither he had gone after the battle of Lexington, Isaac Royall devised to Harvard College more than two thousand acres of land in Royalton and Granby, Mass., "to be appropriated toward the endowing a professor of Law in said College, or a professor of Physic or Anatomy, whichever the Corporation and Overseers of said College shall judge best for its benefit; and they shall have full power to sell said lands and put the money out at interest, the income whereof shall be for the aforesaid purpose." Had the College availed itself immediately of this devise, the school at Cambridge might perhaps have been organized before Tapping Reeve began his instruction at Litchfield Hill. But it was not until 1815 that the proceeds of this devise, which amounted then to $7943.63 and had hitherto remained in the treasury of the College unappropriated, were first devoted to the establishment of a professorship of law. The annual income of this fund, about four hundred dollars, was supplemented by the fees of students; and Isaac Parker, then one of the Justices (afterwards Chief Justice) of the Supreme Judicial Court of Massachusetts, was appointed under the title of Royall Professor. This was, however, merely a college professorship, like the Vinerian professorship at Oxford, and the professorship of law at the College of Philadelphia. The foundation of the Harvard Law School, as such, dates from the year 1817, when Asahel Stearns was appointed University Professor of Law. The statutes of the College required him to open and keep a school in Cambridge for the instruction of the graduates of the University and others prosecuting the study of the law; and in addition to prescribing to his pupils a course of study, to examine and confer with them upon the subjects of their studies, to read to them a course of lectures, and generally to act the part of a tutor, so as to improve their minds and assist their acquisitions. His compensation consisted of the tuition fees paid by the students. Chief Justice Parker took but little part in the exercises of the school. His duties required him to deliver every summer fifteen lectures to the undergraduates and the members of the Law School; these lectures, which were necessarily general and elementary in their nature, related chiefly to the Constitution of the United

SIMON GREENLEAF.

States and of Massachusetts, and the early legal history of New England. In 1827 Chief Justice Parker resigned his professorship, and in 1829 his withdrawal from the school was followed by that of Mr. Stearns. The method of instruction adopted at Cambridge during this period appears to have resembled that which prevailed at Litchfield and Northampton. Mr. Stearns's treatise on "Real Actions," once widely known, embodies a course of lectures read by him to the students. Besides, there were less formal lectures, recitations, and Moot Courts. In spite of the learning of Mr. Stearns and the eminent ability of Chief Justice Parker, the Harvard Law School was not successful during the early years of its existence. The belief in school instruction was still limited to a few, and most of those were attracted to Litchfield and Northampton. The former enjoyed a national reputation, and the latter, being situated within a hundred miles of Cambridge, was a dangerous rival. Thus the Harvard Law School, notwithstanding the zeal of its professors and its connection with a college then already widely known, received but few students. The largest number until 1829 was eighteen, and the average attendance was only eight.

The year 1829 marks a new era in the life of the Harvard Law School. In that year Nathan Dane, a lawyer of Beverly, Mass., author of the once famous "Abridgment of American Law," and the alleged draughtsman of the never-to-be-forgotten Ordinance of 1787 for the government of the Northwest Territory, following the example of Viner, gave to the school the profits of his Abridgment. This gift secured for Harvard the services of Joseph Story, and for the world his epoch-making treatises on the law. In laying the foundation for the professorship which bears his name, Mr. Dane prescribed that "it shall be the duty of the professor to prepare and deliver and to revise for publication a course of lectures on the five following branches of Law and Equity equally in force in all parts of our Federal Republic, — namely, The Law of Nature, The Law of Nations, Commercial and Maritime Law, Federal Law and Federal Equity, — in such wide extent as the same branches now are and from time to time shall be administered in the courts of the United States, but in such compressed form as the professor shall deem proper; and so to prepare, deliver, and revise lectures thereon as often as said Corporation shall think proper;" and "as the Hon. Joseph Story is by study and practice eminently qualified to teach the said branches both in Law and Equity, it is my request that he may be appointed the first professor on this foundation if he will accept the same; and in case he shall accept the same it is to be understood that the course of his lectures will be made to conform to his duties as one of the Justices of the Supreme Court of the United States; and further, that time shall be allowed him to complete, in manner aforesaid, a course of lectures on the said five branches, probably making four or more octavo volumes, and that all the lectures and teachings of him and every professor so to be appointed shall be calculated to assist and serve in a special manner law students and lawyers in practice, sound and useful law being the object." The amount given was ten thousand dollars; and the fund was increased by a bequest of five thousand dollars upon Mr. Dane's death, a few years later.

Joseph Story became Dane Professor, John Hooker Ashmun was appointed Royall Professor, and the school entered upon a period of great prosperity. At the time Story assumed the duties of instructor at Cambridge, he was fifty years old. He had been for eighteen years Associate Justice of the Supreme Court, a position which he held until his death. This was a period during which the attention of the public was perhaps more generally fixed upon that tribunal than at any other in our history. The learning and the lucid exposition displayed in Story's judicial opinions had won the admiration of the bar throughout the land, and the opportunity

of hearing his lectures was eagerly seized. Almost immediately upon his appointment as professor, the school changed its character from a local to a national school of law. It became broader in its aims; it improved in the quality of its instruction, and the attendance grew larger. When, sixteen years later, death severed Story's connection with the University, the Law School numbered one hundred and sixty-five students, representing nearly every State in the Union. During the same period the law library increased so rapidly that, after a few years, it surpassed any in America. Between 1829 and 1845 nearly thirty thousand dollars were expended by the Law School in the purchase of books, and it received in addition Samuel Livermore's collection of works on the Civil Law, which is said to have been the most valuable collection of its kind in this country. In 1831 Mr. Dane offered to advance funds to enable the College to supply a separate building for the Law Department. Dane Hall was erected in 1832; but the growth of the school soon necessitated extensive additions, which were completed in 1845. The prosperity of the school was so great that in spite of the purchases for the library and the enlargement of Dane Hall, there had accumulated at the time of Judge Story's death a surplus of over fifteen thousand dollars. How well he had performed the duty imposed by Mr. Dane to revise his lectures for publication may be seen from the fact that during this period Story published all his treatises on the law, filling no less than thirteen volumes.

JOEL PARKER.

Although it was the fame and ability of Story which then gave to the Harvard Law School its impulse and which established its national character, yet others contributed in no small measure to the high reputation which it won at this time. John Hooker Ashmun was a man of extraordinary legal acumen; and upon his early death, in 1833, Simon Greenleaf, then reporter of decisions for the Supreme Court of Maine, was appointed Royall Professor of Law. Greenleaf had already distinguished himself at the bar by his critical discrimination of legal principles, and for fifteen years he brought these mental faculties to bear with great effect upon his work as a teacher of law. In the performance of his duties as professor he prepared the work on "Evidence," which was published in 1842 and soon won for him a reputation in every country where the common law is administered. His learned edition of "Cruise on Real Property" appeared after he became Emeritus professor.

The method of instruction prevailing at the Law School during this period was in many respects similar to that which had been practised during the earlier years of its existence. Professor Ashmun's instruction was mainly by recitations adding informal explanations where it was deemed necessary. Judge Story taught mainly by lectures, and resorted rarely to questioning students. Professor Greenleaf adopted the same method.

with such difference only as the different qualities of his mind would naturally produce. The multiplication of text-books on the lesser branches of the law — many of them prepared by the professors themselves — had done away with the careful copying of the instructor's lectures which at Litchfield and Northampton had occupied much of the students' time. A list of books for a course of study was prepared, and the students had an opportunity of airing their learning occasionally at the Moot Courts which were held by the professors.

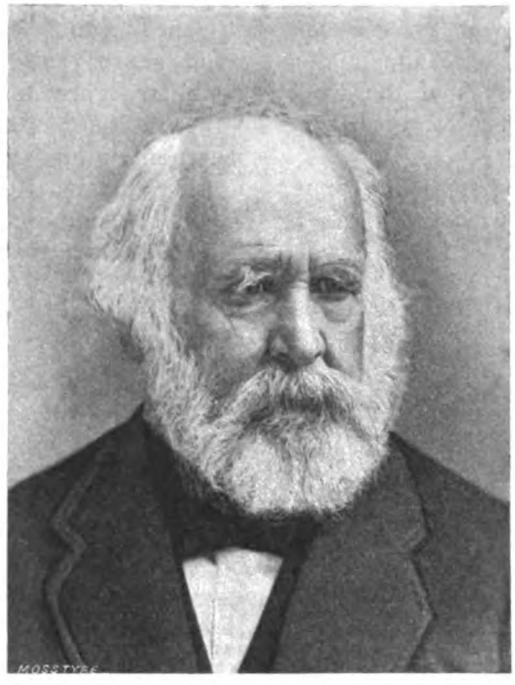
Within a few years after Judge Story's death the school numbered among its instructors Hon. William Kent of New York, George Ticknor Curtis, Franklin Dexter, Luther S. Cushing, the author of the famous Manual, and Edward G. Loring. Henry Wheaton accepted the position of Lecturer on International Law, but died before entering upon the performance of his duties. Later, Richard Henry Dana delivered courses of lectures. But Kent, Curtis, Dexter, Cushing, Loring, and Dana were lecturers for short periods only; and during the twenty years following the death of Greenleaf, the fame of the school rested upon the ability and zeal of Judge Parker, Theophilus Parsons, and Emory Washburn.

At the time of his appointment as Royall Professor of Law, Joel Parker, though but fifty-two years of age, had been for nearly fifteen years a member of the Superior Court of New Hampshire and for nearly ten years its Chief Justice. He will doubtless long be considered *the* Chief Justice of that State, for he was one of the ablest of American judges. Stored with the practical experience of a long professional and judicial life, patient, assiduous, and accurate, keen in argument and clear in exposition, he devoted for twenty years all his powers to the performance of his duties at the school.

Theophilus Parsons became Dane Professor of Law in 1848, and held that position until the year 1870. He was a son of the eminent judge whose name he bore, — the Chief Justice of Massachusetts, — and inherited from his father a deep love for the law, and a power of impressive statement rarely equalled. At the date of Parsons's appointment as professor, he was fifty-three years of age, and had acquired considerable reputation, both as a practitioner in admiralty and as a literary man. His fame, however, rests upon his work at Cambridge. The ability of fixing and holding the attention of students, which he possessed in an unusual degree, gave him a high reputation as a lecturer, and the treatises prepared by him in his professorial work soon spread his name far and wide. His "Law of Contracts," which appeared in 1853, is said to have had a larger sale, during the lifetime of the author, than any legal text-book ever published in any country. Like Story's and Kent's Commentaries, it was often quoted in England, and for more than twenty years it was the leading book of reference on the subject in America. A Kentucky law-student, finding it constantly relied upon by the courts of his State, inquired whether there was any statute making it an authority. At comparatively short intervals between 1856 and 1869, Professor Parsons also published works on "Mercantile Law," "Maritime Law," "Bills and Notes," "Partnership," "Marine Insurance," and "Shipping and Admiralty." His reputation as a legal text-writer became so extended that his publishers sold over one hundred and fifty thousand copies of his "Law of Business Men," — a treatise on commercial law for laymen. It is believed to have netted the author, in royalties, fully $40,000.

In 1855 Emory Washburn, a lawyer of rare integrity and industry, who had attained prominence not only in his profession, but also as judge, legislator, and Governor of Massachusetts, was appointed lecturer at the Harvard Law School, and in the following year became University Professor of Law, — a position which he filled for twenty years. The name of the professorship was changed, in 1862, to Bussey Professor, a considerable

fund then becoming available to the Law School from a bequest of Benjamin Bussey, Esq. Like his colleague, Professor Parsons, Washburn soon became favorably known both as a lecturer and as a legal writer. Probably no instructor at the Law School was ever more generally loved by his students. While at the bar every client's cause had been his own ; and as a professor he identified himself in the same manner with his pupils, — their hopes and successes were his ; their fears he sought to dispel by warm words of encouragement. His works on the "American Law of Real Property" and on the "American Law of Easements," renewing their youth with each new edition by the aid of able annotators, are still the leading books of reference on those subjects in America.



THEOPHILUS PARSONS.

During the twenty-five years following the death of Judge Story, the attendance at the school fluctuated considerably, owing partly to the war, partly to the competition of law schools which were organized elsewhere in large numbers, and partly, perhaps, to other causes. The highest number of students (one hundred and seventy-six) was reached in January, 1860 ; the lowest (sixty-nine), in July, 1862. In the year 1869–1870 the attendance at the school was one hundred and fifteen. The method of instruction during this period remained substantially the same as that which was practised under Judge Story and Professor Greenleaf ; namely, oral lectures illustrating and explaining a previously prescribed text-reading, with more or less examination thereon.

On Jan. 6, 1870, Christopher Columbus Langdell became Dane Professor of Law, — an event which, like Story's appointment to the chair forty years before, marks an epoch in the history of the school and of legal education. In external conditions two men could hardly have differed more widely than Story and Langdell at the time each entered upon his duties as an instructor of law. Story had a national reputation ; at the early age of thirty-two he had been appointed one of the judges of the highest court in the land ; he had been tendered the Chief Justiceship of Massachusetts ; his official position, his family connections, and his social qualities had secured for him the acquaintance of the most prominent men of this country ; he was the pride of New England ; the University was honored when he accepted the professorship at the Law School. Langdell, on the other hand, was almost unknown ; he had held no public office ; at the bar of New York, of which for more than fifteen years he had been a member, not many could be found who had even heard of him ; he had rarely been seen in the courts ; in Boston there were few to whom his name was known. But some of the leaders of the New York Bar had discovered his ability, and there were some other lawyers of prominence both there and in Boston who remembered that, nearly twenty years before, there

had been at the Harvard Law School a young student from New Boston, N. H., of indomitable will, of untiring industry, and of a strong legal mind, who assisted Professor Parsons in his work on the "Law of Contracts," and acted for some time as librarian of the school. They remembered that their fellow-student had occupied himself much with the proper methods of study; they had regarded him then as something like a genius in the law; and when they heard that Mr. Langdell had been chosen Dane Professor, they did not share the anxious concern which other friends of the school expressed at the appointment of a man comparatively unknown.

As soon as Professor Langdell assumed his new duties, changes were suggested in the requisites for admission and for graduation, and in the methods, order, and quality of instruction, which being eventually approved by the Faculty completely revolutionized the school. Prior to 1875, no examination or particular course of previous study was prescribed as necessary to entitle one to admission to the school. As a result the classes contained many students whose training had not been sufficient to enable them to profit by the instruction given. In that year requisites for admission were first prescribed, and since then no person other than a graduate of a college has been admitted without passing a written examination in Latin or French and in Blackstone's Commentaries. Persons not candidates for a degree, called special students, are still permitted to attend the school without examination. Likewise, prior to 1875, any person who had for three terms or eighteen months been enrolled as a member of the school was entitled to a degree without having necessarily attended a lecture or passed an examination. Under the new administration the regular period of residence for the degree of Bachelor of Laws was first lengthened to two years, and subsequently a third year course was added. Now this degree is conferred only upon students who have been in the school at least two full years as candidates for a degree and have passed examinations in the studies for the three years. The course of study itself has been greatly changed and enlarged. The amount of instruction given in the school previously to 1870 appears not to have exceeded ten exercises a week. Although the course actually covered two years, half of the course only was given at the school each year, so that it was purely a matter of chance whether the student began his studies with one or the other set of subjects. This arrangement doubtless proceeded upon the theory that "there is neither beginning nor end to the law, neither fundamental principle nor natural development." But with such a theory the new Faculty most thoroughly disagreed. They believed that the law was a science, and should be studied as such. And so throughout the three years' course of study the subjects are arranged with reference to their fundamental character. The total number of exercises each week is now thirty-five. The following is the course of instruction for the year 1888–1889: —

FIRST YEAR.

Contracts. Professor KEENER. *Three hours a week.* Langdell's Cases on Contracts.

Property. Professor GRAY. *Two hours a week.* Gray's Cases on Property.

Torts. Mr. SCHOFIELD. *Two hours a week.* Ames's Cases on Torts.

Civil Procedure at Common Law. Professor AMES. *One hour a week.* Ames's Cases on Pleading.

Criminal Law and Procedure.[1] Mr. CHAPLIN. *One hour a week.*

SECOND YEAR.

Bills of Exchange and Promissory Notes. Professor AMES. *Two hours a week.* Ames's Cases on Bills and Notes.

Contracts. Professor KEENER. *Two hours a week.* Keener's Cases on Quasi-Contracts.

Evidence.[1] Professor THAYER. *Two hours a week.*

[1] No text-book.

Jurisdiction and Procedure in Equity. Professor LANGDELL. *Two hours a week.* Langdell's Cases in Equity Pleading.

Property.[1] Professor GRAY. *Two hours a week.*

Sales of Personal Property. Professor THAYER. *Two hours a week.* Langdell's Cases on Sales.

Trusts. Professor AMES. *Two hours a week.* Ames's Cases on Trusts.

THIRD YEAR.

Agency.[1] Professor KEENER. *Two hours a week.*

Jurisdiction and Procedure in Equity. Professor LANGDELL. *Two hours a week.* Langdell's Cases on Equity Jurisdiction.

Partnership and Corporations. Professor AMES. *Two hours a week.* Ames's Cases on Partnership.

Suretyship and Mortgage.[1] Professor LANGDELL. *Two hours a week.*

Constitutional Law.[1] Professor THAYER. *Two hours a week.*

Jurisdiction and Practice of United States Courts.[1] Professor GRAY. *One hour a week.*

[Law of Persons.[1] Professor GRAY. *One hour a week.*]
Omitted in 1888–1889.

Wills and Administration.[1] Professor GRAY. *One hour a week.*

[Conflict of Laws.[1] Professor KEENER. *One hour a week for half the year.*]
Omitted in 1888–1889.

[Points in Legal History.[1] Professor AMES *One hour a week for half the year.*]
Omitted in 1888–1889.

In addition to the foregoing third-year subjects, third-year students may elect any second-year subjects which they have not taken in their second year. Every student who has been in the school one year or more has an opportunity each year of arguing in a moot court case before one of the professors.

Every candidate for the honor degree will be required to take ten hours a week in each of the last two years. Every candidate for the ordinary degree will be required to take in the second year ten hours a week in the subjects of that year, and in the third year eight hours a week.

Great as have been the advantages derived from these changes in the requirements for admission and for graduation and in the quantity and order of the instruction, it is believed that Professor Langdell's chief contribution to the cause of thorough legal education was the introduction of an entirely new system of teaching law, — a system which was at first looked upon with great distrust by his colleagues as well as by the bar, but which, making converts from year to year, has eventually established itself firmly at the school. Believing that law is a science, and recognizing that the source of our law is the adjudicated cases, Professor Langdell declared that, like other sciences, the law was to be learned only by going to the original sources. It was there that the authors of text-books had gained their knowledge of the law, and there only can others acquire it. No instructor can provide the royal road to knowledge by giving to the student the conclusions deduced from these sources; his chief aim should be to teach the student to think in a legal manner in accordance with the principles of the particular branch of the law. He should seek to inculcate and develop in legal reasoning the habit of intellectual self-reliance. The sphere of usefulness of the teacher of law according to this conception of his duty is not a narrow one. Having gone over the ground which the student is to traverse, the teacher can, in the first place, aid the student by removing from his consideration the great mass of cases on the particular subject which bore no part in the development of the principle under discussion. Eliminating those, he selects the cases especially worthy of study; and for the convenience of the student the select (not leading) cases on the different subjects are published as a collection. The principle upon which such a collection is made was thus stated by Professor Langdell in the preface to his "Select Cases on Contracts," which appeared in October, 1871, — the first book of the kind ever published: —

"Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with

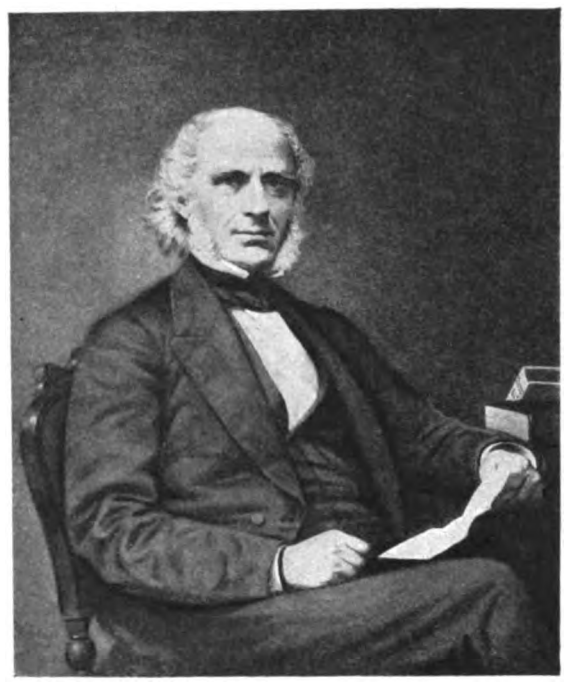
[1] No text-book.

constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of the law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. The vast majority are useless and worse than useless for any purpose of systematic study. Moreover, the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the cause of much misapprehension. If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formidable from their number."

These books of cases are the tools with which the student supplies himself as he enters upon his work. Take, for instance, the subject of "Mutual Assent" in contracts. A score of cases covering a century, contained in about one hundred and fifty pages and selected from the English reports, the decisions of the Supreme Court of the United States, and the highest courts of New York, Pennsylvania, and Massachusetts, arranged in chronological order, show the development of its leading principles. Before coming to the lecture-room, the student, by way of preparation, has studied — he does not merely read — say from two to six cases. In the selection of cases used as a text-book, the head notes appearing in the regular reports are omitted, and the student, besides mastering the facts, has endeavored for himself to deduce from the decision the principle involved. In the class-room some student is called upon by the professor to state the case, and then follows an examination of the opinion of the court, an analysis of the arguments of counsel, a criticism of the reasoning on which the decision is based, a careful discrimination between what was decided and what is a *dictum* merely. To use the expression of one of the professors, the case is "eviscerated." Other students are either called upon for their opinions or volunteer them, — the professor throughout acting largely as moderator. When the second case is taken up, material for comparison is furnished; and with each additional authority that is examined, the opportunity for comparison and for generalization grows. When the end of the chapter of cases is reached, the student stands possessed of the principles in their full development. Having attended as it were at their birth, having traced their history from stage to stage, the student has grown with them and in them; the principles have become a part of his flesh and blood; they have *pro hac vice* created a habit of mind. Like swimming or skating, once acquired, they cannot be forgotten; for they are a part of himself.

One objection to this method of study, naturally presents itself: "How can anybody give the time to study the law in this elaborate manner? Either one must cover only a small field, or a lifetime must be given to the mere preparation for the profession." This objection was anticipated and an answer to it was given by Professor Langdell in the passage quoted from the preface to his "Select Cases on Contracts." Undoubtedly the principles of the law are numerous; one might almost say innumerable. It has been said that there are nearly three millions of distinct principles. This may be true; yet the fundamental principles are comparatively few. These only need be acquired; once acquired, they will be found springing up everywhere. They are immediately recognized and located; they are the guide-posts that point the lawyer unerringly to his destination, however numerous the cross-roads or alluring the by-ways. Besides, the progress through the cases, though at first slow, grows more and more

rapid as the student progresses in the particular subject and becomes accustomed to this system of study. Furthermore, the particular principles of law thus gained represent but a small part of the total acquisition while studying the cases on one narrow subject. The courts, the judges, the pleadings, the practice, the arguments of counsel, have become real things. Again, though a case is selected because it illustrates one stage in the development of a legal doctrine, a dozen points not directly connected with that doctrine may be involved or suggested, and these the student either solves for himself or seeks to have explained. The points thus incidentally learned are impressed upon the mind as they never could be by mere reading or by lectures; for instead of being presented as desiccated facts, they occur as an integral part of the drama of life, — of an actual lawsuit. Besides, the study of the cases does not exclude the study of the treatises. The animated discussions in the class-room induce the student to resort to every means of fortifying himself, either for his own instruction or in order to overthrow his adversary in discussion, be it professor or fellow-student. This leads the pupil to independent investigation; and the treatises which are always accessible are rarely neglected.



EMORY WASHBURN.

There could be no stronger proof of the excellence of this system of instruction than the ardor of the students themselves. Professor Ames, writing of the school ten years ago, said: "Indeed, one speaks far within bounds in saying that the spirit of work and enthusiasm which now prevails at the school is without parallel in the history of any department of the University." What was true then is at least equally true now. The students live in an atmosphere of legal thought. Their interest is at fever heat, and the impressions made by their studies are as deep and lasting as is compatible with the quality of the individual mind.

The testimony of the value of this system of instruction which is furnished by the zeal of the students is supplemented by the actions of the professors. Each instructor at the school is entirely at liberty to choose the method of instruction which most commends itself to his judgment. Several of the professors declined for many years to adopt the system introduced by Professor Langdell. Slowly it won its way. Actual experience overcame all doubts. Now that general method — varied of course in the manner and extent of application, according to the views of the different instructors — is almost universally adopted at the school. See what Mr. Justice Oliver Wendell Holmes, Jr., of the Supreme Judicial Court of Massachusetts, says of it: —

"But I am certain from my own experience that Mr. Langdell is right; I am certain, when your

object is not to make a bouquet of the law for the public, nor to prune and graft it by legislation, but to plant its roots where they will grow, in minds devoted henceforth to that one end, there is no way to be compared to Mr. Langdell's way. Why, look at it simply in the light of human nature. Does not a man remember a concrete instance more vividly than a general principle? And is not a principle more exactly and intimately grasped as the unexpressed major premise of the half-dozen examples which mark its extent and its limits than it can be in any abstract form of words? Expressed or unexpressed, is it not better known when you have studied its embryology and the lines of its growth than when you merely see it lying dead before you on the printed pages?

I have referred to my own experience. During the short time that I had the honor of teaching in the school, it fell to me, among other things, to instruct the first-year men in Torts. With some misgivings I plunged a class of beginners straight into Mr. Ames's collection of cases, and we began to discuss them together in Mr. Langdell's method. The result was better than I even hoped it would be. After a week or two, after the first confusing novelty was over, I found that my class examined the questions proposed with an accuracy of view which they never could have learned from text-books, and which often exceeded that to be found in text-books. I at least, if no one else, gained a good deal from our daily encounters."

We Americans, who have given to modern England systematic instruction in the law, who enriched its law half a century ago with the ideas of Kent, Story, and Greenleaf, may feel some pride in the fact that the English now recognize the value also of Professor Langdell's contribution to legal pedagogic. In 1886 Gerard Brown Finch, Esq., Law Lecturer at Queen's College, Cambridge, after thoroughly examining the system of instruction prevailing at Harvard, introduced at Queen's College Professor Langdell's methods, and for that purpose published a selection of cases on the Law of Contracts.

But the time has passed when we need look to the enthusiasm of students or to the opinions of professors for evidence of the value of the new method of instruction. It is eighteen years since it was introduced. Those who have had an opportunity of putting the legal education thus acquired to a practical test are perhaps best qualified to speak of its merits, and almost without exception they pronounce in its favor. Mr. James C. Carter, probably the leader of the New York Bar, has expressed in the strongest terms his belief in the new method of instruction: —

"Now, is this method open to the objection that the study of cases is apt to make the student a mere 'case' lawyer? Not at all. The purpose is to study the great and principal cases in which are the real sources of the law, and to extract from them the rule which, when discovered, is found to be superior to all cases. And this is the method which, as I understand it, is now pursued in this school. And so far as the practical question is concerned, whether it actually fits those who go out from its walls in the best manner for the actual practice of the law, I may claim to be a competent witness. It has been my fortune for many years to have charge of a considerably diversified legal practice; and the most that I have had to regret is that it has overwhelmed me so much with mere business that I have had too little time for the close study of the law which my cases have involved.

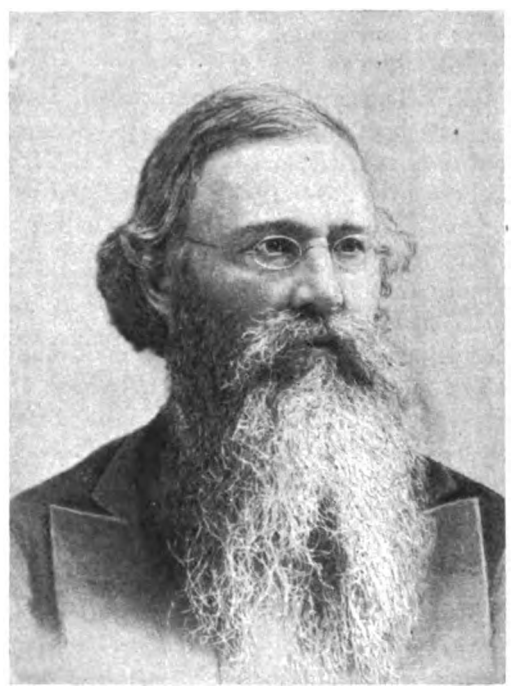
"It has been necessary for me to have intelligent assistants, and I have long since discovered that most valuable aid could be derived from the young graduates of this school. I have surrounded myself with them, partly for the reason that I have an affection for the place, and also because I have found them in possession of a great amount of actual acquirement, and — what is of more consequence — an accuracy and precision of method far superior to anything which the students of my day exhibited."

That Mr. Carter's experience is shared quite generally, appears from the following statement by President Eliot, contained in his report for the year 1885–1886 to the Overseers of Harvard College: —

"It is good evidence of the value of the full three years' course that for several summers past the school has been unable to fill all the places in lawyers' offices which have been offered it for its

third-year students just graduating. There have been more places offered, with salaries sufficient to live on, than there were graduates to take them."

The intellectual self-reliance and the spirit of investigation which this new method of instruction engenders, have produced the "Harvard Law Review" and greatly developed the Club Courts. The "Harvard Law Review" is a monthly journal of law, of the same general plan as the "American Law Review," and is managed wholly by the students. It contains articles also by the professors and others, and is a magazine of high order. The Club Courts, which are practically Moot Courts, conducted entirely by students, have far outstripped in usefulness the Moot Courts held by the professors. These clubs have generally two sets of members, — the junior court consisting of eight members selected from the first-year class, and the senior court consisting of nine members selected from the second-year class. The junior and the senior courts meet at regular intervals, and at each sitting a case is argued by two of the members as counsel, — the rest sitting as judges. In the junior court a member of the senior court sits as Chief Justice. The cases are regularly presented upon the pleadings; briefs are prepared, arguments made, and opinions — sometimes in writing — delivered by each of the judges. The cases are prepared with quite as much thoroughness as any work that is done at the school.



C. C. LANGDELL.

In material prosperity the school has also progressed steadily during the past eighteen years. The number of students has risen from one hundred and fifteen in the year 1869–1870 to two hundred and twenty-five in the year 1887–1888. The national — indeed the international — character of the school has been fully maintained. Since the establishment of the three years' course ten years ago, thirty-five States, two Territories, and the District of Columbia, England and four of her provinces, Japan and the Hawaiian Islands have been represented at the school. The library now contains twenty-three thousand volumes, and is believed to be in some respects the best equipped law-library in America. About $3,000 is spent upon it annually. In 1881 Mr. Edward Austin gave the school over $140,000 for the erection of a new building, — Austin Hall, — which it now occupies. In 1882 the school received a gift of $90,000 to endow a professorship, and in the same year large gifts were made toward a library fund.

The enthusiasm of the graduates of the school found expression, in 1886, on the occasion of the celebration of the 250th anniversary of the founding of Harvard College. The Harvard Law School Association was organized, on Sept. 23, 1886, "to advance the cause of legal education, to promote the interests and increase the usefulness of the Harvard Law School, and to promote mutual acquaintance and good fellowship among the members of the Association." All former

members of the School are eligible for membership in the Association. Its general meeting was held at Cambridge on Nov. 5, 1886. The membership of the Association now numbers eight hundred and eighteen. For the current year it has made a gift of $1,000, to increase the instruction in Constitutional Law, and another of $100, for a prize essay to be competed for by members of the third-year class. Similar grants for these purposes are to be made by the Association yearly.

In describing the progress of the school since 1870, we have referred only to the work of Professor Langdell. Those who have had any knowledge of the school during this period need not be told to how great an extent its prosperity should be ascribed to the co-operation of others who from time to time have been members of the Faculty. Of none of the instructors is this more true than of the present professors, who have devoted themselves to the cause of legal education with never-flagging zeal. The tact and good judgment which they have displayed in dealing with the difficult problems of administration, and the ability — nearly approaching genius — with which they have put the new method of instruction into practice, have alone made it possible to carry through the changes at the school, and to obtain the moral and financial support from without which have brought the school to the high degree of prosperity which it now enjoys.

After Judge Parker's resignation, Nathaniel Holmes, formerly one of the justices of the Supreme Court of Missouri, was appointed Royall Professor; and later, Charles S. Bradley, formerly Chief Justice of Rhode Island and a lawyer of great ability, became Bussey Professor. During this period Edmund H. Bennett, N. St. John Green, John Lathrop, Benjamin F. Thomas, and New England's greatest lawyer, Benjamin R. Curtis, were lecturers at the school. O. W. Holmes, Jr., held a professorship for a short time before his appointment to the Supreme Bench of Massachusetts in 1883.

The "Catalogue of the Students of the Law School of Harvard University, 1817–1887," which was prepared by John H. Arnold, Esq., its efficient librarian, under the inspiration of the Harvard Law School Association, contains five thousand two hundred and sixty-three names. A glance at its pages will show to how great an extent men prominent in public and professional life have received their early training at this school. Among those now holding offices under the Federal Government may be mentioned the Chief Justice and Mr. Justice Gray of the United States Supreme Court; the Secretaries of War, of the Treasury, and of the Navy; Senators Evarts, Hoar, Eustis, Chandler, and Gray, who will soon be joined by Senators-elect Walcott and Higgins; the Chief Justice and Mr. Justice Davis of the Court of Claims; Walter L. Bragg of the Interstate Commerce Commission; Judge Cox of the Supreme Court of the District of Columbia; the United States District Judges, Ogden Hoffman of California, Addison Brown of New York, Henry B. Brown of Michigan, Edward C. Billings of Louisiana; and, of the territorial courts, Judges Twiss of Utah, and Knowles and Blake of Montana.

On the highest State Courts the school is represented in Maine, New Hampshire, Massachusetts, South Carolina, West Virginia, and Iowa, by the Chief Justices, and in New York, Rhode Island, Delaware, and Ohio, by associate justices. Five of the seven judges of the Supreme Judicial Court of Massachusetts were students at the school.

To the Dominion of Canada the school has furnished the present Minister of Finance, Charles H. Tupper, as well as judges, and many members of Parliament; and to the Hawaiian Islands, the Chief Justice and Judge M'Cully of the Supreme Court.

We should expect to find the names of leaders of the Boston Bar now, as in the days of Rufus Choate, among the former students of the Harvard Law School; and in other cities the school is no less ably represented than there. Take, for example, New York,

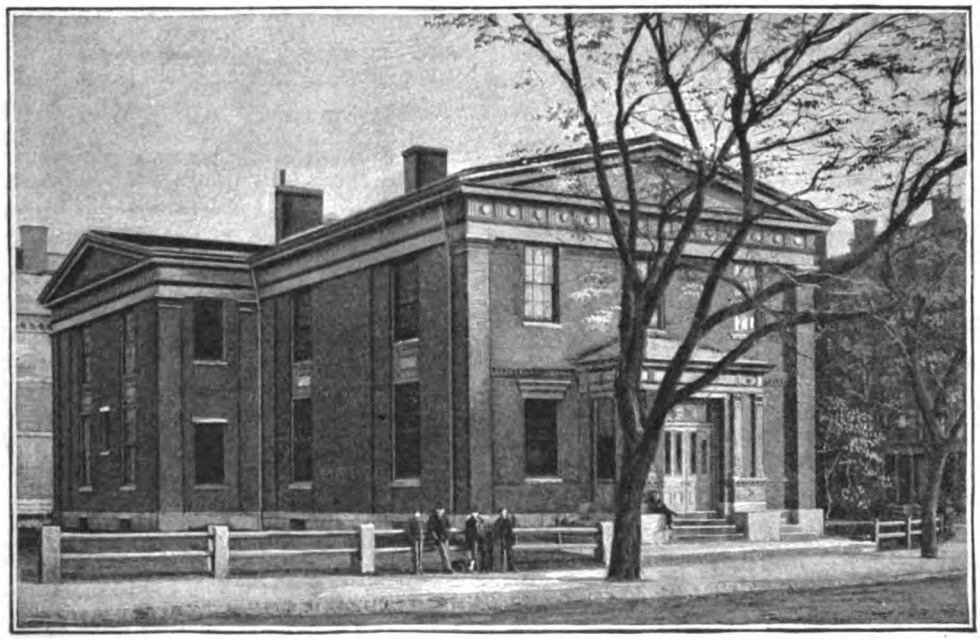
with James C. Carter, William M. Evarts, Joseph H. Choate, William G. Choate, George Hoadly, George Frederick Betts, George De Forest Lord, C. C. Beaman, D. H. Chamberlain, and George Bliss; at Providence, Benjamin F. Thurston, and formerly Charles S. Bradley; at Detroit, George V. N. Lothrop, the late Minister to Russia; at Savannah, Alexander R. Lawton; at St. John (N. B.), Ezekiel McLeod.

The educational influence of the Cambridge School has not been confined to the instruction given within its walls. Former students have as professors of law elsewhere spread wide its teachings. Thus, Francis Wayland, the Dean of the Yale Law School, and Prof. Simeon E. Baldwin, and Edmund H. Bennett, Dean of the Boston University Law School, studied at Cambridge.

Widely, too, has the Harvard Law School made its influence felt by the legal writings not of its professors merely, but also of others who were once its students. The last decade alone has given us, among others, Judge Holmes's work on the "Common Law," Langdell's "Summary of the Law of Contracts," Gray's works on "Perpetuities" and "Restraints on Alienation," Jones's treatises on "Mortgages and Liens," Benjamin Vaughan Abbot's various writings, Pierce on "Railroad Law," Gould on "Waters," Thompson & Merriam on "Juries," Morawetz on "Private Corporations," Merwin's "Patentability of Inventions," Stimson's "American Statute Law," besides the valuable writings of such authors as Preble, Austin, Grinnell, Aldrich, Wald, and Chamberlayne.

Among the many former students at the Harvard Law School who became prominent in spheres other than the law, may be named Caleb Cushing, Charles Sumner, Wendell Phillips, Rutherford B. Hayes, and Robert T. Lincoln; Elihu B. Washburn, Richard H. Dana, and Anson Burlingame; Motley, Prescott, and Parkman; James R. Lowell, William W. Story, and Dr. Oliver Wendell Holmes.

The Harvard Law School has done a great work in the past. May we not venture to hope that the work of the future will be immeasurably greater?



DANE HALL.

SPECIFIC PERFORMANCE OF CONTRACTS.

Prof. J. B. Ames.

ENGLISH and American lawyers are so familiar with the jurisdiction of equity in enforcing the specific performance of contracts, that it probably occurs to very few of them that there is anything extraordinary in this remedy of the courts of chancery. The doctrine of specific performance is, however, one of the paradoxes of legal history. Only in the United States and the British Empire, the two countries in which popular government has attained its highest development, is it permitted so far to invade the liberty of the individual as to compel him specifically to perform his contracts upon pain of imprisonment. "*Nemo potest præcise cogi ad factum*," was a rule of the Roman law. In France, Germany, and presumably in the other European States, pecuniary compensation is the sole remedy for a breach of contract.[1]

Even in England the practice of the chancellors met with strenuous opposition from the common-law judges, and was finally established only at a comparatively late period. Mr. Spence, it is true, has expressed the opinion, to which Lord Justice Fry has added the weight of his authority,[2] that "bills for specific performance of contracts for the sale of land are amongst the earliest that are recorded in the court of chancery."[3] But this opinion would seem to be erroneous. In its support these eminent writers cite a case of the time of Richard II.[4] (1377–1399). The bill alleged that the plaintiff, trusting in the defendant's promise to convey certain land to him, had paid out money in travelling to London and consulting counsel, and prayed for a *subpœna* to compel the defendant to answer of his "disceit." There is no allusion to specific performance; the bill sounds in tort rather than in contract; and its object was, in all probability, not specific performance but reimbursement for the expenses incurred. Indeed, this probability becomes almost a certainty when it is remembered that equity at this time gave no relief even against feoffees to uses who refused to convey to their *cestuis que usent*, and that the common law gave no action for damages for the breach of a parol promise.

It is probable that the willingness of equity to give pecuniary relief upon parol promises hastened the development of the action of *assumpsit*. Fairfax, J., in 1481, advised pleaders to pay more attention to actions on the case, and thereby diminish the resort to chancery;[1] and Fineux, C. J., remarked, in 1505, after that advice had been followed and sanctioned by the courts, that it was no longer necessary to sue a *subpœna* in such cases.[2]

Brooke, in his "Abridgment," adds to this remark of Fineux, C. J.: "But note that he shall have only damages by this [action on the case], but by *subpœna* the chancellor may compel him to execute the estate or imprison him *ut dicitur*."[3] Brooke died in 1558. This note by him and the following meagre report of a case in 1547,[4] — "It is ordered that the defendant and his wife shall make an absolute assurance for the extinguishment of her right in the lands," if, indeed, this can be said to be in point, — seem to be the earliest allusions to the equitable doctrine of specific performance. Against these should be set the statement of Dyer, J.,

[1] Fry, Specific Performance (2d ed.), 3.
[2] Ibid., 8.
[3] 1 Spence, Eq. Jur. 645.
[4] 2 Cal. Ch. II. Two similar cases are reported: 1 Cal. Ch. XLI. and Y. B. 8 Edw. IV. 4, pl. 11. The other authorities cited by Mr. Spence are cases of uses.

[1] Y. B. 21 Edw. IV. 23, pl. 6.
[2] Y. B. 21 Hen. VII. 41, pl. 66.
[3] Bro. Ab. Act. on Case, pl. 72.
[4] Carington *v.* Humphrey, Toth. 14.

in 1557:[1] "And no *subpœna* will lie for her [the covenantee], as for a *cestui que use*, to compel Sir A. [the covenantor] to execute the estate . . . because she has her remedy at common law, by action of covenant."

In the reign of Elizabeth, however, there are several reported cases in which specific performance of contracts was decreed.[2]

There were many similar decrees in the reign of James I., one of which, according to Tothill, was "by the judge's advice."[3] This is, possibly, an error of the reporter. At all events, the hostility of the common-law judges to the jurisdiction of equity over contracts was very plainly expressed, two years later, in Gollen *v.* Bacon,[4] by Fleming, C. J.: "If one doth promise for to give me a horse for 20 shillings, afterwards he doth not perform this; I am not in this case to go and sue in chancery for my remedy, but at the common law, by an action on the case for a breach of promise, and so to recover damages; and this is the proper remedy, and the common law warrants only a remedy at the common law; and if the law be so in the case of a horse, *a multo fortiori* it shall be so in case of a promise to make an assurance of his land upon good consideration, and doth not perform it, he is not to sue in chancery for this, but at the common law, which is most proper." Croke, J., and Yelverton, J., agreed herein with the chief justice, who added: "There are too many causes drawn into chancery to be relieved there, which are more fit to be determined by trial at the common law, the same being the most indifferent trial, by a jury of twelve men." As might be supposed, the most determined opponent of this new encroachment of equity upon the common law was Lord Coke. In Bromage *v.* Genning,[1] the plaintiff applied to the King's Bench for a prohibition against a suit for specific performance of a lease brought against him in the Marches of Wales, on the ground that Genning's proper remedy was an action at law. Sergeant Harris, in reply, urged that the object of the suit was not the recovery of damages but the execution of the lease, and that this was regularly done in chancery. Coke, C. J., Doddridge and Houghton, JJ.: "Without doubt a court of equity ought not to do so, for then to what purpose is the action on the case and covenant; and Coke said that this would subvert the intent of the covenantor, since he intended to have his election to pay damages or to make the lease, and they would compel him to make the lease against his will; and so it is if a man binds himself in an obligation to enfeoff another, he cannot be compelled to make the feoffment."

Sergeant Harris then confessed that he acted in the matter against his conscience, and the court accordingly granted the prohibition. This was in 1616, the year of the memorable contest between Lord Coke and Lord Ellesmere as to the power of equity to restrain the execution of a common-law judgment obtained by fraud. Lord Coke was alike unsuccessful in this contest, and in his attempt to check the jurisdiction of equity in matters of contract. The right of equity to enforce specific performance, where damages at law would be an inadequate remedy, has never since been questioned.

[1] Wingfield *v.* Littleton, Dy. 162*a*

[2] Pope *v.* Mason (1569), Toth. 3; Hungerford *v.* Hutton (1569), Toth. 62; Foster *v.* Eltonhead (1582), Toth. 4; Kempe *v.* Palmer (1594), Toth. 14; King *v.* Reynolds (1597), Ch. Cas. Ch. 42; Beeston *v.* Langford (1598), Toth. 14.

[3] Throckmorton *v.* Throckmorton (1609), Toth. 4.

[4] 1 Bulst. 112.

[1] 1 Roll. R. 368.

CAUSES CÉLÈBRES.

I.

PAPAVOINE.

[1824.]

HERE is one of the strangest dramas to be found in the criminal annals of France, and yet everything in it is perfectly clear and simple except upon a single point. This doubtful point is, it is true, the vital one, — that upon which rests that supreme question: Is the accused guilty? The crime is flagrant, horrible; the victims are two little innocent creatures; the witnesses are numerous; there is no dispute as to the facts; the accused himself confesses. And yet the human conscience has none the less continued to raise the question which the evidence and the facts fail to answer satisfactorily: Was the accused guilty? The accused, the confessed author of the deed, expiated his crime upon the scaffold; and yet, after all the years which have passed since that bloody expiation, the human conscience still repeats with an increasing doubt, or rather with a mournful certainty that an error was committed, Was the condemned man guilty?

But why these strange doubts and uncertainties? What new element then entered into the appreciation of human acts? What astonishing problem was presented by these acts, which up to that time it had seemed only natural to ascribe to the free responsibility of their author? Can it be that a man who has committed a crime may yet not be guilty?

Such is the question which was for the first time clearly presented to the judicial and to the popular mind by the trial of Papavoine. This case marked a new era in the history of human justice. It was not until after the execution of this man that the judge believed himself bound to go beyond the facts themselves and inquire into the conscience, the physical and moral condition, of the accused. From that time physiology and psychology took their stand between the criminal and his judge.

It is thus that at certain periods in human history certain crimes disappear. The law becomes more lenient; its punishments diminish and are softened, and the guilty one of yesterday is only the poor unfortunate of to-day.

Sunday, the 10th of October, 1824, was an unusually warm day for the season, and the woods of Vincennes were filled with a numerous throng of pleasure-seekers. Many of them came from Vincennes itself, while others came from Paris in the public conveyances. Among these last a young woman, belonging apparently to the working-class, held by the hand two little boys, one about five years old and the other six. Another woman, dressed in red, who also was evidently one of the lower class, joined the little group and played for a while with the children, and then continued her way.

A man wearing a blue overcoat buttoned up to his chin and a hat with a broad band of crape upon it, had appeared to watch this scene with interest. He approached the woman in red as she left the others and said to her, "Do you know those children you have just left?" "Cannot one caress children one does not know?" replied the woman shortly; and she turned and walked away.

The mother of the two boys (for it was their mother) had observed this man watching the children and speaking to the woman dressed in red; but she attached no importance to these circumstances, and went on farther into the woods with her little ones. Shortly after the sky became clouded, and drops of rain began to fall. The mother directed her steps to a small wooden pavilion

near by to seek shelter from the shower, and also intending to eat there the lunch which she had brought with her in a basket.

Suddenly she perceived before her the curious individual in the blue overcoat. The face of this man was frightfully pale, his arms moved convulsively, and in a hoarse voice which froze the very blood in her veins he said, "*Your walk is almost ended.*" Seized with an instinctive terror, the mother tried to hurry on; but the man, approaching the younger of the two boys, struck him violently. The woman, believing that he had struck her son with his fist, attacked the man with her umbrella; paying no attention to the mother, the mysterious personage advanced to the other boy and also gave him a blow, and then turned and fled.

Presently the poor mother saw her two children, one after the other, sink upon the ground; they were both dead. Uttering a piercing shriek, the unhappy woman fell fainting upon the earth.

In response to her cry several persons walking in the vicinity rushed to the spot and beheld a mournful spectacle,—an unconscious woman, and two little lifeless bodies extended side by side, both inundated with blood. Every effort was exerted to restore the wretched mother; and when at last life came back to her, she related all that had passed and described the murderer. Gendarmes on horseback were hastily sent in all directions, with orders to arrest any man whom they found alone in the woods.

In the mean time the mother was taken to Vincennes and interrogated. She declared her name to be Charlotte Hérin, twenty-five years of age, a worker on lace, dwelling in Paris with her family. She described fully all that had taken place in the woods. She laid so much stress upon the meeting with the woman dressed in red, whom she felt convinced must be an acquaintance of the assassin, that immediate search was made for this woman in Vincennes, and she was presently found.

On being questioned she said that her name was Malservait, and that she was a dressmaker in Paris. She declared that the individual who had accosted her in the *bois* was an utter stranger to her, that she had never seen him before in her life.

The news of the murder had spread through Vincennes with the rapidity of lightning, and at this moment one Dame Jean, who kept a small variety shop, came and stated that a man, who answered the description of the assassin, had stopped near her shop while the woman in red had entered to make a small purchase, that he had examined this woman attentively, and that on her going out he had followed her to the woods. Some time later he had returned to her shop and asked for a knife. Dame Jean had only assorted knives which she sold by the dozen only; the man refused to take a dozen and persuaded her to sell him one, offering more for it than the price of the entire dozen. As soon as this knife was delivered to him, the man again returned to the woods.

Thus three persons were found, all of whom had seen the murderer, and they agreed perfectly as to his description. He was thin, tall, pale, and wore a blue overcoat carefully buttoned up. His hair and whiskers were brown, and his hat had a band of crape upon it.

While these interrogatories and investigations were in progress, the gendarmes were beating the woods. In one of the paths a man was discovered talking quietly with a sportsman. The gendarme ordered him to follow him. "You take *another for me*," said the individual, who evidently intended to say, "You take me *for another*." "I am perfectly willing to follow you, but you are only losing time and will let the real guilty one escape."

The man arrested was very pale, and the sportsman stated that he had seen him coming out of a thicket, very much out of breath. The prisoner, the gendarme, and the sportsman proceeded to Vincennes. On the way the sportsman said that, at the moment of his arrest, the prisoner was asking him the

way out of the woods, and that he had noticed him examining his garments with the greatest care as if to assure himself that there was no spot upon them, and that he had asked if his face was clean. As for the prisoner, he said tranquilly: "It is an abominable thing to have killed two children. If one has anything to complain of in another, he can call him out in a duel; but to murder two children, *one must have the most powerful motives.*"

As soon as the arrested man was brought into the presence of the three women, the mother cried, "*That is the monster who killed my children!*" The woman Malservait identified him at once as the man who had spoken to her in the woods, and Dame Jean recognized him as the individual who had bought the knife in her shop.

The prisoner, on being questioned, replied that his name was Papavoine, and with the greatest calmness he related his history.

Born at Mouy, in the department of L'Eure, in 1783, he had for a father a manufacturer of cloth, a man in comfortable circumstances. He had received an excellent education, and at an early age he entered the French navy. In December, 1823, his father died, leaving to his wife and son an estate which was in a disordered and complicated condition. The widow being unable to carry on or wind up the business, Papavoine determined to ask for his discharge from the navy, which he obtained with a pension of three hundred francs. He then established himself at Mouy. At the time of his father's death the manufactory had a contract for supplying the army with uniforms; but presently the War Department refused to continue it, and by this refusal the affairs of the Papavoine family were placed in a very critical condition. Papavoine, it seems, then repented of having given up his position; he endeavored to re-enter the navy, but without success.

The condition of business affairs and his failure to be reinstated in the navy greatly affected Papavoine, who became really ill. His nights were agitated; a profound sadness took possession of him. His sleep was filled with visions, and a vague uneasiness filled his mind in his wakeful hours. His condition became such that he was advised to travel. Acting upon this advice he went to Beauvais, where he found some relatives and also met a gentleman named Branche, with whom he had had business relations.

On the day after his arrival at Beauvais, Papavoine, who was still seeking from the War Department a renewal of the contract, received unexpectedly from his mother two orders from the War Department. As it was necessary that these papers should be put into proper form, Papavoine determined to go to Paris at once. He arrived there on the 6th of October, having borrowed money to pay his expenses.

He alighted at the Hôtel de la Providence, situated in the Rue Saint-Pierre-Montmartre, and repaired at once to the office of his correspondents in the city, to whom he delivered the orders he had received, in order that they might have them put into proper form. Until the following Sunday, the 10th of October, he lived very quietly in the city. On that day, feeling the need of distraction, he went out, after a frugal breakfast, and proceeded to Vincennes.

All these declarations were found to conform to the truth, and it was impossible to discover any relation between the prisoner and the woman Hérin, and it was equally proved that he did not know the woman Malservait.

Papavoine, however, calmly repelled the accusation brought against him. In vain they urged the identification of himself by the three women, and by other less important witnesses who had seen him not far from the place of the crime; in vain they showed him upon his hat the evident trace of the blow of the umbrella which the poor mother had used against him: he persisted in denying. He fought the proofs which accumulated against him with a rare lucidity,

recalling to the magistrate remarkable examples of grave judicial errors.

An autopsy made upon the bodies of the young victims demonstrated that their death was caused by the blow of an instrument resembling a knife. Dame Jean furnished one of the eleven knives remaining of the dozen out of which had been taken the one sold to Papavoine; and this knife applied to the wounds fitted perfectly.

The investigation added new facts to those already known. It was ascertained that Papavoine had always exhibited a strange character; he was of a taciturn nature, but at the same time kindly-disposed and obliging. He had never manifested any of the small vices which are almost inevitably met with in young men. Very uncommunicative, sensible, faithful to his duties, respectful to his superiors, he had always been noted as an unsympathetic man, but as an excellent employé and as a reliable, peaceable person.

It was discovered, it is true, that when, on his journey from Beauvais to Paris, he wrote to his mother asking for more wearing apparel and also begging her to send him two sharp table-knives. These knives were found in the Rue Saint-Pierre-Montmartre. Papavoine, then, had not departed for Vincennes with the intention of committing a murder. As for the knife bought of Dame Jean, it was impossible to discover any trace of it.

Suddenly, on the 15th of November, Papavoine renounced his denials. He confessed that he committed the crime; he confessed even more than was asked of him. He declared that he had been deceived in killing the son and *daughter* of the woman Hérin, and that it was his intention to have murdered the *Enfants de France.*

Four years only had elapsed since the fatal day on which the Duc de Berri had been struck down by Louvel. France had not yet recovered from the impression made by that attempt; and at the first word of Papavoine, the authorities believed that they had found a new fanatic. Papavoine, in making these strange confessions, spoke of great revelations; he demanded an interview with Madame la Duchesse d'Angoulême and with Madame la Duchesse de Berri. This demand being refused, he insisted on appearing before one of the two princesses, which was also refused him.

Presently a new series of acts called attention again to Papavoine. In his prison he attempted to set fire to his bed. Interrogated as to this attempt, he coolly declared that he wished to burn the fleas. On the 17th of November he violently seized a knife which he found near his door and struck a young prisoner by the name of Labiey. As a motive for this new act, he said that Labiey belonged to the Orleans faction. The young prisoner was not seriously wounded.

The authorities saw in these acts the development of a new system. In their eyes, Papavoine was simulating madness and seeking in other crimes the justification of his first. But the motive for the first crime had not been discovered when the trial took place, in February, 1825, before the Court of Assizes of the Seine, M. Hardouin presiding.

We give a portion of the examination of Papavoine by the President.

The President. "Papavoine, in what year did you enter the navy?"

Papavoine. "In 1805 I was employed in the Navy Department at Brest."

"Then, after your father's death, you and your mother were reduced for subsistence to the three hundred francs' pension which you had from the navy?"

"Yes, Monsieur."

"Why did you go from Mouy to Beauvais?"

"I was uneasy; I was sick, tormented, ill at ease."

"Why did you come to Paris?"

"Because my mother sent me some orders from the War Department which were not in proper form, and I wished to have them made so."

"Why, on coming from Beauvais to Paris, did you bring two table-knives in your valise?"

"I have already told you that I was ill. I rose in the middle of the night. I had a thousand wild ideas. I was accustomed to place near me a sword and loaded pistols. Not having taken these weapons on my journey, I used the two knives, which I put, one under my pillow and the other on my night table."

"Why did you go to Vincennes on Sunday, the 10th of October?"

"To distract myself. I was tormented, suffering; I wished to take the air."

"How were you dressed?"

"I wore a blue overcoat, black stockings, and shoes."

"Was your overcoat buttoned?"

"I believe that it was buttoned."

"At Vincennes you followed a woman wearing a red dress?"

"I may have followed her, but it was mechanically. I was so agitated that I did not know what I was doing."

"You followed this woman to a shop?"

"I do not recollect."

"You saw the woman with the red dress talking to a woman who was with two children?"

"I do not recollect. I was in a deplorable state; I did not know what I was doing. I recollect nothing about it; I was tormented continually. I do not know what I did; I do not remember any circumstance."

"Your memory was clearer at the preliminary examination?"

"I merely agreed then to what that lady stated."

. . . . . .

"You bought a knife at the shop which the lady dressed in red entered?"

"Yes, Monsieur, it is possible; I do not recollect. During the preliminary examination I was cruelly affected by the deplorable condition in which I found myself, by the handcuffs by which I was confined. It was an entirely new situation for me. Rather than say things which might aid my defence, I expressly charged myself. I longed to see the end of this affair, even if it had a most disastrous issue for me."

. . . . . .

"What was your object in buying this knife?"

"I had seen a dungeon at Vincennes; I thought that it contained prisoners, *and I believed that with my knife I could deliver them.*"

"You did not buy the knife until after you had seen the woman dressed in red caressing the children; and you have not, besides, in any of your previous examinations, spoken of your desire to deliver prisoners."

"I was consumed with fever; I had no clear ideas; I did not know what I did."

"Was the knife concealed in your pocket?"

"I think so."

"It was after seeing the children that you bought the knife. What was your motive for striking them?"

"I was not in my right mind when I struck the children; I do not know what impelled me to do so. I would have given my own blood rather than shed theirs; it was a frenzy which made me commit this incomprehensible act."

"You remember having struck the children?"

"Yes, Monsieur."

"Then you fled into a thicket?"

"Yes, Monsieur."

"What did you do with the knife?"

"I buried it in the earth."

"You appreciated, then, the enormity of the crime you had committed, since you fled?"

"The deed, which I involuntarily committed, produced a sudden revolution in my mind, which made me comprehend what I had done."

"As you fled you met a sportsman?"

"Yes, Monsieur."

"Did you not tell the gendarme who arrested you that he was losing time and that he would, perhaps, let the real guilty one escape?"

"I believe I told him that."

"Do you still persist in your declaration that you wished to strike more august victims?"

"No, Monsieur. I was so wearied by the painful position in which I found myself, that, not being able to destroy myself, I wished to hasten, by every possible means, the end of my torments. I would have accused myself, I believe, of wishing to assassinate the *Eternal Father*, if the idea had come into my mind."

. . . . . .

The President read from the notes of a prior examination in which Papavoine explained how the idea had come to him to say that he had wished to kill the *Enfants de France.* An officer wearing epaulettes had said, as they were conducting Papavoine through the streets of Vincennes, "Look! there is the man who attempted to assassinate the *Enfants de France.*" These words, heard by the accused, had given rise to the idea of declaring that such had been his project.

The President then continued: —

"You pretend that you were led to commit the act of the 10th of October in consequence of the effects of a fever, by a sort of mental aberration; but your conduct since your departure from Beauvais shows that you were in full possession of your reason. The letters that you wrote to your mother are full of sense; so it was not madness which impelled you."

"What motive could I have for killing those children? *I had no interest in so doing.*

"*That is your secret.* Up to this time no one has been able to discover anything upon that point. However, on examining all that has passed before and since the murder, it must be that the access of madness seized you on seeing the children, and left you as soon as you had struck them. Immediately after the crime you were confronted with the mother, who cried, "There is the murderer of my children." And you said that you did not know her. You were brought before the bodies of the children, and you declared that you did not recognize them. All your responses were full of sense."

"This crime was so far from my thoughts that *I really believed that I had not committed it.* Besides, I have a family, and I did not wish to dishonor them by confessing the crime."

"For a whole week you denied being the author of the double crime committed at Vincennes; you said that they were mistaken, and you maintained this with spirit; and it was not until you were warned that the mother of the children and several others identified you, that you said that you had intended to strike the *Enfants de France.* Explain all these circumstances to the jurors. They prove that you were not mad."

"I was filled with terror, with fears, but I never felt a desire to shed blood. I did not act like a sane person."

"When you said that you wished to strike the *Enfants de France*, you surrounded this declaration with so many circumstances — some true, others probable — that it is impossible that you did not have full possession of your reason to invent them. You said, for example, that one of the children whom you killed resembled one of the *Enfants de France.* You defend yourself very skilfully at the present moment, and you appear to be in possession of a sound mind."

"I do not claim that I am always insane."

Other witnesses were heard. The most of them, while testifying that Papavoine was naturally of a morose and melancholy temperament, were loud in their praise of his probity and uprightness. He was an honest man, very humane and fond of children.

Papavoine was eloquently defended by M. Paillet, a young advocate from Soissons and a friend of the Papavoine family, the defence being temporary insanity.

His skilful argument impressed, but did not convince, the jury and the judges. The theory of the defence was too bold and

novel. Monomania, that word of modern creation, was not then accepted. Public opinion did not believe, any more than the magistrates, in these passing aberrations of the mind, in these involuntary impulses, in this irresponsibility for crime.

M. Hardouin, the President, clearly summed up the facts in the case, and after an hour's deliberation the jury found Papavoine guilty.

The President pronounced the sentence of death. No trace of emotion was visible upon the features of Papavoine, who arose and said calmly, "*I appeal to Divine justice!*"

In spite of every exertion made by his family to obtain royal clemency, the unhappy man was executed, on the 25th of March, in the Place de Grève.

It will be observed that science was not called upon to establish the mental condition of Papavoine. It was not the same a few months later when all Paris was horrified by a similar crime. A young girl named Henriette Cornier, without motive, without consciousness of her actions, cut off the head of a little girl whom she did not even know. Three physicians were appointed by the court to examine as to the mental condition of the girl Cornier. Papavoine's death saved this girl's life. She was sent to a hospital instead of to the scaffold, as she would have been but a few short months before.

THE SELDEN SOCIETY.

WE print below a paper, signed by distinguished legal names, which can hardly fail to bring it home to lawyers, as a debt due to their profession, that they should join the Selden Society. Much which is very important to our legal scholars lies still in manuscript, and the only way in which it can be made accessible here is through such an organization as this. The first year of the Society was 1887. The volume for that year, and also that for 1888 (which will soon be published), can be had by subscribing for the year named. The yearly subscription (due for each year on January 1 of that year) is one guinea ($5.18), payable to the General Secretary, or to any of the Local Secretaries. We append also a list of the American Secretaries; but we are compelled to omit from this number the full circular of the Society, which can be obtained on application to any of the Secretaries.

It should be added that an increase in the number of members will enable the Society to publish more than one volume a year for the same annual subscription. The material for several volumes is now ready.

The undersigned have assured themselves of the great importance of the work of THE SELDEN SOCIETY, — an organization formed with a view, as one of its main purposes, to put into print certain legal records and manuscripts hitherto unpublished. The circular of the Society is appended to this paper.

Such an organization cannot accomplish much unless its membership be large. It has seemed to us that our brethren of the legal profession might be widely induced to join THE SELDEN SOCIETY, if their attention were directly called to the matter; for we are persuaded that in every way our law will gain much from the careful historical and scientific investigations which are now going forward in many quarters, and which this Society will materially assist and promote.

MELVILLE W. FULLER.
HORACE GRAY.
OLIVER W. HOLMES, JR.
RUSSELL S. TAFT.
J. I. CLARK HARE.
THEODORE W. DWIGHT.
C. C. LANGDELL.
WM. G. HAMMOND.
EDMUND H. BENNETT
GEO. TUCKER BISPHAM.
HENRY WADE ROGERS.
J. D. COX.
HENRY HITCHCOCK.
M. M. BIGELOW.
WAYNE MCVEAGH.
R. C. MCMURTRIE.
JOSEPH H. CHOATE.
GEO. W. BIDDLE.
WM. HENRY RAWLE.

DECEMBER, 1888.

[*Circular of* 1888.]

THE SELDEN SOCIETY was founded in 1887 to encourage the study and advance the knowledge of the history of English Law. Its objects may be outlined as follows: I. The printing of MSS. and of new editions and translations of books having an important bearing on English Legal History; II. The collection of materials for Dictionaries of Anglo-French and of Law Terms; III. The collection of materials for a history of English Law; IV. The holding of meetings for the reading and discussion of papers; V. The publication of a selection of the papers read at the meetings and of other original communications.

The second volume of the Society's publications, which will be issued in respect of the subscription for 1888. will be a volume of Selections from the earliest Manorial Rolls extant, edited with a translation by Mr. F. W. Maitland, University Reader in English Law, Cambridge. The term "Manorial Rolls" may perhaps hardly give a fair impression of the contents of these records. Only a small part of them is taken up by conveyancing entries, such as surrenders, admittances, and the like. By far the greater part is taken up by contentious proceedings; and these are of many different kinds. In the first place, there are the actions for land held by villein services, and disputes between the lord and his tenants as to services and rights of common, and similar matters. In the second place, there are numerous personal actions for debts and trespasses, matters quite unconnected with land law. In the third place, the lord usually has the leet jurisdiction. The first stages of a criminal prosecution often take place in the local courts; and the pettier offences are punished there, the king's courts hardly as yet interfering with any crime which falls short of felony. The mediæval law as to offences answering to our modern misdemeanors and offences punishable upon summary conviction must be found in the rolls of the local courts, which were in truth the police courts of the neighborhood. The procedure before these local tribunals is of very great interest, as it preserved many archaisms which had disappeared from the king's courts before the time at which our extant records begin. Lastly, the whole system of local police, of frankpledge and so forth, is displayed. In short, the whole legal life and much of the social life of a mediæval village is recorded in one way or another upon the manor rolls. In the Public Record Office there is a rich collection of these rolls, many dating from the reign of Edward I., and a few even from the reign of Henry III., relating to manors which at one time or another came into the hands of the Crown. It is probable that there are rolls equally early in other libraries and in private hands; and about such the Council will be grateful for any information. If the number of subscribers is sufficiently large, more than one volume will be issued in respect of the year's subscription.

The first publication of the Society, issued in respect of the subscription for 1887, is a volume of Thirteenth Century Pleas of the Crown from the Eyre Rolls preserved in the Public Record Office, edited with a translation by Mr. F. W. Maitland, University Reader in English Law, Cambridge. Many of these criminal cases are very interesting, and they throw more light than cases of almost any other class on the manners and customs of the people. They are not, however, on that account the less valuable from the point of view of the legal historian. The criminal cases in the Year Books are not many, and yet they have to fill the long interval between Bracton and Staundford. Many points are still obscure, and none more so than the history of the petty jury.

The volume begins with the year 1200, the point at which the *Rotuli Curiæ Regis*, published by Sir Francis Palgrave for the Record Commissioners, comes to an end, and contains many cases from the reign of John, which illustrate fully the working of the ordeals of fire and water. It contains also many cases from the first part of Henry III.'s reign, which may serve to show how a substitute for the ordeals was gradually found in trial by jury. Though for the most part the cases are cases of felony, still many of the grievances redressed by the Great Charter are illustrated, and care has been taken to collect whatever throws new light on the procedure of the ancient local courts, — the system of frankpledge, the representation of counties and boroughs for judicial purposes, the condition of the towns, their corporate privileges, and the like.

The Council hope soon to continue the publication of Select Pleas of the Crown, suspended for the present in order to give variety to the Society's work. In course of time it may be possible to carry on the selection as far as the year 1500. Every volume should be more interesting than its

predecessors, as the records become fuller and more elaborate. It is also proposed, as soon as possible, to print a series of records of real actions and of cases illustrating villein status and villein tenure; but how soon these can be undertaken depends entirely on the number of subscribers.

In all the publications of the Society there will be a full subject-index and complete indexes of the names of all persons and places, thereby rendering the volumes of great value to local historians and genealogists as well as to lawyers.

The Council will be glad to receive offers of help from all persons who are willing to assist in carrying into effect the Second of the Society's objects, — the collection of materials for the Dictionaries of Anglo-French and of Law Terms. Directions for the plan to be adopted in collecting materials have been kindly drawn up by Prof. W. W. Skeat. On application to the Honorary Secretary, a copy will be forwarded to any person willing to assist.

An account of the principal classes of MSS. with which the Society proposes to deal may be had from the Honorary Secretary by members of the Society gratis, or by non-members at the price of one shilling. Mr. Bernard Quaritch, 15 Piccadilly, W., has been appointed agent for the sale to non-members of the Society's publications. The price to non-members of each volume of the Society's publications will be £1 10*s*.

The Annual Subscription to the Society is one guinea, due on the first of January for the year then commencing. Members have no further liability of any kind. Each subscriber will receive a copy of all the publications issued in respect of the subscription for the year. A composition of twenty guineas is accepted in lieu of all Annual Subscriptions, constituting Life Membership from the date of composition, and in the case of Libraries, Societies, and Corporate Bodies, membership for thirty-years. Subscriptions should be paid, in America, to Prof. W. A. KEENER, Cambridge, Mass., Honorary Secretary for America, who has kindly undertaken to receive all American subscriptions; in England, to the Honorary Secretary and Treasurer, P. EDWARD DOVE, 23 Old Buildings, Lincoln's Inn.

MARCH, 1888.

HONORARY SECRETARIES.

America: *General Secretary*, Prof. W. A. KEENER, Cambridge, Mass.

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Illinois: Chicago, COLIN C. H. FYFFE, 23 Portland Block.
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Honorary Secretary and Treasurer, P. EDWARD DOVE, 23 Old Buildings, Lincoln's Inn, London, W. C.

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.

AS the green bag of the lawyer, although ostensibly designed for the convenient transportation of dry and musty papers of the law, frequently is made use of as a receptacle for many articles not strictly within the letter of the law; so this magazine is intended to convey to the legal profession, from month to month, a collection of articles, which we trust will prove of interest, although they may not all prove to be strictly legal. Our "Green Bag" is not intended as a *text-book* or *a legal reporter*: and the lawyer who turns to these pages for material which will aid him in the preparation of his case will seek in vain. But if wearied by the labors of the day his mind requires relaxation, it will find in the "Green Bag," we hope, entertainment and amusement.

The magazine will be made up of articles upon interesting topics by leading members of the bar, short biographical sketches of prominent lawyers (with portraits), a collection of legal antiquities, curious cases, causes célèbres, etc. The humorous side of the law will not be neglected, and the "Green Bag" will be liberally supplied with the latest legal anecdotes. A considerable space will also be devoted to current legal news and gossip.

A leading feature will be a series of fully illustrated articles upon the various law schools in the United States, the Supreme Courts of the United States and of the several States, etc.

It has seemed to us that a work of this kind will supply a long-felt want in the profession, namely, a bright, entertaining magazine, designed rather to interest and amuse than to instruct; and that is just what we intend the "Green Bag" to be.

With these few words we introduce our new venture to the profession, and bespeak for it a kindly reception at the hands of our legal friends.

THE antiquity of the "green bag," as the badge of a lawyer, is indisputable. It appears that barristers carried them in the reign of Queen Anne. In Dr. Arbuthnot's "History of John Bull," is the following: "I am told, Cousin Diego, you are one of those that have undertaken to manage me, and that you have said you will carry a *green* bag yourself rather than we shall make an end of our lawsuit. I 'll teach them and you to manage."

ADDITIONAL evidence of the fact that lawyers used to carry green bags towards the end of the seventeenth century, is to be found in "The Plain Dealer," a comedy by Wycherley. One of the principal characters in the play is the widow Blackacre, a petulant, litigious woman, always in law, and mother of Jerry Blackacre, "a true, raw squire; under age and his mother's government, and bred to the law." In act i., sc. 1, we find the following stage directions: "Enter Widow Blackacre with a mantle and a *green* bag, and several papers in the other hand. Jerry Blackacre, her son, in a gown laden with *green* bags, following her." In act iii., sc. 1, the widow is called impertinent and ignorant by a lawyer, of whom she demands back her fee, on his returning her brief and declining to plead for her. This draws from her the following reply: "Impertinent again, and ignorant, to me! Gadsbodikins, you puny upstart in the law, to use me so! *You green-bag carrier*, murderer of unfortunate causes," etc. Further on, to Jerry Freeman, she says: " . . . rather than wear this gown and carry *green* bags all thy life, and be pointed at for a 'torny."

A GOOD story is told of a learned English conveyancer who had been requested by some of his family to bring home with him one evening from chambers a child's hat and a pair of shoes. As he was in the habit of carrying home papers every evening in his bag, in this receptacle did he place the articles required. When he had reached the churchyard in Portugal Street, he was accosted by the watchman. "I say, Mister, what ha' you

got in that 'ere bag o' yourn?" "Got, got!" exclaimed the learned conveyancer; "why, I 've got my papers, to be sure." "Ah! that 's very true, I d' say," replied the old Dogberry; "but come along o' me, and we 'll see what your *papers* look like!" All remonstrances were useless, and the distinguished gentleman was compelled to accompany the trusty guardian of the night to the watch-house, which was a few doors off. When they arrived, the watchman took the bag, opened it, put his hand in, and exclaimed with a look infinitely *knowing*, as he drew forth the little cap: "Ah, *nothing* but papers! I thought so." Down went his hand again; out came the shoes. "Ah, *nothing* but papers! I wor *sure* of that." He then told the enraged lawyer that he must stop there until he could give a good account of himself; but at last, yielding to his entreaties, allowed him to send for bail. He consequently sent to Lincoln's Inn; and when some of his learned friends arrived, they found the incarcerated conveyancer seated in the chair of the night-watch, advising on a ponderous abstract which was stretched on a table before him!

A YEAR or two ago, a suburban lawyer left his bag on a train of the Boston and Lowell Railroad. On discovering his loss, he returned to the station, and inquired at the proper office if anything had been seen of "*A green lawyer's bag.*" The peculiar form of the inquiry leaked out, and for months the unhappy owner heartily wished that he had never attempted to recover that bag.

LEGAL ANTIQUITIES.

ONE of the earliest acts, if not the first, making education compulsory was that passed in the reign of James IV. of Scotland, which ordained that all barons and freeholders send their sons to grammar-schools at eight or nine years of age, and keep them there till they have "perfect Latin," and thereafter to the schools of "Art and Jure" for three years. That act was passed in 1496. In 1579 an act was passed ordaining that "Sang schools" be provided in burghs for the instruction of the youth in music.

These acts may not indeed have produced great results in education, but they show that minds were at work with liberal forecast for the welfare of the country, at a time when it is commonly supposed that all public men and courtiers were alike selfish and factious.

THERE is said to be an unrepealed law of New Jersey, passed while the State was a British Colony: "That all women, of whatever age, rank, profession, or degree, whether virgins, maids, or widows, who shall after this Act impose upon, seduce, or betray into matrimony any of his Majesty's subjects by virtue of scents, cosmetics, washes, paints, artificial teeth, false hair, or high-heeled shoes, shall incur the penalty of the law now in force against witchcraft and like misdemeanours."

IN the "Lives of the Lord Chancellors of Ireland," we are told that the Irish Parliament at Trim enacted this curious statute: "That those who would not be taken for Englishmen should not wear a beard upon the upper lip; that the said lip should be shaved once at least in every two weeks, and that offenders therein should be treated as Irish enemies."

We are also told that James II. employed his Irish judges in diplomatic missions, and in England they were received with derision and nicknamed "The Potato Embassadors."

IN the wording of an old deed a certain boundary line was described as terminating at "a stump where Daniel Harrington licked William Jones." This reminds us that in the early days of the township of North Hatfield, Mass., a road was laid out which was described as "running from Pochang meadow to the stream where old Mr. Doolittle's horse died."

IN 483 A. D. the Emperor Zeno issued the following edict to the Prætorian Prefect of Constantinople (Code IV. 59): —

"We command that no one may presume to exercise a monopoly of any kind of clothing, or of fish, or of any other thing serving for food, or for any other use, whatever its nature may be, either of his own authority, or under a rescript of an Emperor already procured, or that may hereafter be procured, or under an Imperial decree, or under a rescript signed by Our Majesty; *nor may any persons combine or agree in unlawful meetings, that different kinds of merchandise may not be sold at a less price than they may have agreed upon among*

themselves. Workmen and contractors for buildings and all who practise other professions, and contractors for baths are entirely *prohibited from agreeing together that no one may complete a work contracted for by another, or that a person may prevent one who has contracted for a work from finishing it:* full liberty is given to any one to finish a work begun and abandoned by another, without apprehension of loss, and to denounce all acts of this kind without fear and without costs. And if any one shall presume to practise a monopoly, let his property be forfeited, and himself condemned to perpetual exile. *And in regard to the principals of other professions, if they shall venture in the future to fix a price upon their merchandise, and to bind themselves by agreements not to sell at a lower price, let them be condemned to pay* 40 *pounds of gold.* Your Court shall be condemned to pay 50 pounds of gold if it shall happen through avarice, negligence, or any other misconduct, the provisions of this salutary constitution for the prohibition of monopolies and agreements among the different bodies of merchants, shall not be carried into effect." — *Candian Law Times.*

The Emperor seems to have been called upon to grapple with the same social questions which confront us to-day, and he certainly appears to have been equal to the occasion. Have we a Zeno among us?

FACETIÆ.

LEGAL MAXIMS.

A SONG.

AIR: "CALIFORNIA BILL."

Oh, Themis! goddess of the law, to whom we bow the knee!
Thy precepts and thy maxims we study faithfully:
We con them o'er with rev'rend care;
But still I must submit,
That in the practice of the law
They sometimes fail to hit.

Chorus. But, *desperandum nil!*
Oh, *desperandum nil!*
Tramp bravely on, my brothers, in
The grand old legal mill!

"*Non dormientibus leges subveniunt,*" I read,
And got this fine old maxim well planted in my head;
But soon I learned it had been held,
All in the Mass. Report,
That passenger in *sleeping*-car
Could action bring in tort.

"*De minimis non curat lex,*" I 'd read in many a book:
So with ideas full well enlarged for mighty things I 'd look;
But when for ten cents suit was brought
For shirking fare on car,
I thought our dear old mother *Lex*
Amavit minima!

"*The law doth not approve delay:*" so runs the Latin phrase,
And so with youthful ardor I would try to shun delays;
But soon enlarged ideas I got
From elders at the bar,
Who, when I 'd efforts make to haste,
Would loudly laugh, Ha! ha!

"*Within a Court of Equity with clean hands one must come:*"
A rule which should apply to all, but only does to some;
For oft when gazing round the bar,
I 've seen most "awful paws"
Whose owners still got Equity,
Its remedies and laws.

"*Wherever marriage is, in truth, a dowry you will find:*"
In early youth this pretty phrase full greatly pleased my mind;
But sometime after knot was tied,
I looked her assets o'er,
And found my wife had quite forgot
This little form of law.

"*For every wrong a remedy the law doth sure provide:*"
So I believed until, in fact, the truth of this I tried;
But when "poor debtor," richly dressed,
Snapped fingers in my face,
Within this phrase a fallacy
I thought that I could trace.

But yet, with all these little flaws, we dearly love thee still,
And to thine everlasting health a brimming glass we 'll fill:
May thou still cheer us on our path
With help that never fails,
And wield with equal justice still
Thine awful sword and scales! A. A. M.

A CASE was not long ago tried in a provincial court, and in due course the judge summed up dead against the prisoner. The jury retired to consider their verdict, and were an unheard-of time, under the circumstances, making up their minds. The judge's usual dinner-hour came and went, and still the jury agreed not; whereupon his lordship made inquiry, and found that one obstinate fellow was holding out hard and fast against the other eleven. This was intolerable, in the face of so distinct a charge; so my lord ordered the jury to be brought before him. Then, with ponderous solemnity, he told them that in his summing up he had stated the facts and the law so plainly that their verdict ought to be both prompt and cordially unanimous, and that the man who persisted in setting his individual opinion against those of eleven thoughtful and sensible men was unfit to discharge the lofty duties of a juryman. At the termination of the judge's forcible remarks, a squeaky voice from the jury-box asked: "Will your lordship allow me to say a word?" The judge having given permission, the still small voice was raised again to the following effect: "*May it please your lordship, I am the only man on your lordship's side.* Tableau.

MRS. LARDINE (of Chicago). "Really, Mr. Bigfee, I think that five hundred dollars for so simple a matter as a divorce is quite exorbitant!"

MR. BIGFEE (firmly, but respectfully). "Those are my usual terms, madam."

MRS. LARDINE (with *hauteur*). "Very well, sir, you may write a receipt; but *I have never paid so much before, and I never will again.*"

NOT long since, a venerable member of the legal profession from the Pine Tree State visited Boston, and while there made a call upon a brother lawyer with whom he had formerly practised in his native State. The conversation naturally turned upon the law, and the visitor sadly lamented the decadence which had taken place since the "good old times."

"Ah, Brother X.," he exclaimed, "the law is n't what it used to be when you and I tried cases together down in Maine. Why, now you may take a witness and coach him every day for two weeks, and then *the d—— fool will go on to the stand and prevaricate!*"

A STRANGER walked into a Massachusetts court one day, and spent some time in watching the proceedings. By and by a man was brought up for contempt of court and fined; whereupon the stranger rose and said, "How much was the fine?"

"Five dollars," replied the clerk.

"Well," said the stranger, laying down the money, "if that's all, I 'd like to jine in. I 've had a few hours' experience of this court, and no one can feel a greater contempt for it than I do, and I am willing to pay for it."

THIS is not bad. Two judges at General Term having given opposing opinions on a matter of slight importance, the question was settled by Judge ——'s quietly stating, "I agree with my brother A. for the reasons given by my brother B.!"

"I HAVE a number of authorities bearing directly upon this point if your honor would like to hear them," said a young attorney recently, in one of our Massachusetts courts. With a weary smile the judge replied: "I cannot truthfully say that I should like to hear them, but I suppose it is my duty to listen to them."

IF any one will search the old law lexicons, he will find many writs with names unknown to modern practitioners. That some of these writs should have been disused and dropped does not seem at all strange, but that the days of the Judicature Act and the Consolidated Rules should produce a new writ not known to our forefathers, and one that might be supposed to issue only after the object of it had passed away, beyond the reach of sheriffs and bailiffs, does seem strange.

A sheriff of a neighboring county lately advised the solicitors that he had duly executed the writ of *Requiescat in pace* placed in his hands. Whether the consequence of the sheriff's action was that another had to "join the majority," deponent sayeth not. — *Canada Law Journal.*

BARON ALDERSON could make puns, and had much drollery. A juryman once said that he was deaf in one ear.

"Well, then," replied Alderson, "you may leave the box, for it is necessary that jurymen should *hear both sides.*"

A DAKOTA schoolmistress sued three young men for breach of promise. Counsel for one of the defendants moved for a nonsuit on the ground that she was too promiscuous. The court seemed disposed to grant the motion, whereupon the plaintiff asked, "Judge, did you ever go out duck-shooting?" His Honor's eyes lighted up with the pride of a sportsman, as he answered: "Well, I should say so; and many 's the time that I 've brought down a dozen at a shot." "I knew it," eagerly added the fair plaintiff. "That 's just the case with me, Judge. A flock of these fellows besieged me, and I winged three of them." The motion for a nonsuit was refused. — *Pump Court.*

"I HAVE noticed," said a young solicitor, "that members of the legal profession are almost always brave men. It is seldom that one shows cowardice. I wonder why this is so?" "Well," responded an elderly lady, "I 've read somewhere that 'conscience makes cowards of us all.' And as lawyers mostly have no conscience, why, of course, they have n't anything to make them cowards."

NOTES.

THE AMERICAN LAW REVIEW says: "We are always glad to receive suggestions from our subscribers as to what they desire and do not desire. One of them writes: 'Cheap reports have or will entirely supersede law journals devoted chiefly to legal topics, such as are discussed in the text-books; and you, to succeed, must devote a great deal of space to what might be termed "legal miscellany."'" This is precisely the idea upon which "The Green Bag" has been started, which will be devoted exclusively to "legal miscellany."

THE savants are having a bonny time investigating the best way to take off criminals by electricity. Fortunately they have a good year before the actual test will be demanded. Why did they not try the experiment on that mischievous elephant a few days ago? The danger seems to be that the application will be made too cumbrous, and that the preparations will be more appalling to the doomed man than the simple noose. It is reassuring, however, to learn that the Medico-Legal Society of New York do not approve of immersing the body in water, nor of placing large metal plates upon the body. But shampooing and hair-cutting seem to be recommended, — "the skin and hair at the points of contact should be thoroughly wet with a warm aqueous solution of common salt. The hair should be cut short." The latter will be as objectionable to women as it is to female victims of the guillotine. When we read that two hundred have accidentally lost their lives by artificial electricity within a few years, we have confidence that the wise men will find a way out. If they can't, the convict might be apprenticed to an electrical lighting company, and his sin would be sure to find him out sometime. — *Albany Law Journal.*

A FRENCH doctor has lately published a curious synopsis of the recent Criminal Anthropological Congress. He has discovered that, contrary to what is often believed, the criminal, as a rule, has not a ferocious countenance; and the more hardened he is, the softer the expression of the face and the finer the traits. Abnormal development of the jaws, absence of beard, abundance of hair, and a lapping ear are also evidences of moral obliquity.

THE judges of the Supreme Court of Pennsylvania have adopted the practice of wearing silk gowns similar to those worn by the Supreme Bench at Washington.

Referring to the above, "The Albany Law Journal" comments as follows: —

"Now arise, ye Pennsylvanian newspaper Solons, in your wrath, and sling your ink! The Pennsylvania Supreme Court, unmindful of the traditions and proprieties of our great democracy, and in a spirit of shameful and craven and dwarfish subserviency and imitation of the revolting customs of the effete monarchies of Europe, have decided to put on gowns. Thus we go — first the Federal Supreme Court, then the New York Court of Appeals, and now the great Quaker court. If this sort of thing keeps on, we shall expect to see representatives in Congress refraining from smoking on the floor during sessions, and from squirting tobacco juice down the register or on the carpets. There is danger that we are growing too 'particular' for a free people."

THE Chicago Union College of Law is in a prosperous condition. It numbers this term one hundred and thirty-six students.

AN examination of the Catalogue of the Columbia Law School shows that there are in attendance four hundred and sixty-eight students, of whom two hundred and nine are college graduates.

WE desire to call our readers' attention to the appeal of the SELDEN SOCIETY published in this number. Of the great importance of the work of this society there can be no doubt; and the hearty indorsement by the leading lawyers of this country, including the Chief Justice of the United States, Mr. Justice Gray, and *seven* deans of our best-known law schools, ought to inspire every member of the profession to aid the good work by sending in his subscription to Prof. W. A. KEENER.

Recent Deaths.

THE venerable SAMUEL E. SEWALL, the Nestor of the Massachusetts Bar, died of pneumonia at his residence in Boston on the 20th of December. For sixty-seven years he was in the active practice of the law, rarely missing a day from his office until he was prostrated by the disease which proved fatal.

Mr. Sewall was born in Boston, Nov. 9, 1799. He graduated from Harvard College in the Class of 1817, and was the only surviving member of that class; and there is but one older graduate of that college now living. In 1821 he commenced the practice of the law in Boston, in which practice he had continued up to the time of his death.

Mr. Sewall was a lineal descendant of Chief Justice Samuel Sewall, of colonial and witchcraft times.

He was an ardent abolitionist, and in 1851 he was one of the counsel for the defence of Alfred Sims, a fugitive slave. He was also instrumental in forming the National Antislavery Association.

As a man and as a lawyer, Mr. Sewall was greatly beloved and respected, and his memory will long be cherished by all who knew him. Such men only "yield their breath," as James Montgomery has it; they never die.

SIR WILLIAM FREDERICK POLLOCK, who died December 24 in London, was the eldest son of the late Sir Jonathan Frederick Pollock, Chief Baron of the Exchequer. He was born April 3, 1815, and was called to the bar in 1838. In 1846 he was appointed a Master of the Court of Exchequer, and was nominated by Mr. Disraeli in 1874 to the office of Queen's Remembrancer, — a very ancient office of State.

JUDGE CHARLES E. BOYLE, who was recently appointed by President Cleveland Chief Justice of Washington Territory, died in Seattle, W. T., Saturday, December 15. He was born in Uniontown, Penn., Feb. 4, 1836, and was educated at Waynesburg College, Pennsylvania. For a few years he edited a newspaper, and then took up the practice of law; but in 1865 and 1866 he entered the State Legislature, and followed up this beginning of a political career by serving as representative from Pennsylvania in the Forty-eighth and Forty-ninth Congresses.

HON. GEORGE W. MARVIN died at Manchester, N. H., on the 21st of December, at the ripe old age of seventy-nine. He was a native of Fairlee, Vt., but had resided in Manchester since 1836. He served with distinguished ability in the State Legislature in 1840, 1841, 1844, 1849, and 1850, and in the Thirty-first and Thirty-third Congresses. While a member of the latter body he made a speech in opposition to the Kansas-Nebraska bill which gave him a national reputation. He was for years a leading advocate at the New Hampshire Bar, and it is said that during his career he tried a third more cases than any other lawyer who has ever lived in the State.

EDWIN O. PERRIN, clerk of the New York Court of Appeals, died suddenly of apoplexy at his home in New York, December 19. Mr. Perrin was a prominent Democrat, and was nominated by President Johnson for Chief Judge of the Supreme Court of Utah; but his nomination was rejected by the Senate, as was also his nomination for Internal Revenue Assessor of New York. He was elected clerk of the Court of Appeals in 1868.

JUDGE WILLIAM BADGELY, who died at Montreal on December 24 at the age of eighty-one, had been for years a distinguished member of the judiciary. He was raised to the bench in 1855, where he greatly distinguished himself until a few years ago, when he retired.

HON. ANDREW L. GREELEY, of Mason Valley, Nev., died at Salisbury, N. H., last month. He was admitted to the bar in 1859, but soon afterward emigrated to California, and subsequently removed to Nevada. He was a member of the first Legislature of Nevada.

HON. D. B. BOOTH, assistant clerk of the Superior Court of Fairfield County, Connecticut, died at his residence in Danbury, January 2, of apoplexy. The deceased was probably one of the best-known lawyers in the State. He had served in the State Legislature several terms; was clerk of the Senate in 1854, was a member of the Committee, in 1864 and 1875, to revise the General Statutes, was the first clerk of the Court of Common Pleas in Fairfield County, and for many years had held the position of assistant clerk of the Superior Court. He served in almost every office in the gift of the town. He was the son of ex-Lieut.-Gov. Reuben Booth, who was also one of the leading lawyers of the State.

REVIEWS.

THE contents of the LAW QUARTERLY REVIEW for January are: "The County Courts Consolidation Act," by Judge Chalmers; "How to Simplify our Titles," by C. E. Thornhill; "The Liability of Shipowners at Common Law," by E. L. De Hart; "Feoffment and Livery of Incorporeal Hereditaments," by L Owen Pike; "Notes on the English Law of Marriage," by Howard W. Elphinstone; "The Reform of Company Laws," by Edward Manson.

THE JURIDICAL REVIEW. — We have received an advance copy of the first number of this new quarterly journal, published by Messrs. Wm. Green & Sons, Edinburgh. The object of this Review will be, as the editor states, to record accurately and discuss impartially subjects relating to the science and practice of law and politics. The opening number contains a full-page portrait of the Right Hon. John Inglis, Lord Justice-General of Scotland, and articles on "The Faculty of Law," by Professor Lorimer; "Codification in the United States," by Hon. D. Dudley Field; "Private Bill Legislation," by R. Vary Campbell; "Municipal Socialism in Scotland," by Albert Shaw; "Mr. Parnell's Action against 'The Times,'" by G. W. Burnet; and "The Judicial System of Germany." This new quarterly will, we predict, prove a valuable addition to our legal literature.

THE leading article in the HARVARD LAW REVIEW for December is an able discussion of "The Watuppa Pond Cases," by Messrs. Samuel D. Warren, Jr., and Louis D. Brandeis, in which issue is taken with the Supreme Court of Massachusetts on its decision in the case of "Watuppa Reservoir Co. *v.* City of Fall River." The article contains much valuable information in regard to public rights in "great ponds." Marland C. Hobbs, Esq., also contributes an exhaustive paper on "Statutory Changes in Employers' Liability."

THE COLUMBIA LAW TIMES for December has an interesting article on "Legal Education at Cambridge" (England), by G. Glover Alexander, B.A.

THE ADVOCATE is the title of a new law journal, published at St. Paul, Minn., of which H. N. Ogden is the editor. The first number contains extracts from the "Inaugural Address of Prof. Stephen O. Southall," delivered at the University of Virginia; and a full account of the banquet given in Chicago by the Bar Association to Chief Justice Fuller. The ADVOCATE is attractive in form, and will undoubtedly prove a welcome addition to the legal publications in the West.

THE CHICAGO LAW JOURNAL has changed ownership. The December number, issued by the new management, contains a paper on "Prohibition *v.* Interstate Commerce," by John Gibbons; and a short article on "Impartial Administration of Justice."

THE VIRGINIA LAW JOURNAL for December contains articles on "Speedy Litigation" and "Abolishing the Rule of Fellow-Servants." With this number this enterprising journal completes its twelfth volume. Hereafter it will be issued weekly.

THE AMERICAN LAW REVIEW, November–December, 1888, offers its readers two able and extremely interesting articles upon the "Jury System in Sweden and in America," the one by Herr Fahlcrantz, of Stockholm, and the other by Judge Caldwell, of Lit-

tle Rock. "Contracts in Restraint of Trade" are discussed by James M. Kerr, of Rochester; and John Henry Wigmore contributes an interesting paper on "Louisiana: the Story of its Jurisprudence." An article on "Maritime Collisions" contains much that will be of interest to admiralty practitioners.

JOHNS HOPKINS UNIVERSITY STUDIES. — The first number of the seventh series is a sketch by F. C. Montague, Fellow of Oriel College, Oxford, of the life of ARNOLD TOYNBEE, that interesting young Englishman whose last years were devoted to an endeavor to ameliorate the condition of the working classes. The story of his struggles to attain the realization of his passionate desire to mitigate the lot of human misery is one of exceeding interest. Dying at the early age of thirty-one, with his great work hardly begun, he had nevertheless sown seed which has already borne its fruit. "Some persons seldom address their clients without slipping into a style of flattery. Toynbee, who loved the people with all his heart and was, perhaps, prejudiced in their favor, avoided this pernicious cant. We give a short extract from one of his addresses which might well serve as a model for some of our American speakers. After reminding his hearers that a rise in wages was desirable in the interests of the whole community only in so far as it led to a rise in the civilization of the wage-earners, he said: —

"'You know only too well that too many workingmen do not know how to use the wages which they have at the present time. You know, too, that an increase of wages often means an increase of crime. If workingmen are to expect their employers to act with larger notions of equity in their dealings in the labor market, it is at least rational that employers should expect that workingmen shall set about reforming their own domestic life. It is at least reasonable that they should demand that workingmen shall combine to put down drunkenness and brutal sports.'

"In a paper entitled 'Cheap Clothes and Nasty,' he wrote: 'The great maxim we have all to follow is that the welfare of the producer is as much a matter of interest to the consumer as the price of the product;' — wise and true words, how seldom borne in mind!"

BOOK NOTICES.

THE CONCURRENT JURISDICTION OF THE FEDERAL AND STATE COURTS. By GEORGE C. HOLT. New York: Baker, Voorhis & Co., Law Publishers. 1888. Price, $3.00.

This is a work which will be welcomed by the legal profession. We have had treatises before on the jurisdiction of State and Federal Courts, but none on the *concurrent* jurisdiction, — a question which is often puzzling even to the most experienced members of the bar. Mr. Holt treats the subject under the following heads: *The Concurrent Jurisdiction of the United States Supreme Court; The Concurrent Jurisdiction of the United States Circuit and District Courts with each other and with the State Courts; Grounds of Preference between United States Circuit and District Courts and State Courts; The Concurrent Jurisdiction of the United States Circuit Courts and the State Courts; Grounds of Preference between United States Circuit Courts and State Courts, growing out of Diversity of Procedure; Grounds of Preference between United States Circuit Courts and State Courts, growing out of Diversity of Decisions; The Concurrent Jurisdiction of the United States District Courts and the State Courts.*

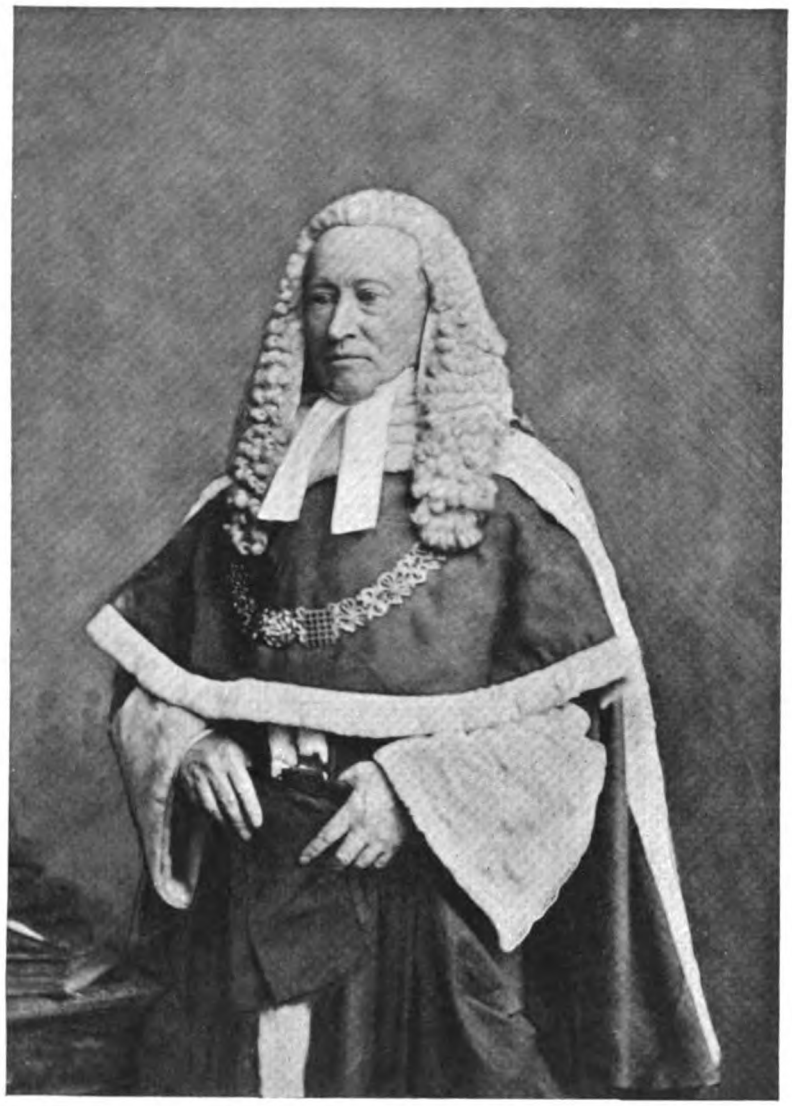
The work in preparing this treatise seems to have been thoroughly done, and each chapter is subdivided into sections, with distinct headings, making reference easy and satisfactory.

THE PRINCIPLES OF ESTOPPEL. By MICHAEL CABABÉ. MAXWELL & SON, London.

This little work is designed, as stated by the author in his preface, "to state the real grounds of the doctrine by which a conclusive admission of fact can be exacted from parties, by reason of their conduct; the exact nature and consequences of the admission, and the limits to the application of the doctrine." The subject is discussed under three heads: "Estoppel by Agreement," "Estoppel by Misrepresentation," and "On the Doctrine generally and its Limits." There is also a short appendix, containing a note on "Estoppel by Negligence."

THE AUSTRALIAN BALLOT SYSTEM. By J. H. WIGMORE.

We have received a copy of this interesting work, but too late for an extended notice in this issue. The subject is one worthy of study by all who desire the purification of the ballot: and, from a hasty examination, we judge that Mr. Wigmore has prepared for his readers an immense amount of valuable information upon this system, which has proved so successful wherever it has been adopted.



LORD CHIEF JUSTICE COCKBURN.

The Green Bag.

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LORD CHIEF-JUSTICE COCKBURN.

ALEXANDER JAMES EDMUND COCKBURN, the late Lord Chief-Justice of England, was descended from a Scotch family of great antiquity, which held lands of the Crown in the reign of David II. Sir William Cockburn obtained a grant of the lands and barony of Langton in 1595, and his son, William Cockburn, Esq., was created a baronet of Nova Scotia in 1627. From him the late Chief-Justice descended in male line. His father, Mr. Alexander Cockburn, was some time Envoy Extraordinary and Minister Plenipotentiary to Columbia, and married a daughter of the Vicomte de Vignier.

The late Sir Alexander Cockburn was born on Dec. 24, 1802, and was privately educated, partly abroad and partly in England. He owed to this early training, and to the French parentage of his mother, a remarkable acquaintance with foreign languages. French he spoke with great purity; and he was familiar with Spanish, German, and Italian. In 1822 he became a member of Trinity Hall, Cambridge, and in his second year gained prizes for the best exercises in English and Latin. He took his degree in law in 1829, and was at once elected a fellow of his college, — a dignity which, with its emolument, he held for many years. In 1825 he had been admitted a member of the Middle Temple, and was called to the bar on Feb. 6, 1829, and went on the Western Circuit and the Devon Sessions.

Soon after the Reform Bill was passed, he commenced, with Mr. Rowe, the publication of the reports of the decisions which arose out of that measure; and the volume in which the reports were collected was of great and substantial merit. He was consequently engaged on several contests before election committees, and in 1834 was made a member of the Municipal Corporations Commission. In 1841 he received his silk gown, and his practice became large and profitable. He showed at this time a great tenacity on the subject of briefs. He always insisted on having his fee with his brief; and the story is told that when a brief for an election committee was ready for delivery but the fee was not forthcoming, the parties, on the assembly of the committee, found themselves without their counsel, who, observing that "a man might as well play for nothing as work for nothing," had gone off to the Derby.

In 1847 Mr. Cockburn was a candidate for Southampton on advanced Liberal principles. His success in the House of Commons was conspicuous. He did not attempt to take it by storm; he spoke little at first, and then only on subjects which came within the range of his profession; and three years passed before he had an opportunity of displaying his ability as a debater. But when the chance came he was ready for it. In the session of 1850 a vote of confidence in the foreign policy of the Ministers was proposed in the House of Commons, and during the debate Mr. Cockburn delivered the famous speech which secured his future career. This speech was delivered on June 28, and on July 12 Mr. Cockburn received the Solicitor-Generalship.

Upon attaining this preferment, Sir Alexander Cockburn was knighted in the usual course. The next year (1851), on the eleva-

tion of Sir John Romilly to the bench as Master of the Rolls, Sir Alexander Cockburn became Attorney-General, and held that office until he went out with Lord John Russell in February, 1852. In December of the same year he came in again with the Coalition Ministry, and was first law officer of the Crown until 1856, when, upon the death of Sir John Jervis, he was appointed Chief-Justice of the Common Pleas. He left the bar with the greatest reluctance. He was satisfied with his standing and popularity in the House, and was earning a very large income as Attorney-General. He accepted the post, however, and held the office until June 24, 1859, when he was made Lord Chief-Justice of England.

This latter office he held for twenty-one years, and occupied the judicial bench altogether twenty-four years. His charges to juries were masterpieces of popular oratory; and there was little chance for the most skilful counsel if the Lord Chief-Justice became convinced of the duty to sum up against him. His considered judgments were marvels of exposition. An indisputable merit was the pains he took with his work, especially with such portions of it as came into more than usual publicity; and he would, in important cases, find some reason for adjourning the court, in order that he might prepare a judgment or a charge which would be of classical excellence.

The most famous case which came before him as Chief-Justice was that of the celebrated Tichborne claimant. The tedious and patient investigation of this case, together with the humorous and elaborate summing up by Chief-Justice Cockburn, which lasted eighteen court days, are comparatively fresh in the memory of the legal profession. Never, perhaps, was a judge's temper more tried by counsel than on that occasion.

Sir Alexander Cockburn served on several commissions, and was chairman of the Cambridge University Commission in 1877–1878; but his most important function, outside the duties of Chief-Justice, was to act as arbitrator for Great Britain at Geneva in 1872, in the settlement of the Alabama claims. His conduct as arbitrator has been severely commented upon, notably by Mr. Caleb Cushing; but the existing fact that the sum awarded on that occasion in favor of the claims of the United States exceeded by some millions of dollars the proofs subsequently admitted, so that a large surplus remains still unaccounted for, may perhaps be received, now that animosities are hushed in the silence of the tomb, as some extenuation of a protest that doubtless was made honestly and patriotically, even though ill-judged and without avail.

In private life, Sir Alexander was a warm friend, and many instances are given of his kindly nature. One in particular deserves special mention. At an early stage in his career he witnessed what he conceived to be a miscarriage of justice in the case of a prisoner of the name of Galley, who was convicted and sentenced to transportation for life. It was a case in which he had no personal interest, he being simply present at the trial as a member of the bar. He attempted, however, at the time, to bring the case before the authorities and get the sentence reversed, but in vain. A short time before his death the case of this unfortunate man was unearthed, and again did Sir Alexander come forward as his champion, and move the Home Secretary to remit the nominal remainder of the sentence, and allow Galley, a respectable Australian citizen, to end his days free from the stigma of an unjust conviction. Failing in this, he did not rest until he had brought the case before Parliament, and finally succeeded in his generous object.

He was a man of varied accomplishments, a keen sportsman, a skilful yachtsman, a society man of the best type, and finding also in his leisure moments time to contribute to the periodicals of the day; his last effort in that respect being entitled "A History of the Chase," in which he exhibited much archaic, classical, and sylvan lore.

With unimpaired, or apparently unimpaired physical powers, and with undimmed intellect, Sir Alexander performed to the last day of his life with efficiency the duties of his high office. On the 20th of November, 1880, he presided at court as usual, and returned to his home in apparent good health. That same night he died suddenly from an attack of heart disease.

We cannot better close this short sketch of his life, than by quoting briefly from a tribute paid to his memory by Lord Coleridge: —

"I can say, from personal knowledge, that no man who ever was opposed to Sir Alexander Cockburn ever complained of the slightest deviation on his part from the sternest rules of honor and integrity. As a judge, his chief and leading characteristic appeared to me to be a sleepless and ardent desire to do justice as between man and man to the suitors who came before him. Though naturally inclined to ease and pleasure, he shrank from no trouble, he declined no toil, that might lead him to the truth. He kept his mind open to the very end, and he was always ready to listen to any piece of evidence or weigh any argument that in his judgment was likely to lead him to do justice. Like other men, he had prejudice and bias of opinion, which he shared with the rest of mankind. He never permitted them, so far as I saw, for a single instant to divert him from a single-minded and most earnest pursuit of what he believed to be the right between the parties. If you had a good case, however complicated it might be, however much prejudice there might appear to be against it, only make Sir Alexander Cockburn understand it, and you were perfectly safe in his hands. Now, this is simple, literal truth. No one, I am satisfied, can deny it. Yet stand and reflect what high and great qualities of head and heart this simple truth implies. He died, as he often said in my hearing he wished to die, in harness, enjoying life and doing duty to the very end."

JOHN AUSTIN AND HIS WIFE.

By Prof. W. G. Hammond.

THERE is very little in legal authorship of that indefinable charm which, from the days of Homer and the author of Job, has attached to the making of books. Almost the first step in literary taste is usually the boy's love of reading about the personal habits of poets and novelists and historians, and all who live by their pen; and in spite of much proof to the contrary, few of us can conquer our early impression that such work is in itself poetic or romantic, and altogether different, in the eyes of the author himself, from the dull drudgery by which other men earn their daily bread. The youthful aspirant for fame thinks of himself as dashing off an ode or a string of sonnets in much the same poetic fervor with which he reads them; and the lives of authors as usually written, foster the same belief, by painting in brilliant colors all that is spectacular and striking in the career of their heroes. But none of this romance of literature is found in the arid field of legal authorship. Nothing could be drier or less interesting than a description of the labor to which we owe the interminable rows of calf-bound volumes, which have their genesis in no nobler passion than a young lawyer's desire for clients, or a publisher's for money.

But once in a while, even in this arid field, the lover of sentiment may find a book whose history is in itself a romance as striking as ever produced a poem or a picture. Even in "The Calamities of Authors," or any of the other works which detail the vicissitudes of literary life, we shall hardly find a more surprising story than that of the Lectures on Jurisprudence, which have now made the name of John Austin famous wherever English law is administered or

studied. Written in sickness and doubt, delivered but twice, and then to small and rapidly dwindling classes of embryo barristers, cast aside in disgust, to lie neglected for all the rest of the author's life, they owe their resurrection and splendid success to a woman, to the loving pride of a devoted wife, who spent all the years of her widowhood in building this monument to her dead husband's fame.

John and Charles Austin were the sons of an Englishman, who had begun life as a miller, but made money enough by army contracts during the French war to feel warranted in trying to raise his children to a higher social position. For John, therefore, a commission was bought in the army, while Charles was bred to the bar. Of the latter it is sufficient to say that he made a great reputation and greater fortune as parliamentary counsel, when railroad companies were striving for profitable charters, and paying enormous retainers to the barristers who had influence in the lobby and committee room. In short, he was a successful lawyer of the most practical type, and is remembered now chiefly by the fact that after being an ardent Liberal to the very verge of socialism all his life, he exhausted his ingenuity in framing a will by which his property should be strictly entailed to the farthest limit allowed by English law.

John Austin, the elder of the two, was born in 1790. He appears to have lacked all the practical qualities of his brother. He did not like the army, and sold his commission after five years' service. Then he studied law, and was admitted to the bar at the age of twenty-eight in 1818, but gave up practice in 1825. Under all the delicate phrases with which his biographers have veiled the truth, it appears plainly enough that his failure was almost as conspicuous as his brother's success. A part of this is attributed to ill health, still more to a fastidious temper and morbid self-consciousness, which all his life prevented him from dealing effectively with his fellow-men. He had acute and subtle intellect, with much logical power, but lacked perseverance. He does not seem ever to have been a close student. When one reads his lectures carefully, after the first glow of admiration has passed away, one cannot help feeling that they betray a surprising want of acquaintance with the learning of his chosen profession. Of course, we do not expect in them the technical treasures of a Coke, or a Comyn, or even the mastery of detail shown by writers like Blackstone or Woodeson. But there are many passages in his work which reveal, as well by what he does not say as by what he does, the fact that he never took the pains thoroughly to master the system which he afterward criticised so severely and so effectively. He probably would have been a much better lawyer if he had been less interested in many problems of social science and human life which had only an indirect bearing upon the trial of causes. He loved to speculate upon these, and above all to talk about them. There is a lively letter from Mrs. Grote to Mrs. Senior, in the Life of George Grote, where she says: "Don't you know what is the matter with John Austin? He has been languishing for the want of a listener. . . . It is the indispensable condition of his existence; talk, and monological talk." In this connection the very keen analysis of his character given in the Autobiography of John Stuart Mill is worth quoting: —

"Mr. Austin was the eldest son of a retired miller in Suffolk who had made money by contracts during the war. He was for some time in the army, and served in Sicily under Lord W. Bentinck. After the peace he sold his commission and studied for the bar. He was a man of great intellectual powers, which in conversation appeared at their very best, from the vigor and richness of expression with which under the excitement of discussion he was accustomed to maintain some view or other of most general subjects, and from an appearance of not only strong but deliberate and collected will, mixed with a certain bitterness, partly derived from temperament, and partly from the general cast

of his feelings and reflections. The dissatisfaction with life and the world, felt more or less in the present state of society and intellect by every discerning and highly conscientious mind, gave in his case a rather melancholy tinge to the character, very natural to those whose passive moral susceptibilities are more than proportioned to their native energies. For it must be said that the strength of will of which his manner seemed to give such strong assurance expended itself principally in manner. With great zeal for human improvement, a strong sense of duty, and capacities and acquirements the extent of which is proved by the writings he has left, he hardly ever completed any intellectual task of magnitude. He had so high a sense of what ought to be done, so exaggerated a sense of deficiencies in his own performances, and was so unable to content himself with the amount of elaboration sufficient for the occasion and the purpose, that he not only spoilt much of his work for ordinary use by overlaboring it, but spent so much time and exertion in superfluous study and thought, that when his task ought to have been completed he had generally worked himself into an illness without having half finished what he undertook. From this mental infirmity combined with liability to frequent attacks of disabling though not dangerous ill-health, he accomplished through life little in comparison of what he seemed capable of; but what he did produce is held in the very highest estimation by the most competent judges." [1]

When the new London University, with all the confidence of inexperience, undertook to revolutionize the study of law, Mr. Austin seems to have been selected, by common consent, to inaugurate the new system. He had already given up the attempt to practise, and went to Germany to prepare himself there for his duties. He spent the greater part of a year at Bonn, in studying German and civil law. He came entirely under the influence of the so-called philosophical school of jurists, of which Thibaut was the recognized leader. The conflict between this school and that of Savigny was then at its fiercest, and neither party could have exerted so useful an influence upon an English stranger as it would have done at a later date, when a spirit of compromise prevailed, and each school had learned to profit by the favorite truths of its opponent. But it must be added, too, that it was unfortunate for Austin and for English law, that his German training was not received from the historical school. The sympathy which that school has since shown for English law is a sufficient proof that he would have found in their doctrines teaching far better adapted for transplantation, theories answering far more truly to the facts of the common law, than those of Thibaut. Had Austin become as zealous a disciple of Savigny as he was of his rival, the study of scientific jurisprudence in England might have reached, a generation earlier, the point to which it has later been brought, under the guidance of jurists like Sir Henry Maine.

The Lectures on Jurisprudence were delivered for the first time in London University, in 1828–1829, to a class which is said to have exceeded his expectations and to have included several men who afterward became famous in law, politics, or philosophy. Some of these, such as John Stuart Mill for instance, took full notes of his lectures, and entered into the new study with a zest that must have been a delightful reward for all the labor of preparation. "He was much impressed and excited," says his wife, "by the spectacle of this noble band of young men, and he felt with a sort of awe the responsibility attaching to his office. He had the highest possible conception of the importance of clear notions on the foundation of Law and Morals to the welfare of the human race; the thought of being the medium through which these were to be conveyed into so many of the minds destined to exercise a powerful influence in England, filled him with ardor and enthusiasm." Any teacher who loves and appreciates his work, whatever his topic, can understand at least the enjoyment which Austin found with such pupils. If the highest of all intellectual pleasures be, as we may well believe it

[1] Mill's Autobiography, pp. 73–75.

to be, the exercise of creative thought, by those to whom the rare gift of genius has been intrusted, the second place at least may be claimed for the act by which the grand ideas which are the world's choicest treasures, are handed on to the best minds of a new generation, eager to seize and carry them forward,

> "Like the band
> That in the Grecian games had strife,
> And passed from eager hand to hand
> The onward dancing torch of life."[1]

The feelings with which Austin regarded his choice students, those whose minds were fully open to his own, are clearly shown in the memoranda (printed by his wife) of his requests to them after his first lecture. "I therefore entreat you, as the greatest favor you can do me, to demand explanations and ply me with objections. Can bear castigation without flinching, coming from a friendly hand. In short, my requests are that you will ply me with questions, and that you will attend regularly." (Preface, p. 7.)

But unhappily there was no endowment for the chair of Jurisprudence, and the thrifty managers of the University required it to be self-supporting. If the lamp of science does not require gross material oil, costing money in the market, the lamp of life does; and in 1832 Mr. Austin had to bring his lectures to a close, and resign his chair in the University, for the want of a paying attendance. In November, 1833, however, he was appointed to deliver lectures upon the general principles of Jurisprudence and International Law, in the Hall of the Inner Temple. Here there was no difficulty about support. He received ten guineas (about fifty dollars) for each lecture, as did Mr. Starkie, who lectured on the Principles of the Law as administered in the Superior Courts. But this experiment was even briefer than the other. The lectures were discontinued in January, 1835, "in consequence of the slight attendance of members. They were reduced to a very slight attendance indeed, sometimes only as many as three or four; the last attendance was eight." (Testimony of Mr., afterward Justice, Keating, before the Inns of Court Commission, p. 144.)

The very limited attendance at University College has often been mentioned as a proof of the difficulty of obtaining general attention to improved methods of legal education. But another fact in the same connection has generally been overlooked; that at the same time another course of lectures of a more practical character, delivered in the same institution, was largely attended, and undoubtedly had a very considerable immediate influence. This was the course of Mr. Andrew Amos (afterward a member of the Supreme Council of India), who was professor in the University College for four or five years, and had an attendance all the time of fifty to one hundred and fifty hearers, lecturing an hour every day in the week, except while absent on circuit and during the long vacations. His success also encouraged a great number of other lecturers in King's College, the Law Institute, etc. Mr. Amos had also private classes in his chambers, which were very fully attended. A full account of his success may be found in his testimony before the Select Committee of the House of Commons, on legal education (Rep. of August 25, 1846, beginning at p. 94, Ques. 1232. Upon Austin's contemporary course, see Ques. 1254; upon the method pursued by Amos, Ques. 1258), where he states that he found the lectures that related to the *practice* of the law were most attractive. Austin "had but a very small number who attended upon his lectures; they were very intelligent men, but a small number of them" (Ans. to 1254.) The comparative effect produced by the two courses upon the improvement of legal education in England would be an interesting topic for speculation. Much might be said on both sides. It may be well, in the interests of legal science, to hold as high as possible the standard of juridical study, when we are discussing the

[1] Et quasi cursores vitæ lampada tradunt. — *Lucretius*, II. 79.

merits of Mr. Austin as a jurist; but it cannot be denied, with his lectures before us in printed form, that he failed singularly to show to ordinary minds the connection between the truths he expounded and the practical work for which they were endeavoring to fit themselves. It is no answer to this to say that his conception of the subject was too dignified to permit his illustrating it from the particular rules of English law. The dignity of teaching consists, first of all, in what it accomplishes; and the first condition of this accomplishment is that the teacher reach out (or down, as the case may be) to the learner's mind, and secure his hold on that. Mr. Austin might well have taken to heart some lines from a poem, the whole of which we are thankfully certain (on chronological grounds) he never read, —

> "Nor let him get so far before his age,
> He loses sight of it, as we have seen
> A locomotive breaking from its train;
> Be sure to keep the string within his hands,
> As kite-flyers do, and running raise mankind."

It seems to the writer, too, that amid all the praise lavished upon Austin's lectures since their tardy publication in 1863, the chief merit of his work has been lost sight of, and its aims entirely neglected. Certainly in the host of writers who have echoed his phrases, and accepted his theories as finalities, I cannot think of one who has set himself the task of carrying out Austin's main purpose, — the work to which all his theorizing was meant to be merely preparatory; though in fact it occupied him so long that in the final failure of the lectures as lectures, the principal work was left very incomplete. That work was intended to be, not an investigation of the sources of law, but a thorough analysis of the present contents of the law. He found the law expressed in loose and ambiguous terms, from which no exact reasoning could be drawn, because each of them was used to denote several different notions, or one notion the relation of which to others was undefined, or (still more frequently) several different aspects or stages of one notion or relation.

Austin aimed at a more accurate definition of legal terms, but this was by no means all. He rightly valued legal terms as the representatives of those legal conceptions in which the entire body of the common law, if not of all law, has its being, and he aimed at a clear and exhaustive inventory of these conceptions. His object was to so fix and define each term that it should have one precise meaning, and that it could be used (as a mathematical term might be) in the different members of a syllogism, or in any other steps of argument without the risk of a fallacy from varying senses of the same term. He knew that there could be no true science that had not such exact terms to reason with. They are the units of arithmetic, the points and lines of geometry; and any attempt at science without them would be like reckoning "big" and "little" pieces of chalk, or surveying a field by the paces of a dozen different individuals, measuring each from his own starting-point.

To use his own language as to this object (p. 34): "Having determined the province of jurisprudence, and distinguished general from particular jurisprudence, I shall analyze certain notions which meet us at every step, as we travel through the science of law." Of these leading notions, or these leading expressions, he then gives a list, beginning with "Person and Thing," ending with "Sanction," some thirty or more in all.

True, he includes this analysis of "notions which pervade the science of law" among the "merely prefatory, though necessary or inevitable matter," and states the main subject of his lectures as consisting in the consideration of law, its sources, purposes, etc. (p. 35). But to get the true force of this we must recall his theory. Had he recognized the common law as it really is, existent apart from enactment, and immersed in these very conceptions of fact which he was analyzing, he would have seen that this analysis was of the very body and essence of his subject. It be-

gins with Lect. XII. p. 353 (Vol. I.), and extends to p. 524, Lect. XXVII.; while much of the matter in Vol. II. might with equal or more propriety have been classed with it.

Indeed, the one great service that Austin rendered to English law was that in all his lectures, whatever their declared purpose, he set the example of this analysis, and was careful and discriminating himself in the use of legal terms. He cleared up a great many fallacies and confusions by his own efforts, and he did still more good by showing the way in which they and others like them were to be got rid of. If his example had only been followed in this respect, we might now have had a legal language which would diminish the time and labor spent in argument by at least one half.

He also gave back to English law some indispensable notions and distinctions that had originally belonged to it, but of which it had almost been deprived by neglect or the mistakes of his predecessors; for example, person and thing, *jus in rem*, *jus in personam*, etc., though even these he failed to bring into clear and intelligent connection with the "practical" rules of his contemporaries, so that they could reason from them.

And so plans of the greatest promise came to an untimely end, in disappointment, and what seemed to be hopeless failure. One more was added to the countless number of lives, capable of much utility to their fellows, that have been literally thrown away in England and America for the want of some provision enabling them to pursue their favorite science or art in the interests of humanity at large, and without reference to the immediate profit or glory of any school or sect. Mrs. Austin tells us that "it was from no unsteadiness of purpose, no shrinking from labor, no distaste to a life of comparative poverty and obscurity, that he abandoned the pursuit to which he had hoped to devote his life. If there had been found for him some quiet and humble nook in the wide and rich domains of learning, it is my firm conviction that he would have gone on, slowly, indeed, as the nature of his study and his own nature rendered inevitable, and with occasional interruptions from illness, but with unbroken tenacity and zeal to the end of his life."

Yet this was in a land where there are more endowments for educational purposes, more wealth given for the support of teachers and students, than in all Protestantism beside! It is melancholy to reflect that while Austin was starved out of his career there were half a dozen professorships and like places in the older universities, intended for exactly that purpose, held as acknowledged and shameless sinecures by men who could very well live without them. (The proof of this may be found in the Reports on Legal Education, already referred to.) But we of America must be very cautious how we rebuke the faults of our English cousins in this regard. While millions are lavished yearly, by public and private liberality, upon schools and colleges of every kind, how many places are there among them all where a man like Austin could find even "the quiet and humble nook" that would enable him to pursue his work free from anxiety as to tuition fees? Is there *one* such nook in the country, except it may be in the one department of Theology? and there would the most earnest pursuit of truth recommend him so well as a correct utterance of the particular shibboleth of his sect? Although Mr. Austin lived twenty-five years after the failure of the Temple lectures, he never resumed his task, and never completed the course in accordance with his original plan. He seems to have thrown aside the entire mass of manuscripts in disgust, and to have shrunk from even the effort of arranging its fragments. In 1832 he had published the first six lectures, under the title, "The Province of Jurisprudence Determined;" but when the small edition was exhausted after some years, he would neither permit it to be reprinted without change nor give the labor necessary to revise it to his own satisfaction. It might seem that he had dismissed the subject finally

and entirely from his mind, if it were not for the prospectus of a large work on "The Principles and Relations of Jurisprudence and Ethics," of which a single copy only remains to inform us that he cherished such a plan. But the plan was nothing more. The work never existed, unless it were *in nubibus*, or *in gremio legis*, or in some other like legal equivalent of nonentity. It never "fed the uses" of the students of Jurisprudence, or of the author's own aimless and obscure life. No life of such talent and promise ever seemed so utterly wasted and resultless as his down to the very time of his death, in 1860.

So it would have been but for one woman, — the wife who had loved and worshipped him for forty years of marriage with a devotion that all the failures of his career, all the world's neglect, all the poverty and privation of a wandering, unsuccessful life, could not shake. Mrs. Austin was the sister, we believe, of Isaac Taylor, of Norwich, and must have had a full measure of that rare spiritual insight, and appreciation of whatsoever things are lovely and of good report, that have marked his religious and philosophical writings. The Preface she prefixed to her husband's collected writings may seem, to a cool and critical judgment, a vast exaggeration of the powers and work embodied in those writings. But it will be read with delight as one of the most charming prose-elegies in the language, while there is a heart that can feel the exceeding beauty of a wife's unquestioning confidence and self-forgetting love. After quoting one of his letters before marriage in which, with what seems to have been his habitual morbid anxiety as to the future, he speaks of privations and disappointments before them, she says: —

"The person to whom such language as this was addressed has therefore as little right as she has inclination to complain of a destiny distinctly put before her and deliberately accepted. Nor has she ever been able to imagine one so consonant to her ambition, or so gratifying to her pride, as that which rendered her the sharer in his honorable poverty. I must be permitted to say this, that he may not be thought to have disappointed expectations he never raised, and that the effect of what I have to relate may not be enfeebled by the notion that it is the querulous expression of personal disappointment." (Preface, pp. iii, iv.)

In the year after Mr. Austin's death his widow reprinted the volume of 1832, and then with wonderful patience and assiduity labored upon the long-neglected manuscripts until every possible morsel of his lectures was reproduced in the edition of 1863. The result was a success so marked and brilliant for a book of the kind that the dead author in his most ambitious dreams could hardly have anticipated it. There has been nothing like it in the last century of English law. Many causes beside the real merit of Austin's writings contributed to the result. In the thirty years since the delivery of these lectures the time had been slowly ripening for a new advance in "the greatest and the slowest of all sciences;" and what John Austin in the prime of his youth spent all his strength on in vain came to pass, as it were, at a touch from the hand of a woman, who worked for his sake, not her own. But while all the world were reading and talking of the book and of him, she had rejoined him.

THE LECTURE ROOM.

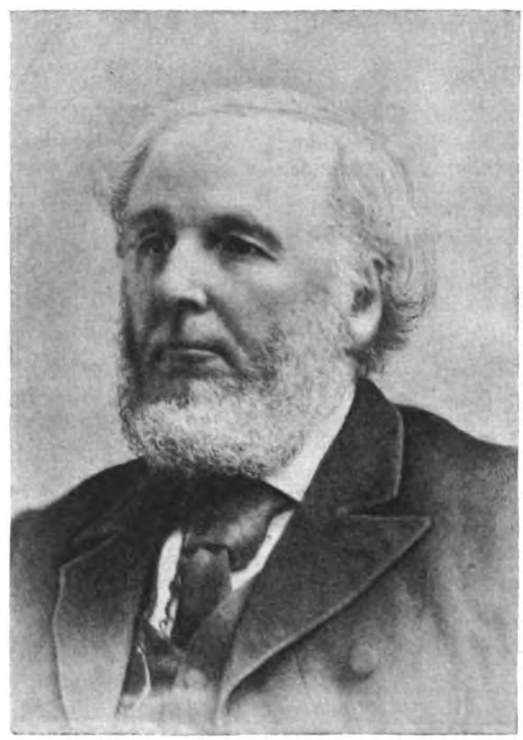
BOSTON UNIVERSITY LAW SCHOOL.

GEORGE R. SWASEY.

MOST of the law schools in America have not originated so much from a real public demand for them as from a desire upon the part of college authorities and their friends to add new departments to those already attached to their respective institutions. The literary atmosphere which surrounds institutions of learning very readily creates a belief that certain enlargements are needed in the sphere of instruction, but this conviction does not always reflect an educational necessity. As early as 1792 a law lectureship was created in the University of Pennsylvania and a lecturer appointed, but it was quite a number of years before any lectures were delivered by the incumbent. In 1781 a friend of Harvard devised quite a valuable piece of real estate to the college for the establishment of a professorship of law, but it was not till nearly thirty-five years afterwards that the proceeds of this devise were devoted to the specified purpose and a professorship created. In 1817 the Harvard Law School, as such, was established by the enactment by the Corporation of statutes which called for the maintenance of a distinctive school as distinguished from the lectureship which had existed for about three years. But the school was in advance of the times, and did not represent any public demand, and for more than ten years the attendance did not average more than seventeen students.

Perhaps the two most notable exceptions to the introductory statement may be found in the old law school at Litchfield, Conn., and in the school which is the subject of this article. The school at Litchfield, which was in a flourishing condition in the last century, seems to have been undertaken almost as a labor of love by its friends; and it is doubtful whether a professional school ever existed which had less of selfish motive upon the part of its officers or whose work was

more enthusiastically done. The lectures delivered in that little country town by Mr. Reeve and Mr. Gould, especially those of the latter, gave the school a national reputation. The lectures of Mr. Gould upon Pleading were subsequently published, and for a logical and clear treatment of the subject for students constitute the best book upon the subject ever written; the treatise is one of the classics of the law. The Law School of Boston University does not owe its origin either to a prevailing desire to add new departments to the University without reference to the state of professional life at the time, or, upon the other hand, to any one man devoted to the theory of the law and possessed with an ardent desire to impart a knowledge of its technicalities to young men. The school was the legitimate result of conditions which existed in Boston and its vicinity eighteen years ago. For many years Boston had been the commercial centre of New England, and, as a consequence, was becoming more and more with each year the centre of litigation and legal life. With the growth of population there had been a corresponding increase of lawyers and students. It has long been a settled rule in legal education that a thorough and systematic knowledge of the law can best be obtained by attendance upon lectures, but in the adoption of that principle and in discouraging office study alone, the profession went too far, and a necessary reaction took place; and a feeling that the best system embraced lectures in connection with the practical work of an office resulted. The long hours of weary office work, unrelieved by advice or assistance, through which so many students formerly plodded are now brightened by healthful suggestions of the lecturer which systematize and digest the knowledge obtained by the individual work of the student. But a theoretical knowledge of law obtained from school and text-book work alone leaves a young man at his graduation with no accurate practical knowledge, and throws him helpless among his elder brothers. This same evil result has been for a long time recognized in the medical profession, and has been remedied largely by opening to students in that profession the privileges of clinics, hospital practice, and charity work, so that a young physician starts in life with some practical qualification for his work. At the time the Boston Law School was established it was a fact that many students who would have liked to attend some law school were deterred from so doing by the fact that it rendered office work impracticable and did not supply the place of such office experience. It was further felt that the instruction at the nearest law school, namely, at Cambridge, was particularly technical and historical, and when completed necessitated an apprenticeship in some good attorney's office. In this situation, with young men at the very door of the Univer-



FRANCIS WHARTON.

sity anxious to avail themselves of the privilege of personal contact with the leading lawyers of Boston in their offices and at the same time to acquire a thorough knowledge of the science of law with a view to its application, the Trustees of the University felt that there was a public demand and necessity for the establishment of a law school as a department of the University, and that such an establishment would be consistent with and in furtherance of the purpose for which the University was founded.

Boston University had been created by the Commonwealth of Massachusetts, in 1869, under a very liberal charter, and it was the intention of its founders and friends to make it one of the most progressive institutions of the country. In accordance with that intention the statutes of the University provide for a group of colleges, with distinctive faculties and administrations. All departments of the University so organized as to presuppose on the part of the student a collegiate training or its equivalent are termed schools.

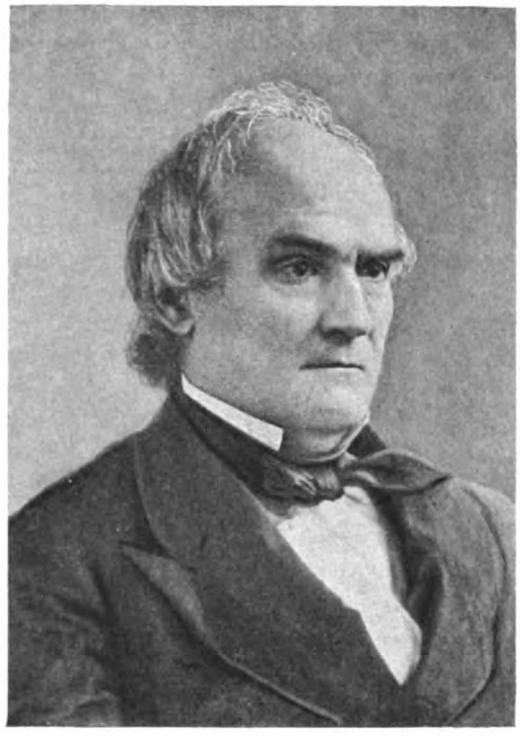
Almost immediately after the charter was granted, the College of Liberal Arts was opened (now located in a fine building on Somerset Street), and also the College of Music. The Massachusetts Agricultural College became the College of Agriculture.

Three professional schools have been established; namely, Schools of Law, Medicine, and Theology. These colleges and schools, together with the School of All Sciences (which under the statutes is for graduates only), make up the present composition of the University.

Upon the establishment of the Law School, in 1872, the Hon. George S. Hillard was chosen dean, and upon him fell largely the work of organization. This choice was a fortunate one. A Boston Latin School boy and a graduate of Harvard, his whole social and literary life had been passed in companionship with such men as Longfellow, Holmes, Everett, Winthrop, Bancroft, Webster, and Choate, and he had had at one time Charles Sumner as a legal associate. His wonderful oratorical power is familiar history; at the time of his death, in 1879, Longfellow said of him: "He was absolutely unrivalled in fluency of speech, in beauty of diction and suggestiveness of thought, and as to his power of memory." A wonderful tribute from a man of the conservative judgment and statement of Longfellow! It was natural that such a man should select for his associates none but those of the highest talent; and such was the fact. The lecturers whom he called around him embraced Francis Wharton, Judge Benjamin R. Curtis, Hon. Henry W. Paine, Judge Edmund H. Bennett, N. St. John Green, Esq., Judge Benjamin F. Thomas, Judge Dwight Foster, Hon. Charles Theodore Russell, Judge Otis P. Lord, Prof. Melville M. Bigelow, Hon. Edward L. Pierce, and Hon. Wm. B. Lawrence. Such a distinguished list of lecturers had probably never before been connected with any law school. Judge Curtis never delivered any lectures. His death took him away from this new field of labor, to which he had looked forward with much pleasure.

The school was opened in the building 18 Beacon Street (which at that time was also used by other departments of the University) with about sixty students, whose character at once justified the existence of the school. Among the students were many men of mature years and members of the bar, who had not been able to obtain that exact and systematic knowledge of the law which they had come to realize was demanded from them, and which they were now for the first time enabled to obtain without a sacrifice of the time which they had to devote to professional work. The rules of the school were informal, and the students were practically at liberty to attend the exercises or remain away as they saw fit; but the lectures were of such a high grade that the attendance was always large. The lecturers seem to have appreciated the fact that the students wanted practical information; and while the theories

of the law were ably expounded, the constant aim was to impart knowledge which would be of value in actual practice. Perhaps the chief strength of the school at this time was the unconscious influence which the lecturers exercised upon the students. The men who gave the instruction had a national reputation, and were actively engaged in the practice or administration of the law; they brought to the lecture hall the atmosphere of the court-room, and enthused the students by their personality. The force of such influences is hard to estimate, but every young man who has been brought into contact with them during his student days knows that they leave upon him as lasting an educational impress as any experience of his life. For many years prior to the war of the Rebellion, the State of Virginia had maintained a Military School at Lexington in that State. It was here that Stonewall Jackson, as he was afterwards known, lectured from 1852 to 1861, and it was from its halls that he went forth to battle for the cause of the South, never to re-enter them alive, but to be borne dead through them by weeping students. Here during the war came many wounded and disabled Confederate soldiers, who occupied their time in lecturing to the students. One of those students has recently told us what a great influence the presence of those gallant soldiers had. It educated the pupils alike in courage and discipline; and when in 1864 the South in her extremity called upon these young men to assist in checking the advance of the Federal force under Sigel, upon the field at Newmarket they bore noble evidence to the power which had been shaping them, and performed deeds of valor equal to those of the knights of old.



HENRY W. PAINE.

The second year of the School opened with a larger attendance than before. This was true of the third and fourth years also, during which latter year twenty-three different colleges were represented among the students. During the school year of 1874–1875, Mr. Hillard's health became so poor that Mr. N. St. John Green was selected to perform the executive part of Mr. Hillard's duties and to act as dean. Mr. Green also lectured upon Kent's Commentaries and upon Torts. He continued to act as dean until his death, which occurred after the close of the school year 1875–1876; from that time to the present Hon. Edmund H. Bennett has been the dean of the school. Mr. Green was a strong character; he was full of earnest endeavor to strengthen the school, and fond of his students. His weakness, if he had any, as an instructor, was his contempt for the maxim *stare decisis*. He loved to attack adjudications. He had a great fund of good nature, of which the students often availed themselves during his lectures by questions which were not always relevant to the point at issue, and which he always received pleasantly, and in fact

seemed to enjoy. His memory is most fittingly honored by the large portrait of him which hangs in the lecture hall of the school.

In 1872 the standard maintained by the law schools of the country was remarkably low. Even such an old school as that at Cambridge did not require any examination for admission, promotion, or graduation. Neither was there at that time any law school which had a three years' curriculum. At its inception the University School insisted upon examinations, and particular importance was attached to those for graduation. It also from the first had a three years' curriculum, the third year of which was, until 1876, a post-graduate course; but in that year it was added to the undergraduate course, and a three years' course of study, with minor exceptions, was made a prerequisite to graduation. Other law schools have since adopted similar provisions in all the above matters; but the Boston Law School was the leader in the movement, and is entitled to the credit of placing legal academic education upon a higher plane than had before been maintained.

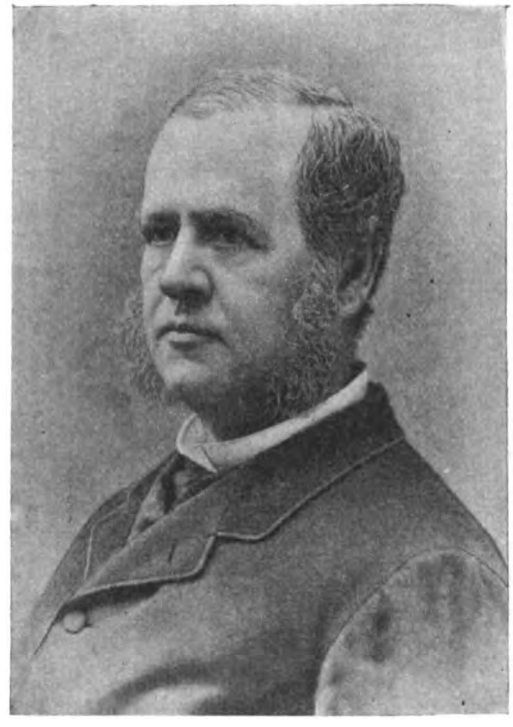
In 1875 the number of students had so increased that more accommodations were demanded, and the large hall in the Wesleyan building on Bromfield Street was secured for a lecture room. Subsequently the library and dean's office were removed to the same building, and other improvements made by the addition of recitation rooms and the fitting up of a large lecture hall which was capable of seating some one hundred and seventy-five persons. In 1884 the school was removed to its present location in the fine law-school building on Ashburton Place, and adjoining Jacob Sleeper Hall, a building used by other departments of the University.

The period during which the school was located in Bromfield Street was a most important one; it gave system and consistency to the school, and developed it into one of the best managed, equipped, and most thorough schools in the country.

Up to the time of the removal to Bromfield Street, and indeed for a year or two after that, the instruction consisted almost entirely of lectures, with such incidental discussion as would naturally arise from an occasional interruption and question. Moot courts had been held with considerable regularity, and had been conducted by some member of the faculty. But in the fall of 1877 the system of recitations was inaugurated. These recitations have become one of the greatest elements of strength in the school; and in this measure, as in others, the school has led all the other law schools in the country. It has given to this branch of instruction, as distinguished from instruction by lectures, a prominence nowhere else attained. It has been the practice of the faculty since this system was instituted to intrust this work to young men, and always to some one other than a lecturer. It is true that young men who have just finished their own school work do not know quite as much as their elders, but they are far better adapted to conduct recitations; they appreciate more quickly and more fully the difficulties and embarrassments of the pupil, and can therefore help him more. Two instructors were appointed in 1877, and their work was so satisfactory that in the fall of 1878 two more were added to the list; and from that time to the present the school has always had an able corps of such instructors. Time has but increased the satisfaction which attended the introduction of this system; and it has become the settled policy of the school to leave the discussion of particular adjudications, their reasonings and pleadings, to the recitation room; and for the lecturer to lead the students along the great lines of principle which pervade his subject, giving them the broad foundation for his statements and citations to the great leading cases.

It has of late years become quite common to study law in some of our schools without any such work in the lecture room, and to make it all the study of cases, from which

the general principles which shape the common law may be induced ; and it is insisted that to state those principles in the first instance to the pupil and then leave him to study the cases is to discourage such study, and to put the student in a position where he will take the principle for granted without induction from the decisions. The first objection is, in substance, that the student will take the statements of the lecturer for granted. After a constant experience of ten years as instructor and lecturer, the writer is decidedly of the opinion that the average law student takes nothing for granted ; he is a vitalized interrogation point; and if the statement of the lecturer is not a true and logical conclusion from the cases cited and the reasons given by the lecturer, he is pretty sure to be apprised of that fact by his students. If there is any force in the second objection, which is, that the statement of a principle prevents or at least discourages inductive reasoning, then the study of geometry is a mistake, in so far as it states a proposition and requires the student to prove it. Any one who has witnessed the recitations at the Boston Law School knows that the students study cases most critically, and often get the best of the instructors in the discussion of such cases ; he knows, also, that the students are not deterred from case study by the system which prevails, but that the whole class is alive with energy and curiosity.



DWIGHT FOSTER.

It was while the school was located in Bromfield Street that the moot courts were placed upon a more substantial basis. As finally arranged, the court consisted of three judges, one of whom was a member of the faculty, the other two being members of the senior class ; of a clerk, who was required to keep his records with legal accuracy ; of a sheriff and other court officers. Cases were prepared and assigned to the students for argument ; or the students were required to draw writs, to make the officers returns of service, and draw the pleadings necessary to bring the parties to an issue. All this work was made obligatory upon the members of the school ; they enjoyed the experience greatly, and some of the clearest and most logical arguments that the writer has ever heard have been delivered before these moot courts. Although the proceedings are always dignified, there is in the style of argument a freedom which perhaps would not be tolerated in some tribunals. A few years ago a case involving the law of libel was argued before the court, which had as its Chief Justice for that sitting a member of the faculty noted for his gravity and also for the works which he has given to the profession. One of the counsel in the case was an Ohio boy. He began his argument by most extravagant praise of the writings of the Chief Justice, and told in glowing language how their reputation had spread over the whole West; then he paused for a mo-

ment as if hesitating to make the statement, but finally said seriously: "But, your Honor, I am sorry to say that there is one thing which you must do to preserve that reputation; in the next edition of your 'Law of Torts,' you must modify your statements as to the law of privileged communications."

Out of these courts grew the preparation and publication of reports of the cases there argued, under the name of the "University Law Reports." These volumes are carefully made up by the official reporter, and contain statements of the cases, the briefs of counsel, and the opinion of the court. These books preserve the work of the students, induce greater care in the preparation of arguments, and make a pleasant history of one portion of the school work.

Another innovation during the Bromfield Street period was the adoption of the rule that each senior should write a thesis of merit as one of the qualifications for a degree. At about this time examinations for promotion began to receive more attention from the faculty, and were increased in thoroughness. The standard of these examinations is now placed so high that it would be difficult for a student to be promoted who did not have a good comprehension of the preceding year's studies.

Every school has some peculiarity of student life which distinguishes it from others; that of the Boston Law School has been and is to-day the literary fellowship of the students. There being no dormitories in which the undergraduates can live together, the students are scattered throughout the city, and opportunity is not given for that close social acquaintance which is afforded in some schools. But in spite of this fact there has grown up a habit of association for work which takes expression in the formation of law clubs, and in evening study at the room of some student or at the school library or in some other room of the school building. These meetings for study, discussion, and mutual questioning are a source of much profit to the students. There are also at present four law clubs in the school, which are made up of those who are elected from the various classes by the older members of the clubs.

Some of the lecturers of the school during the years thus far alluded to are no longer connected with it; some have died, and some have been lost through other causes beyond their own control or that of the school authorities. The Hon. Henry W. Paine, who for years lectured upon the law of Real Property, is no longer engaged in active work. Mr. Paine began the practice of law in Maine, where he acquired a large practice and a fine reputation. He removed to Boston when in his prime, and there he soon took his proper place at the head of the profession. He went into court a great deal, but the most extensive part of his practice latterly was the writing of opinions upon cases which were sent to him from all parts of the country. There is no member of the Suffolk Bar of whom more anecdotes are told than of Mr. Paine. For the Supreme Court of Massachusetts as it was at one time constituted he had not the greatest respect, in its official capacity; and when asked his opinion of the wisdom of appointing a certain person of acknowledged ability to that bench, he replied, "It would be like letting a ray of light into a cave of bats." Once, when arguing a case before the court, he made a statement of the law as he understood it to be. He was interrupted by one of the judges with the remark, "Mr. Paine, you know that is not law." "It was law until your Honor spoke," replied Mr. Paine. After arguing quite a celebrated case before the full court, Mr. Paine went abroad for a vacation, and while in England he received a letter from a friend which stated that the exceptions had been overruled. In his letter of reply, Mr. Paine said, "I have been passing the day in a little English village, where there is a monument to one of England's kings who was noted for the celerity with which he executed incompetent judges; what a harvest would that king reap were

he to-day king in Massachusetts!" Mr. Paine was among the first lecturers at the school, and retired in 1884 on account of poor health. Those who enjoyed the privilege of hearing his lectures will not soon forget them or the manner of their delivery. His subject was not an easy one to present in a clear or attractive form, but Mr. Paine succeeded in doing both. Up to the last year of his lectures he never used notes, manuscript, or text-book, but, coming into the hall promptly at his assigned time, he would at once begin the delivery of his lecture, and for an hour would speak without the slightest hesitation upon the most intricate topics in a manner which showed his entire familiarity with the subject and his wonderful memory. He rarely cited cases, and this peculiarity rendered it necessary for the instructor in the recitation room to supplement the lectures with more or less citations.

MELVILLE M. BIGELOW.

Judge Benjamin F. Thomas, whose death in September, 1878, deprived the school of his valuable services, had lectured upon Wills from the first. He was born in Boston in 1813, and entered Brown University when a little more than thirteen years of age. While in college he showed great brilliancy and intellectual strength, and in his discussions in the class-room with the celebrated Dr. Wayland he is said to have astonished his instructor by his wonderful power. In 1853, when less than forty years of age, he was appointed to the Supreme Bench of Massachusetts, which position he held until 1859. Though on the bench less than six years, he gained a reputation as a jurist of the highest character. After his retirement from the bench he again devoted himself to the practice of his profession, in which he gained renewed successes and the respect and love of all his brethren at the bar. He was very fond of young men, and was glad to be brought into contact with them by his work at the school. His hour was always anticipated by the students with pleasure; he brought sunshine with him, and seemed to regard the students as his companions and equals. He threw his whole soul into his lecture, and enlivened it with many anecdotes and practical suggestions from his own large experience. He was in the habit of closing his course each year with a brief exhortation by way of encouragement to prepare the students for the disappointments which he knew would attend their early days of practice. The last words the writer ever heard him utter were at the close of his lectures for 1877, and were facetiously given as an epitome of his advice to his hearers: "*Charge*, Chester, CHARGE! On, Stanley, on!"

Another lecturer whose services have been lost to the school is the Hon. John Lowell, for many years Judge of the United States District Court for Massachusetts, and afterwards made Judge of the First Circuit. His subject was Bankruptcy; but when the United States Bankrupt Law was repealed

his lectures were necessarily suspended. Judge Lowell has a wonderfully accurate legal mind, and his lectures resembled his written opinions in that they were models of exact and clear statement which expressed important things and omitted trivial matters. He had a rather curious way of giving citations, and one which could hardly be commended. After the discussion of some topic, he was quite likely to say, "This principle was first laid down in Jones *v.* Smith, somewhere in the 10th or 12th Wallace, I am not sure which, but you can find it by looking in the index of cases."

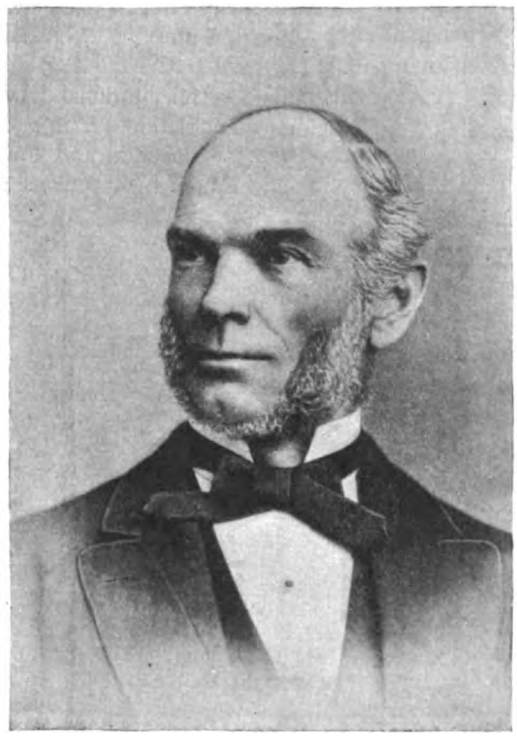
In the fall of 1883 Judge Dwight Foster, who had been the lecturer on Equity from the opening of the school, was compelled to give up his work, and on April 18, 1884, his death deprived the school of one of its ablest lecturers. Mr. Foster was born in Worcester in 1828, and was graduated from Yale College in 1848 at the head of his class. In 1860, when but thirty-two years old, he was elected Attorney-General of Massachusetts, and held the office four years. Those were trying times for persons in authority; but that Mr. Foster was equal to the situation was universally conceded, and upon his retirement from the office Governor Andrew addressed a letter to him which contained the following language: "The separation has been looked forward to by me with keen regret, and I feel no less its consummation. On your serenity, clearness, firmness, and intelligent judgment both as a lawyer and friend, I have relied with the utmost confidence. Your advice, while always healing and pacific, has been always true-headed and manly. The more public professional efforts you have made, as well as the general conduct of your department, have all added new honors to an office heretofore filled by able men, some of them of unsurpassed capacity and fame." In 1866 Governor Bullock appointed Mr. Foster an Associate Justice of the Supreme Court, which position he resigned three years later and returned to the practice of his profession. Judge Foster's practice at the bar and his services on the bench had given him a reputation as one of the first equity lawyers in Massachusetts, and it was this fact which made his selection by Mr. Hillard to lecture upon that subject eminently proper.

Francis Wharton, LL.D., another of the original lecturers, was constantly connected with the school as lecturer on the Conflict of Laws up to the time of his death, which occurred Feb. 21, 1889. He was born in 1821, and was graduated from Yale College in 1839. He was professor of English Literature in Kenyon College from 1856 to 1863, when he was ordained a minister of the Episcopal Church, and made rector of St. Paul's Church, Brookline. He was at one time connected with the Theological School at Cambridge. He was an author of legal works whose reputation was world-wide. Among them were "Treatise on Criminal Law," "The Law of Agency and Agents," "Treatise on the Law of Homicide," "Treatise on the Conflict of Laws," and "Standard Digest of International Law." He was a joint writer of a "Treatise on Medical Jurisprudence."

In 1884 the school was removed from Bromfield Street to 10 Ashburton Place. This building had been formerly the residence of Mr. Augustus H. Fiske, who for many years was a very prominent lawyer in Boston with an extensive practice. The structure was entirely remodelled. The basement is devoted to lounging and dressing rooms. The first floor is occupied by the Dean's office, one room of the Library, and a large Lecture Hall, with a seating capacity of some two hundred. The second floor is given up entirely to the Library, and the third floor has two large recitation rooms, which are also used by the students for their law club meetings. There are also rooms on the fourth floor which are used by the law clubs.

If the Boston Law School is a success, it owes that result to its present Dean, the Hon. Edmund H. Bennett, more than to any other man. Mr. Bennett was born in Man-

chester, Vt., in 1824, and was graduated from the University of Vermont in 1843. He studied law with his father, who was for many years an Associate Justice of the Supreme Court of Vermont. The professional career of Mr. Bennett began at Taunton, Mass., whither he removed in 1848. He was mayor of the city in 1865, 1866, 1867; and in 1858 he was appointed Judge of Probate for Bristol County, and held the position until 1883, at which time he resigned. During the years 1870, 1871, and 1872 he was a lecturer at the Harvard Law School, and was made a lecturer at the Boston Law School in 1872. His practice has always been a very large one, and he has written, edited, or assisted in editing more than a hundred volumes of legal works. Among them are a "Digest of Massachusetts Reports," "Bennett and Heard's Leading Criminal Cases," "Bennett's Fire Insurance Cases," and American editions of "Goddard on Easements," "Benjamin on Sales," and "Indermaur on the Common Law." He has been for several years one of the editors of the "American Law Register." Judge Bennett has perhaps been able to accomplish this great amount of work by reason of his habit of untiring industry. He is never idle, and has great facility in passing from one class of work to another. He is a model lecturer, and excels in clearness of statement and in a power of leaving an unconfused impression upon the mind of a student. But perhaps his peculiar strength is as an executive officer, and in the influence which he exercises over the students. He has a wonderful faculty of controlling young men. During his long service as dean it is believed that there has not been an instance of insubordination or resistance to authority, or any dissatisfaction with his decisions in the administration of the school. It would be hard to overestimate his contribution to the success of the institution.



EDMUND H. BENNETT.

There is another man who has been a lecturer at the school from its infancy whose labors should not be forgotten in this brief sketch, and that is Melville M. Bigelow, Ph.D. Mr. Bigelow now lectures upon Torts, Bills and Notes, and Insurance. He is known throughout the United States and England as the author of various legal works, among them being his "Estoppel," "Fraud," "Equity," "Torts," and "Leading Cases on Torts." Some two years since, his work on "Torts" was adopted as a text-book by the University of Cambridge in England; and at the request of the University, Mr. Bigelow has prepared an English edition, which the University has published for its own use. This certainly is an honor conferred upon but few American writers. Mr. Bigelow is without question one of the finest law lecturers in America. He has a peculiar power of analysis, which he uses with great discretion in his lectures. He treats his subjects in the most exhaustive manner, but through all his discussion holds

himself to vital principles, and impresses them upon the minds of his hearers.

The corps of lecturers at the school at present embraces the Dean, who lectures upon Agency, Contracts, Criminal Law, Partnerships, and Wills; Mr. Bigelow, upon Bills and Notes, Insurance, and Torts; Judge Benjamin R. Curtis, Jurisdiction and Practice of United States Courts; Mr. Frank Goodwin, Real Property; William G. Hammond, LL.D., the History of the Common Law; Hon. Elias Merwin, Equity Jurisprudence and Equity Pleading; John Ordronaux, LL.D., Medical Jurisprudence and Constitutional Legislation; Edward J. Phelps, LL.D., Constitutional Law; James Schouler, Esq., Bailments and Domestic Relations; Hon. Charles Theodore Russell, Admiralty and Shipping, Evidence, Pleading and Practice, and Parliamentary Law; Josiah H. Benton, Jr., Esq., Law of Railroads; Hon. Uriel H. Crocker, Massachusetts Conveyancing; Simon G. Croswell, Esq., Landlord and Tenant; James E. Maynadier, Esq., Patent Law; Charles Theodore Russell, Jr., Esq., Law of Elections. There are now six instructors in the school.

The course of study, subject to slight variations from year to year, is as follows: —

FIRST YEAR. Agency (*Required*). — Contracts (*Required*). — Criminal Law (*Required*). — Elocution and Forensic Oratory (*Elective*). — History of the Common Law (*Elective*). — Sales (*Required*). — Torts (*Required*).

SECOND YEAR. Review of first year. — Bailments (*Required*). — Bills and Notes (*Required*). — Domestic Relations (*Elective*). — Elocution and Forensic Oratory (*Elective*). — Insurance (*Elective*). — Landlord and Tenant (*Required*). — Massachusetts Conveyancing (*Elective*). — Partnership (*Required*). — Real Property (*Required*).

THIRD YEAR. Admiralty, &c. (*Elective*). — Chartered Rights (*Elective*). — Conflict of Laws (*Elective*). — Constitutional Law (*Elective*). — Constitutional Legislation (*Elective*). — Corporations (*Elective*). — Elocution and Forensic Oratory (*Elective*). — Equity Jurisprudence; Equity Pleading and Practice (*Required*). — Evidence (*Required*). — Jurisdiction and Practice of the United States Courts (*Elective*). — Law of Railroads (*Elective*). — Medical Jurisprudence (*Elective*). — Parliamentary Law (*Elective*). — Patent Law (*Elective*). — Pleading and Practice at Common Law (*Required*), and under Massachusetts Practice (*Elective*). — Roman Law (*Elective*). — Wills (*Elective*).

As evidence of the work done in the school, the following table of lectures and recitations, 1887–1888, is presented: —

Lecturer.	Subject.	Number of Lectures.	To Whom Delivered.	Number in Class.	Maximum Attendance.	Minimum Attendance.	Average Attendance.	(R.) Required. (E.) Elective.	Average Attendance at Recitations on this Subject.	Number of Recitations.
E. H. & S. C. Bennett.	Agency.	12	Middle Year. Jrs	70	38	32	35	R.	22	10
James Schouler, Esq.	Bailments.	23	Middle Year.	34	51	34	42	E.	No recitations.	
M. M. Bigelow, Esq.	Bills and Notes.	37	Middle Year.	34	55	24	42	R.	41	29
Dr. John Ordronaux.	Constitutional Legislation.	9	Entire School.	177	99	39	68	E.	No recitations.	
The Dean.	Contracts.	59	Junior.	36	86	47	70	R.	56	36
The Dean.	Criminal Law.	21	Junior.	36	90	55	71	R.	28	6
Prof. Chas. T. Russell.	Evidence.	21	Senior	66	46	33	38	R.	33	33
Prof. E. Merwin.	Equity.	50	Senior.	66	59	47	51	R.	28	47
Chas. F. Jenney, Esq.	Massachusetts Practice.	11	Senior.	66	40	26	34	E.	No recitations.	
Uriel H. Crocker, Esq.	Mass. Conveyancing.	10	Middle Year.	34	30	15	24	E.	No recitations.	
Dr. J. Ordronaux.	Medical Jurisprudence.	9	Entire School.	177	82	58	69	E.	No recitations.	
Prof. Russell.	Pleading.	20	Senior.	66	56	45	51	R.	34	29
Frank Goodwin, Esq.	Real Property.	64	Middle Year.	34	69	17	41	R.	38	53
George R. Swasey, Esq.	Sales.	16	Junior.	36	76	53	65	R.	41	10
M. M. Bigelow, Esq.	Torts.	51	Junior.	36	74	58	66	R.	36	45
B. R. Curtis.	U. S. Courts Jurisdiction.	14	Senior.	66	52	36	46	E.	No recitations	
J. H. Benton, Jr., Esq.	Railroad Laws.	11	Senior.	66	42	18	36	R	No recitations.	

The Boston Law School is a young institution, but already it numbers among its graduates men who have taken a foremost position in their profession in different parts of the country, those who have taken high rank in the politics of their respective States and have filled most honorable positions, and authors of extended reputation. If the later years of the school shall prove to be as successful, in the highest sense of the term, as those which have already passed, its friends will be able to look back over its history as a complete vindication of its existence and its methods of instruction.

SMITH v. MARRABLE.

THE FAMOUS —— CASE. (11 M. & W. 5. — Temp. 1843.)

By John Popplestone.

[*It is an implied condition in the letting of a furnished house that it shall be reasonably fit for habitation.*]

BRUNSWICK PLACE is in Brighton;
Leads to Brunswick Square;
And Brunswick Square looks right on
To the sea that 's there.

The Marrables went to Brunswick Place;
Sir Thomas the Knight, in the year of grace
Eighteen hundred and forty-two,
Wrote: "Yes, I think the house will do;
I 'll take it furnished for a space.
We 'll come at once; the bargain fix, —
I 'll take it for five weeks or six."

But when begins my ditty?
Six and forty years ago,
To see the Marrables bitten so
By insects, was a pity.
——s!
They crawled in jugs, they filled the mugs,
Lay hidden in the folds of rugs,
Worried her ladyship's favorite pugs
Till the beasts had never a moment's ease.
Some were slow as lazy slugs,
And some were as light and quick as fleas.

In beds and chairs they sheltered snug,
Into carpets and hassocks dug.
In vain was every patent drug;
Their safe retreats they still would hug.
Powder, pastes, — all, all were tried,
That chemists or the stores supplied;
A hundred came for one that died.
The cook complained, the children cried,
The nurse gave notice; and beside
The bedrooms were the worst infested,
And no one slept or in them rested,
Save one where they 'd not penetrated;
The rest were thickly populated.
There was the *cimex lectularius*,
And all the *cimicidæ* various;
Some of all the kinds there are
In genus *hepteroptera*.
There were black ones, red ones, brown and yellow,
Young and frisky, old and mellow;
Of all ages, kinds, and stations,
And each had hundreds of relations!
Sir Thomas said, with a shuddering shrug,
There were some of every kind of ——;
In fact, you 'll see, if you 've caught my meaning,
'T was worse than a severe spring cleaning.
None suffered so in all the land; it
Was worse than the vilest Spanish bandit.
'T was plain they could n't, would n't stand it.
Three wretched days had o'er them sped,
But ere the fourth was gone they fled.
Sent a note to the landlord, that within he
Would find the key, and each golden guinea —
'T was eight in all — that for a week
Was due. But Smith
Went off to seek
Sir Thomas. Found him; said, forthwith:
"Go, if on going you are bent, sir;
But first, if you please, my five weeks' rent, sir."
"Five weeks!" Sir Thomas, angry, said;
"Why, man, if we stayed on here five
Days we 'd be consumed alive,

And on the sixth be eaten dead!
Worse impudence I never heard.
The thing 's, as Euclid said, absurd.
If more you want, why, you must sue, sir."

Three months, in pleading, by them flew, sir;
And then the judges, in their ermine,
Sat, grave, to hear, and then determine
If for a furnished house, where vermin
Made life a burden quite unbearable
To Sir Thomas and every other Marrable,
Full rent was due. And Smith contended
The law implied no warranty;
A house, when let, from fault was free,
Or that 't was fit for habitation;
Or suitable for occupation.
And that when let his duty ended,
Save to collect the rent. And then did
Sir Thomas answer: "Yes, that 's true
Of houses let unfurnished. You
Have let yours furnished; which implies
The house you let is fit to live in:
That 's plain to every man with eyes.
That 's all the point. And if you give in,
It follows that who lets may flit
Whene'er he finds the place unfit —
From vermin, or unpleasant st–nks,
Arising from defective sinks,
Or what not — for him to reside in."

That day Smith was a luckless wight.
The judges took the view the knight
Had urged, — that warranty 's implied in
A furnished house that it 's fit to abide in.

Smith caught the five express, repentant;
And judgment followed for defendant.

ANCIENT LEGAL EDUCATION IN THE INNS OF COURT.

SIR EDWARD COKE, in the preface to the second part of his Institutes, has these words: "After the making of Magna Charta and the Charta de Foresta, divers learned men in the laws, that I may use the words of the record, kept schools of the law in the City of London, and taught such as resorted to them the laws of the realm." He then quotes the writ of King Henry III. in the nineteenth year of his reign, by which he commanded the mayor and sheriffs of London to cause proclamation to be made throughout it, that no one who kept Schools of Laws in the same city should thenceforth teach them there; and that, if there should be any one keeping schools of this kind, they were without delay to make him cease. "But this writ," he says, "took no better effect than it deserved; for evil counsel being removed from the King, he in the next year . . . did by his Charter, under his great seal, confirm both Magna Charta and Charta de Foresta, he being then twenty-nine years old."

Sir Edward Coke seems, therefore, to consider the above-mentioned writ as intended to attack the memory of Magna Charta and the Charter of the Forest, by silencing, in an arbitrary and summary manner, legal teachers who based upon those documents instructions in the law of England.

Sir William Blackstone, however, treats this writ as intended, by the suppression of unauthorized teachers, to sanction a new legal university arising on the Westminster side of the city, and which was ultimately constituted of the several Inns of Court and Inns of Chancery.

It may be doubted whether the opinion that the lawyers were so early collected together will bear examination. Of Lincoln's Inn, Dugdale mentions a tradition, as still current among the ancients, that the professors of the law were brought in to settle in that place by Henry, Earl of Lincoln, "about the beginning of King Edward II.'s time." This was rather more than seventy years after the nineteenth of Henry III. There is an account of Gray's Inn (formerly the property of the Lords Gray of Wilton) as having been held by a lease from them by students of the law in the time of King Edward III.; and the Temple is said to have been conveyed by the Knights Hospitallers to a society of lawyers during the reign of the same king. It therefore seems reasonable to doubt that at the time when Henry III.'s writ was put forth, any legal university existed.

Not much, however, is known about the Inns of Court and Chancery until the time of Henry VI. Sir John Fortescue, a great and famous lawyer, and chief justice of the King's bench at that time, has left us, in his little panegyric upon the laws of England, a sketch of the inns as they then existed. He says that there were then belonging to the lawyers' university four Inns of Court, each containing two hundred persons, and ten Inns of Chancery, and in each of them one hundred persons.

Most of the students in the Inns of Chancery were young, learning the first principles of the law; and as they advanced in learning and grew to riper years, they were admitted into the Inns of Court. In both the Inns of Chancery and Court, not only law, but also lighter accomplishments, were cultivated, — singing among the number. There, too, in the intervals of their study of the law, they appear to have given time largely to the study of the Scriptures and of chronicles; and the sons of persons of quality were placed there for the sake of general education, though their fathers did

not design them to live in the practice of the profession.

Passing over the long interval from Sir John Fortescue's time to that of Queen Elizabeth, we find Sir Edward Coke giving a fuller and very laudatory account of the inns: —

"Now for the degrees of law, as there bee in the Universities of Cambridge and Oxforde divers degrees, as Generall Sophisters, Bachellors, Masters, Doctors, of whom bee chosen men for Eminent and judiciall places, both in the Church and Ecclesiasticall Courts; so in the Profession of the Lawe, there are Mootemen, (which are those that argue readers cases in houses of Chauncerie, both in Termes and graund vacations.) Of Mootemen, after eight years' study or thereabouts, are chosen utter-barristers; of utter-barristers, after they have beene of that degree twelve yeares at the least, are chosen benchers, or auncients, of which one that is of the puisne sort reades yearly in Summer vacation, and is called a single reader; and one of the auncients that have formerly read, reades in Lent vacation, and is called a double reader, and commonly it is between his first and second reading about nine or tenne years. And out of these the King makes choyse of his attorney and sollicitor-generall, his attorney of the Court of wardes and liveries, and attorney of the duchy: and of these readers are serjeants elected by the King, and are by the King's writ called ad statum et gradum servientis ad legem: and out of these the King electeth one, two, or three, as pleaseth him, to be his serjeants, which are called King's Serjeants; of serjeants are by the King also constituted the honorable and reverend judges and sages of the law. . . .

"For the young student which most commonly cometh from one of the Universities, for his entrance or beginning were first instituted and erected eight houses of Chauncerie, to learne there the elements of the law: that is to say, Clifforde's Inne, Lyon's Inne, Clement's Inne, Barnard's Inne, Staple Inne, Furnivall's Inne, Davis' Inne, and New Inne: and each of these houses consists of fortie or thereabouts. For the readers, utter-barristers, mootemen, and inferiour students, are foure famous and renowned colleges or houses of Court, called the Inner Temple, to which the first three houses of chauncerie appertain; Graie's Inne, to which the next two belong; Lincolne's Inne, which enjoyeth the last two saving one; and the Middle Temple which hath onely the last: each of the houses of Court consist of readers above twentie, of utter barristers above thrise so many, of young gentlemen about the number of eight or nine score, who there spend their time in study of law, and in commendable exercises fit for gentlemen: the judges of the law and serjeants, being commonly above the number of twentie, are equally distinguished into two higher and more eminent houses, called Serjeant's Inne: all these are not farre distant one from another, and altogether doe make the most famous universitie for profession of law onely, or of any one humane science, that is in the world."

From other sources additional details may be learned which give a tolerably full picture of the manner of life and system of instruction in the inns.

The year was divided into the term times, the learning or grand vacations, and the dead or mean vacation. There were two learning or grand vacations, — the one in Lent, the other at the beginning of August. Each continued for three weeks and three days. Two readers were appointed for the exposition to the members of their house of some statute during these vacations. In the Middle Temple the junior (who held his reading in the summer vacation) was a barrister just about to be received as a bencher. The other reader was a bencher of some standing, and his time of expounding was in the Lent vacation.

At these times the reader's exposition of the statute was canvassed and impugned by the elder part of the barristers of the house; and sometimes they were divided, some of them attacking and others defending it; and afterwards the reader replied in confirmation of his opinion. It appears that the serjeants and judges were occasionally present at these exercises. They are said to have occupied three or four hours a day, though perhaps on alternate days; and a single statute formed the groundwork for the reading of a whole vacation. The reader mean-

while held, according to the usage of those days, a sumptuous feast in the Hall, at which noblemen, judges, and officers of State were entertained, and sometimes the King himself.

The evenings of the grand vacations were occupied with the exercise called mooting, when, according to one of the old accounts, "before three of the elders or benchers at the leste, is pleadyd and declared in homely law French, by such as are young lerners, some doubtfull matter or question in the law; which after an utter-barrister doth reherse, and doth argue and reason to it in the law Frenche; and after him another utter-barrister doth reason in the contrary part, in law Frenche also; and then do the three benchers declare their myndes in English." These were the exercises of the grand vacations; but Stowe mentions that others similar were performed in term time, arguing and debating cases after dinner, and mooting after supper, in the same manner as in the vacation.

In the mean vacations the same system was carried on, with this difference, that the junior members of the society were those engaged. The utter-barristers presided in the place of the benchers, and "the young men that be no utter-barristers" argued before them in law French.

An additional plan was adopted in the Middle Temple among the students themselves. After dinner and supper, they sat together by three in a company, and, one of the three putting forth some doubtful question, they argued upon it in English, and at last the propounder of the question gave his opinion, and showed the judgment of the book from which the point was taken; "and," according to the old authority where this custom is mentioned, "this do the students observe every day throughout the year, except festivall days."

As indicating the attention given to the studies of the inns, and the length of the times of probation, it may be well to quote a few examples from codes of rules made for all the societies during the reign of Queen Elizabeth, Philip and Mary, and James the First.

Thus, in the time of Philip and Mary,— "that the mote cases in every of the houses of Court, for the vacation time, do not contain above two points argumentable; and that the same cases be brought in pleading, and the puisne of the bench to recite the whole pleading, according to the ancient orders and custome; and that none of the bench shall argue above two points; and if he do, then the reader shall shew him that he breaketh the common order, and so reform it."

In the reign of Elizabeth,— "that none be called to the barr, but such as be of convenient continuance, and have used the exercises of the house, as in arguing cases, putting at bolts, and keeping of the moots and exercises there three years at least, before they be called. . . . That in the moots both in the houses of Courts and Chancery, pleadings be rehearsed and used, as hath been in former times past used; and thereupon to go to the case, but not without the pleading drawn, pleaded, and recited; and that no case in any inne of Chancery do contain above three points or questions at the most, and that the cases be but short."

And in James I.'s time there was an order by which, after a recital that the "over early and hasty practice of utter-barristers doth make them less grounded and sufficient, whereby the law may be disgraced and the clyent prejudiced," it was provided "that, for the time to come, no utter barrister begin to practice publicly at any bar at Westminster until he hath been three years at the barr; except such utter-barristers that have been readers in some houses of Chancery."

The festivities at the inns formed characteristic parts of their systems; and some curious regulations were made in relation to these. The following are extracted from a series stated to have been made at the Inner

Temple in the 7 Car. I. for keeping good rule in Christmas time: —

"That no play be continued within the house upon any Saturday night, or upon Christmas Eve at night, after twelve of the clock. . . .

"That there be not any going abroad, out of the circuit of this house, or without any of the gates, by any lord or other gentleman, to break open any house or chamber, or to take anything in the name of rent, or a distress. . . .

"That, for preventing of quarrells within the house, and that general scandal and obloquie which the house hath heretofore incurred in time of Christmas, there shall no gentleman of this house side with any person whatsoever that shall offer to disturb the peace and quiet of the house; but shall indeavor to punish them, according to the old custome of the house; and that no strangers be suffered to come within the Hall, but such as shall appear and seem to be of good sort and fashion."

The accounts of the observances at the special feasts are very curious, and are well worth reading as illustrations of the rigid and stately manners of ancient times, but they are of too great length to be quoted here.

On the whole, the system anciently in use at the inns is entitled to more respect than it often receives. It was obviously suited for the special object for which it was designed, — the cultivation of a learned acquaintance with the laws, and readiness and skill in applying them. There is something pleasing in the co-operation of the different grades of the societies in their common occupation. Benchers and readers, utter and inner barristers, and students appear to have been combined in the pursuit of legal knowledge, not merely when points arose in actual business, but as a matter of study and learning; and while the distinctions of rank were maintained, the abilities of the subordinate classes had scope in more independent exercises than those of mere pupils. The inner-barristers had to argue as well as to learn; the utter-barristers, to preside and teach as well as argue. The gregarious and social character of life in the inns was likely to give a zest to the pursuits of the young lawyers, and to nourish a spirit of good fellowship among them. It is also deserving of notice that there were considerable periods of probation before the students rose to the successive ranks of the profession.

A quaint notice is given in one of the old books of the external difficulties amidst which the young Templars had formerly to attain to erudition, and we conclude by quoting it. It is said of the Middle Temple:

"There be none there that be compelled to lerne, and they that are learners, for the most part have their studies and places of learning so sett that they are much troubled with the noyse of walkying and communication of them that be no learners; and in the term time they are so unquieted by clyents and servants of clyents that resort to such as are attornies and practysers, that the students may as quietly study in the open streets as in their studies. . . .

"Item, they have no place to walk in and talk and confer their learnings, but in the church; which place, all the term times, hath in it no more quietness than the pervyse of Pawles, by occasion of the confluence and concourse of such as are suters in the law."

CAUSES CÉLÈBRES.

II.

LESURQUES.

[1796.]

IT is related that at the time Venice was at the height of its power a Venetian nobleman was struck down, in the night, by the blow of a stiletto. The crime was committed a few steps from the house of a baker. Suspicions were directed against this man, who was noted for his violent and quarrelsome temper. A search was made in his dwelling, and a sheath was discovered which perfectly fitted the stiletto found in the wound. This fact was conclusive to the judges; the baker was condemned to death, and was executed after undergoing the most frightful tortures.

Shortly afterward the real assassin was arrested, and confessed his crime. The innocence of the unfortunate baker was recognized; but the innocence of Justice could be established only by a striking reparation. Every one comprehended that, — the Doge, the Council of Ten, the State Inquisitors, the Tribunal of Forty. All these great powers, composed exclusively of nobles, raised their voices acknowledging their recognition of the error, as a reparation for the involuntary injustice which had been committed. The Republic declared itself the guardian of the poor man's children; religion effaced his pretended crime by prayers, and a perpetual mass was ordered for the repose of his soul; the judges who had had the misfortune to pronounce his sentence went into mourning; and in the great hall where criminal trials were heard were inscribed these words, — a continual warning for all future judges, — RICORDATEVI DEL POVERO FORNAIO (*Remember the poor baker*).

But now, when a doubt arises against human justice, when an accusation is made against the law and its interpreters, it is not the name of the poor baker which is invoked, it is the name of LESURQUES. The whole world believes in the innocence of this man; and yet no reparation or attempt at reparation has ever been made in his case.

. . . . . .

On the 28th of April, 1796, early in the morning, some peasants walking near the Pont de Pouilly, in the Commune de Vert, saw at a place called Le Closeau, near the Fontaine-Ronde, a carriage which had apparently been abandonded at the entrance to a little wood. This carriage they recognized as that which served to carry the mail between Paris and Lyons. One of the two horses was still attached to it; the other was missing. A few steps from the carriage lay the dead body of the postilion. Around this body bloody papers were scattered upon the grass. Farther along, near the Pont de Pouilly, another dead body was found; it was that of the courier of the mail.

The peasants hastened to Lieursaint, the nearest town, and related their discovery. The postmaster at this place, the citizen Duclos, was already upon his steps, uneasy at not hearing from his two horses and the postilion whom he had sent with the mail to Melun the evening before. At the first words of the peasants he leaped upon a horse, which he had ready, intending to go to Melun for news of the missing ones.

The place designated by the peasants as the scene of the crime was situated about three quarters of a league from Lieursaint and about a hundred steps from the road to Lyons, between the two inns of the Fontaine-Ronde and the Commissaire-Général. In less than ten minutes Duclos arrived at Le Closeau, and found there the abandoned carriage, one of his two horses, and the dead bodies of the postilion Etienne Audebert and that of the Courier Excoffon.

Duclos at once sent a postilion to Melun to advise the public prosecutor of that town of the crime. This officer and the *juge de paix* of Melun at once repaired to the place.

The spectacle which met their eyes was horrible. The body of the unfortunate postilion was frightfully mutilated; the head had been split by the blow of a sabre, the breast was pierced with three enormous wounds, and one hand had been severed from the arm. Around this first victim the trodden grass still preserved the marks of numerous footprints, and there were evidences of a vigorous resistance.

At a distance of a few steps an overcoat was found, gray with a blue border, which had not belonged to either the postilion or the courier. Near the coat was a broken sabre and its scabbard. The blade, stained with blood, had upon one side this inscription, "*L'honneur me conduit*," and upon the other, "*Pour le salut de ma patrie.*" They found also, in the grass, another scabbard and the sheath of a knife, as well as a spur with silver links tied together with coarse thread.

The magistrates then went toward the Pont du Pouilly and viewed the body of Excoffon. The neck bore two deep wounds made with a sharp instrument, and upon the body were three other wounds evidently made by the same weapon.

The two bodies were rigid, and the crime must have been committed many hours before, without doubt on the previous evening about nine or half-past, after the relay at Lieursaint. Under the Pont du Pouilly they found the boots of the postilion, one of which was filled with blood.

Everything indicated that these assassinations had been committed for the purpose of robbery. Among the letters and papers scattered upon the ground were found the list of Excoffon, and on it the imprint of a bloody finger marked certain places, showing that one of the murderers had consulted this list of the packages carried by the courier, while the others probably sought out and opened the desired ones. The list showed that the courier had in his care a large amount of money and drafts.

An inquiry was at once commenced which developed two evident facts: first, that four men on horseback had been seen on the road from Paris to Lieursaint on the afternoon of April 27, riding back and forth, and that they reappeared in the evening accompanied by another companion. The second important fact was the disappearance of an individual who had been observed by several persons riding on the carriage beside the courier. It was very probable that this traveller was a fifth assassin. The overcoat abandoned at the place of the crime answered the description of the one said to have been worn by this person as testified to by several witnesses who saw him.

For a time the investigation was without important result, but at length the authorities got upon the right track. It was ascertained that, on the morning of the discovery of the crime, four horses covered with sweat had been taken by a certain Etienne to the house of an innkeeper named Aubry in the Rue des Fosses-Saint-Germain-l'Auxerrois; at about seven o'clock Etienne returned for them, accompanied by one of his comrades named Bernard, and took them to the house of Citizen Muiron, where the two men remained until evening and then departed.

Following up this trail, it was presently found that this Etienne was named Courriol; that he had lived up to April 27 in the Rue du Petit-Reposoir; that he slept there on the night of the 26th; that he had not been seen at this house since the crime, and that he lived with a woman named Madelaine Bréban, who passed as his wife.

The authorities succeeded in getting upon the track of Courriol. From the Rue du Petit-Reposoir, he went with his mistress to lodge at the house of a man named Richard, No. 27 Rue de la Bucherie; both remained there until the 6th of May, when, having procured a passport for Troyes, they departed. The man who furnished the carriage was a Jew

of a doubtful reputation, named David Bernard. The two were accompanied by a third individual named Bruer, who went with them as far as Bondy. Just beyond this place the two changed their route, and instead of going to Troyes returned to Château-Thierry, to the house of one Golier, an employé in the Department of War.

An officer was at once sent to Château-Thierry, and there arrested Courriol and his mistress. There was found in their possession 1,528 livres in silver coin, 1,680 livres in gold coin, 1,142,200 livres in assignats, 42,025 livres in checks, 7,150 livres in drafts, and a large quantity of gold and silver jewelry, absolutely new. It was evident that they had secured one of the five assassins, for the value of the recovered property formed just one fifth of the amount that had been stolen.

Where were the other four? They suspected Golier; they suspected still more strongly a man named Guesno, whom they found staying at the house of Golier, and who had arrived that very day from Paris; who knew Courriol, and who had lodged with him at the house of Richard in Paris. Guesno was, as was Golier, connected with the military.

The central bureau of police intrusted the investigation of the affair in Paris to the *juge de paix* of the section of Pont-Neuf, the Citizen Daubanton, an active, severe, and perspicacious man. This officer hastened to summon witnesses and to interrogate the prisoners.

It became evident at the outset that Guesno had nothing to do with the matter. He explained his presence at the house of Richard and at the house of Golier in a perfectly natural manner, and the Citizen Daubanton dismissed him, telling him that his papers would be returned to him on the next day.

The next day Guesno went to the central bureau to obtain his papers. On the way he met an old friend whom he had not seen for some time, the Citizen Lesurques. Full of his tribulations of the preceding day, Guesno related them on the way to Lesurques. The two friends arrived at the central bureau before Guesno had completed his recital. "Come with me to the office of the Citizen Daubanton," said Guesno, "and I will finish my story." Lesurques had no time to spare, but Guesno insisted, saying that he would only delay him a few moments, — just long enough to get his papers.

Lesurques allowed himself to be persuaded, and the two friends entered.

In the room which served as an antechamber to the office of the *juge de paix*, they found about twenty persons, whom they recognized by their costumes to be peasants from the environs of Paris. They were the witnesses from Lieursaint and Montgeron whom the judge was to hear that day.

Guesno and Lesurques seated themselves upon a bench; Guesno while awaiting his turn went on with his interrupted recital. At the first words which he spoke concerning the assassination and the robbery of the Courier of Lyons, two of the witnesses turned their heads towards the new-comers, let escape a gesture of affright, and then whispered together without taking their eyes off of Lesurques and Guesno. These two witnesses were two servants from Montgeron, women named Santon and Grosse-Tête.

The moment arrived for these two women to enter the cabinet of the magistrate; a few moments afterwards an officer of police named Hendon came out of the cabinet, looked attentively at the two friends, and approaching Guesno informed him that the judge desired to see him and the friend who accompanied him. Lesurques was greatly astonished, but the two at once entered the private office.

The magistrate made them sit down in a window facing the two women, and addressed to them, in a severe tone, some unimportant questions. The two women regarded them with attention. The judge then told the two men to return to the antechamber.

They were unable to comprehend this strange proceeding.

Alone with the two women, Daubanton

said to them, "Well, do you still think that these two men are two of the assassins of Lieursaint?"

"Yes, Citizen Judge," replied they; "they are two of the four cavaliers who dined at the house of the Citizen Everard, and took coffee at the house of the Citizeness Châtelain."

"Be careful what you say," replied the magistrate. "One of these two men has been suspected, and nothing obliged him, if he were guilty, to come here. The other, the blonde, has never appeared before in the case, and his presence here is still more inexplicable. Criminals ordinarily do not come to the bureau of police after committing a crime."

The two women persisted; they recognized both of them, but were most certain as to the blonde, who was Lesurques.

The Citizen Daubanton made Guesno and Lesurques re-enter, and this time confronted them with their accusers. Both were surprised at this confrontation which neither of them could comprehend. When they had again retired, the judge once more recommended the women to reflect and think of the terrible consequences if they were mistaken; they still insisted. The magistrate, not wishing to act hastily, obtained from the gendarmes of Lieursaint and Melun a description of the men who had been seen. Two of these descriptions seemed to correspond with the appearance of Guesno and Lesurques. The last especially answered the description of the large blonde of whom all the witnesses spoke.

The magistrate requested Lesurques to exhibit his papers. Lesurques, although established at Paris for a year, had neither papers nor *carte de sûreté;* in his pocketbook was found a *carte de sûrcté* which bore the name of his cousin, and another one in blank; this raised a strong presumption against the man.

Daubanton did not hesitate, but at once arrested both men.

The crime at Lieursaint produced in Paris a profound sensation. The numerous brigands who at that time infested the highways of France rarely had the audacity to attempt their crimes at the very gates of the capital.

The Citizen Daubanton entered upon the examination of this affair with the most ardent zeal. In regard to Lesurques and Guesno, however, he acted with the greatest circumspection. Further facts developed by the investigation seemed to throw grave doubts upon the probability of their guilt.

Joseph Lesurques was born at Douai, of a very honorable family. While he was yet a mere youth he enlisted in a regiment of Auvergne, and served with great faithfulness and obtained the rank of sergeant. He left the service in 1789. Active, intelligent, and ambitious, he found in the great disorders consequent upon the revolution an opportunity to make his fortune. At first employed in the district bureau in his natal town, he erelong became its head. He had made large sums in fortunate speculations, and at the time of his arrest he enjoyed an income of about 10,000 livres, — a fortune for those times. Rich, the husband of a devoted wife, the father of three children, a great student of art, he decided to establish himself in Paris, where he could enjoy a life in accordance with his tastes, and could educate his children as he desired. He left Douai early in the year 1795.

Lesurques referred to all his friends, well-known and honorable men, who gave a good account of his reputation. "The 27th of April," said Lesurques, "I passed the forenoon until two o'clock at the house of the Citizen Legrand; from there I went to the Rue Montorgueil. In the evening, at six o'clock, I went to walk upon the boulevards with the Citizen Ledru. I met my friend Guesno, and we then entered a café at the corner of the Comédie-Italienne, where we each drank a glass of wine.

The citizens Hilaire, Ledru, and Legrand confirmed these statements.

On his part, Guesno accounted satisfac-

torily for his whereabouts on the 27th, and furnished what appeared to the judge a perfect alibi.

But how was it possible to reconcile the apparent innocence of Lesurques and Guesno with the identification, so precise and persistent, by the women Santon and Grosse-Tête? How could it be that Lesurques was not guilty, when to the evidence of these two women was added that of many others, among whom were Champeaux, an innkeeper at Lieursaint, and his wife, who declared that he was certainly the large blonde, who having broken the links of his spur had repaired them at their house with a piece of coarse white thread?

As for Courriol, everything proved his guilt. He could give no satisfactory account of his employment or of the property found in his possession. He denied everything until his mistress, Madelaine Bréban, confounded him by her confessions. This girl, whom Daubanton told that perfect frankness could alone save her from an accusation of complicity in the crime, declared that on the 27th of April Courriol departed early in the morning. He took some clothes in a valise and his pistols, saying as he left her that he was going into the country. The next day, as he did not return, she became alarmed, and was about to seek Bernard to obtain news of him, when he, Bernard, came to tell her that Courriol was waiting for her at the Hôtel de la Paix. Courriol wished her to bring him a complete change of clothing. She made a package of the desired articles, and hastened to the Hôtel de la Paix. There, in the room of a man named Dubosc, she found Courriol, who had on nothing but a shirt. The next day Courriol changed his quarters; ten days afterward they started for Troyes. This girl added that she had seen Bruer and Richard many times at Courriol's apartments; that she had seen Guesno only once, and that she had never seen Lesurques. She thought she recognized the sabre found at the place of the assassination as belonging to Courriol. She gave the names of the persons with whom Courriol was most intimate; they were Dubosc, Durochat, Roussy, and Vidal.

Matters were in this condition when the case was taken from Daubanton, and on the 22d of May was referred to the criminal tribunal of Melun.

This was a most unfortunate occurrence for Lesurques. The impression made upon the magistrate at Paris by the attitude of the prisoners Lesurques and Guesno, so different from that of their alleged accomplices, did not exist in the mind of the magistrate at Melun. Nearer the scene of the crime, and more desirous to make a terrible example, he relied upon the evidence of the local witnesses, without troubling himself with the evidence offered by the defendants. There had been five assassins at Le Closeau; they presented him with five prisoners (Bernard and Bruer had been also arrested for complicity in the affair); these were then the assassins. That is all that this magistrate of Melun took into consideration.

The trial was about to commence before the criminal tribunal of Melun, when the accused, availing themselves of a right accorded by law, demanded to be taken before the criminal tribunal of Paris.

The president of this tribunal was M. Jerome Gohier. This judge from the very outset saw in all the accused only guilty criminals. The act of accusation presented at Melun left him no doubt as to Lesurques, and the accusing declarations of the witnesses from Lieursaint and Montgeron annulled in his mind all the evidence obtained in Douai and Paris tending to prove an alibi. The witnesses upon this point numbered fifteen, and were positive in their statements. But the witnesses who testified to the presence of Lesurques at Lieursaint and Montgeron showed the same certainty and persistence.

The witnesses for Lesurques were treated with great harshness and severity by the judge, and some of them were even terrified into modifying their evidence, and stating

that they might have been mistaken as to the date on which they saw him.

Without going into the details of the evidence, we may sum up by saying that Lesurques was positively identified by seven witnesses, and believed by three others to have been the man whom they saw at Lieursaint and Montgeron. The witnesses to his presence in Paris at the time the crime was committed numbered, as we have said, fifteen, all of them persons of the highest respectability.

In spite of the evident partiality of the magistrate the advocate of Lesurques still hoped; he was certain of the innocence of his client. Before the commencement of the trial the defender of Courriol said to him and to the advocate of Guesno, "I do not know about Courriol; but you may defend your clients with confidence, for they are both innocent."

The charge of President Gohier to the jury was a one-sided discussion of the case, a new argument for the prosecution. The jury then retired.

While they were deliberating an incident occurred in the court-room which might have enlightened justice if justice had wished to be enlightened.

A woman whose presence at this trial would have been considered indispensable by a magistrate worthy to bear the name, Madelaine Bréban, demanded to be allowed to make to the president of the tribunal a very important revelation. President Gohier ordered her to approach. She then said to him, that of the accused present one alone was guilty, and he was her lover, Courriol; that Guesno and Lesurques particularly were the victims to their resemblance to two of the murderers; that Guesno resembled a man named Vidal and Lesurques one named Dubosc, and that this last resemblance had been greatly increased by a blond wig that Dubosc wore on the day of the crime.

"The trial is ended," replied M. Gohier; "it is too late."

It is too late! The fatal excuse for all the faults which we commit. It is too late to be just! It is too late to save an innocent man from death and justice from shame! The trial is ended! Well! what prevents your reopening it if the light at last has penetrated your mind? M. Gohier preferred not to see the light; it was too late!

At eight o'clock in the evening the jury returned and rendered a verdict of guilty against Lesurques, Bernard, and Courriol. Guesno was acquitted, and two others, Bruer and Richard, found guilty of knowledge of the crime and of having received a portion of the stolen property, but not guilty of participation in the murder.

Courriol, Bernard, and Lesurques were then sentenced to death.

When Lesurques heard his sentence he grew frightfully pale, raised his eyes to heaven, and moved his hands convulsively; then, recovering from his terror and surprise, he rose and said in a clear, ringing voice: —

"Undoubtedly the crime of which I am accused is horrible and merits the punishment of death; but if it is frightful to assassinate on the highway it is not less so to abuse the law to strike down an innocent man. A moment will come when my innocence will be recognized, and then my blood will recoil upon the heads of the jury who have so readily condemned and the judge who has influenced them."

Jurors, judge, and all in the court shuddered on hearing these words. What were their feelings, then, when they saw rise the admitted guilty one, Courriol, and heard him cry: "Lesurques and Bernard are innocent. Bernard did nothing but furnish the horses; Lesurques took no part in the crime."

The condemned were taken to the conciergerie, Courriol persisting in declaring the innocence of Lesurques.

The 21st of August Courriol begged the magistrates of the central bureau to come to him, as he desired to make further statements and to tell the whole truth. Upon being heard, he stated in addition to what he had previously said: "The true guilty ones

are named Dubosc, Vidal, Durochat, and Roussy. Durochat, under the name of Laborde, took a place in the mail carriage by the side of the courier. The others departed from Paris on the 27th of April on horseback. He, Courriol, joined them an hour after their departure at Charenton. They dined and took coffee at Montgeron. The next morning the five returned to Paris about five o'clock. Courriol took the horses to the house of Aubrey. Roussy and Durochat planned the enterprise. The sabre and spur belonged to Dubosc, who went back to get his sabre at Lieursaint; the other sabre found in the road belonged to Roussy. It was Dubosc and Vidal who were walking in Lieursaint on foot."

This trial had absorbed public attention. A great number of persons believed in the innocence of Lesurques. It was known that Courriol persisted in his protestations.

A petition was made to the directory, and that body examined with the greatest care all the evidence as developed at the trial, and all the arguments brought to bear against the judgment. The result of the examination was a determination to submit the matter to the decision of the council of five hundred.

This council finally made a report.

"The council cannot exercise a judicial power; it does not wish to exercise it. It is not our province to determine whether Lesurques is guilty or innocent. He has been judged and properly condemned."

The council refused to interfere, and the last hope of Lesurques was gone.

When there was no longer hope, Lesurques courageously prepared for death. He bid his wife farewell, and embraced for the last time his three children. The evening before the fatal day he cut his own hair, and took the locks and addressed them to his wife and children. To his wife he wrote this letter: —

"When you read this I shall have ceased to exist; the cruel knife will have cut the thread of that life which I have consecrated to you with so much joy. But such is fate; one cannot avoid it. I am about to be judicially murdered. Ah! May I submit to my fate with the courage worthy of a true man. . . . I send you some locks of my hair; preserve them, and when my children are older give them to them. They are all I have to leave them. I bid you an eternal farewell. My last thought will be of you and my unfortunate children."

This letter was addressed to the Citizenness Widow Lesurques.

To his friends he wrote: —

"The truth has not made itself known. I perish a victim to error. May I hope that you will always preserve for my wife and my children the friendship you have shown for me, and that you will aid them under all circumstances? Receive my last farewell."

Before leaving the conciergerie he wrote to Dubosc, and entreated his judges to insert the letter in their records: —

"You in whose place I am about to die, be satisfied with the sacrifice of my life. If you are ever made accountable to human justice, remember my three children overwhelmed with shame, their mother in despair, and do not prolong the misfortunes caused by this sad resemblance."

The day for the execution of the sentence arrived. It was Oct. 30, 1796. Lesurques asked to be dressed in white, an external sign of his innocence. In the court of the prison he met his two unhappy companions who were to die with him, Courriol and Bernard. Bernard, more dead than alive, hardly realized the situation; they were obliged to place him in the cart as though he were a dead body. Courriol preserved all his courage. Scarcely had Lesurques mounted the cart by his side, than pointing him out to the crowd Courriol cried, "I am guilty, but Lesurques is innocent." All the way, even to the very foot of the scaffold, he did not cease repeating, "I am guilty, but Lesurques is innocent."

A few moments later Lesurques mounted the scaffold with a firm step, pardoned for the last time his judges, and as M. Salques

eloquently says, "presented himself before the only Judge in whom error is impossible."

Four months had scarcely elapsed since the execution of Lesurques, when Durochat was arrested for a robbery recently committed. This man corroborated the statements of Courriol respecting Lesurques in every particular.

At last a trace of Dubosc was found, and he was arrested upon some other charge. Confronted with the witnesses who had so positively identified Lesurques, they were astounded. They extricated themselves from their disagreeable dilemma only by saying that there might have been two blondes among the men they saw, and would not acknowledge that they had been mistaken as to Lesurques.

Dubosc was, however, brought to trial upon the charge of being concerned in the assassination of the courier of Lyons, and was convicted and executed.

Finally, Roussy was arrested, tried, and convicted. Before his death he declared that Lesurques was innocent, and that he had never known the man.

The heirs of Lesurques struggled for years to obtain a restitution of the property of which they had been cruelly deprived by order of the court, but with no success.

THE LAW COURTS IN EDINBURGH.

From ROBERT LOUIS STEVENSON'S "*Picturesque Notes of Edinburgh.*"

ONE of the pious in the seventeenth century going to pass his *trials* (examinations, as we now say) for the Scottish Bar, beheld the Parliament Close open, and had a vision of the mouth of Hell. This — and small wonder! — was the means of his conversion. Nor was the vision unsuitable to the locality; for after an hospital, what uglier place is there in civilization than a court of law? Hither come envy, malice, and all uncharitableness to wrestle it out in public tourney; crimes, broken fortunes, severed households, the knave and his victim, gravitate to that low building with the arcade. To how many has not St. Giles's bell told the first hour after ruin? I think I see them pause to count the strokes, and wander on again into the moving High Street, stunned and sick at heart.

A pair of swing-doors gives admittance to a hall with a carved roof, hung with legal portraits, adorned with legal statuary, lighted by windows of painted glass, and warmed by three vast fires. This is the *salle des pas perdus* of the Scottish Bar. Here, by a ferocious custom, idle youths must promenade from ten till two. From end to end, singly or in pairs or trios, the gowns and wigs go back and forward. Through a hum of talk and footfalls, the piping tones of a Macer announce a fresh cause and call upon the names of those concerned. Intelligent men have been walking here daily for ten or twenty years without a rag of business or a shilling of reward. In process of time, they may perhaps be made the Sheriff-Substitute and Fountain of Justice at Lerwick or Tobermory. There is nothing required, you would say, but a little patience and a taste for exercise and bad air. To breathe dust and bombazine, to feed the mind on cackling gossip, to hear three parts of a case and drink a glass of sherry, to long with indescribable longings for the hour when a man may slip out of his travesty and devote himself to golf for the rest of the afternoon, and to do this day by day and year after year, may seem so small a thing to the inexperienced! But those who have made

the experiment are of a different way of thinking, and count it the most arduous form of idleness.

More swing-doors open into pigeon-holes where Judges of the First Appeal sit singly, and halls of audience where the Supreme Lords sit by three or four. Here you may see Scott's place within the bar, where he wrote many a page of Waverley Novels to the drone of judicial proceeding. You will hear a good deal of shrewdness, and, as their Lordships do not altogether disdain pleasantry, a fair proportion of dry fun. The broadest of broad Scotch is now banished from the bench; but the courts still retain a certain national flavor. We have a solemn enjoyable way of lingering on a case. We treat law as a fine art, and relish and digest a good distinction. There is no hurry: point after point must be rigidly examined and reduced to principle; judge after judge must utter forth his *obiter dicta* to delighted brethren.

Besides the courts, there are installed under the same roof no less than three libraries. . . . As the Parliament House is built upon a slope, although it presents only one story to the north, it measures half a dozen at least upon the south, and range after range of vaults extend below the libraries. You descend one stone stair after another, and wander, by the flicker of a match, in a labyrinth of stone cellars. Now you pass below the outer hall, and hear overhead, brisk but ghostly, the interminable pattering of legal feet. Now you come upon a strong door with a wicket; on the other side are the cells of the police-office, and the trap-stair that gives admittance to the dock in the justiciary court. Many a foot that has gone up there lightly enough has been dead heavy in the descent. Many a man's life has been argued away from him during long hours in the court above. . . . A little farther and you strike upon a room, not empty like the rest, but crowded with *productions* from bygone criminal cases: a grim lumber: lethal weapons; poisoned organs in a jar; a door with a shot-hole through the panel, behind which a man fell dead. I cannot fancy why they should preserve them, unless it were against the Judgment Day.

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 new field upon which we have entered with "The Green Bag" seems to be an attractive one to the legal fraternity, judging from the communications which have poured in upon us from prominent members of the profession. A well-known lawyer in New York writes: "I notice that you are to issue a magazine for the edification of the profession. Such a periodical will occupy a new and waiting field. Send it to me." From Pennsylvania, another prominent member of the bar, writes: "I am struck with the prospectus of 'The Green Bag.' One gets a bit of *juice* occasionally from American Law Journals, but the periodicals usually coming to the office are little more interesting than the average digest." And another correspondent says: "We have so many so-called useful things thrust upon our notice in the way of voluminous reports of everything, large and minute, that it is a relief to run across something that does not profess to be of any particular use." From Ohio an eminent judge writes: "*Useless* law books I have many, — *useless* because they are not entertaining. I see that 'The Green Bag' is not only *useless* but entertaining. Them 's the feller I want."

We might go on quoting in the same vein; but the extracts given show that the bar desires something more than the flood of digests poured upon them from month to month, and turns with a feeling of relief to lighter and more entertaining legal literature. "All work and no play makes Jack a dull boy," is as applicable to the wearied mind as to the exhausted body.

We are glad to find our ideas in making this new departure so quickly and fully confirmed by a host of our legal brethren.

THE writer of the sketch of CHIEF-JUSTICE FULLER, which appeared in our January number, desires us to make the following correction in regard to DANIEL FULLER. In the paragraph concerning him, in place of the words, "He married Esther Fisher," it should read: "*His father*, Thomas Fuller second, married Esther Fisher, in 1668, who was the daughter of the proscribed patriot, Daniel Fisher, of Dedham, etc., . . . and sister of the bold Captain Daniel Fisher, who 'hated the tyrant,' Sir Edmund Andros," etc.

WE trust our readers will not overlook the note at the head of our editorial department, and will send to the editor contributions for use in our columns. Almost every lawyer has some one subject in which he is particularly interested and upon which he would be glad to express his views. "The Green Bag" affords an excellent medium for communication with his legal brethren. Many a good joke or anecdote is lost which might have been preserved, if jotted down at once upon the hearing. The next good story that you hear, make a note of it, and send it to "The Green Bag."

LEGAL ANTIQUITIES.

COURTS OF REQUESTS (known also as Courts of Conscience) were first instituted in London by Henry VIII., and similar local tribunals were afterward established by Act of Parliament in other parts of the Kingdom; but they have all been superseded, long since, by the County Courts. The jurisdiction of these courts was originally limited to questions of debt or damage under 40*s.* but was afterward extended to questions under £5. The design was to furnish a cheap and simple method of settling trivial cases; and the trials were conducted before commissioners who appear to have been bound by no technical rules of law, but settled the disputes submitted to them according to

their own best judgment. These commissioners were men of ability and good standing in the community, and they received no pay for their services. The costs of suit were merely nominal, thus enabling the poorest as well as the richest subject to obtain justice. We give the table of fees, which was kept hung up in open court: —

For every summons, to the clerks, 3*d.*
For the service, to the beadle, 2*d.*
For calling plaintiff or defendant, clerks 2*d*, beadle 1*d.*
Nonsuit, to the clerks, 1*s.*
For paying money into court, to the clerks, 6*d.*
For every hearing, to the clerks, 3*d.*
For a copy of every *ex parte* order, and of every judgment of nonsuit to be served, to the clerks, 4*d.*
For the service of every such order, to the beadle, 2*d.*
For every execution, clerks, 8*d.*
To the beadle, for levying the same, 1*s.*
For acknowledging satisfaction in full, clerks, 2*d.*
For every search, to the clerks, 2*d.*

No lawyer's services were required in these courts; the commissioners simply questioning the disputants and then rendering judgment. Hutton, in his interesting work upon the subject, cites a number of cases which came before the Birmingham Court. We quote one, as showing the extreme simplicity which characterized the proceedings: —

Court. What is your demand?
Plaintiff. Eleven shillings.
Court. Is it just?
Defendant. No; I do not owe him a farthing.
Court. How does the debt arise?
Pl'ff. There is a pump in the neighborhood, for the joint use of the tenants. It has lately been repaired; each tenant pays a proportionate sum, according to his rent; all have paid, except the defendant.
Court (*to the defendant*). Was the pump out of repair?
Def't. Yes.
Court. Was any part of the expense unnecessary?
Def't. I suppose not.
Court. What objection can you make against paying your quota?
Def't. I have never paid anything, neither have I a right to pay. I gave no orders to have it done. I never promised payment, neither has any man a right to lay out my money.
Court. Should you think it fair, if all the neighbors went free, and the whole expense was saddled upon you?
Def't. No.
Court. Then what reason is there that you should go free, and your neighbors bear the whole? Had they been all of your mind, they would have been deprived of one of the greatest blessings we know; or rather, like you, would wish to enjoy it at the expense of another. If you have never paid to former repairs, they have granted you a favor you do not deserve. As they have all an equal right to the pump, they have an equal right to pay. If you gave no orders, it was not because orders were not necessary, or the water not wanted; but that another, more spirited than yourself, might step forward and furnish you with a pretext. If you *had* promised payment, you would have stood in a more honorable light. He lays out his money himself who pays for a necessary article, which cannot be had without; but if you take that article, at the expense of your neighbor, you do him an injustice; so shall we, if we do not order payment.

In the Birmingham Court the number of commissioners was seventy-two. Once every two years ten of their number were stricken from the list by ballot, and ten others chosen out of the body of the inhabitants. Six were summoned alternately by the beadle to attend bench every month, but their attendance was wholly optional. Any three formed a quorum.

A Lucid Proclamation. — The following is a proclamation made at the Market Cross of Inverary, Scotland, less than a hundred years ago: —

"Ta hoy! Te tither a-hoy! Ta hoy three times!!! an' ta hoy — whist! By command of his Majesty King George, and her Grace te Duke of Argyll: If anybody is found fishing about te loch, or below te loch, afore te loch, or ahint te loch, in te loch, or on te loch, aroun te loch, or about te loch, she 's to be persecuted wi' three persecutions: first, she 's to be burnt; syne, she 's to be drownt; an' then to be hangt. — An' if ever she comes back, she 's to be persecutit wi' a far waur death. God save te King an' her Grace te Duke o' Argyll." — *Irish Law Times.*

In the reign of Charles II., Scroggs (that infamous justice of the King's Bench) and all other judges declared, under their hands, "that to print or publish any new book or pamphlet of news whatsoever, is illegal; that it is a manifest intent to the breach of the peace, and they may be proceeded against by law for an illegal thing." — *Timb's Legal Anecdotes.*

FACETIÆ.

WHY THEY DO IT.

A BARRISTER was Tupp, Q. C.,
  Of Lincoln's Inn a member:
He used to practise equity,
  As near as I remember.
From judge to clerks in common law,
  All ranks of the profession
Combined to sing his praises for
  The courts' entire session.

To show the high esteem of Tupp,
  I only need to mention,
He 'd but to hold his finger up
  To gain the court's attention.
Although I grieve a word to say
  Of lights of the profession,
He fell into a painful way
  Of digital expression.

Instead of laying down the law,
  Avoiding all commotion,
He pointed with his fingers for
  Additional emotion.
He pointed at the walls and floor,
  He pointed at the ceiling;
He frightened the solicitor,
  And left his junior reeling.

He emphasized the least remarks
  With signs and pokes and fudges,
That woke the anger of the clerk,
  And then awoke the judges'!
The chancellor the time perceived
  Had come for remonstrations:
"My learned friend, we 're always grieved
  To interrupt orations;

"But kindly keep your arms in hand,
  Unless the court permit you.
We can't informal motions stand —
  My goodness! I 'll commit you!"
His brother said, "I can't endorse
  This very stringent ruling;
But this I say, and will enforce,
  This court will stand no fooling."

Our learned friend was greatly pained.
  He answered: "As your Lordship
Has not that graceful art attained, —
  Imaginary swordship, —
I 'll waive my right when I am wroth
  To wave my arms like rockets,
And I 'll address the court with both
  My hands within my pockets."

Envoi.

I merely state a platitude, —
  When once he set the fashion,
This academic attitude
  Became the legal passion.

Pump Court.

"WHAT do you understand by a 'mortgagee'?" asked the examiner of a youthful aspirant for legal honors. "Is n't it the feminine for 'mortgagor'?" replied the youth, diffidently.

THE conspiracy case against the Transcontinental Transportation Company that has been dragging its weary length through the criminal court at Chicago, was enlivened by a momentary gleam of sunshine when Robert Lincoln was called to the stand.

"Were you in Chicago in October, 1887?" asked the lawyer.

The son of his father pulled his beard, and replied: "Well, really I can't say; that 's the month in which I go fishing, as a rule."

This startling admission acted like a bomb in arousing the court.

"Sorry, but we can't hear fish stories now," replied the lawyer, hoping thereby to get on the good side of the judge; but he was mistaken.

"I 'll hear most anything," said the judge, "that will enliven this dry and sleepy case. Go ahead with your fish story!" — *Boston Record.*

Law Professor. What constitutes burglary? *Student.* There must be a breaking. *Professor.* Then, if a man enters your door and takes a ten-dollar bill from your vest-pocket in the hall, would that be burglary? *Student.* Yes, sir; because that would break me.

A LONG-WINDED lawyer lately defended a criminal unsuccessfully, and during the trial the judge received the following note: "The prisoner humbly prays that the time occupied by the plea of the counsel for the defence be counted in his sentence."

JUSTICE BRAMWELL, when attempting to be clear, was at times rather perplexing. "My good woman," he would say to a witness, "you must give an answer, in the fewest possible words of which you are capable, to the plain and simple question whether, when you were crossing the street with the baby on your arm, and the omnibus was coming down on the right side and the cab on the left side, and the brougham was trying to pass the omnibus, you saw the plaintiff between the brougham and the cab, or between the omnibus and the cab, or whether and when you saw him at all, and whether or not near the brougham, cab, and omnibus, or either, or any two, and which of them respectively — or how was it?"

"GENTLEMEN of the jury," said counsel, in an agricultural case, "there were thirty-six hogs in that lot, — thirty-six. I want you to remember that number, — thirty-six hogs, — just three times the number that there are in the jury-box." — *Albany Law Journal.*

SPEAKING of hogs, the following story is recalled to our mind: —

A young lawyer, employed to defend a culprit charged with stealing a pig, resolved to convince the court that he was born to shine. Accordingly he proceeded to deliver the following brilliant exordium: "May it please the court and gentlemen of the jury, — While Europe is bathed in blood; while classic Greece is struggling for her rights and liberties, and trampling the unhallowed altars of the bearded infidels to dust; while America shines forth the brightest orb in the political sky, — I, with due diffidence, rise to defend the cause of this humble hog-thief."

This reminds us of a story told of a learned counsellor who, in a suit for slander, treated his hearers to the following flight of genius: "Slander, gentlemen, like a boa-constrictor of gigantic size and immeasurable proportions, wraps the coils of its unwieldy body about its unfortunate victim, and heedless of the shrieks of agony that come from the uttermost depths of its victim's soul, — loud and reverberating as the night-thunder that rolls in the heavens, — it finally breaks its unlucky neck upon the iron wheel of public opinion, forcing him first to desperation, then to madness, and finally crushing him in the hideous jaws of mortal death."

"PRAY, my lord," said a gentleman to a late respected and rather whimsical judge, "what is the difference between law and equity courts?" "Very little in the end," replied his lordship; "they differ only as far as time is concerned. At common law you are done for at once; in equity you are not so easily disposed of. The former is a bullet, which is instantaneously and charmingly effective; the latter is an angler's hook, which plays with its victim before it kills it. The one is prussic acid; the other, laudanum."

AT a legal investigation of a liquor seizure, the judge asked an unwilling witness, "What was in the barrel that you had?" The reply was: "Well, your Honor, it was marked 'whiskey' on one end of the barrel and 'Pat Duffy' on the other; so I cannot say whether it was whiskey or Pat Duffy was in the barrel, being as I am on my oath."

IN one of the earliest trials before a colored jury in Texas, the twelve gentlemen were told by the judge to retire and "find the verdict." They went into the jury-room, whence the opening and shutting of doors, and other sounds of unusual commotion were heard. At last the jury came back into court, when the foreman announced: "We hab looked eberywhar, Jedge, for dat verdict, — in de drawers and behind de doors; but it ain't nowhar in dat blessed room."

THE late Judge Keogh was "a fellow of infinite jest." When he first went on the circuit as Judge of Assizes he was entertained in state by his bar, and the evening was passed in dignified decorum, as grave compliments were exchanged on both sides. The "counsellors" present were made to feel that their old comrade had become a judge. At ten o'clock, to their amazement, he rose, thanked them for their hospitality, made a solemn bow, and retired, leaving them in blank consternation at the complete change. In five minutes a face beaming with fun appeared at the door. "Boys, the Judge has retired for the night, but Billy Keogh won't go home until morning." A roar of laughter and applause greeted the return, and the mirth was fast and furious. — *Irish Law Times.*

APROPOS of amateur advocacy, a good story is told of one of our chancery judges. A plaintiff appeared in person before him in a case arising out of a bill of sale, which included, besides some other personal chattels, a quantity of household furniture. After addressing the court at inordinate length upon the first class of articles, the plaintiff went on to say, "And now, my Lord, I will address myself to the furniture." "You have been doing that for a long time past," replied the jaded judge.

THIS reminds us of an anecdote told at the expense of Sergeant Prime, who was a good-natured but rather dull man, and, as an advocate, wearisome beyond comparison. A counsel once getting up to reply to one of his lengthy orations, which had made the jury very drowsy, began: "Gentlemen, after the long speech of the learned Sergeant —" "Sir, I beg your pardon," interrupted Mr. Justice Nares; "you might say, after the long soliloquy; for my brother Prime has been talking an hour to himself."

WHILE we are on this subject, here is another story which will bear repeating: —

A lawyer having wearied the court by a long and dull argument, the judge suggested the expediency of his bringing it to a close.

"I shall speak as long as I please," was the angry retort.

"You have already spoken longer than you please," answered the judge.

"DO you mean to challenge the jury?" whispered a lawyer to his Irish client. "Yis, be jabbers! If they don't acquit me, I mean to challenge ivery spalpeen of them. I want ye to give 'em all a hint of it, too."

AN Indiana colored lawyer, in trying to get his client out of custody, exclaimed: "Da is a law dat 's called 'habhis carcass,' an' I 'ze gwine to hab de carcass ob dat client ob mine, dea' or alive!"

THE following anecdote of Baron Alderson is, we think, not generally known. It must be premised that his lordship was suspected of being a bit of a freethinker. A child of tender years was once being examined before him on the *voir dire*. She could make nothing of the phrases, "nature of an oath," "religious responsibility," and so forth, used by counsel; and at last Alderson said, "I will put it to the witness very simply; my little girl, if you tell a lie here, do you know where you will go hereafter?" "No, sir," replied the child. "No more do I!" muttered the Baron, aside; and then turning to the witness, "I am afraid you must stand down."

NOTES.

THE *Chicago Legal News*, in reviewing Beach on Wills, puts forth the following curious idea: "The usefulness of many law works is injured by an undiscriminating over-citation of authorities." The reviewer probably meant that the usefulness of many law works is injured by an indiscriminate citation of authorities. There can be no such thing as an over-citation of authorities in a legal treatise, provided the authorities are in point. The citation of an additional case in support of a proposition from the court of last resort of the smallest jurisdiction, like Delaware or Rhode Island, will afford assistance to lawyers in that jurisdiction. The time has gone by when lawyers will accept as law, except on the most obvious propositions, the statements of authors not well fortified by the citation of authorities.

EXACTLY how to sentence a criminal to death under the new law is at present puzzling the criminal court judges. The following form possesses the value of being terse, scientific, and to the point: "I therefore sentence you to be taken to Sing Sing Prison, there to remain confined until —— the — day of ——, 188—, between the hours of — and —, A. M., where you will be taken to a cell specially designed for that purpose, be forcibly seated in a properly insulated chair, with one semaphore placed upon the junction of your frontal and parietal suturas and the other just over your medulla oblongata, and then and there made conductor for an alternating current of 1,800 volts' intensity from a dynamo constructed for that specific purpose, said current to pass through the ganglia and vasomotor centres of your cerebral tissue until you are dead, dead, dead; and may the Lord have mercy on what is left of you!" — *New York World.*

HERE is a bill which was introduced into the Nevada Legislature the other day to promote the pleasure of the people in places of public amusement: —

Section 1. It shall be unlawful for any spectator in any place of amusement to wear a covering for the head which shall reach more than three inches above the crown of the head, and any person wearing such a covering for the head shall be guilty of a misdemeanor, and shall be fined in a sum of not less than $5 nor more than $10, or imprisoned in the county jail not less than two days or more than five days; provided that this act shall not apply to women over thirty-five years of age.

Section 2. The act shall take effect on and after the 25th day of February, A. D. 1889.

We commend this bill to the attention of our own legislators, though we doubt the expediency of the proviso relating to women over thirty-five years of age. They are frequently as vain as some of their younger sisters. Let it include the entire sex or none at all.

"SIR" WILLIAM CONRAD REEVES, Chief-Justice of Barbadoes, just knighted by Victoria, is a colored man. His mother was a full-blooded negress His father was a Scotch planter. The Chief-Justice began life as a printer. He has served as Solicitor and Attorney-General of the Colony, and resigned the latter because of a disagreement with Governor Sir John Hennessey on West Indian federation. He has served for six years as Chief-Justice.

THE "Canadian Law Journal" is responsible for the following: "The following clause is to be found in an Act respecting domestic and other animals, now in force in the Province of Manitoba, and was enacted with a view of striking terror into the breasts of certain evil-doers who had the 'pernicious' habit of 'catching animals at large and using them without the owner's consent.' It reads as follows: 3. No person catching or detaining, or causing to be caught or detained, any animal that has been advertised by the owner, or by any person on his behalf, as lost or strayed, shall be liable to fine or imprisonment under this Act, unless he shall establish, to the satisfaction of the court in which the charge is made, that he took immediate and proper measures to inform the owner of the animal, or his agent, of its having been caught." Comment would be useless.

FOLLOWING upon the heels of the public discussion as to the legality of "trusts," comes a decision by Judge Barrett of the Supreme Court of New York, bearing upon the sugar "trust." The popular mind, ignorant of the technical meaning of the decisions of courts, and grasping simply at the shadow of things, has proclaimed this case as a direct and substantial blow at "trusts," and interpreted it to mean the complete and immediate overthrow of that gigantic partnership. Nothing, however, could be further from the facts, though the decision, of course, has a tendency in that direction. The facts, succinctly stated, are these: The "trust" rests upon a written agreement styled the trust deed. Under this deed all the corporations which are to enter the combination agree that all the shares of the capital stock of all the corporations shall be transferred to a board, consisting of eleven persons, trustees, joint tenants, subject to the purposes set forth in the deed, namely: To promote economy and reduce cost of manufactured article; to give to all the use of appliances used by the others; to furnish protection against unlawful combinations of labor; to protect against lowering standard of manufactured articles, and generally to promote the interests of all parties in all lawful ways. The board was, in effect, to manage the allied and combined interests. The stock held in each individual corporation was to be transferred to this board, who were to issue to each corporation, in lieu of said stock, trust certificates, in value equal to the appraised net assets of each corporation. Thereafter the original corporate shareholder ceases to hold any further relations with his particular corporation, and thenceforward he is treated as a shareholder in the trust board. All profits arising from the business of each corporation is to be paid to the trust board, who blend all the profits received from all the corporations into one grand mass, and from that aggregation declare such dividends as may seem appropriate. Thus we have a series of corporations, existing and transacting business under the forms of law, without real membership or genuinely qualified direction, — mere abstract figments of statutory creation, as Judge Barrett says, without life in the concrete, or underlying association.

This suit was a *quo warranto* against one of these corporations, asking for its forfeiture and dissolution. The court, in awarding the writ and

declaring judgment of forfeiture, proceeds upon the ground that the corporation has entered into a combination and exercised privileges and franchises not conferred upon it by law; that any act of a corporation which is forbidden by its charter or by a general rule of law, and strictly every act which the charter does not expressly or impliedly authorize, is unlawful. This was the gist of the decision; and so far as that case was concerned, it was sufficient. But the court thereafter entered into an extended consideration of the question whether such combination, into which the corporation unlawfully entered, is an injury to the public and unlawful in itself. This question was decided in the affirmative. Judge Barrett and Professor Dwight are thus at issue on the latter question; and we are frank to admit that a study of the arguments of both leaves the student much in doubt. — *The Central Law Journal.*

THE consideration of the application of Mademoiselle Popelin to be permitted to plead in the Belgium courts was disposed of on December 12. The court refused Mademoiselle Popelin's demand, holding that the laws and manners of the country were opposed to the exercise of the advocate's profession by a woman, who has other and social duties to perform.

Recent Deaths.

DR. FRANCIS WHARTON, Solicitor of the State Department and author of the "Standard Digest of International Law," "American Criminal Law," "The Law of Negligence," "Criminal Pleading and Practice," and many other standard works, died at his residence in Washington, February 21, aged sixty-eight years. Dr. Wharton graduated at Yale in 1839, and practised law in his native city. He was professor of English Literature, etc., in Kenyon College, Ohio, from 1856 to 1863, when he was ordained a minister of the Episcopal Church and became rector of St. Paul's Church, Brookline, Mass. He was afterwards connected with the Episcopal Theological School at Cambridge, Mass., professor at the Boston Law School, and associate editor of the Philadelphia "Episcopal Recorder." An excellent portrait of Dr. Wharton, and an account of his connection with the Boston University Law School, will be found in this number.

HON. SAMUEL N. BELL, of Manchester, N. H., a well-known lawyer, and one of the wealthiest and most prominent citizens in the State, who died suddenly at Deer Park Hotel, North Woodstock, was born in Chester, March 25, 1829. He was graduated at Dartmouth in 1847; studied law with, and became a partner of, State Attorney William C. Clarke. In 1871 he was the Democratic candidate in the second congressional district, and was elected over Gen. A. F. Stevens, Republican candidate. He also served in the Forty-fourth Congress.

MR. ALBION K. P. JOY, a well-known lawyer of Boston, died at Winchester, February 17. He was a graduate of the Harvard Law School, Class of 1848, and in 1855 was a member of the Boston Board of Aldermen. About thirty years ago, when he lived in Boston, he was a member of the Legislature. At one time he was attorney for the Union Pacific Railroad Company. He was one of the incorporators and trustees of the Winchester Savings Bank, and for a number of years acted as the bank's attorney. Mr. Joy was a native of Maine, where he was born about sixty-four years ago.

REVIEWS.

JOHNS HOPKINS UNIVERSITY STUDIES, seventh series, II., III. This double number contains an historical account of "The Establishment of Municipal Government in San Francisco," by Bernard Moses, Ph.D. The events described extend over three quarters of a century, from the foundation of the Spanish pueblo, in 1776, to the adoption of the city charter, in 1851. This history is of extreme interest, and the paper is a most valuable addition to the many excellent articles published in this series of studies. We make one brief extract, showing the contrast between the San Francisco of fifty years ago and the city of to-day.

"In 1839 San Francisco had been founded more than sixty years; still it was without a jail, from which it is to be inferred that but little progress had been made in civilization. Finding the criminal Galindo on their hands, the inhabitants of San Francisco, through Justice De Hare, asked of the governor that he might be sent to San José, which was already provided with a prison. Besides the lack of a jail, another reason for the request was that the inhab-

itants of the place were scattered; each having his agricultural interests at a great distance from the town, so that there were very few remaining to guard the criminal, and these could not spare time from their personal business."

In the Harvard Law Review for January, Prof. C. C. Langdell continues his papers entitled "A Brief Survey of Equity Jurisdiction," this being the fourth in the series. Blewett H. Lee commences in this number a discussion of the "Limitations imposed by the Federal Constitution on the Right of the States to enact Quarantine Laws."

The Columbia Law Times for January is an unusually interesting number. "Hints on Advocacy" contains much that will bear careful perusal by even experienced practitioners at the bar. A copy of questions propounded for examination for admission to the New York Bar will be eagerly read not only by the students of Columbia, but by those of other law schools. For the most part they seem to be of a very practical nature, though we find a few old "chestnuts," as, for instance, "What is the difference between an executory devise and a contingent remainder?"

The Canada Law Journal for January contains a bright and interesting paper on "Law for Ladies," by R. Vashon Rogers. The humorous comments on various decisions of the English and American courts in regard to Women's Rights are exceedingly amusing.

The leading article in the January Criminal Law Magazine and Reporter is on "The Doctrine of Reasonable Doubt," by Hon. Seymour D. Thompson.

The Chicago Law Times begins its third volume with the January number. Among other good things it contains a biographical sketch of Joseph Story, accompanied with an excellent portrait, and articles on the "Source and Extent of Legislative Power;" "Reform in the Administration of the Criminal Law in Illinois," and interesting sketches of some of the "Representative Members of the Chicago Bar."

In the Canadian Law Times for January, R. S. Cassels discusses "The Effect of Indemnity Clauses upon Trustee's Liability for Wilful Default and Neglect," and T. W. Tempany, of London, contributes an interesting paper on "The Amalgamation of the Legal Profession in England."

The Chicago Law Journal for January contains an able article on "Prohibition *v.* The Constitution," by James C. Davis, of Keokuk; also articles on the "Rights of Trespassers upon Railroads," and "Public Prosecutors."

BOOK NOTICES.

A Treatise on the Law of Trials. By Seymour D. Thompson, LL.D. Chicago. 1889. T. H. Flood & Company. Two volumes. $12.00 net.

Anything from the pen of this distinguished writer is always gladly welcomed by the legal profession. This work on Trials fully sustains the reputation of its author, and will be found invaluable to the active practitioner. The arrangement of the work is such, and the index so full and complete, that one can with the greatest ease find anything that may be required upon a given point. The two volumes contain nearly twenty-five hundred pages, and citations of over fifteen thousand cases.

American Constitutional Law. By J. I. Clark Hare, LL.D. Boston, 1889. Little, Brown, & Co. Two volumes. $12.00.

This work, in two volumes, is an embodiment of a course of lectures delivered by the author in the Law School of the University of Pennsylvania, with additions and modifications, made necessary by the current of decisions and events. These lectures are fifty-nine in number, and cover the ground from the adoption of the Constitution to the present time. It is undoubtedly the most exhaustive work on the subject yet offered to the profession.

A Digest of the Reports of the United States Courts. Vol. V. By Benjamin Vaughan Abbott. New York, 1889. Diossy & Company. $6.50.

This volume contains a digest of the U. S. Reports from January, 1884, to December, 1888, making a volume of over 700 pages. Mr. Abbott's work in this series is too well known to require further comment. This volume seems in every respect the equal of its predecessors.

Samuel Shaw

The Green Bag.

VOL. I. NO. 3. BOSTON. MARCH, 1889.

CHIEF-JUSTICE SHAW.

IN the judicial annals of Massachusetts the name of Chief-Justice SHAW stands first and foremost among the many distinguished judges who have adorned the bench of the Commonwealth.

Lemuel Shaw was born at Barnstable, Mass., on the 9th of January, 1781, and was the son of Rev. Oakes Shaw and Susannah Hayward. His father was ordained minister of the West Parish of Barnstable in 1760, and continued in the pastorate until his death in 1807. That he was faithful to his people and that they loved him, this long connection shows. The mother was a woman of vigorous mental and physical powers, and lived to see the honors and successes of her son; dying under his roof in 1839, at the extreme age of ninety-four.

Lemuel Shaw's childhood was passed in an old-fashioned New England parsonage — if the minister's house may be so called — in that part of Barnstable known as Great Marshes. Here, as he grew older, he was fitted for college under his father's instruction, leaving home only for brief final preparation at the school of a Mr. Salisbury at Braintree. In 1796, at the age of fifteen, he entered the freshman class at Harvard. During the winter vacations of the last three years of the course, to help pay the college bills and to relieve his father, he kept a district school. He was an earnest, industrious student, and held a good rank in his class.

On leaving college, a position as usher in the South Reading School, afterwards known as the Franklin School, in Boston, was obtained; and here, as he afterwards expressed it, he "worried through" a year. At the same time he was a writer or assistant editor for the "Boston Gazette." After relinquishing his position as usher, he entered, as a student, the office of Mr. David Everett, a lawyer at Boston; and on Mr. Everett's removal to Amherst, N. H., Mr. Shaw went with him, and there completed his term of study. In September, 1804, he was admitted to the bar of New Hampshire, and to that of Massachusetts in the following October.

The beginning of 1805 found him in an office in Boston, from which, after a few months, he moved into the office of Mr. Thomas O. Selfridge on the north side of the Old State House. His advancement in the profession could not have been very rapid at first, as he did not argue his first case before the Supreme Judicial Court until 1810, six years after his admission to the bar. This case may be found reported in the sixth volume of Massachusetts Reports. The amount involved was only five dollars, and the future chief-justice lost his case.

For twenty-six years Mr. Shaw devoted himself faithfully to the study and work of his profession, but not to the utter exclusion of other studies. A man cannot be a great lawyer who is nothing else. The mind requires not only diversity of discipline, but generosity of diet. It cannot grow to full, well-rounded proportions on any one aliment. Mr. Shaw understood this, and read and studied much outside of Coke and Blackstone.

While he did not, we think, keep up his intimacy with Greek and Latin, he was at home with the English classics and a master of the English tongue. He liked the elder

English novelists and satirists, — Swift, DeFoe, Fielding, and Smollett. He was a student and admirer of Hogarth, frequently calling attention to the minute details of his pictures, showing the artist's nice touch and the student's careful eye. He was a close observer of Nature, — of the trees of the forest, and of the wild flowers and their haunts. He had a strong taste for, and a love of, mechanics and the mechanical arts. A new machine was a delight to him, and after court he must go down to the machine-shop or manufactory to see it in operation. He also took great interest in the affairs of town and State, and held numerous offices, being school-committee man, fire warden, selectman, and for eight years a Representative to the Legislature from the town of Boston; and for three or four years Senator from Suffolk. In the Convention of 1820, to revise the Constitution of the State, Mr. Shaw was a delegate from the town of Boston.

During all these twenty-six years of practice, Mr. Shaw's business was confined chiefly to the Boston courts. He worked alone, with brief exception, for the first sixteen years, and then took into partnership Mr. Sidney Bartlett, who had been his student, and who up to the time of his death was so well known to the bar of this Commonwealth and in the Supreme Court at Washington.

Mr. Shaw travelled but little, was fond of home, but enjoyed greatly the meetings of the clubs of which he was a member, and other social gatherings. He had fine social qualities, large conversational powers, and a fund of good humor and quiet mirth.

He was twice married. His first marriage, at the somewhat mature age of thirty-seven, was with Eliza, a daughter of Josiah Knapp, Esq., a merchant of Boston. By her he had two children, a son and daughter. His second marriage was in 1827, with Hope, a daughter of Dr. Samuel Savage, of Barnstable, by whom he had two sons, both of whom afterward became members of the bar in Boston. Home was always a happy place to him; and he never was more attractive and delightful than at his own fireside.

In this quarter of a century at the bar, Mr. Shaw built up a solid professional reputation, and acquired a valuable practice; not a great many cases, but important and leading causes. His examinations and arguments of legal questions were comprehensive and thorough; his addresses to the jury, forcible, earnest, and logical.

Upon the death of Chief-Justice Parker, in the summer of 1830, Mr. Shaw was appointed by Governor Lincoln as his successor. He was at first very reluctant to accept the office; and a heavy pressure was brought to bear upon him before he consented to do so. He was then in his fiftieth year; he had won his way, slowly but surely, to eminent rank at the bar, and to a lucrative practice. He had acquired a moderate property, and was living happily and to his taste. He had a growing family to support and educate. He knew a great place was to be filled, and was distrustful of himself. He felt that he ought to and must decline. In this exigency Mr. Webster was requested by the Governor to confer with him, and urge his acceptance of the place. After two interviews with the future chief-justice, Mr. Webster succeeded in obtaining a reluctant assent. Mr. Shaw accepted the office, and held it for thirty years, retiring in 1860, less than a year before his death, which occurred in 1861.

He went upon the bench in his fiftieth year, and then worked through the lifetime of a generation, with strength and vigor to the last. Some of his later judgments are his best, and are, indeed, remarkable for their freshness and for the sagacity and grasp with which he apprehended the new exigencies of society and business, and applied and adapted old rules of law to them. An opinion written in his eightieth year (*Commonwealth* v. *Temple*, 14 Gray, 69) has the freshness, vigor, and constructive power of early manhood.

In the thirty years during which Mr. Shaw presided over the Supreme Court, great changes were made in the jurisprudence of the State and the methods of administration; and he was constantly called upon to adapt himself to these changes, to reconcile the old with the new, and to assist in bringing them into order and harmony. In doing this he showed the strength and fertility of his resources wherever principles and their application were involved.

As a judge he was careful, thorough, systematic. He had a patient ear, — not merely the passive consent to listen, but the desire to be instructed in the facts and law of the case, no matter how inconsiderable the amount involved, or however humble the parties or their counsel. He was no respecter of persons; and a good point well put by the youngest member of the bar told with the same effect as if made by the leader. His rulings upon interlocutory questions and the admission of evidence were well considered and carefully noted; his charges to the jury simple and clear, but at the same time comprehensive and impressive. He was, in the best sense, impartial, and weighed with an even scale the merits of the cause. It was a pleasure to try causes before him; for one's repose in his integrity, fairness, and sense of justice was never ruffled. He held the reins in his own hands, quietly, firmly, with no twitching or jerking, but so that the strongest men at the bar perfectly understood who presided.

He was a man of great firmness; but this firmness was not obstinacy, dogged conceit, unwillingness to confess error. It was a sense of duty; nothing could shake or disturb that. Such was the veneration for him, that no man would have ventured to suggest to him a consideration or motive outside of the line of duty. Though this firmness brought him into conflict with a strong and sensitive popular opinion on several occasions, we think it never impaired the public esteem and confidence. Men who knew Chief-Justice Shaw found it impossible not to respect him.

The most celebrated criminal trial over which Judge Shaw ever presided was that of Professor Webster for the murder of Dr. Parkman. Time seems to have vindicated his impartiality and ability on that occasion; but at the moment he was assailed by savage attacks in the newspapers of New York and Philadelphia, and by abusive letters.

But, after all, the reputation of the Chief-Justice as a jurist must rest upon his reported judicial opinions. These, beginning with the tenth volume of Pickering, extend to and include the fifteenth volume of Gray. They make, perhaps, a third part of the matter in these fifty-five volumes. Through these reports he is known as well to the profession throughout this country and England as in his native State. His judicial opinions are thorough and exhaustive. They seldom rest on mere authority, but strike down to the very root, — to the principle on which the cases rest. We venture to affirm that there are, in the reports of this country or of England, no more instructive and suggestive judicial opinions and arguments than those of Judge Shaw.

But, great as was the judge, the man was greater than the magistrate. A truer man, indeed, did not grace his generation. With that little roughness of exterior, he was like the nuggets of California, — through and through solid gold.

But the man bowed to the magistrate. With the largest sense of equity he was the servant of the law he was set to administer, and obeyed its mandate. With the soundest judgment, with masterly powers of reasoning, and, in discussion, with a subtlety of logic seldom equalled, he had literally no pride of opinion, but retained to the last the docility of childhood, — the ever open and receptive and waiting spirit, into which wisdom loves to come and take up its abode. With a stern sense of justice, he had the tenderness of a woman; and while the magistrate pronounced the dread sentence of the law, the man was convulsed with grief and sympathy.

With a firm trust in God, with a constant sense of his presence, looking to him for guidance and support, nothing could move him from the path of duty. He stood in his place, and the billows broke at his feet.

In the year 1860, having then nearly attained the age of eighty, and completed thirty years of service on the bench, being in full possession of his mental and bodily faculties, he tendered his resignation as chief-justice. It was received with a universal expression of respect and affection from the public; and the address of a committee of the bar of the whole State gave him the opportunity of making a farewell address, in which he feelingly acknowledged the support which his reliance on the good-will of his professional associates, the advocates at the bar, had furnished him, and in which he left his testimony to the value of our judicial system:

"Above all, let us be careful how we disparage the wisdom of our fathers, in providing for the appointment to judicial office, in fixing the tenure of office, and making judges as free, impartial, and independent as the lot of humanity will admit. Let no plausible or delusive hope of obtaining a large liberty, let not the example of any other State, lead you in this matter to desert your own solid ground, until cautious reason or the well-tried experiments of others shall have demonstrated the establishment of a judiciary wiser and more solid than our own."

A VISIT TO SOME ENGLISH PRISONS.

By Clement K. Fay.

IN the summer of 1887 I spent my vacation in England; and as I was then a Commissioner of Prisons for the State of Massachusetts, I took the opportunity to visit some of the English prisons for purposes of inspection and comparison with our own. Soon after reaching London I called upon Hon. Sir Edmund F. Du Cane, the surveyor-general of prisons in England, in whom the whole prison system of that country may be said to centre, although the actual control is vested in the Home Office. I was armed with a letter of introduction from Mr. Phelps, our minister plenipotentiary. Sir Edmund received me very courteously at his house in South Kensington, and after an interesting conversation as to our American prisons, and especially the "indeterminate sentence" plan which exists at Concord, Mass., and in some other States, he gave me letters of introduction to the governors of the three famous prisons in London, — Millbank, Pentonville, and Wormwood Scrubs, — with instructions to those officials to show me every attention and give me any information which I wanted; and I was treated by each and all of them with great politeness and consideration.

I went first to Millbank, a large prison on the north bank of the Thames, in Westminster, which was built about the beginning of this century upon a design by Bentham. The plan is, so far as I know, unique, and is certainly interesting. Each prison in Millbank (for there are practically several in one) is built in the form of a pentagon, four sides of which are devoted to cells and the fifth to the officers' quarters, workshops, etc., which form a base. Six of these bases are brought together to form a centre of hexagonal shape, something like an ordinary table-caster with six cruets, or bottles, round the handle. The tiers or corridors are isolated from one another. There are three tiers of cells, each tier having fifteen, so that it is only possible for a warder to have, at most, thirty cells under his inspection by standing at the corner of the corridor where he can command a view in two directions. Under the more modern radiating plan, as at Charlestown or Concord,

Mass., a person standing in the guard-room under the dome can see all the cells, with the tiers, or iron platforms, in front of them, which are exposed to view, a large open air-space being left outside of the tiers and between them and the wall of the cell building. It is like standing on the hub of a large wheel and looking along three spokes radiating from it. Of course, the Millbank plan is too antiquated, inconvenient, and expensive to be of value at the present day. In order to inspect the whole prison, one must walk about two and one half miles, and this involves the locking and unlocking of over one hundred doors.

Millbank was formerly one of the prisons to which convicts sentenced for more than five years were committed, and hence was known as a "convict" prison. In England there are two kinds of prisons, — the "local" prisons, the maximum term of imprisonment in which is two years, and "convict" prisons, in which the minimum term of imprisonment is five years. There are no sentences between two and five years. The English prison system is now, and has been for the past few years, in a transition state. Of course some leading features are, and are likely to be, unchanged; but the number of convict and local prisons has been reduced, and there has been also a marked reduction in the number of crimes and criminals within that time. Millbank and Pentonville, originally built as convict prisons, have been changed into local prisons, and Wormwood Scrubs is about to be. Millbank is to be given up entirely, partly on account of its architectural defects, but chiefly because of the great value of the several acres of land which it covers. It is surrounded by a high brick wall, which used to have a moat round it, but which has been filled up.

Pentonville, which is in the north of London, had 1,071 male prisoners when I inspected it. There, for the first time, I saw men walking on the treadmills. These large wheels are surrounded by wooden steps running the length of the wheel. The men are separated from one another by partitions, and each one catches hold of a horizontal bar and continues a slow tread from one step to another, all of course stepping together, and as it were kicking away the steps from under their feet. The wheels, like the "mills of the gods, grind slowly," making wheat into flour, from which the bread is baked for use in Pentonville and Millbank. The prisoners tread for fifteen minutes and rest five minutes, for several hours at a time. When I went there, there were 84 at work on the treadmills, although there were accommodations for over 200.

Wormwood Scrubs, the most modern of the London prisons, is in the northwestern part of London, and is a fine collection of buildings, erected entirely by convicts. Even the bricks were made by them. Printing, stonecutting, and carving, carpenter work, matmaking, brickmaking, and other industries, all for the government, are carried on there, and entirely without steam power; and in all three of these prisons the practice is to utilize the labor of the prisoners for the public works and institutions and by the sole exercise of hand power. I was told that the contract system of convict labor is very little used in England, the work being almost entirely upon what we call the "State account" plan. At Wormwood Scrubs the convicts print the "Habitual Criminals' Register," which is of vast benefit in the detection and identification of criminals. This record is published and distributed to all the prisons and police stations in the country annually.

Flogging is still in vogue in English prisons, but it is only applied in obedience to the direction of the court in passing sentence upon criminals of a certain kind; or sometimes, though rarely, as a last resort to punish a refractory prisoner who has persisted, after previous punishments, in defying the authority of the prison officials. A criminal who has assaulted an official while in the discharge of his duty, or who has committed robbery with violence from the person, — a garroter or highwayman, — may, in addition to a term of penal servitude, be

sentenced by the court to receive twenty, thirty, forty, or even fifty lashes, one half to be administered at the beginning, the other half at the end of the sentence. When it is resorted to as a means of discipline it is only after the case has been laid before the prison directors and carefully investigated.

Prisoners in England have the right to make complaints to the governor of the prison, which are entered, together with the governor's action thereon, in a large book kept for that purpose, and open to inspection by the prison directors and commissioners, who may, in some cases, revise the action of the governor.

The cells in English prisons are constructed on quite different principles from ours. They are much larger, are roofed with a brick arch, and are well lighted and ventilated. The light comes from a window about seven or eight feet from the floor, which is some three feet wide by eighteen inches high. The doors, unlike most of those in America, are solid and are about two inches thick instead of being grated like ours; so that one who walks along the corridor outside of the cells can only view the interior by moving a slide and looking through a small peephole about an inch in diameter. If a prisoner wants to communicate with a warder — some of whom are always on watch in the corridor — he can press a knob in the cell that rings a bell and throws out a signal which can easily be seen, like a bedroom annunciator in a hotel. All the cells are neatly whitewashed, and the ventilation is good, especially in Wormwood Scrubs, where the warm air is forced into the top of a cell upon a novel plan that is said to work very successfully.

The prisoner sleeps upon a mattress, with blankets, placed on two planks fastened together. Every morning he has to roll up his bedding and strap it, and turn up the plank bed against the wall. This enlarges the area for exercise in the cell. On the outside of each cell is a placard giving the name, number, and a distinguishing letter or mark of the prisoner (if he has served previous sentences), and also a report on which are credited his marks. These marks are based upon his conduct and industry. If he gets eight marks a day for a month of twenty-eight days, or two hundred and twenty-four marks a month for two years after he is committed, he is placed in the third grade; and if he continues as well for the third and fourth years, he is advanced at the end of each year to the second and first grade, respectively. For good conduct, as with us, he is entitled to a commutation of the term of his sentence, and is released upon the "ticket of leave," or, as they call it in England, the "license" plan, the obligation of his parole continuing until the full term of his sentence has expired. If his record in prison has been perfect, the prisoner during the last year of his confinement prior to his release on license, becomes a "special class" man and wears a blue suit, instead of the white, or nearly white, suit of the ordinary convict. A "special class" man has certain rights, such as less hours of work and the privilege (for so it is regarded) of carrying messages from one officer to another; and the mere possession of these distinctions makes the "special class" man an object of envy, if not admiration, in the eyes of his less fortunate companions. We have no such system in most of our convict prisons. I wish we had.

I have been frequently asked, "How does the English prison system compare with the American?" It is difficult to make a fair comparison, because in the first place there is no American system. Each State has a system of its own, or pretends to have. Then, again, as I have said, the English system has undergone great changes within a recent period. The government of their prisons is now centred in the Home Office in London, at a saving of expense, and a reduction in the number of local prisons, in 1887, from sixty-one to fifty-five, and the convict prisons from thirteen to ten. Instead of having the country prisons governed by

local boards throughout the realm, the government or the system emanates, practically, from Sir Edmund F. Du Cane, whose long experience and careful, intelligent study of the whole question have given him a high rank among the leading penologists of to-day, and in England he appears to be *facile princeps*.

I confess I think we might well adopt some of the features of the English system. For instance, it is very difficult, if not impossible, for a curious visitor to get into an English prison unless he commits a crime. In America, certainly in Massachusetts, the prisons are too generally regarded as places of entertainment for the outside public. Many of our jails and houses of correction have a sign announcing the visiting hours on each secular day of the week, and it is not uncommon for picnic and pleasure parties to be gotten up for the express purpose of going to see a prison. I think this is all wrong. It is subversive of discipline, is often demoralizing to the prisoners, and may be made — as it frequently is — the entering wedge for a display of unreasonable sentimentality by the surprisingly large number of people who seem to regard a criminal as a martyr after he is in prison, and never think of the victims of his crime or the safety and well-being of society. But it also increases the opportunity for evil-disposed persons to smuggle unlawful articles inside the prison and give them to the prisoners. At best the easy access to our prisons for outsiders can only gratify a morbid or unworthy curiosity. Prisoners are entitled to seclusion from the gaze of inquisitive people. They ought not to be placed on exhibition like the animals in a menagerie. It is especially unwise to admit women to male prisons, or men to female prisons, whether those who are thus admitted are themselves prisoners or not. No person should be allowed to ramble through a prison as a visitor except upon a written permit granted by competent authority for good cause.

At Millbank the deputy-governor told me that even he was not allowed to go into the female department of the prison. It was under the charge of the matron and her female assistants. On entering each English prison, I was at once impressed by the atmosphere of discipline which everywhere prevails. The governor, deputy-governor, and warders are almost entirely military men, — army or naval officers and soldiers, — who have learned to command and obey. I intend no personal reflection on any prison officials in this country. As long as cheap politicians can threaten them with removal or defeat at the next election, we cannot expect them to improve the present state of affairs.

Prison discipline should be applied with equal justice to the convict who has political or social backing and the poor, friendless one who, if he had had a fair chance in life, might have been a good man. Our prison system should in some way be freed from the meddlesome interference of politicians, and should be safe from the capricious or ill-considered attacks of incompetent legislators. It is even a worse blot upon our system to allow political or social pressure to shorten the term or secure the pardon of a prisoner whose case stands on no better footing than that of fifty others, and yet this is often done.

Another and an immense superiority of the English system over ours is the plan of separating convicts when they are first committed to prison. In England the convict spends the first nine months of his sentence in isolation. He lives in his large cell, — much larger than ours, — and works there, picking oakum, making mats or baskets or shoes, or doing whatever work is assigned to him. He goes in the morning for half an hour to the chapel, and, if his health permits, exercises an hour each day in walking around a large circle with a squad of other prisoners. Only during this hour and a half a day is he brought in contact with his fellow-convicts, and during that time he is carefully watched and prevented from communicating with

them. If he has earned the requisite number of marks by good conduct and industry, at the end of this nine months of isolation he is allowed to work with others, but always under strict guard, to prevent, as far as possible, any unnecessary talking. Compare this with our "congregate" system, as it is called. In our prisons all the criminals are herded together promiscuously. At the same bench or in the same shop, side by side, you can see the young beginner in crime and the hardened professional.

Talking, though nominally forbidden, is freely indulged in. Crimes are planned, experiences interchanged, and useful hints for future use outside are eagerly adopted; rebellions against the officials are arranged and made possible; the law-abiding convicts have their ears saluted with vile and contaminating language such as many of them have never heard before, and the whole system of the prison is tainted.

This is not overdrawn! I can produce prisoners to corroborate my statements. Is it any wonder that our prisons are thus made institutions for educating and graduating criminals who are worse after they leave than they were when they entered? By what right does the State send men to prison and compel them to breathe this air of contamination? The paramount idea in prison discipline should be the *reformation* of the prisoners. The State ought not to stoop to revenge by flogging or maltreating its convicts. But what can be further from successful reformation, or more dangerous to discipline, or more baneful in its effects, than this wholesale mixing of criminals, — for there are grades among criminals as much as among outsiders. This fact, which ought to be recognized and treated practically, is at present ignored.

In Pennsylvania, in the Eastern Penitentiary, they have adopted a plan of complete isolation (in theory at least) during the entire sentence of every prisoner. This, it seems to me, is going too far in the other direction, though I would not go to the same length that Dickens did in arraigning it. The nine months' preliminary isolation in the English system is the result of years of experimenting. Formerly the period was eighteen months, but that was thought to be excessive, and was abandoned.

Penology is a vast and perplexing study. In view of the frequency and increase of crimes in America, we shall do well, I think, to adopt such reasonable ideas from the Old World, not England alone, as have survived a practical test, and the *temporary isolation* and *judicious grading* of convicts are two such ideas which have been almost neglected by us, though their value and importance are recognized in England I know, and in France, Belgium, Italy, and Germany I am informed and believe.

We waste money enormously on our prisons. The buildings are too costly and the fare is too luxurious, so that large numbers of vagrants and other misdemeanants turn up, as a regular thing, over and over again, to live at the expense of the State in a style which they cannot themselves afford, and which, except for the accompanying stigma, is far superior to that of thousands of poor but honest men.

CARLTON *v.* HESCOX.

(107 Mass. 410.)

By AUSTIN A. MARTIN.

["*Evidence of how much hay an ordinary horse will eat in a week is incompetent on the question how much hay was eaten in eight weeks and a half by a horse that was not in ordinary condition.*"]

A citizen and horse-owner is stopped by a Sheriff's Deputy.

IT is a sheriff's deputy,
And he stoppeth one so free.
"By Cock and Pye! and the Foul Fiend!
Now wherefore stop'st thou me?"

Who serveth a writ upon him.

"I stop thee at brave Carlton's suit,
Who 's furnished grain and hay
Unto thy gallant four-foot brute,
Who ate and ne'er said neigh!

And summoneth him before the Superior Court next to be holden.

"Before the next Superior Court,
I warn thee to appear;
And if of justice thou hast aught,
Thou there canst make it clear."

. . . . . .

The Judge paceth into the Court.

The Judge hath paced into the court;
A portly man is he.
With rev'rend mien behind him go
The good and true jury.

The Trial. The Plaintiff's tale.

The Plaintiff opened then his case,
And straight he did complain,
That to defendant's gallant steed
He 'd furnished hay and grain.

And eight long weeks and eke a half
Had given watchful care,
To cure him of some fell disease,
That noble horse did bear.

A most astounding quantity
Of hay that horse had ate;
So swore good Amos Carlton
Before the Court sedate.

Defendant is sore angered and amazed.

Such monstrous weight of provender,
Defendant Hescox swore,
No living horse or hippogriff
Had eaten e'er before.

And to sustain this goodly plea,
He straight a witness seeks
To swear what common horse could eat,
In eight and one-half weeks.

He endeavoreth to put in certain evidence, but the Judge preventeth.

But mark the niceties of law!
Carlton did there object,
And promptly did the learnèd Judge
The evidence reject.

And giveth his reasons therefor.

Defendant's was no *common* horse,
The Justice did explain;
And so was no criterion
Concerning hay and grain.

Whether it was, that, being sick,
He ravenous had grown,
Or that he was a Pegasus,
Is not quite clearly shown.

Prudent rule of conduct to be drawn from the learned Court's decree.

But from the learnèd Court's decree
Most surely we may read,
The only safe proceeding is,
To own a *common* steed.

So, all ye lovers of the horse,
That is the friend of man,
Be warned in time by this decree,
Adopt the safer plan!

Advice to the lovers of good horses.

For if your spicy trotters,
Or high-bred barbs you keep
In public stable, much expense
And trouble you may reap.

Showeth the dangers which beset a contrary course.

For stable-keeper may depose
In good set terms, and say
He 's fed your nag on terrapins
And squabs, in lieu of hay.

In vain indignant you 'll protest!
In vain you 'll earnest plead,
That this is not good equine food!
Yours is no common steed.

So shun to buy fine-blooded stock;
'T is fraught with sore remorse.
Lower your pride, and humbly keep
An "*ordinary*" horse!

THE LAW SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA.

By C. Stuart Patterson,

Dean of the Department of Law of the University of Pennsylvania.

THE University of Pennsylvania, founded in 1749, in the city of Philadelphia, has so far prospered that in this year (1889) it has in its College, Medical, Dental, Veterinary, Biological, Law, and Philosophical departments one hundred and sixty-nine professors, lecturers, and instructors, and twelve hundred and twenty-two students. Thanks to the untiring and self-sacrificing efforts of its Provost and Trustees, and to the enthusiasm with which Provost Pepper has inspired every one who is in any capacity connected with the University, a great advance has been made within a few years.

The University Law School has now six chairs of instruction, and one hundred and forty-four students; but that law school dates only from April 2, 1850. In 1790 a professorship of law was established in the college department. Mr. Justice Wilson, of the Supreme Court of the United States, having been elected the professor, delivered his introductory lecture on December 15 of that year, "in the quaint old-fashioned hall of the Academy," in the presence of President Washington and his Cabinet, the Houses of Congress, the Executive and Legislative Departments of the governments of the State of Pennsylvania and the City of Philadelphia, the Judges of the Courts, the members of the Bar, and last, but not least, Mrs. Washington, Mrs. Hamilton, and many other ladies.[1] But Mr. Justice Wilson's course of lectures, though commenced under such brilliant auspices, do not seem to have progressed beyond their first year. No further effort seems to have been made before 1817 to give instruction in law to the students of the University. On March 20 of that year, Charles Willing Hare, Esq., of the Philadelphia Bar, was elected Professor of Law, and delivered his introductory lecture in the following month. But he, like Mr. Justice Wilson, lectured for but one

[1] Historical Sketch of the Department of Law of the University of Pennsylvania, by Hampton L. Carson, Esq.

year. The subject of instruction of law was again permitted to pass into oblivion, until, on April 2, 1850, the Hon. George Sharswood, then President Judge of the District Court of Philadelphia, was elected Professor of Law; and on September 30 of that year, he delivered his introductory lecture. On May 4, 1852, the Trustees of the University established a Faculty of Law, and appointed Judge Sharswood Professor of International, Constitutional, Commercial, and Civil law; Peter McCall, Esq., Professor of Practice, Pleading, and Evidence at Law and in Equity; and E. Spencer Miller, Esq., Professor of the Law of Real Estate, Conveyancing, and Equity Jurisprudence. From that day down to the present time the Law School has been in active operation. Professor McCall having resigned on June 5, 1860, P. Pemberton Morris, Esq., was, in November, 1862, chosen as his successor. In 1868, Judge Sharswood having been promoted to the Bench of the Supreme Court of Pennsylvania, the Hon. J. I. Clark Hare, his successor as President Judge of the District Court of Philadelphia (now the Court of Common Pleas, No. 2), was also appointed his successor in the Faculty of the Law School. Professor Miller having resigned his professorship in 1872, E. Coppée Mitchell, Esq., was, in 1873, elected to the Chair of Real Estate and Equity Jurisprudence. In February, 1874, James Parsons, Esq., was elected Professor of the Law of Personal Relations and Personal Property. Professor Morris having resigned in 1880, George Tucker Bispham, Esq., was elected the Professor of Equity Pleading and Practice. Professor Mitchell having died in 1887, C. Stuart Patterson was elected Professor of Real Estate and Conveyancing; and A. Sydney Biddle, Esq., was elected Professor of Practice, Pleading, and Evidence at Law, and Criminal Law. To the great loss of the school, and to the great regret of his colleagues, and of all who have ever had the benefit of his instruction in the law, Judge Hare has recently resigned his professorship, and his successor is to be elected in the month of May of this year; but, fortunately for the administration of justice, he remains upon the bench of the Court of Common Pleas over which he has presided since 1868. In addition to the changes in the personnel of the Faculty, changes have been from time to time made in the division and arrangement of the subjects of instruction in the school; and at the present time the titles of the several chairs in the Faculty are as follows: —

1. A Professorship of Commercial Law, Practice and Decedents' Estates; incumbent, Prof. James Parsons.

2. A Professorship of Equity Jurisprudence, including the Principles of and Pleading in Equity and Orphans' Court Practice; incumbent, Prof. George Tucker Bispham.

3. A Professorship of Constitutional Law, and the Law of Real Property and Conveyancing; incumbent, Prof. C. Stuart Patterson.

4. A Professorship of the Law of Torts, Evidence, and Practice at Law; incumbent, Prof. A. Sydney Biddle.

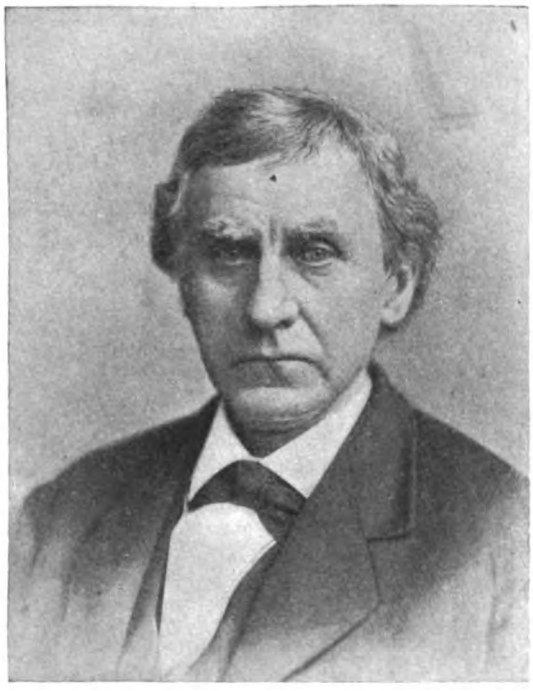
5. A Professorship of the Law of Contracts, Corporations, and Pleading at Law, to be filled by election.

6. A Professorship of Criminal Law, to be filled by election.

The present prosperity of the school is due to the intelligent and self-sacrificing labors of those who have heretofore been its professors and those who were associated with them. It is fitting, therefore, that those who have succeeded them should gratefully record their appreciation of the virtues and abilities of their predecessors.

George Sharswood, the first of the professors, was born in Philadelphia on July 7, 1810. He was graduated from the University in 1828. Having studied law with the Hon. Joseph R. Ingersoll, he was admitted to the bar on Sept. 5, 1831. On April 18, 1845, he was raised to the bench of the District Court of Philadelphia. In 1848 he became by seniority the presiding judge of

that court. In 1868, he was elected an Associate Justice of the Supreme Court of Pennsylvania, and on Jan. 1, 1880, he became the Chief Justice of the State. On Jan. 1, 1883, he retired from the bench; and he died in May, 1883. It is unnecessary to remind students of the law, or lawyers, of his "Lectures Introductory to the Study of Law;" of his essay upon "Professional Ethics," the rules laid down in which, as Mr. George W. Biddle has said, "breathe the loftiest tone and the highest moral principle;" or of his annotations of Blackstone, of Starkie on Evidence, or of Byles on Bills. In the eloquent words of Mr. Hampton L. Carson (an alumnus of the school and a distinguished member of the Philadelphia Bar), as Judge Sharswood's "services to the cause of professional education have become the most precious portion of the history of the school, it cannot be inappropriate to acknowledge the heavy obligations due to him who bore aloft alone the weight of a great enterprise, and by courage, energy, enthusiasm, industry, and learning established upon the foundations of success an institution that had twice failed in distinguished hands." The characteristics of Judge Sharswood's judicial character can best be stated in the words of Mr. George W. Biddle, the Chancellor of the Law Association of Philadelphia, who has said, —



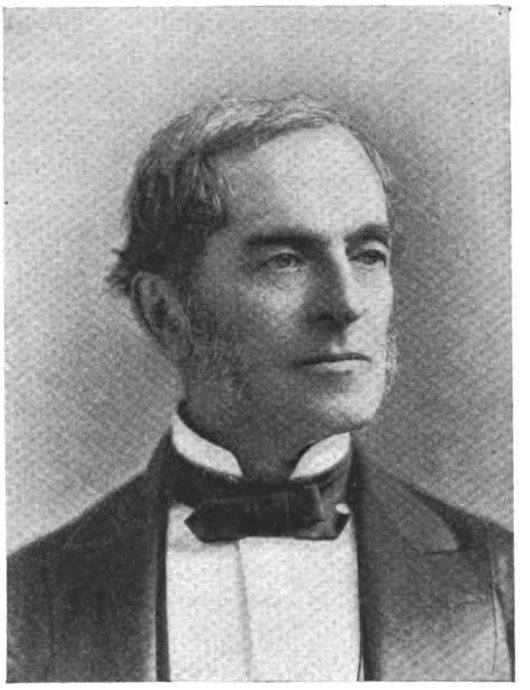
GEORGE SHARSWOOD.

"That he was learned, careful in laying down his premises, accurate in deducing his conclusions, cautious in confining them to the exigencies of the cause, and ever avoiding the unnecessary discussion of collateral subjects, all are aware. But his chief excellence was the ability to single out the controlling principles upon which an important cause depended, to carry them onward to their utmost correct limitations; and in thus generalizing from established views he was able to penetrate new and higher regions of truth, and to draw from them the aptest and most forcible arguments in support of his final results. Where mere technical learning sufficed, he could always bring it to the proper determination of the case in hand. But where a great public question, such as some of those already referred to, came before him, his treatment of it was of a broader and more masculine kind. If we look for a characteristic which distinguished him especially from other lawyers, we may, I think, find it in the entire freedom from the misleading technical analogies of the law as applied to such questions. He seems never to have been led to apply to public or constitutional questions the narrow rules by which we are obliged to decide cases under powers, or of contingent remainders, or those arising under our artificial rules of property; nor was he embarrassed by technical rules relating purely to the form of action. His mind was not only vigorous, but broad. Legal common-sense was as strong an attribute of him as ordinary common-sense is of our most successful business men. Perhaps this is to be ascribed to his liberal education, his wide range of studies, history, politics, economic science. And he was a student all his life; his education, so far as subjects kindred to jurisprudence were concerned, being kept up to the very last. He was therefore able to rise readily to the greatness of the occasion, and, flinging aside the technical trammels

which in such cases hamper and impede the progress, he not only sustained himself steadily in his upward flight, but cleaving still loftier and purer fields of reason, he steered his way onward with tranquil ease, reaching, without apparent effort, the end always clearly kept in view.

. . . . . .

"Judge Sharswood was a living exemplar of the highest moral excellence during his whole term of office. To speak of him as simply an impartial judge is to express his value in this respect very imperfectly. He was subject to no influences of any kind, other than the influences of the law and the justice of the cause. When on the bench he knew, he saw, nothing but the case before him, and the mode of reaching its correct decision. It would have been impossible for any other motives, direct or indirect, to have reached him while thus engaged, — they could not even have approached him, or played near him. He was above and beyond them as much as if he had lived in another hemisphere. It was the sentence of the law that he was striving to get at to be extracted from the only sources known to the law. Nothing exterior to them could by possibility enter into and color them, while he sat as the guardian of the sacred deposit.

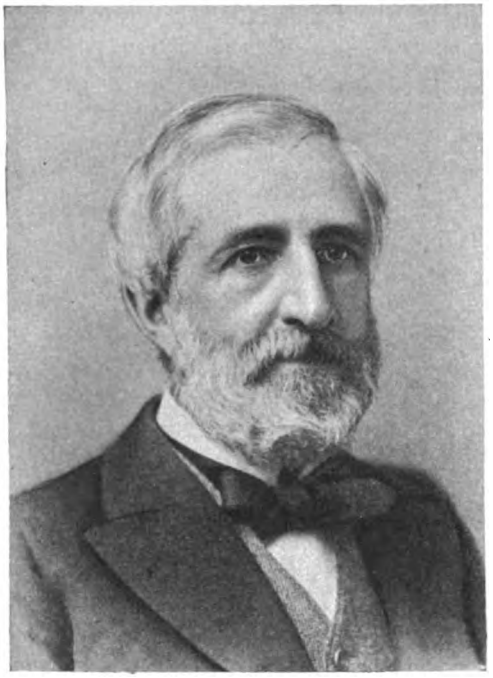


PETER McCALL.

"And then what was his devotion to the public service! For nearly forty years he gave to it without stint the exercise of the very highest faculties, for a return when looked at from a pecuniary standpoint of the meagrest kind. The employment of a tithe of the ability displayed by him in the discharge of judicial duty, with an expenditure of time inconsiderable, — almost incommensurable, — with that so prodigally bestowed by him upon the public, would have yielded in return all the material rewards which men usually rate so highly in this practical age. He held himself completely aloof from such influences. He knew no divided allegiance. He served one mistress, and one only, — the common weal. To her he gave, in early manhood, his affections, his faculties, his health, his strength, his life, without reserve, hesitation, or faltering; and he continued on until the days of his age had passed threescore years and ten. What an example in this age of ours for the juniors of the profession, what a complete volume of Professional Ethics, — this simple, single-minded devotion to the public cause; never turning aside from the course of duty; never using office, as others often have, — if not quite properly, at least with customary sanction, — as a stepping-stone to other ends; never seeking preferment, but letting it come, and taking it as the natural result of public consideration! This it was which entitled the Bar, speaking for the whole community, to say to him when sitting for the first time as Chief Justice of the State, "Well done, good and faithful servant! receive the just reward of long and close and heavy service."

Peter McCall, second of the professors in the order of seniority, was born in New Jersey on August 31, 1809. Having been graduated at the College of New Jersey, he came to the Philadelphia Bar on Nov. 1, 1830. He died on Nov. 2, 1880. He was for many years one of the leaders of the Philadelphia Bar. Profoundly learned in the law, he was, in his intercourse with all who were brought into contact with him, a model of courtesy.

E. Spencer Miller was born in 1818. He was graduated at the College of New Jersey. After some years of practice in Maryland, and afterwards in New Jersey, he was admitted to the Philadelphia Bar, on May 6, 1843. From then until the day of his sudden death, March 6, 1879, he was engaged in active practice. He was a clear and accurate thinker, untiring in energy, and a very forcible speaker. Professor Mitchell characterized him as the most successful lecturer that the Bar of Philadelphia has ever produced. One who stood very near to Professor Miller during the later years of his life, and who was exceptionally well qualified to do justice to him, thus sums up the traits of his character: —



J. I. CLARK HARE.

"Mr. Miller, as a lawyer, attained a very high standing among his contemporaries. He was distinguished for his great integrity, intrepidity, legal erudition and skill, as well as for his faithfulness and untiring industry. He was a close thinker on all subjects and a deliberate and careful speaker, and added to these characteristics a pungent and refined wit. The great facility which he possessed for turning instantly from even the pleasures of life to the most serious work was a remarkable trait; and no less so was the tenacity with which he clung to any course in the conduct of legal work upon which he had deliberately entered.

"Although he had little taste for the arena of politics, he nevertheless served twice as a member of the City Councils, and was always ready to resist unwise or corrupt legislation.

"During the war for the integrity of the Union, he raised and commanded a battery, which he took into the field for the defence of his State. In 1847 he published a 'Treatise on the Law of Partition by Writ in Pennsylvania,' and in 1856 edited the second edition of Sergeant's 'Treatise on the Lien of Mechanics and Material Men in Pennsylvania.' In 1849 he published a small collection of fugitive poems entitled 'Caprices,' which well deserved a circulation beyond the few copies which were distributed among his personal friends. In prose literature, also, he was a ready and graceful writer. He was noted for his high-minded and chivalrous bearing in all the relations of life."

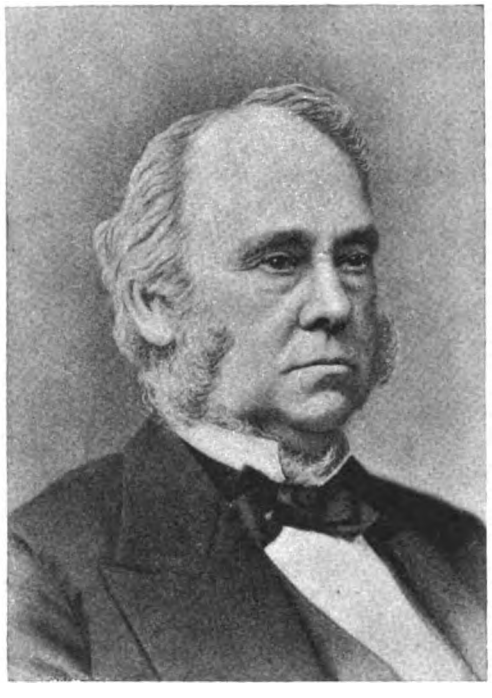
P. Pemberton Morris was born in Bucks County, Pennsylvania, in 1816. He was graduated at Georgetown College. He studied the law in the office of the Hon. Job R. Tyson, and was admitted to the Bar of Philadelphia on Feb. 8, 1840. In 1849 he published a learned treatise on the Law of Replevin, which has ever since been regarded as of high authority. In 1856 he annotated Mr. Smith's work on the Law of Landlord and Tenant. He was for many years engaged in active practice, mainly on the equity side of the courts, and those who were so fortunate as to be his clients always found in him a sound and judicious adviser.

Edward Coppée Mitchell was born in Savannah, on the 24th of July, 1836. He was graduated from the University of Pennsylvania in 1855, and came to the Bar in 1858. He rose rapidly in the profession until, as Mr. Justice Mitchell said, he became a master of Real Estate Law, and "for the combina-

tion of strenuous, unflinching, and unremitting assertion of his clients' rights with a just regard for the rights of others, and a careful consideration for the feelings of his opponent, he was the ideal lawyer and gentleman." The value of his services to the Law School cannot be better shown than by quoting that which was said of him by his colleagues, Judge Hare and Professor Parsons, at the meeting of the bar held after his death. Judge Hare said : —

" I was Coppée Mitchell's associate in the Law School of the Pennsylvania University for thirteen years, and knew him well. During that long period there was no jar, nor could there have been without fault on my side. I preceded him in the school some years, and was his senior by many, and I confidently believed that when I went his hand would still be at the helm. It never occurred to me that he would be the first to take leave of life and work.

" Mr. Mitchell was, as you are aware, Dean of the Faculty, as well as Professor of Real Estate, Conveyancing, and Equity Jurisprudence. This position gave scope for both sides of a liberal nature, his head and his heart, and each was exceptionally equal to such a task. Some men might have taught law as well, others have been as well fitted to represent the University, in their intercourse with the students and the outer world, but there are few who could have performed both parts with as much ability and success. The law of real estate is one of the most arid branches in the field of jurisprudence. Logical and accurate in all its details, as becomes a system originating in the age of the schoolmen, it may, when mastered, like other ingenious mechanisms, gratify the intellect, but has in it much to repel and little to attract the student. These obstacles were surmounted by Coppée Mitchell as they could not have been by any ordinary man. His grasp of principles, and the lucidity of his exposition rendered plain much that would otherwise have been obscure ; while his easy-flowing and persuasive rhetoric relieved the monotony of the subject, and made it easy for the student to persevere.



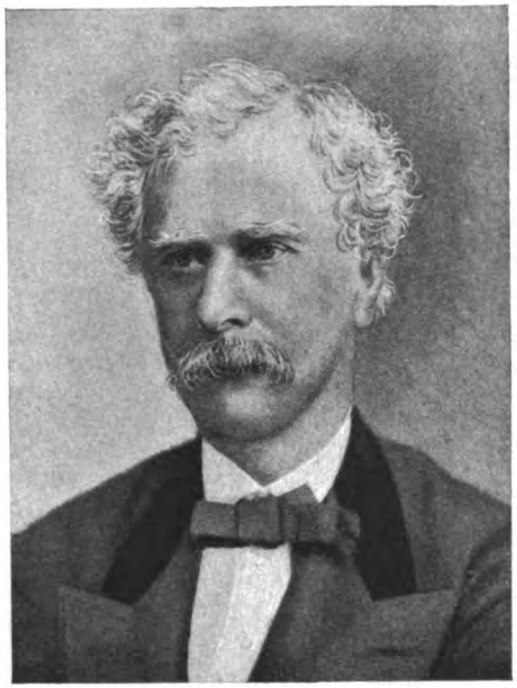
P. PEMBERTON MORRIS.

" Considerable as were the services thus rendered to the University and to the cause of legal education, they were not all. He had, as I have already stated, an important trust to fulfil as Dean of the Faculty. How difficult it must have been for a man in active practice at the bar to give the study requisite for the professor's chair, can only be known to those who have endeavored to combine dissimilar pursuits. Yet was Mr. Mitchell obliged to turn aside from either task to greet the young men who desired to follow the study of the law, and who found in him a counsellor whose geniality and kindness showed that if need were he would act as a friend. Here the qualities of his heart were conspicuous, and it is to them that we may ascribe no inconsiderable part of the measure of success that has attended the Law School of the University."

Professor Parsons said : —

" In his relations as Dean of the Faculty, and in his contact with the bar, Mr. Mitchell exhibited the tact and the judgment and the knowledge of men which were requisite in order to establish the Law School of the University upon its present footing. In this he showed the high qualities which have always distinguished him. He possessed that practical capacity to deal with his associates, and when he came in contact with them,

of impressing them with his convictions by his persuasion. And this is only one illustration of that trait. There were, of course, a great many other duties which devolved upon him as a representative of the Law School, in reference to the Bar of Philadelphia, because they had many other points of contact, and many other questions had to be considered and dealt with by him as the representative of the Faculty, in all of which he acquitted himself well. As a Professor of the Law School, he came in contact with the students, not only while they were at the University, but after they were graduated, when they were the Alumni of the Law School; and he was in more direct contact with the students than any other professor. He took such personal interest in their affairs that he was constantly consulted by them in reference to the formation of their clubs, or of any organization they contemplated while they were at the University, and even after they had left the University and still retained their interest in the institution itself. Their agent in the University was Professor Mitchell. He had a great many duties to perform; and this, among other things, contributed to overwhelm him, to overtax his strength, and to break him down at a premature age.

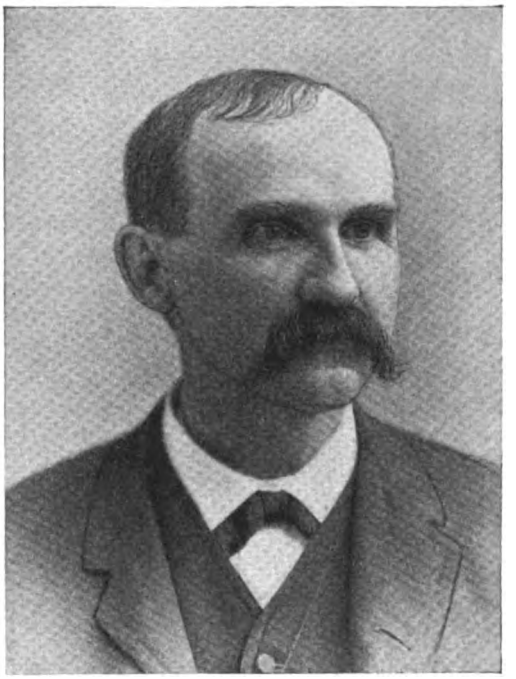


E. SPENCER MILLER.

"In regard to his work as an instructor in the University, there are so many present who recall with distinctness his method of teaching, that it is hardly necessary for me to dwell upon it; but there was one quality about him which always impressed me, and which showed his skill as a lecturer. It was this: that his knowledge of the law was brought down to the very point, to the turning-point, on which its classification rests. Those points of decisions which enabled him to discriminate between somewhat similar cases were the ones that were selected by him as topics for instruction; but instead of stating the proposition in an abstract way — inasmuch as the instruction at the University is by cases — he always presented a case to a student, teaching the student how to handle it for himself, analyzing it into its constituent elements, thus teaching him how to apply the principles of any particular case which was under consideration, and how to distinguish between it and other similar or analogous cases. Mr. Mitchell had, I say, beyond the statement of a mere abstract proposition, the faculty of popularizing the law. He would present it not only in its naked form, but in a neat illustration, with an aptness and with a directness that enabled the student easily to grasp and understand the principle involved. That is eminently important in a lecturer. Even in a court I know how much a lawyer's success may depend upon his capacity to present a proposition in the various forms in which it will take shape in order to be sure that it will be fully understood by the court; and yet a court is supposed, from its experience, to almost intuitively understand the law, and to comprehend every element of any proposition that may be enunciated. Mr. Mitchell had the faculty of not only presenting a legal proposition in the ordinary systematic way in which it was developed, but in illustrating it by examples which the student could hardly forget, because they were so pat in the illustration of the point under discussion. His success was very great at the Law School as a lecturer. He had a kind of magnetism in his address. Instead of mechanically delivering a lecture, it was his nature to throw into it a certain amount of animation, which always added to the weight of what

he said. He always spoke standing; and he has told me that if he should sit down and undertake to state anything, he would instantly jump up, for it was impossible for him to sit still while he was talking. It was natural for him to arise as if addressing a court or a jury.

"Judge Hare has said that the discussion of real estate law in the Law School requires practical skill in its presentation, in order not to repel the student. The real estate law is the backbone of the common law, and it is necessary that it should be thoroughly comprehended and studied. Mr. Mitchell was enabled to teach it with great success, because he stripped it of all its technical forms, and where it was only mechanical and technical, and where it had become tedious and obscure by over-repetition, he presented it in a way that seemed to refresh and revitalize the subject; and in reproducing those abstract subjects, one would think he was presenting his own reasoning, so clear were his explanations of what the law is. He took the law, and, instead of presenting it as a thing of the dead past, he brought it down to the present day, so that it was presented by him just as it appears to-day in the practice of conveyancing and in the discussions in our courts."



E. COPPÉE MITCHELL.

To this he, upon whose weaker shoulders the University has laid the burden of succeeding Professor Mitchell in the Chair of Real Estate Law, may add that every day which he has spent in the performance of his duty as a professor has caused him more and more to appreciate the high character of his predecessor's work, and to realize that Professor Mitchell's untimely death has been an irreparable loss to the University and to the cause of legal education.

It need not be said that a school which numbered among its teachers such men as Chief-Justice Sharswood, Judge Hare, Mr. McCall, Mr. Miller, Mr. Morris, and Mr. Mitchell, and those who were associated with them, gave thorough instruction in the law. But those professors, in the performance of their duties, labored under disadvantages which have happily been removed from the paths of their successors. The course was in their time limited to two years, each year including two terms of four months each, with an aggregate of ten hours of instruction each week. Now the course has been extended to three years, with a minimum of twenty hours of instruction in each week. For several years preceding the present year the lectures and examinations have been conducted at the University Buildings in West Philadelphia, at a distance from the homes of the students and from the offices of their preceptors. Now the Law School has obtained commodious quarters in the building of the Girard Trust Company at Broad and Chestnut Streets, in the business centre of the city and in convenient proximity to the homes of the students, the offices of their preceptors, and the courts. The whole of the sixth floor of that building will be occupied by the lecture rooms, library, and the offices of the executive department of the school Until the present

year the Law School has not had a library appropriated to the use of its students; but now, by the liberality of the family of the late George Biddle, Esq., a library containing complete sets of the English Reports, the Federal Reports, and the reports of the courts of last resort of the several States, has been presented to the University as a memorial of that distinguished lawyer. The curriculum of the school now includes thorough instruction in the following topics of the law: Constitutional Law, Equity Jurisprudence, Contracts, Bailments, Corporations, Carriers, Real and Personal Property and Conveyancing, Wills and Administration, Torts, Practice, Pleading and Evidence at Law and in Equity, and Criminal Law. Within a short time arrangements will be completed for a course of lectures to be delivered by competent instructors in International Law, Admiralty, Patents and Copyrights, and Medical Jurisprudence.

The requisites of admission to the school are: —

1. A satisfactory degree as Bachelor of Arts or Bachelor of Science; or,

2. A certificate of preliminary examination from the Board of Examiners of the Bar of Philadelphia; or,

3. A certificate from two or more examiners appointed by the Faculty of Law, setting forth that the student has passed a satisfactory examination in English and American History, the Latin Language, and the first two books of Blackstone's Commentaries. The course of instruction is strictly graded, and instruction is given by lectures and by frequent examinations. The students are required to read and discuss the leading cases illustrating the subject of instruction. Moot Courts are held at which questions prepared by the professors are argued.

Under the statutes of the University a degree of Bachelor of Laws is granted to candidates who having attended upon the full course of instruction in the Law Department, and having prepared and submitted to the Faculty an essay on some legal subject sufficient in merit to satisfy the Faculty of their fitness to receive the degree, shall have passed a satisfactory examination upon the subjects of instruction. The degree of Bachelor of Laws *cum honore* is granted to such candidates as may be certified by the Faculty to have passed the final examination with distinction. Graduates of the school are admitted to practise in the Supreme Court of Pennsylvania, and in the courts of Philadelphia County upon compliance with the rules of the courts as to registration. There is also a post-graduate course of study, covering two years and involving a philosophical inquiry into the history and sources of the law. Graduates of this course receive the degree of Master of Laws. A system of Fellowships has been created, under which the Faculty may select from the graduating class a distinguished student, and appoint him a resident "Fellow" to serve for three years at an annual salary of $300, and to give instruction in the Law School under the direction of the Dean of the Faculty. The aim and end of the system of instruction of the Law School of the University of Pennsylvania is to train students of law so thoroughly that when they shall have been graduated they will be competent to enter into practice at any bar in the United States. Since the establishment of the Law School, in 1850, more than seven hundred students have been graduated, most of whom have engaged in active practice, and by their professional success have reflected credit upon their Alma Mater.

CAUSES CÉLÈBRES.

III.

THE MYSTERY OF THE RUE DE VAUGIRARD.

[1833.]

ON the 23d of April, 1833, several carriages were drawn up before the door of a house in the Rue de Vaugirard, bearing the number 81. From the first alighted a tall thin man who carried in one hand a lawyer's bag filled with papers; after him came two men whose faces bore marks of evident anxiety and disturbance: one of them, short and thickset, was fashionably dressed and wore a pair of enormous green spectacles, behind which a pair of restless eyes seemed constantly in motion; the other, pale and thin, clad in the garb of a well-to-do working-man, appeared greatly depressed, and gazed vacantly about him.

A municipal guard and two officers surrounded these last individuals as they alighted.

From the second carriage, at the same moment, descended two men, one of whom carried a surgeon's case. The other was no less than the dean of the medical faculty, M. Orfila. He approached the first person whom we have described, and grasping him by the hand, said, —

"Monsieur Procureur du roi, my colleague, Dumoutier, and I are here at your orders. What does it concern? A case of poisoning? An autopsy?"

"Nothing of the kind," replied the procureur du roi, smiling; "it concerns rather a question of archæology."

"Then you have addressed yourself to the wrong persons. You should have sent for Letronne."

While carrying on this conversation, the magistrate and the two savants had entered, through a low dark gateway, the garden attached to the house. This garden was large, but evidently had not been cared for within the past few years. The paths were overrun with grass and weeds. A short flight of dilapidated steps led from this enclosure to the dining-room of the house.

A large kitchen table stood under an old apricot-tree in a corner of the garden, upon which were ink, pens, and paper. A few chairs and a large white-pine box completed the preparations which had evidently been made in expectation of the visitors whom we have introduced.

The procureur du roi, the two savants, a greffier, the municipal guard, and his two acolytes, each holding by the arm one of the two men who appeared so greatly disturbed, directed their steps to the apricot-tree. The procureur, after glancing at a plan which lay upon the table, turned to two workmen who were standing near the wall, and designating with his finger a cross traced in red ink upon the plan, said, —

"Begin there."

The two men at once commenced to dig the ground near a path which ran along beside the wall. After working a few moments one of them suddenly felt his pickaxe penetrate an excavation, and uttered an exclamation of surprise. The short thickset man with the green spectacles started involuntarily, and a momentary flash lighted up the dull eyes of his companion. The municipal guard and the two agents of police contracted the semicircle which they formed around these two men, still holding them tightly by the arms.

"Now," said the procureur to the workmen, "take the greatest precautions; proceed slowly, and be careful to break nothing."

The men emptied the earth with their hands from the hole that they had made, and laid bare a layer of mortar which apparently formed the covering of a sort of vault. It

was this which the pickaxe had penetrated. This layer being removed, beneath it was discovered an excavation about four and a half feet long and three and a half feet deep.

Lying at the bottom of this excavation could be seen a skeleton with a cord around its neck. The teeth and hair were perfectly preserved, and a gold ring still encircled one of the fingers.

"It is evident," said M. Orfila, "that this body was originally covered with quicklime, but they forgot to throw in the water. So the lime, instead of consuming the body, as was doubtless intended, has only served to preserve it. The flesh has disappeared, but the skeleton is complete. Well, my dear magistrate, is this the subject? What do you wish us to do with your antiquity?"

"It is necessary, gentlemen," replied the procureur, addressing the dean, the anatomist, and two new-comers, Dr. Marc, and Dr. Bois de Loury, — "it is necessary for you to accomplish a miracle: to reconstruct this body, decomposed by time, and to tell me who this skeleton was. You must first determine whether these scattered bones belonged to one individual. Then you must further state the sex and the age of the unfortunate being who was buried here, and tell me how many years have passed since the body was placed in this resting-place."

"Nothing could be easier for my colleagues," replied Dumoutier, "and it would not have been necessary to call me to their aid if I could not do more than that. I can tell you, for example, by simply inspecting this head, what were the thoughts, the habits, the passions, the virtues, and the vices of the soul which animated it."

The doctors exchanged a smile of incredulity at these words of the anatomist. Dumoutier was one of the most distinguished adepts in that new science invented by Gall and developed by Spurzheim, — a science which at that time had its warm adherents and its bitter foes.

The bones taken from the excavation were carefully transported to the dining-room and there placed upon a table; the lime and earth were deposited in the large pine box, and the medical gentlemen at once set to work before the eyes of the magistrate and the two men so carefully guarded.

After a rapid examination the savants recognized that they had before them the skeleton of a woman. This woman must have been about four feet eight inches in height, and the condition of the bones indicated that she was of an advanced age. The hair was short and yellowish-white in color. The teeth were long, and during life must have been very long. The nails, which were found intact, showed evidence of hard work. The hands were singularly small.

A *bourgeoise*, about seventy years of age, four feet eight inches in height, with short yellowish-gray hair, formerly red, long teeth, and small hands, — such was the general description of the subject.

At each of these deductions, the result of careful scientific observation, the eyes of the procureur du roi flashed. An archæologist reconstructing piece by piece the mummy of a Pharaoh could not have felt a more intense joy than that which animated the breast of the magistrate.

"It is not sufficient, gentlemen," he said, "to determine the age of the deceased; I must know the date of her death."

"That is a more difficult question to answer," replied M. Bois de Loury. "Two or three years ago I should have said that it was impossible to state accurately, but recent experiments permit a proximate solution of the question."

The conclusion of the four doctors was that death had taken place ten or twelve years before. "The cause of the death," they added, "is easily determined, since the vertebræ of the neck are still surrounded by six turns of the cord. The cause was strangulation. Any idea of suicide is inadmissible; for the turns of the cord have one direction, from the front to the back and from above to below, which indicates the intervention of another's hand. Finally, in the excavation,

the head was lower than the other portions of the body, and the limbs had been bent nearly double; so the body was buried shortly after death, before the *rigor mortis* had taken place."

"Well, Prisoners Bastien and Robert," said the procureur, "you see: these gentlemen on coming here did not even know why they had been summoned; and in less than two hours they have already drawn a striking portrait of your victim. They have made us witnesses of your crime. To the description which they have given me, only the name of the victim is wanting, — that of the Widow Houet."

"Wait!" interrupted the anatomist. "This name, which signifies nothing to us, I will tell you what it represented to those who knew the human being whose bones lie here before us. The woman whose head I now hold in my hands was avaricious, suspicious, and passionate. She was also exceedingly timid."

These details, given by the savant Dumoutier, seemed for an instant to imbue the skeleton with life. For a moment the illusion was so great that Robert, the man in the working-man's dress, drew back frozen with terror; a cold perspiration stood upon his brow; his teeth chattered, and he stretched out his hands as if seeking for support. They encountered an arm, — that of the short man with the green spectacles. At this contact Robert seemed to awaken, as a man recovering from a frightful nightmare, and he repulsed Bastien's arm with a movement of disgust, horror and hatred. Then, making a violent effort to control himself, he relapsed into a state of mournful impassibility.

"The identification is overwhelming; the proof is complete," said the procureur du roi. "Gentlemen of the Faculty, I asked of you a miracle; you have performed it."

. . . . . .

On the 13th of September, 1821, the Widow Houet, a woman about sixty-seven years of age, disappeared from her home in the Rue des Mathurins.

At the time of her disappearance she enjoyed an income of about 6,000 francs per annum, having received at her brother's death the amount of 43,000 francs, and possessing, besides, property of her own. She had two children, — a son, almost an idiot from his birth, and a daughter, who, in 1813, married one Robert, a dealer in wines.

From the time of this marriage a decided misunderstanding prevailed between the widow and her son-in-law; disputes as to money matters aggravated the antipathy which the former felt for Robert, and she feared her son-in-law to such an extent that she was often heard to exclaim, "When I perish it will be by his hands."

On a Thursday, the 13th of September, 1821, about six o'clock in the morning, Robert went to the widow's house and invited her to breakfast with him on the same day. "I will go," she replied. About seven o'clock a woman, named Ledion-Jusson, who did the work about the house, arrived; the Widow Houet reproached her for being late, and a few moments afterward left the house.

She wore a morning dress and a shawl; she walked rapidly, seemed excited, and talked to herself as she went along. She went down the Rue des Mathurins, and was seen in the Rue de la Harpe, near the house where Robert dwelt.

About eleven o'clock Robert's wife went to seek her mother, whom she had expected to breakfast with her. At noon she again returned to the Rue des Mathurins, but the widow had not made her appearance.

The next morning the Roberts were notified that the Widow Houet had not reappeared. Robert was alone in the house when this news came. "Say nothing to my wife," he said; "it will disturb her. I will tell her myself later."

Within two days of this singular disappearance, the news of which was so singularly received, one Hérolle received, to be handed to the woman Jusson, a letter post-

marked Paris. In it the Widow Houet stated that she had departed on a few days' journey with a friend; she forbade Jusson to mention this fact to any one.

Another letter postmarked Saint-Germain-en-Laye, came to a Monsieur Vincent, who lived in one of the two houses owned by the Widow Houet at Versailles. The tenor of this letter seemed to indicate that the widow intended to end her days by suicide.

It was easy to see that these two letters were forgeries; the writing and style of expression were certainly not the Widow Houet's.

There had, then, undoubtedly been a crime committed; but where? by whom? It was proposed to search the widow's house. Robert opposed this, saying that it was evident that his mother-in-law had not died in her house. On the 1st of October, however, a search was made; and they found in the widow's chamber six bank-notes, of 1,000 francs each, and 710 francs in gold and silver. It was not for the purpose of robbery, then, that the crime, if there was one, had been committed.

The suspicions of the authorities were naturally directed to the son-in-law. Robert had carried on successively the business of a wine-dealer and an engraver. He had been unfortunate in his transactions, and early in 1821 he had sold out his wine establishment for 1,800 francs, and it was known that besides the proceeds of this sale and a house which he owned in Dannemoine, which was heavily mortgaged, he had no other resources, except an income of 168 francs belonging to his wife. At the time of the disappearance of his mother-in-law he was forced to seek work as an engraver.

After the disappearance of the widow, who was still looked upon as only absent, Robert applied for an allowance of 1,500 francs from her property.

This situation indicated a motive for the perpetration of the crime on Robert's part; while, as to any other person, the crime, not being followed by robbery, remained inexplicable. Besides, the authorities had, in the course of their investigations, learned of other suspicious circumstances. At the hour when the Widow Houet directed her steps towards the Rue de la Harpe, Robert had been seen by several persons standing under the *porte-cochère* of his house, looking up the street as if expecting some one. After the disappearance, instead of being disturbed and seeking for her, he had attempted to conceal from his wife, for some time, a misfortune which he appeared at once to consider irreparable.

In 1822, after a further investigation, based only upon presumptions, the inferior court decided that it was impossible to ascertain the causes of the disappearance. But while the authorities were thus at fault, the elements for a new investigation were accumulating around Robert. He had left Paris early in 1822, and established himself with his wife in the house at Dannemoine. In February, 1823, he returned, and with one Véron, whom he brought with him from Dannemoine, he occupied the apartments in the Rue de la Harpe, which he still retained. At this time there passed between him and a new personage some scenes which attracted the attention, and presently aroused the suspicions, of the police.

A man named Bastien came one day to receive from Véron a note for 250 francs, signed by Robert, which had been left for him by the latter. A few days later, Bastien once more appeared, declaring that he must see Robert himself. He waited until Robert returned, when the two men shut themselves up in an adjoining room.

The conversation between them presently became animated; they were evidently engaged in a bitter discussion. Loud and threatening words reached Véron's ear. Then cries of, "Robber! assassin!" in Robert's voice. Véron hastened to his friend's aid. When he entered the room, Robert and Bastien were struggling together. The former was red in the face; while Bastien, who held him by the throat, was pale and menacing. At the sight of Véron they both

loosed their hold of each other; Bastien took his hat and departed, muttering threats. While Robert adjusted his clothing, Véron cast his eyes upon a desk, and saw there, beside a twisted pen, a note for 20,000 francs, drawn in Bastien's favor, and lacking only a signature, — that of Robert, doubtless.

As soon as Bastien had gone, Véron and several neighbors, who had been attracted by the noise of the struggle, entreated Robert to put an end to such scenes by making a complaint against Bastien; but Robert declared that he had lost money at play, and that his disputes with Bastien concerned no one but himself. But when he was alone with Véron, he became more confiding, and told him that the importunities of Bastien were becoming unendurable, and he coolly proposed to him to entice the man into one of the houses at Versailles, and kill him and bury him in the garden.

Who was this Bastien, and what mysterious hold did he have upon Robert? Formerly a carpenter at Grenoble, he had left that town in 1819 to escape his numerous creditors, and in 1820 he lived in Paris, not far from where Robert carried on his wine business. Bastien took his meals at Robert's house; and since the disappearance of the Widow Houet, the two had maintained very intimate relations.

Some time after the scene which we have just referred to, Robert and Véron established themselves at Versailles to superintend certain repairs which were being made on the Houet houses. There Robert, on returning from a trip to Paris, told Véron that he had met Bastien, who had forced him, holding a pistol against his head, to sign notes for 20,000 francs. Véron, who did not know all, again advised him to make a complaint to the procureur du roi; but Robert had his reasons for not enlisting justice in his behalf.

He preferred flight to scandal; he sought to escape Bastien. It was to attempt the impossible; Bastien knew too well the life and affairs of his victim. So, although Robert had concealed himself at Dannemoine, he could not avoid the inevitable; and more than once strange scenes revealed the fatal power which one of these men exercised over the other.

In 1827 Bastien appeared unexpectedly at Dannemoine with the intention of forcing the Roberts to accept drafts for 6,000 francs. This new persecution came at a moment when Robert was preparing a new retreat for himself at Villeneuve-le-Roi. His wife had already departed to make ready the new house, and it would be necessary to follow her and bring her back to Germiny to sign the exacted acceptances. The interview between Bastien and Robert was a stormy one. a violent quarrel took place during the night; and the innkeeper, concealed in an adjoining room, heard Bastien say to Robert, —

"Come now! did I do it, or did I not?"

"Yes, it is true," replied Robert.

"Well, then, you must pay me."

"Alas, mon Dieu! it is true; I must pay."

Robert, however, resisted until sunrise, and the acceptances were not signed. He then went secretly to the innkeeper, and handing him six francs said, —

"Look here! there is a man here of whom I wish to rid myself; he demands money of me which I do not wish to give him. When he comes down I will tell you that I have not a sou, and you will lend me these six francs."

The innkeeper declined to play any part in this comedy, and told Bastien of the scheme invented by Robert.

"Ah! that is his game, is it?" said Bastien. "Well, tell him that there is not a bit of straw in his house which does not belong to me if I choose to take it; and if necessary, I will go and install myself in his house and drive him out."

The upshot of the affair was that Robert paid Bastien's bill at the inn, and the two men left the house together.

These singular interviews had more than once awakened the suspicions of those who witnessed them. In 1824 an anonymous de-

nunciation had been made to the procureur du roi, in which Robert and Bastien were accused of complicity in the murder of the Widow Houet; but the absence of the *corps du délit* paralyzed the arm of the law.

After the scene at Germiny, Robert, who had succeeded in concealing from Bastien his retreat at Villeneuve-le-Roi, lived there in apparent security until 1832, when Bastien suddenly reappeared. This time it was an allowance that he exacted, — an allowance of 1,200 francs annually. He was tired, he said, of wandering about the world, and wished to settle down in the country, to raise his own cabbages somewhere, — who knows? At Villeneuve-le-Roi, perhaps. Robert shuddered.

But Robert refused; he always began by refusing. Then Bastien increased his demands, and presented an obligation for 40,000 francs. Robert also refused to sign this paper. Then burst forth the secret which united these two men and made the one the slave of the other.

"Assassin! Assassin!" cried Bastien, in a loud voice; "you wish me, then, to mount upon the roofs and cry, ROBERT MURDERED HIS MOTHER-IN-LAW!" At these words, at this terrible denunciation, Robert fled, wild with terror. As he descended the stairs he met a neighbor named Fleury, who had been attracted by the noise.

"Come and get a commissary of police," said Fleury, "and have that scoundrel locked up."

"No, no," stammered Robert; and rushing up the stairs he ran to the attic, escaped by a window, and fled across the fields back of the house.

A few days later, Bastien made a last effort to obtain money; and this time through an intermediary, one Gouvernant, whom he had known in prison, where he had been confined in 1824. The two men speedily became congenial spirits, and Bastien had made singular confidences to Gouvernant. Later, Gouvernant had met Bastien, who had given him to understand that Robert was at his mercy on account of a common crime. After the interview at Villeneuve-le-Roi, Gouvernant was deputed by Bastien to hunt up Robert. He departed armed with two documents, which Bastien assured him would prove irresistible, — a memorandum containing several names and addresses, and a plan of a garden, in a corner of which was traced a red cross.

Gouvernant arrived at Villeneuve-le-Roi, presented Bastien's ultimatum, and exhibited the two papers. At the sight of them Robert turned deathly pale, his knees trembled, and he sank into a chair, murmuring, —

"Ah! the wretch! the scoundrel! But when I have given him my entire fortune, what assurance have I that he will not seek my life?"

Gouvernant, seeing Robert in this state of prostration, left him, making an appointment to meet him at a neighboring inn. Robert, suspecting that Bastien would be present at the interview, did not go. Bastien had, in fact, followed Gouvernant. He waited in vain for Robert, and furious at his absence he took a piece of chalk from the inn and went and wrote on the door of Robert's house, —

"*Robert murdered his mother-in-law!*"

After these scenes, which began again to awaken the attention of the authorities, Robert and his wife suddenly disappeared from Villeneuve-le-Roi.

Exasperated beyond endurance by their flight, Bastien went to the administrators of the Widow Houet's estate, and declared that he knew her murderer, and that he was no other than Robert. This time the authorities were fully aroused. They recalled the still unpunished crime of 1821, and the two fruitless investigations. It was necessary to strike promptly, for any action by the public minister would be barred by a lapse of ten years from the date of the last investigations, and the guilty ones had almost reached the limit fixed by law.

An order was immediately issued for the arrest of Bastien, the only one upon whom the law could at that moment lay its hands.

Upon his person was found a pocket-book containing several important papers.

First, there was the following memorandum: —

"June, 1821 — M. Robert — hired a cellar in the Rue des Deux Portes.

"Rue de Vaugirard, house with a beautiful fruit garden.

"Hired for 700 francs from July — lease in my name.

"Received money to buy a shovel, pickaxe, and watering-pot.

"Same day bought half a bushel of lime."

And on the back of this memorandum: —

"Plan for the destruction of the Widow Houet, for the Roberts; and it was for that that the cellar was first hired, and then the house in the Rue de Vaugirard."

It was then recalled that in 1824 another mysterious memorandum had been found upon Bastien, which the authorities had suspected referred to a crime, but it was impossible to establish that fact. That memorandum was thus conceived: —

"Rue des Deux Portes, 21.
"Rue de Vaugirard, 81.
"Mme. Veuve Blanchard.
"M. Poisson.
"M. Roussel.
"M. Véron.
"M. Robert at Dannemoine near Tonnerre.
"M. Cherest, advocate at Tonnerre."

The first of these two memoranda explained the second.

Bastien's pocket-book also contained some rough draughts of letters, in which occurred the following expressions: —

"Wretched Robert, it is written that you shall not escape the punishment of your crime. . . . Have you forgotten *the place in the Rue de Vaugirard* which guards in its breast the victim who shall accuse you? *Do not believe yourself safe!* . . .

"You and your wife are assassins. Do you not recollect the cellar in the Rue des Deux Portes? And the house in the Rue de Vaugirard? And the disappearance of that mother on the 13th of September, 1821. . . . Cowards that you are, you believe that your crime is expiated. . . . But you are at the foot of the scaffold. . . ."

A plan was attached to this letter, and this plan was that of the garden in the Rue de Vaugirard. In a corner a red cross marked a certain spot and called attention to it.

Finally, there was a last note, which read as follows: —

"The court has entered as to Bastien a decree of *non lieu* (no ground of process), and as to Robert a decree of *non lieu quant à présent.* This decision is irrevocable as to Bastien, who cannot be pursued further, according to the maxim: *Non bis in idem.* Even if he should confess himself guilty, he need feel no uneasiness. As to him, the matter is definitely settled."

This last note explained the audacity of Bastien, his persistence and his exasperated threats. He believed himself safe.

A new investigation was commenced. It was established that the house and garden in the Rue de Vaugirard had been leased to Bastien by a widow lady named Blanchard, in July, 1821. Bastien had stated that he was living in the country, and wished to reside in Paris with his wife, while their children were being educated. Later, Bastien told a woman named Sanze that he had hired the house for a friend who was coming to live in it with his daughters. There was not a word of truth in either of these stories. At the end of a month of these suspicious hesitations, Bastien dismissed the gardener who had up to that time taken care of the garden; the excuse given was economy. The Widow Blanchard was uneasy at seeing the house remain unfurnished. Notwithstanding this absence of furniture and inhabitants, there were reports of nocturnal visitors and of persons walking in the garden carrying candles; the neighbors were excited by these suspicious appearances. At the end of three months, no one having appeared, the Widow Blanchard had the house opened in the presence of a commissary of police. The

next day, Bastien, having learned of what had been done, returned the keys, saying that his wife had decided not to come to Paris.

While the authorities were collecting and arranging these facts, the Roberts were arrested at Bourbonne-les-Bains.

On the 12th of August, 1833, the trial of this mysterious case began, before the court of Assizes of the Seine, M. Hardouin presiding. An immense crowd filled the court and its approaches, and those who had obtained entrance gazed with awe and interest on the skeleton, which, prepared by Dumoutier, lay upon a table in the centre of the court-room, and formed the first terrible witness of the crime about to be revealed. The evidence developed the facts already familiar to the reader, and tended to show that the perpetrator of the deed was Bastien, who, instigated by Robert, had enticed the Widow Houet to the house in the Rue de Vaugirard, and there murdered her.

After two hours and a half deliberation, the jury found Bastien guilty of murder. Robert was acquitted upon the question of participation, but was declared guilty of having provoked the crime by gifts and promises. But to the astonishment of all, the jury found extenuating circumstances in favor of both the accused.

Upon this verdict Bastien and Robert were condemned to penal servitude for life, and to public exposure in the pillory.

At the moment of passing sentence Bastien had made a slight movement, but without the slightest change of feature. However, on being conducted to his cell, he suddenly turned pale and sank on a seat. On examination his hand was found covered with blood, and convulsively clutching a pair of scissors with which he had stabbed himself in the left breast. The wound was slight.

This trial had created an intense excitement in Paris, and the verdict caused general dissatisfaction. When the two condemned submitted to exposure in the Place du Palais de Justice, the crowd which surrounded the scaffold gave vent to their indignation.

"Down with the murderers! They ought to have been guillotined! They are monsters! The law is too lenient!"

Such, in fact, was the general opinion.

THE TEMPLE.

IT is almost a matter of regret that nowhere in the United States has our profession any institutions that can supply the benefits imparted in Great Britain by those venerable colleges of the laws, which through so many generations have kept the bar of England together, not only with untarnished honor and elevated dignity, but in delightful fellowship, and with the sense and in the power of unity. We refer, of course, to their Inns of Court.

There are three principal Inns, situated not far from each other, — Gray's, Lincoln's, and the Temple. Of these, the Temple is perhaps the largest. It is situated in the most ancient, populous, and busy part of London. Around the three sides of its site are built connectedly, and with more or less irregularity, the continuous structures which make the Temple. The outside — that is, the parts upon the street — is used for purposes of business; law booksellers, stationers, and others, who supply the convenience of the bar, being among the occupants. It is the inner part — around and upon the square — which constitutes the resort and abode of the profession of England. Turning away from the mighty stream of business life which rolls by day and night along the Strand, and entering through an

archway that attracts no notice and reveals nothing within, you find yourself, after a short walk, within the Temple close.

Here, and in the neighboring Inns, is congregated the whole profession of London, we might almost say of England ; and here every student must enter for his education. Many lawyers and judges who are without families live here entirely, having apartments, with offices and servants, more or less expensive. Some occupy "chambers" only, or "offices" as we call them, dining in the Temple Hall, where the students also dine.

In this place you find the *active* members of the profession, whether leaders at Nisi Prius and the courts, members of Parliament, of whom a great number are always barristers, or the great law officers immediately connected with the crown. Here, also, are those eminent *chamber counsel*, whose opinions settle half the concerns of London ; and those *law writers*, perfectly known to the *profession* everywhere, whose voices, however, are never heard in court, nor their names within the "city." Besides these laborious classes, who give the place its essential impress, there are many lawyers here whose professional relations hang more lightly upon them, — men, often very eminent, who choose to limit the extent of their professional services ; or men who find pleasure in the literature of the law, those tasteful barristers "who study Shakspeare at the Inns of Court."

The Temple grounds, which meet your gaze when once within its close, are beautiful. As the reader is aware, the place was, many centuries ago, the residence of the Knights Templars ; and, like Fountains, Fettey, Tintern, and other religious houses in England, it was selected and disposed by its founders with comprehensive and exquisite taste. Before you lies the Thames. On its opposite side, above, rise the time-honored spires of Lambeth, and, in the greater distance, the swell of the Surrey hills. The trees and walks and cloistered gardens of the Temple impress you by their venerable beauty and the air of repose which they inspire. The "Temple Garden" makes a scene in Henry VI. (Part I. Act II. Scene 4), and the student of Shakspeare will remember it as the spot in which the distinctive badges (the white rose and red rose) of the houses of York and Lancaster were first assumed.

Here is the Temple church, a marvel of beauty, the services in which are confined to the members of the Inn, and, being thus sustained by male voices only, have a monastic and peculiar air. As the church comes down from the religious order of Templars, it is said to be the only one in London in which no child was ever baptized. In its aisles still lie, under their effigies of stone — mailed, sworded, and helmeted — the Knights Templars, whose crossed legs show that they were slain in the Crusades, and who, buried here eight hundred years ago, now give the Inn its name. Here, too, in later times, have been buried many members of the bar — Plowden and Selden, Sir John Vaughan, Chief-Justice Treby, John William Smith, and others — for whose memory the members of the Inn have recorded their affection by enduring monuments. From the pulpit of this venerable church Hooker and Sherlock proclaimed to the assembled profession of England morality yet higher than its own ; and since the days of Blow and Purcell, who were both its organists, the choral services have been better performed than in any other church in London.

In another building is the Inner Temple Library. The structure is not so costly as that of Lincoln's Inn ; but the collection is rich not only in books of law but in classics, history, and every kind of literature that can entertain the genius and tastes of an educated and intellectual profession. In the Great Hall of the Middle Temple, a venerable structure with massive tables and benches that look as if they had defied the wear of centuries, the members and students of the Inn dine. The room is about sixty feet high. On its richly stained windows you see the armorial displays of nearly two hundred of

the great lawyers of ancient and modern times, including among the latter those of Lord Cowper, Yorke, Somers, Kenyon, Alvanley, and Eldon. On the wainscoted walls you have the names of the Readers of the Temple, for more than two centuries back; and portraits of great benefactors. Here, too, the bar assembles for occasions of state and festivity, and for ancient celebrations — some very curious — which are still kept up with that instinct of hereditation which belongs to no country but England.

Everywhere about you — in short, in the names of avenues and walks, in the designation of buildings, in the objects of curiosity or interest or veneration — you have the names and associations of the law before you. The profession is here in its corporate dignity and impressiveness. It has about it all those influences which Mr. Burke thought so valuable in the structure of a State. It bears the impress of its name and lineage, and inspires everywhere a consciousness of its ancient and habitual dignity. The past is everywhere connected with the present, and you feel that the profession is an inheritance derived from forefathers and to be transmitted to posterity.

While many of the members of the Inns are of course engaged away from their Inn daily, at the courts or in Parliament, and in the excitements and toils of business, here they always return as for a "higher conversation;" and when within the Temple close, are as completely sequestered from the mighty world of London that is rolling on without them, as though they were beneath the venerable shades of Oriel or Christ Church and looking upon the tranquil currents of the Isis before them.

In some senses the courts themselves are subordinate to these foundations. A person is admitted to the bar, not by motion in court, as with us, but by being *called* to the bar by the *Inn* where he has studied. The Inns, therefore, and not the courts, regulate the whole subject of admissions to the bar; and having this controlling power, are in truth masters of the courts themselves.

It will be readily understood from all this, that these Inns, numbering some thousands of persons, are complete communities, with laws and customs and officers. Each foundation is governed by a small committee called Benchers, selected always from the most influential and eminent members of the profession. Every member of the bar lives under restraints in all ways professional. He is surrounded by his professional brethren, and guarded everywhere by their watchful observedness. A controlling and valuable influence exercises itself upon his professional life, and he could not lose his reputation at his Inn and remain at the bar at all. — *Livingston's Monthly Law Magazine.*

GOSSIP OF AN OLD FRENCH LAWYER.

SOMEHOW or other the legal profession has always been considered as a fair butt for the wit of those who are jealous of its intellect or envious of its gains. The familiar picture of a cow pulled by the horns by the pursuer, and held by the tail at the instance of the defender, while the "lawyer" quietly fills his pail with her milk, is one whose truth to nature has been maintained, sometimes in ignorant earnest, sometimes in conscious jest, by many writers and speakers in almost every age. But the fact that we readily forgive the satire is the best proof of its want of application; and we are never slow to welcome a joke, even at our own expense, if it serve to stir a little of the dust which is too apt to gather in the "purlieus" where much of our work lies. Indeed, the

very fact of dryness and dustiness seems to provoke a thirst for fun, and we should not be far wrong in saying that our profession has been productive of a greater mass of humor and witticism than any other calling under the sun. Few people think of making jokes about architects, for instance, or bankers; and if these worthies do condescend to become facetious *inter se*, they are denied the publicity which has conferred immortality on repartees in open court.

Wit and humor are alike ephemeral, and subject to the changes of times and tastes. The jokes of our Scotch ancestors, some centuries ago, are often silly and disagreeable; while their Acts of Parliament are very quaint reading, and are often quoted for the pure purpose of amusement. Let us think of the time when posterity will go to sleep with "Punch" or "Pickwick" in its hands, and become convulsed with laughter over "Pub. Gen. Statutes, 1883."

But even when humor has lost its charm as such, it retains its value as the medium by which many little scraps and fragments of history and manners have been preserved to us. If we have any interest, then, in the former life of our profession, or if we care to glance for an idle moment at the lighter side of its daily work in past times, we shall find that humor has here and there preserved some such records for us, and has, let us hope, attained the unimpeachable result of "combining amusement with instruction."

Guillaume Bouche, Sieur de Brocourt, was a bookseller of Poitiers, who also performed certain legal functions in that town, where he was born in 1526. This man wrote a book which is little known, and, perhaps, as little deserves to be known, outside the circle of bibliomaniacs. It is a collection — of a somewhat childish and somewhat Rabelaisian character – of anecdotes and conversations about almost everything under the sun. Only one part of it, however, has any particular interest for us, and that is a chapter headed: "Des juges, des advocats, des proces et plaideurs."

It is as well to say, at the outset, that the author adopts a tone of caustic raillery almost throughout, so that it is difficult to gather the bent of his sober thoughts on any subject. The discussion, which is supposed to take place amid a circle of choice companions, commences in a manner by no means flattering to the legal profession. For almost the first inquiry proposed, is why advocates should so often be called thieves! "When we call a Breton thief," one of the company remarks, "there is at least rhyme (*Breton, Carron*), and when we call a miller, for instance, thief, there is reason; but when we call an advocate thief, there is neither rhyme nor reason." Another of the company gives an account of a case in which he had been pursuer. "I neither lost nor won," he says, "and the case is in suspense; for although I had received a good donation in proper and authentic form and signed by the donor, the opposite party alleged that he who had given it me was not 'wise enough,' nor in his proper senses; and this being so, that he could not dispose of his property, much less give it away, and that the law forbade a man, who was not 'wise enough,' to part with his goods by donation. Thereupon I gave up hopes of my case, since we never find that a wise man will give away his property, besides the fact that there would be great difficulty in finding a man wise enough to judge whether he who had given me the gift was so, seeing that in the whole of Greece, as M. Bodin says, there were only seven wise men, and there is no evidence as to who adjudged them to be so." It is perhaps fortunate that such metaphysical litigants are rare in our day.

The next story is told of a merchant who asked a painter to paint for him the picture of a horse lying on its back with its legs in the air. The artist painted the horse, but could not bring himself to depict it in such an absurd position. On delivery, the work of art was refused for this reason; but on the case coming before a judge, he turned

the picture upside down, and found the pursuer liable for the price. "If I had been judge," says one of the company, "I should have made him pay double, for he had two pictures instead of one." Another story, even sillier than the last, gives rise to an interesting remark; namely, "that the office of a good magistrate is not to draw men into litigation, but rather to keep them out of it by every means, as Cato Censorius properly declared, when it was proposed in the Senate to decorate the Court and Auditorium of Rome, some proposing to construct galleries so as to keep the litigants under cover. Cato said it would be better to pave the courts and passages with pitfalls and man-traps, so as to keep the people out of them as much as possible."

The discussion rambles in a quaint way from point to point of the subject under review, and here and there we find passages which have an interest as contributions to the oft-renewed questions of advocacy which have been such favorites with ancient and modern philosophers alike. "Does not every one know," it is said, "that, among persons of sound judgment, the fluent speaking and eloquence of a fallacious orator are of no more account than the *rouge* of a coquette with which she adorns her face to appear more fascinating? Does not every one know that this art is nothing more than a deceit and a tyranny of the understanding? Who does not know that the Spartans rejected this art, saying that the speech of good men came not from art, but from the heart; and that Socrates judged no orator to be worthy of honor in a republic, no plague being more hurtful to a country than a fair-speaking orator when he made a bad use of his art, and of the sweetness of speech?" "One would not find so many advocates abusing the art of eloquence," says another guest, "in order to conceal the truth, surprise the judges, or so dazzle them as to prevent their separating the just from the unjust, if the example of the Athenians was renewed, who, after judgment given, and aware that an attempt had been made to beguile them, addressed themselves to the advocates and punished them rigorously. Even the Athenian Senate, the Areopagus, only permitted advocates simply to state the facts on either side, without using any embellishment to allure the judges. When the advocate was called, the usher forbade him to move the affections of the judges. And in order that the judges should not be diverted by any means from the truth, they heard criminal cases by night and in darkness." This, and the passage which follows, give us very curious ideas of ancient and mediæval conceptions of justice. "The great King Francis was constrained to deprive accused persons of all assistance from counsel, seeing that their artifices only served to pervert justice. In all cases where there is a question of fact, the parties should be heard by word of mouth, as is done in the Merchant Courts." "All ordinances would be useless," said another, "if all advocates were imitators of the sanctity of Parpinian, who refused to defend his emperor, Caracalla, who was accused by the Senate of having massacred Geta, his brother. But nowadays manners are so corrupt, says François Grimaudet, that there is no murderer, thief, brigand, or robber, of whatever condition, or however wicked, who will not find, provided he has the money, an advocate who will boldly undertake to plead his cause. And if he cannot make it a good one, he will make it last so long that one may despair of seeing the end of it." As a salutary warning to the profession, the following anecdote is introduced: —

"A certain advocate of Milan was so cunning that he could make his cases last as long as he liked. Galeazzo, Duke of Milan, hearing of this, called the advocate to him, and said that he owed a thousand crowns to his baker, and wished to avoid paying him just then. The advocate assured him that he need not trouble himself about it for ten years to come, as the case would last all that time. The ungrateful Duke, when he came to know the artifices of his counsel, at once ordered the advocate to be hanged."

On the subject of oaths, solemn though it be, our author has some caustic remarks to make. There is the story of a man who held up his left hand, and, on being corrected by the judge, replied, "It is all the same, Monsieur; I swear equally well with either." A smattering of learning follows, to the effect that the ancient Flamens were not required to swear, and that priests had been for a long time exempt. "Even in our day," it is added, "the clergy do not swear on the Gospels, and have an oath different from the common form; for they place the hand *ad pestus*, which was called in old French *au py*. The reason of all this is and was," he continues very sensibly, "that it is absurd to doubt the faith of those to whose hands we have confided all divine things." The great value of an oath is shown by the fact that by its means Henry of England cleared himself of the murder of the Archbishop of Canterbury, Charles VII. of the death of the Duke of Burgundy, Pope Marcellius of the accusation of idolatry, etc.

It is only natural that in the course of the discussion, if we can dignify this old-world gossip by the name, that the freaks and subtleties of the law itself should come under notice, as well as the foibles of its professors. Accordingly, a number of instances are given of insoluble problems suddenly presenting themselves where all seemed plain and easy, of some of those inextricable complications which, when they occur, recall the lines of Charleval on the conduct of life: —

> "Avant qu'en savoir les lois
> La clarté nous est ravie;
> Il faudroit vivre deux fois
> Pour bien conduire sa vie."

There was a law in a certain country, according to Bodin, which decreed that he who provoked a sedition should be punished with death, and he who appeased a tumult of that kind should receive five hundred crowns. No doubt was entertained as to the wisdom or sufficiency of these provisions until it occurred that a certain citizen, after having stirred up a seditious tumult, became himself the peacemaker, and restored order. Here was a difficulty! On the one side it was argued that the five hundred crowns were clearly due, as more weight should be given to his good action in calming the revolt than to his misdemeanor in raising it. The magistrates, however, entertained no such moral distinctions, but proceeded on the stern lines of fact. He had raised a sedition first, and appeased it afterwards. Let him be hanged, then, first; and when that is done, the reward will be paid on his applying for it. Another difficulty cited is that in which Augustus was placed, he having published a reward of twenty-five thousand crowns to the person who should bring him the head of Crocatus, the Spanish robber. Crocatus brought it himself, and was presented with the reward, and pardoned.

But the reader may think that he has had enough of the Sieur Brocourt and his pleasantries, which, like the "motti" and "burle" of the Italians of the preceding age, are apt to pall on the modern taste. But the glimpse which he gives us of his place and time is not without its value. He brings to our view the old town of Poitiers, with its quaint and not uncultivated society; we hear murmurs of the law's delay mingled with praises of the prompt justice done by the Consuls des Marchands; we see the motley crowd of peasants and citizens moving through a maze of daily circumstance which has found no other place in the memory of the world. Through all this turmoil there move the figures of judge and advocate, the one dignifying his natural shrewdness by a somewhat florid learning; the other, if these tales be true, sometimes endangering the reputation of his calling. But we should be glad to believe that this latter catastrophe had not so much existence in fact as in the grotesque imagination and quaint humors with which Guillaume Bouche enlivened the select society of Poitiers some three hundred years ago. — *Journal of Jurisprudence.*

OLD INNS OF COURT CUSTOMS.

THE history of the Inns of Court in days gone by, apart from its legal interest, affords us a good insight into the festive and social life of our forefathers. Indeed, the merry doings associated with these old institutions are proverbial, and many a graphic picture has been bequeathed to us illustrative of the joviality which once formed a prominent characteristic on all seasons of rejoicing. Thus it may be remembered that in the hall of the Middle Temple was performed Shakespeare's "Twelfth Night," — a fact recorded in the table book of John Manningham, a student of the Middle Temple: "Feb. 2, 1601–2. — At our feast we had a play called Twelfth Night; or What You Will." As Charles Knight remarks in his "Pictorial Shakespeare," "it is yet pleasant to know that there is one locality remaining where a play of Shakespeare was listened to by his contemporaries, and that play 'Twelfth Night.'" We read, too, how in the reign of Charles I. the students of the Middle Temple were accustomed at All-Hallow Tide, which they considered the beginning of Christmas, to prepare for the festive season, an account of which we find in Whitelock's "Memoirs of Bulstrode Whitelock." Evelyn alludes to the Middle Temple feasts, and describes that of 1688 as "very extravagant and great, as the like had not been seen at any time."

Equally famous were the entertainments at the Inner Temple, — Christmas, Candlemas, Ascension Day, and Halloween having been observed with great splendor. In 1561 the Christmas revels were kept on a very splendid scale. At breakfast, brawn, mustard, and malmsey were served; and at the dinner in the hall several imposing ceremonies were gone through. Thus it is related how, between the two courses, first came the master of the game, then the ranger of the forests, who, having blown three blasts of the hunting-horn, paced three times round the fire, then in the middle of the hall. Nine or ten couples of hounds were then brought in, with a fox and a cat, which were set upon by the dogs, amidst the blowing of horns. At the close of the second course the oldest of the masters of the revels sang a song. Finally, after supper, the Lord of Misrule addressed himself to the banquet, which, amongst other diversities, generally concluded with minstrelsy and dancing.

Many of the dinner customs of the Inns of Court are curious. Thus a banquet at the Inner Temple is a grand affair. At six the barristers and students in their gowns follow the benchers in procession to the dais; the steward strikes the table three times, grace is said by the treasurer or senior bencher present, and dinner commences. The waiters are called "panniers," from the "panarii" who attended the Knights Templars; and in former years it was the custom to blow a horn in every court to announce the meal. The loving cups used on important occasions are huge silver bowls, which are passed down the table filled with time-honored "sack," which consists of "sweetened and exquisitely flavored white wine;" each student being restricted to a "sip." On the 29th May a gold cup of this fragrant beverage is handed to each member, who drinks to the happy restoration of Charles II.

Referring to the customs once observed at the Middle Temple banquets, many of these have died out. "The loving cup," Mr. Thornbury remarks in "Old and New London" (I. 179), "once fragrant with sweetened sack, is now used to hold the almost superfluous toothpicks. Oysters are no longer brought in, in Term, every Friday before dinner; nor when one bencher dines does he, on leaving the hall, invite the senior bar-man to come and take wine with him in the Par-

liament Chamber (the accommodation-room of Oxford Colleges). Dugdale informs us that "until the second year of Queen Elizabeth's reign, this society did use to drink in cups of aspenwood; but then those were laid aside, and green earthenware pots introduced, which have ever since been continued." Amongst the old customs associated with the Middle Temple may be mentioned the calves'-head breakfast which was given by the chief cook of the society to the whole fraternity, for which every member paid at least one shilling. In the eleventh year of James I., however, this breakfast was turned into a dinner, and appointed to be held on the first and second Monday in every Easter Term. The price per head was regularly fixed, and to be paid by the whole society, as well absent as present, and the sum thus collected was divided amongst all the domestics of the house.

The merry doings at Lincoln's Inn were, in days gone by, kept up with much enthusiasm; and frequent notices of the "Revels" are given by our old writers. Charles Knight, too, in his "Cyclopædia of London" tells us that on such occasions dancing and singing were insisted on, and, by an order of February 6 in 7th James I., it appears that "the under-barristers were by decimation put out of commons for example's sake, because the whole Bar were offended by their not dancing on the Candlemas Day preceding, according to the ancient order of the society, when the judges were present." Of the social customs formerly observed, we read that at each mess it was a rule that there should be a "moot daily;" the junior member of each mess having to propound to the rest some knotty question of law, which was discussed by each in turn during the dinner. Not many years ago, too, it was the custom for one of the servants, attired in his robes, to go to the threshold of the outer door about twelve or one o'clock, and call out three times, "Venez manger." To quote a further old custom, in the first year of Elizabeth it was ordered "that no Fellow of the House should wear a beard of above a fortnight's growth, under penalty of loss of commons, and, in case of obstinacy, of final expulsion."

Gray's Inn, again, formerly had its masques and revels, when the presentation of plays seems to have been one of the chief features. A comedy acted at Christmas, 1527, written by John Roos, a student of the Inn, so offended Wolsey that its author was actually imprisoned. Amongst the many customs relating to the dining-hall, we are told that in 1581 an agreement was made regarding Easter, in accordance with which the members who came to breakfast after service and communion were to have "eggs and green sauce" at the expense of the House, and that no calves' heads were to be provided by the cook. In the year 1600 members were instructed not to come into the hall with their hats, boots, or spurs; but with their caps, decently and orderly, "according to the ancient orders." Gray's Inn has also been noted for its exercises known as "bolting," which is thus defined in Cowell's Law Dictionary, — "Bolting is a term of art used in Gray's Inn, and applied to the bolting or arguing of *moot* cases."

Lastly, a very curious dinner-custom has in years gone by been kept up at Clifford's Inn. The society consists of two distinct bodies, — "The Principal and Rules," and the junior members or "Kentish Mess." Each body has its own table. At the conclusion of the dinner the chairman of the Kentish Mess, first bowing to the Principal of the Inn, takes from the hand of the servitor some small rolls or loaves of bread and, without saying a word, he dashes them three several times on the table; he then discharges them to the other end of the table, from whence the bread is removed by a servant in attendance. Solemn silence, broken only by three impressive thumps upon the table, prevails during this ceremony. — *Illustrated London News.*

The Green Bag.

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THE GREEN BAG.

WHY call your magazine useless? is the query of many intelligent but unimaginative lawyers. It seems hardly worth while to offer an explanation to those who do not appreciate the intent at once; but as the phrase appears actually to trouble many of our friends, and, when quoted in the papers, has been taken to be an adverse criticism on the merits of the magazine, it may be well here to work out an exegesis for the benefit of such querists.

The chief feature of legal literature nowadays is the bewildering profusion of periodicals, all claiming to be *useful*. Besides the quarterlies and the monthlies and the weeklies, general and local, which follow the old traditions of legal magazines, there has latterly sprung up a crop of weekly reporters and digests, and even of monthly text-books, which come to every lawyer's office in such quantities that shelves and tables, chairs and floor, are littered with accumulating pamphlets. And hardly a mail comes in without announcements of new periodicals, or puffs of those already in the field; each extolling itself as more "practical" and "useful" than its rivals. Out of the whole lot, only one or two find room for anything but opinions and monographs. Small type, close columns, large pages, overwhelm the profession with a deluge of cases. Even the most omnivorous "dig," whose recreation lies in over-work, and who delights in legal dyspepsia, finally finds so steady a diet of poor print and indifferent law pall upon his wearied brain, and yearns for something from which this "useful" element is entirely banished. It is for such lawyers, as well as for the lighter-hearted and idler members of the profession, that "The Green Bag" comes into existence; and it is boldly announced as being "useless," as a revolt against the depressing "practical" tendencies of the periodical literature of the day. It offers a little toothsome literary cake and jam, to offset the heavy bread and the over-cooked meats of the legal table. It is meant to be "useless," it is "useless," it will continue to be "useless," in the sense which we have indicated; and those sad-eyed recluses who are content to mortify eyes and brain with the "reporter system" and nothing else, may go their way and muddle their brains in peace.

THE foregoing remarks are not intended as a slur upon any of our legal contemporaries. We value and appreciate many of them highly, especially those which find room in their columns for a few bright notes and vigorous editorials, as well as occasional articles of interest to the profession. But we do maintain that lawyers are surfeited with "reports of cases," and are glad to turn from these "useful" periodicals, to something which is perfectly "useless" to them, so far as practice in the courts is concerned.

SMITH *v.* MARRABLE (in verse), published in our February number, should have been credited to a little work, recently published, entitled "Lays of a Limb of the Law," by John Popplestone.

A CORRESPONDENT writes as follows: —

"The anecdotes related of Hon. Henry W. Paine, by Mr. Swasey, in his article on 'The Boston University Law School,' published in the February number of 'The Green Bag,' recall to my mind one or two stories attributed to Mr. Paine, which may be new to some of your readers.

"One afternoon as he was riding in a Cambridge horse-car, reading a book bound in sheep, a friend remarked to him, —

"'Ah! Mr. Paine, I see that you are reading law.'

"'No, sir,' was the reply; 'I am not reading *law*, I am reading the last volume of the "Massachusetts Reports."'

"On one occasion, when trying a case in court, Mr. Paine was much annoyed by the constant and apparently uncalled for interruptions of the presiding judge. Finally he stopped short, slowly gathered up his papers, and started to leave the court-room.

"'Stop, sir!' cried the judge, angrily. 'Are you doing this to show your contempt for the court?'

"'No, your Honor,' replied Mr. Paine; 'I was retiring to *conceal* my contempt.'"

From a prominent Philadelphia lawyer comes the following: —

"I am a subscriber for the 'Green Bag,' and am much pleased with the January and February numbers. It should, and I trust will, meet with good success.

"The definition of mortgagee, in the February number, reminds me of an answer I heard in my student days. The professor at the Law School of the University of Pennsylvania, in an examination on wills, asked why it was proper to attach a seal to a will, and received the answer: '*So as to bring an action of covenant upon the will.*'

"I enclose a legal curiosity, the product of a twelve-year-old boy of Philadelphia.

"The twelve-year-old son of a member of our bar, at a visit to his father's office, borrowed the sum of twenty cents, and tendered the following document for it: —

"It is to be known to all men and women of the United States that I have borrowed 20 cents of my sire on condition that my mother will pay him back.

Witness: C. L. J. D."

Such communications as the foregoing are just what the Editor desires, and he trusts that other readers will profit by the example thus set, and enable him to open a chatty "Correspondence" column.

In our April number we expect to have an article on the Columbia Law School, written by Prof. Theodore W. Dwight, and containing illustrations of the Law School building and library, and portraits of James Kent, Samuel B. Ruggles, Hamilton Fish, Charles T. Daly, Francis Lieber, George Templeton Strong, and Theodore W. Dwight.

LEGAL ANTIQUITIES.

Our English forefathers had to deal with "boycotting" of an extraordinary kind, but the law seems to have been sufficient for the evil. In the seventh year of Henry III. the Archbishop of Canterbury and the Bishop of Lincoln enjoined the faithful not to sell victuals to the Jews nor have any communication with them, whereupon the king ordered the sheriffs and mayors to issue counter injunctions, and to imprison any one who refused to supply the necessaries of life. Thirteen years later the Bishop of London followed the course adopted by his Episcopal brethren, and the king thereupon issued a writ to the mayor and sheriffs of London to stop the evil. In the reign of Edward I. the Archbishop of Canterbury threatened to excommunicate every one in the province of Canterbury who should have any intercourse with the Archbishop of York, or supply him or his servants with the necessaries of life. He was subsequently obliged by the king and parliament to revoke his threats.

If we may believe the author of the "Mirror of Justices," who is said to have written in the reign of Edward I., there were almost as many judges as malefactors hanged in the time of Alfred. That active monarch ordained that all false judges, after forfeiting their possessions, "should be delivered over to false Lucifer, so low that they never return again; that their bodies should be banished, and punished at the king's pleasure; and that for a mortal false judgment they should be hanged as other murderers." That this denunciation was not merely *brutum fulmen* appears from a list, given by the same author, of the judges executed by the king's order. In one year we are told that forty-four justices were hanged. "He hanged Cole, because he judged Ive to death when he was a madman. He hanged Athulf, because he caused Copping to be hanged before the age of one-and-twenty years. He hanged Diling, because he caused Eldon to be hanged, who killed a man by misfortune. He hanged Horne, because he hanged Simin at days forbidden." A judge at this time could hardly escape with life or limb; for, not content with hanging, Alfred maimed his judges for not maiming their prisoners. Thus, we are told, he cut off the hand of Haulf, because he

saved Armock's hand, who was attainted before him, for that he had feloniously wounded Richbold; and he judged Edulfe to be wounded, because the latter judged not Arnold to be wounded, who feloniously had wounded Aldens."

THE last trial by duel in England appears to have taken place in the sixth year of Charles I., when Donald, Lord Rey, was the appellant, and David Ramsey, Esq., the defendant. They fought in the Painted Chamber at Westminster. But, of course, when trial by battle or duel was abolished as part of the judicial machinery of the country, men kept it up as a mode of remedying their private wrongs; and it may be mentioned parenthetically that the last of such duels fought by Englishmen on English soil was in 1845 when Lieutenant Hankey shot Captain Seton at Browndown, near Gosport. In feudal times trials by single combat were nowhere more common than on the borders of England and Scotland. The practice was to draw up and execute a formal indenture setting forth in a schedule, and with much precision, the causes of the quarrel. The following is a specimen: "It is agreed between Thomas Musgrave and Lancelot Carleton for the true trial of such controversies as are betwixt them, to have it openly tried, by way of combat, before God and the face of the world, to try it in Canonby-holme, before England and Scotland, upon Thursday in Easter week, between the eighth day of April next ensuing, A. D. 1602, betwixt nine of the clock and one of the same day, to fight on foot, to be armed with jack, steel cap, plaite sleeves, plaite breeches, plaite socks, two boskered swords, the blades to be one yard and a half a quarter of length, two Scotch daggers or dirks at their girdles, and either of them to provide armour and weapons for themselves according to this indenture." Even yet the world has not seen the last of trial by ordeal. It is still resorted to by the natives of the Garo Hills, Assam. The water-boiling ordeal is, in that region, a popular mode of settling disputed claims. An earthen pot, filled with water, is placed on a tripod over some sticks, which are lighted. The defendant calls upon his gods to be present and do justice. If the water does not boil within a certain time, the defendant is victorious and entitled to receive compensation as for a false accusation. In more serious cases the accused is tied to a tree in a dense jungle, and left for several days and nights on the chance of a tiger coming that way. If he escapes alive, he is adjudged to be innocent. — *Irish Law Times.*

FACETIÆ.

A famous judge came late to court
One day in busy season;
Whereat his clerk, in great surprise,
Inquired of him the reason.
"A child was born," his Honor said,
"And I 'm the happy sire."
"An infant judge?" "Oh, no," said he,
"As yet he 's but a *crier*."

— *Splinters.*

A GOOD legal *bon mot* was that of the late Baron Alderson. A friend who complained that Grant, author of "The Great Metropolis," in his sketches of Parliament had published some statements contrary to truth, added, "What could one expect from a man who in early life had been a servant?" "Of course," replied the witty Baron; "formerly he used to lie in *livery*, but now he lies in *Grant*."

An equally happy *jeu d'esprit* was that of Richard Lane, Q. C., on the Munster Circuit. When the coach conveying the Munster Bar and their luggage from Killarney to Cork was descending the steep pass of Keim-an-eigh, the heavy luggage on the roof got loose, and caused the coach to stop until secured. "Take a purchase on this strap, Pat," said the coachman to the guard, "and tighten it well." "If you don't secure it by *purchase*," said Richard Lane, "you 'll have it by *descent*."

One rainy day in Cork, while Judge Perrin occupied the bench, he caused one of the windows of the court-house to be opened, which allowed some wind and rain to reach the bar seats. A barrister, John S. Townsend, placed a handkerchief, not of the most unsullied hue, on his head; and as he rose to address the court, the judge remarked: "Mr. Townsend, it is not respectful of you to address the court with that soiled handkerchief on your head." "I 'll take it off, my Lord," replied Townsend, "when you direct the window over my head to be shut." "'T is better for me," replied the judge, "to consult my health than your appearance. Go on, Mr. Townsend."

A witness to a fight between some carriers drawing turf from a bog was asked what the witness was doing when the fight began. He said, "Fencing with others on the side of the road." Judge Ball, who was presiding, at once looked surprised, and asked, "Fencing! with what?" "Spades, my Lord." "Mr. Bennett," said the judge, addressing the leading Crown Counsel, "can this be true, — fencing with spades on the road?" "Quite true, my Lord; but the man was making a fence along the side of the road with the spade."

Baron Foster, also, quite mistook the meaning of an Irish account of a bloody affray in which a witness swore "that Mick Doolin gave the beaten man a *wipe of his chalpeen* [a formidable bludgeon] and laid him on the grass." When charging the jury, the Baron called their attention to the *humane* conduct of one of the prisoners, Michael Doolin, who tenderly laid the injured man on the grass and *wiped* his wound with a *clean napkin.*

Chief Baron O'Grady, afterwards Lord Guillamore, was a great humorist. His brother, Darby O'Grady, asked him if he could prosecute some thieves for stealing his turnips under the Timber Act. "I think not, Darby," replied the Chief Baron, "unless, indeed, the turnips were *sticky.*"

Considerable noise prevailed in the court-house in Tralee, and the Chief Baron observed that the sheriff, instead of preserving order, was intently reading a book. At last, when the uproar was intolerable, the Chief Baron exclaimed, "Mr. Sheriff, if you allow this noise to go on, you 'll never be able to finish your novel in quiet."

The larceny of a pair of trousers by a boy being fully proved, despite the character for honesty which was produced, the Chief Baron's charge was brief: "Gentlemen of the jury, you have heard the prisoner is an honest boy, but he stole the breeches."

A very clear case of highway robbery being proved, and a verdict of "Not Guilty" returned, the angry Chief Baron asked, "Is there any other charge against this honest man?" On being told that there was not, the Chief Baron said, "Mr. Gaoler, as I 'm leaving Tralee on my way to Cork to-day, don't discharge this man until I have half an hour's start of him on the road."

Daniel Ryan Kane, Q. C, late County Court Judge and Recorder of Cork, was very entertaining, and said good things. An action on a policy of insurance induced the company, who resisted the payment on the ground of fraud, to send a brief to the son of the doctor who was to give evidence to the bad health and habits of the deceased. On seeing the young barrister for the first time, a member of the circuit asked Mr. Kane, "Is he a special counsel?" "No," replied Kane, "he 's counsel by prescription." Walking one day he met Joshua Clarke, Q. C., with the breast of his coat much torn. Kane instantly thrust his stick into the torn coat, exclaiming, "Rents are enormous!" On which Clarke promptly replied, "Well, you can't say it is rent in arrear."

A case was waiting for argument in the Queen's Bench in which a very prosy Queen's Counsel, Mr. Scott, and Mr. Holmes were retained. On seeing Mr. Scott, the Chief Justice called on him to proceed. "I really must ask your Lordship's indulgence," answered Mr. Scott; "I have now been speaking for three hours in the Court of Exchequer, and I need some refreshment." "Of course, Mr. Scott," said the Chief Justice; and Scott left the court. "Now, Mr. Holmes," said the Chief, "you have not been speaking for three hours in the Court of Exchequer; so we 'll be happy to hear you." "Oh, my Lord, I beg to be excused; I am very tired too," replied Mr. Holmes. "Why, what has tired you?" asked the Chief. "Listening to Mr. Scott," was the answer.

The following *bon mot* of Baron Alderson deserves to be recorded. When asked, "What use were the javelin-men who accompanied the High Sheriff to escort the judge into the Assize town?" the witty Baron, replied, "I really don't know, unless to help me charge the Grand Jury." — *Pump Court.*

In a case, not long since, an honest farmer was complained of for maintaining a nuisance in the shape of a piggery, the neighbors claiming that said piggery was detrimental to their health. At the trial the rustic gentleman argued his own case, and summed up as follows: "The neighbors say, your Honor, that hogs is unhealthy; I say they ain't. *Look at me; ain't I healthy?*" The application of his argument was, naturally, somewhat different from what he intended.

Is it correct to speak of a sick lawyer as an ill-legal man?

A DISCIPLE of Coke, in Charleston, S. C., when asked by a "brudder" to explain the Latin terms "de facto" and "de jure," replied: "Dey means dat you must prove *de facts* ob de case to de satisfaction ob *de jury*."

AN elderly lady insisted on taking her will with her, instead of leaving it in the care of her attorney who had drawn it and who was afraid that she might lose it. The lady persisting, however, her legal adviser finally said: "I will, of course, comply with your request; but remember, madam, 'where there 's a *will* there 's a *way*,' but don't make a-*way* with your *will*."

IN a Western case the learned counsel for the defence attempted to disqualify an important witness on the ground that he was an idiot. The court, however, thought it proper to examine the witness in order to ascertain his mental condition, and asked a few questions regarding the nature of an oath, which were very intelligently answered. The learned counsel was nonplussed for a moment, but finally turned to the witness and asked:

"Who made you?"

In a drawling tone the answer came, "I suppose Aaron made me."

"There, your Honor!" cried the counsel, triumphantly, "you see the man is an idiot. He was undoubtedly coached as to the answers to the questions put to him by the court; but my brother on the other side did not anticipate the question I asked him."

"Will your Honor allow me to ask the learned counsel a question?" piped up the attorney for the plaintiff.

"Proceed, sir."

"Who made *you?*" demanded the attorney, turning to the counsel for the defence.

Imitating the expression and tone of the witness, the counsellor replied, —

"I — suppose — Aaron — made — me."

"Well," continued the attorney, addressing the court, "I have always understood that once upon a time Aaron made a calf; but I did n't suppose that *the critter had got loose and wandered into this court-room*."

"WITNESS, did you ever see the prisoner at the bar?"

"Oh, yes, very frequently. That is where I got acquainted with him."

DID it ever occur to you why a lawyer who is conducting a disputed will case is like a trapeze performer in a circus? Did n't! Well, it is because he flies through the heir with the greatest of fees. — *Splinters*.

A NEW YORK lawyer tried jumping from a railroad train running at the rate of fifty miles an hour. Strange to say, he did not move for a new trial.

A WELL-KNOWN Boston lawyer was about starting for his office one morning, his "green bag" under his arm, when he noticed a colored butler standing bareheaded on the steps of a house near by, arrayed in a dress-suit. On inquiry, the counsellor learned that the "cullud gemman" was accustomed to come out of the house every morning, arrayed in his "regimentals," in order that the servant-girls might have an opportunity to admire his "manly form." Thinking that his parlor-maid might like to see the show, our legal friend called to her, "Maria, come and have a look at the distinguished colored individual opposite;" when his little daughter, who had heard him, cried out: "Oh, papa, why should she want to see him? She is not a *black Maria!*"

NOTES.

A FRENCH journalist has counted up the laws passed in France since the Revolution, and arrived at the total of about 200,000.

THE new Law School of the University of Minnesota has opened with very flattering prospects. About sixty students are now in attendance. A Moot Court has already been established by Professor Pattee, the energetic Dean of the School; and the course of regular daily instruction under his personal charge is supplemented by lectures on special subjects by Judge Pierce, W. D. Cornish, C. D. Kerr, and other able lawyers.

MR. CHOATE, in a recent meeting of the bar, describing the qualities of the late Chief-Justice Chase, placed common-sense as the first quality of a great lawyer, just as Baron Jomini declared that moral courage was the first quality of a great general. He is credited with saying: "There is many a man at the bar bewailing his slow progress, because he, without knowing it, is too cunning, or too learned, or too pushing, or too eloquent, or too glib, in proportion to his common-sense; while he who has common-sense enough to manage these qualities cannot have too much of them to be useful, nor, if he have also that honor which commands confidence, can he well fail of success." It might be added that there are judges who would go into conniption fits at the idea of substituting common-sense for some of the crooked, gnarled, and antiquated technicalities of the law.

Is there anything in the grave doctrine of *cy près* of a heady nature, like champagne, that tends to produce friskiness in the court and bar? A century ago Lord Hardwicke held a bequest made by Elias Paz, a Jew, for the education of youthful Israelites in the mysteries of the Talmud, to be void by the law of England, as supporting a religion not countenanced by that law; but as the bequest showed a charitable intent, the legacy was applied by *cy près* to the support of the very religion the testator had aimed to subvert; and "his Majesty, by his sign manual, was graciously pleased to give the fund towards supporting a preacher, and to instruct the children in the foundling hospital *in the Christian religion*," — a pleasant surprise for Elias if he had known of it.

A RECENT case in a neighboring State has sustained as valid a charitable bequest "to be used discretionary by the acting selectmen of B. for the special benefit of the worthy, deserving, poor, white, American, Protestant, Democratic widows and orphans residing in B." To aid interpretation, testator added: "I also will that not one of my connections shall have a dollar; also not one of my wife's connections shall have a dollar. No partiality among friends." The court wrestled manfully with the testator's adjectives, even "Democratic widows and orphans" not staggering it. These it apparently held to have inherited the politics of the lamented husbands and fathers, as it rather unkindly defines an "orphan" as one "extremely young, without character, religious belief, or political principles;" and a similar lack seems implied, though not expressed, as to the widows.

IN Marsh *v.* Means, 3 Jur. N. S. 790, where a fund had been given to support the "Voice of Humanity," a dumb-animal paper, which had become mute for lack of needful (pecuniary) wind, the counsel for the next of kin, resisting the charity, gravely conclude: "At all events, if it is to be executed *cy près*, the intention being to benefit worn-out horses, donkeys, etc., the nearest approach to a literal carrying out such an intention would be to give it to the testator's next of kin;" to whom accordingly it was given.

A SINGULAR case of mistaken identity occurred in respect of one of the victims of the Whitechapel fiend. The murdered woman was identified by a Mrs. Malcolm as her sister. Mrs. Malcolm said that both she and her husband had had dreams or visions of the death of the sister at the hour when the deceased was murdered. She testified to a remarkable series of coincidences between her sister and the deceased. "They were thus summed up by the coroner, at the inquest, October 23: 'Both had been courted by policemen [this, however, is not a remarkable coincidence]; they both bore the same Christian name, and were of the same age; both lived with sailors; both at one time kept coffee-houses at Poplar; both were nicknamed Long Liz; both were said to have children in charge of their husband's friends; both were given to drink; both lived in East End common lodging-houses; both had been charged at the Thames Police Court; both had escaped punishment on the ground that they were subject to epileptic fits, although the friends of both were certain that this was a fraud; both had lost their front teeth; and both had been leading very questionable lives.'" Notwithstanding this remarkable series of coincidences, notwithstanding the remarkable vision of Mrs. Malcolm and her husband, and notwithstanding her positive testimony that the deceased was her sister, it was clearly shown by other evidence that such was not the fact.

THE phrase "too thin" is generally regarded as an instance of American slang, and is supposed to find its proper place only in works devoted to that now important branch of philology. In support of this theory one occasionally sees newspaper stories obviously manufactured for the purpose of explaining the origin of this expression; and it has even been called in the English press, "a notable Americanism."

The truth is, it has a most reputable English paternity, having been used by Lord Chancellor Eldon, in an opinion delivered in the case of Peacock *v.* Peacock. The point under discussion was whether "partnership, without any provision as to its duration, may be determined without previous notice." The eminent jurist decided that the question was one for the court and jury to act upon, and summed up his opinion in these words: "I cannot agree that reasonable notice is a subject *too thin* for a jury to act upon; as in many cases juries and courts do determine what is reasonable notice." Here the expression was applied in what we term its *slang* sense. — *American Notes and Queries.*

SURVIVAL OF THE FITTEST. — The Legislature of Maine, a few years since, passed a law for the prevention of cruelty to animals, in one section of which it was provided that societies for the prevention of such cruelty "may destroy old, maimed and disabled horses and other animals;" while in another section it was provided that the word 'animal' as used in the Act, "shall be held to include *every living creature.*"

THE "Up-River News" gives the following reminiscence of an incident in an Oldtown, Me., lyceum, forty years ago, to which all the ministers, doctors, and lawyers of the town belonged. One evening capital punishment was the question under discussion, and called out the best forces on both sides. During the evening a young boy who had been a constant member replied to Deacon Rigby upon this question. The deacon was for hanging. The boy opposed. Said the deacon, quoting from the Mosaic law, "Whoso sheddeth man's blood, by man his blood shall be shed."

Thinking this to be a bombshell to his opponents, he dwelt upon it, and until his time had expired, when the boy sprang to his feet and said: "Supposing we take the law which the gentleman has quoted, and which in a philosophic sense has been abrogated as null and void since the birth of our Saviour, and see what the logical deduction would come to. For example, one man kills another, another man kills him, and so on until we come to the last man on earth. Who's going to kill him? He dare not suicide, for that same law forbids it. Now, Deacon," said the boy, "what are you going to do with that last man?" The boy's logic called out rounds of applause, and vanquished the deacon. That boy is now Chief Justice of the Supreme Court of the United States, Melville W. Fuller.

JOSEPH G. PARKINSON, of Chicago, is said to be the only deaf and dumb lawyer in the country. He is associated with his twin brother, who does not share his disabilities. When Mr. Parkinson was twenty-three years old, he was chief examiner in the Patent Office at Washington, a place he held for six years. In 1879 he resigned, and soon afterward was admitted to practice before the United States Supreme Court. He now ranks as one of the most successful patent lawyers in the country. — *New York Sun.*

"IF the judges of the Supreme Court of the United States would refuse to do circuit duty, and attend exclusively to the duties of the Supreme Court, as they have the right to do, they could dispose of many more cases each year, and the docket would soon decrease in the number of cases continued over from term to term. Short opinions would work a great reform in this court. Every surplus word should be removed from the opinions of this, the greatest and most important tribunal on earth." — *Chicago Legal News.*

THE first volume of the "Oxford Dictionary" has been published in London. The aim of the work is declared to be "to furnish an adequate account of the meaning, origin, and history of English words now in general use, or known to have been in use at any time during the last seven hundred years. It endeavors (1) to show, with regard to each individual word, when, how, in what shape, and with what signification it became English; what development of form and meaning it

has since received; which of its uses have, in the course of time, become obsolete, and which still survive; what new uses have since arisen, by what processes and when; (2) to illustrate these facts by a series of quotations ranging from the first known occurrence to the latest, or down to the present day, the word being thus made to exhibit its own history and meaning; and (3) to treat the etymology of each word strictly on the basis of historical fact, and in accordance with the methods and results of philological science." The first volume, which deals with the letters A and B only, contain 31,254 words in 1,240 pages. In Johnson's Dictionary, A and B occupied 127 pages.

THE Dallas Bar Association is to be congratulated on its flourishing financial condition. We give the report of its treasurer, Judge Philip Lindsley, or rather that portion relating to the finances. It certainly is good enough to be preserved.

"My last report as treasurer showed there had been received and disbursed by me, for the four years preceding that date, the sum of two dollars and fifty cents.

"During my last term of office of some three years, which expires to-day, I have not received nor disbursed a single cent. Consequently, my final report to you, as treasurer, upon the finances of the association, is necessarily brief.

"The original membership fee, as fixed by our by-laws, was five dollars. No member ever paid this but the first president, Colonel Leake; and when soon after, by a change in your by-laws, the membership fee was fixed at two dollars and a half, Colonel Leake promptly called upon the treasurer to refund him the half of what he had paid. Colonel Leake will do me the justice to say that I never told this on him until he had solemnly announced that he would not be a candidate for re-election. No single member has ever yet paid the fee of $2.50. I feel it due to myself to state this, because it is also due from each member of the association but one. Estimating our original membership at about one hundred, the original fees yet unpaid amount to two hundred and fifty dollars. Add interest thereto for seven years at three per cent per month, the prevailing rate of interest at the time the contract was made, and you have the neat sum of eight hundred and eighty dollars in the aggregate, or ninety dollars for each member, ready at any time to be paid into the treasury, whenever it is in need of money. I may, I trust, be allowed to indulge in some pride in leaving the financial affairs of your association in so healthy a condition."

THE anomalies to which our system of appeals sometimes give rise are illustrated by Judge Seymour D. Thompson, of St. Louis, in a recent account of a Missouri case, where a man described as a phenomenal criminal is said to have had three trials, four appeals, and one writ of error to the Supreme Court of the United States on the usual Federal question. That great court, by a majority of five to four, reversed the decision of the Supreme Court of Missouri, reversing at the same time an intermediate appellate Court and the trial Court, and rendering a decision which actually presented the spectacle of five judges overruling thirteen upon a question which all of them had considered. The result was that this scoundrel, after putting the State of Missouri to untold expense, received the rites of the Church and died outside the jail like a decent Christian.

The decision of the Supreme Court in the Matter of Zeph (50 Hun, 523), that civil death is not enough to justify the issue of letters of administration, probably puts a quietus upon the ancient common-law doctrine of civil death. Since the unfortunate convict is no longer dead for the purpose of preventing him from inheriting property, or being served with process, or testifying as a witness, or having letters issued upon his estate, it seems almost uncivil to call him dead in any sense. If he is, he is "a pretty lively corpse." — *Daily Register.*

Recent Deaths.

SIDNEY BARTLETT, LL.D., the oldest member and acknowledged leader of the Suffolk Bar, died at his residence in Boston on March 6. Mr. Bartlett was born in Plymouth, Feb. 13, 1799, and was therefore a little over ninety years of age at the time of his death.

We hope in our April number to give our readers a sketch of the life of this remarkable member of the legal profession, accompanied by an excellent portrait.

HON. C. W. GODDARD died at Portland, Me., on March 9. He was born in 1825 in Portland, graduated from Bowdoin College in 1844, and from the Harvard Law School in 1846. He was the first attorney of Androscoggin County, and

served from 1854 to 1857; he was a State Senator in 1858 and 1859, and President of the Senate in 1859; Consul-General at Constantinople from 1861 to 1864; Judge of Cumberland County Superior Court from 1868 to 1871; Postmaster of Portland from 1871 to 1884; Commissioner for the Revision of the Statutes of Maine from 1881 to 1883; Professor of Medical Jurisprudence in the Maine Medical School since 1872, and was chairman of the Police Commission of Portland in 1885. He leaves a widow (the daughter of ex-Gov. Anson P. Morrill), three sons, and two daughters.

MR. WILLIAM HOBBS, for many years a well-known lawyer of Boston, died suddenly of apoplexy at his home in Brookline on the 9th of March. He was a native of Waltham, where he was born July 11, 1819. For a number of years he resided in Roxbury, and was in the Common Council during the last two years of that city's existence as a separate body from Boston, 1866 and 1867. The next two years he was an active member of the Common Council of the City of Boston, when Mayor Shurtleff was at the head of the municipal government.

GEORGE W. NICHOLS, for twenty-seven years assistent clerk of the Supreme Judicial Court for the County of Suffolk, Mass., and for thirteen years clerk of the Supreme Judicial Court of Massachusetts, closing his labors Jan. 1, 1888, died at Amherst, N. H., March 11. He leaves a wife and one daughter.

CONGRESSMAN RICHARD W. TOWNSHEND, of Illinois, who died March 9, was a native of Maryland, and born April 30, 1840. After receiving his training in the public and private schools, he removed to Illinois, and taught school there. He then began the study of the law, and was admitted to the bar in 1858, and commenced practice. He served as clerk of the Circuit Court of Hamilton County five years, and from 1868 to 1872 he was prosecuting attorney for the Twelfth Judicial District of the State. In 1864 and 1865, and again in 1874 and 1875, he was a member of the Illinois State Democratic Committee, and was a delegate to the National Democratic Convention at Baltimore in 1872. He was elected to the Forty-fifth Congress and succeeding sessions till his death.

JUDGE G. R. BARRETT died, March 9, at the age of seventy-three years, at his home in Clearfield, Penn. He was appointed by President Pierce in 1856 to codify the revenue laws. He served as Judge of the Twenty-fifth Judicial District continuously for eighteen years, when he resigned.

HON. JOHN A. CAMPBELL, ex-Justice of the United States Supreme Court and Assistant Confederate Secretary of War, died at his home in Baltimore, March 12, aged nearly seventy-eight. He regarded his success in the great "State" case, as it is called, the States of New York and New Hampshire *v.* Louisiana, as the triumph of his legal life, as it established his view of the rights of the States under the Constitution.

Judge Campbell was considered one of the greatest lawyers in the United States. He was certainly a most accomplished advocate. He confined himself to powerful argument, and never indulged in declamation. His clearness of statement and the force and precision of his language were remarkable. His manner was above the common order of forensic delivery. His wit was not genial or playful, but sarcastic. It is related of him that being asked by a young attorney of New Orleans, not distinguished for his talents, whether he (Judge Campbell) had any objection to the attorney joining in a great case at that time conducted by Judge Campbell and other eminent lawyers, he answered: "Most certainly not, my dear sir, provided you do not appear on my side."

REVIEWS.

IN an article on "Solicitor and Client" in the CANADA LAW JOURNAL (March 1), the author advances the following remarkable statement: "Lawyers are like other men, and are liable to form an extravagant estimate of the value of their services, and sometimes may think themselves deserving of and justified in accepting from their clients gifts over and above their legal fees for services rendered."

We had supposed the profession to be particularly modest in this respect. In fact, it has been our experience that the lawyer who succeeds in getting even his *legal fees* is generally more than satisfied. However, if there are any dissatisfied ones who feel that they are deserving of more than their

innate modesty allows them to *charge*, they will find some well-timed words of caution in the article above referred to.

THE decision of the Supreme Court of Massachusetts in the case of the Watuppa Reservoir Company *v.* City of Fall River, seems to have aroused an unusual interest in the subject of "great ponds" among the profession. Following upon the heels of the able discussion of the subject in the December number of the HARVARD LAW REVIEW, by Messrs. Brandeis and Warren, comes an article in the February number of that same periodical, by Hon. T. M. Stetson, of New Bedford, in which the writer takes issue with the dissenting opinion of a minority of the judges in the case, and consequently with Messrs. Brandeis and Warren.

This subject of "great ponds" is a *deep* one, apparently *inexhaustible* and certainly not *dry*.

THE JURIST. — The March number of this interesting periodical contains, besides its very readable Notes, a paper upon the "Law of Landlord and Tenant." "Mr. Barrable's Will," "Notes on Stephen's Commentaries," "Professor Dicey on the English Constitutions," are the other leading articles to be found in it.

THE LEGAL NEWS (Montreal) is one of the brightest and most welcome of our exchanges. Every number has something in it well worth the reading, and its reports of cases are well selected and not too voluminous.

"CONTRACT and Consideration in Roman Law," by Ernst Freund, is the leading article in the February number of the COLUMBIA LAW TIMES, in which the author considers the standing of the classical Roman law in reference to what we call consideration. Professor Dwight's "Junior Lecture Notes" are continued, and contain much of real practical use to the profession.

THE MAGAZINE OF POETRY: a Quarterly Review. The first number of this new aspirant for public favor is exceedingly attractive in form and make-up, and is profusely illustrated with portraits of many of our best-known American writers, including Walt Whitman, John Boyle O'Reilly, and Anna Katherine Green. The poems of the different authors are well selected; and altogether the magazine is well worth the having, and will doubtless receive a cordial welcome from the lovers of poetry.

BOOK NOTICES.

REPORTS OF STATE TRIALS, New Series. Vol. I. 1820 to 1823. Edited by JOHN MACDONELL, M. A. Eyre & Spottiswoode, London, 1888. 10*s*.

It has long been a matter of surprise and regret that the reports of State Trials, which in Howell's well-known collection extend to the year 1820, have not been continued to the present day; and Mr. Macdonell is to be congratulated on his determination to carry on the good work. This first volume, although covering a period of only three years, contains nearly 1,450 pages. Among the trials reported, are those of Sir Francis Burdett, for publishing a seditious libel; Henry Hunt *et al.*, for conspiracy; John Knowles, for unlawfully making and selling arms; James Morris, for the same offence; George Dewhurst, *et al.*, for unlawfully assembling and causing people to go armed to a public meeting; Andrew Hardie, for high treason; George Edmonds *et al.*, for seditious conspiracy; Queen Caroline's claim to be crowned; Mary Ann Carlile, for blasphemous libel.

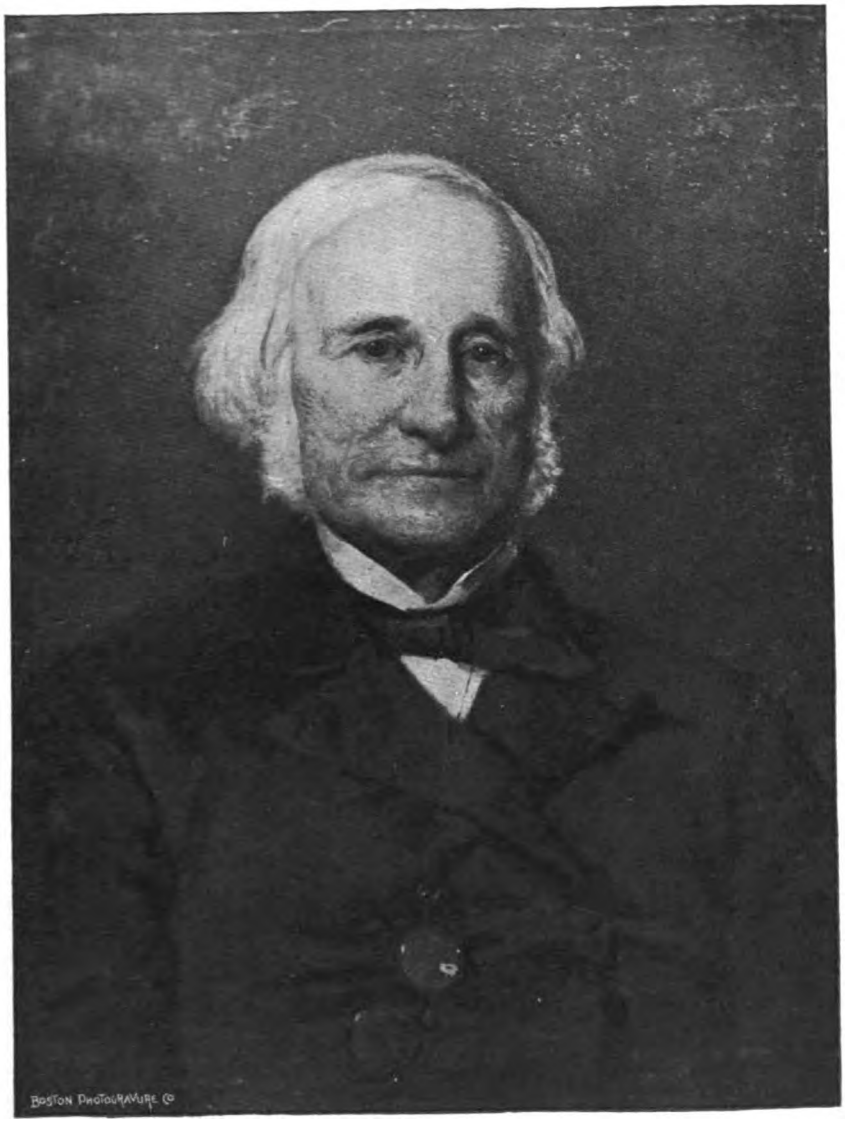
The reports of the trials are very full, both as to evidence and arguments. The volume is attractive in form, and the price so reasonable as to bring it within reach of every member of the profession.

GENERAL DIGEST OF THE UNITED STATES. Vol. III. For year ending September, 1888. The Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1888. $6.00.

This series of annual Digests gives the decisions of the principal courts in the United States. The present volume embodies many improvements over the first two of the series, and certainly seems to leave nothing to be desired. It is arranged under well-tried classification, with ample cross-references, indexed even within paragraphs, so that any desired point can be found in an instant. It also contains a table of Cases criticised, distinguished, overruled, or reversed. It is a work no lawyer can afford to be without.

A TREATISE ON THE LAW OF BILLS OF EXCHANGE, PROMISSORY NOTES AND CHECKS (adapted from the English work of his Honor Judge Chalmers). By WAYLAND E. BENJAMIN, A.M. Second American Edition. Callahan & Co., Chicago, 1889. $3.50 net.

This is a most admirable work for students as well as for the practising lawyer. Fifty pages of new matter have been added to the text, and the latest cases in all the States upon the subject will be found cited.



Timothy Bartlett

The Green Bag.

VOL. I. NO. 4. BOSTON. APRIL, 1889.

SIDNEY BARTLETT.

SINCE the days of Simon Bradstreet, who was Governor of Massachusetts in his ninetieth year, our State, and doubtless our nation, has seen no such example of a life prolonged far beyond the ordinary term of years allotted to man, and yet retaining its mental and physical activity to the last, as that of Sidney Bartlett. Scarcely two months have passed since his tall vigorous form was seen upon our streets, and in the ripeness of his intellectual vigor he stood in his place within the bar of the Supreme Judicial Court, and argued a case with a clearness of utterance and a profoundness of thought which might well be envied by any of his associates. And yet he was then ninety years old. Certainly in this respect he was unique in the legal profession, not only of this country but of the world.

Sidney Bartlett was born Feb. 13, 1799. He was the son of Zaccheus Bartlett and of Hannah, his wife, and was a native of Plymouth, in this State. He was a lineal descendant of Robert Bartlett, who came to Plymouth only three years after the first settlers set foot upon the famous rock. In his character were readily discovered those sturdy traits which so distinguished the Puritan settlers of New England.

At the early age of nineteen he was graduated at Harvard College. Among his classmates were Rev. Samuel Barrett, D.D., Prof. G. R. Noyes, and J. H. Ashmun, who were known to the past generation of Bostonians. Hon. Francis Brinley, of Newport, Rev. Warren Goddard, and Rev. F. A. Farley of his classmates still survive.

After graduation he studied law with Hon. Lemuel Shaw, and in due time was admitted to the bar. He was at once taken into partnership with his instructor, and the two were associated together until the partnership was necessarily dissolved by the appointment of Mr. Shaw to the exalted position of Chief-Justice of the Supreme Judicial Court.

Mr. Bartlett early became one of the leaders of the Suffolk Bar, and for many years was recognized by the Supreme Court of the United States as one of the ablest, if not the ablest, of the distinguished lawyers of the country who argued causes before that tribunal. He was thoroughly read in the literature of his profession, and, as a legal reasoner, grasping legal principles and applying them to the facts of the case in hand, he was without a superior in this country. His preparation of a cause was absolutely exhaustive of all that was germane to the questions involved. He seemed thoroughly to enjoy, as well as to master, the subtlest legal logic; but he rarely allowed his sound judgment to be obscured by any subtlety, however refined. He was terse, and seized upon the strong points in his case with an intuitive mental touch which enabled him to press them with immense power. He did not treat the minor considerations with neglect, but he considered them subsidiary. He did not allow them, as is sometimes the case, to weaken the force of his argument. Judge E. Rockwood Hoar has said of him:

"It has always been the habit of his mind to perceive with absolute clearness the principles upon which the decisive questions of a case must turn, and to confine his argument closely and

strictly to these. Capable of great labor, never losing his equanimity and self-possession, never worrying, he has followed the course in life which he had chosen with a devotion, an ability, and a success so remarkable that his practising law to the age of ninety with scarcely abated vigor makes him one of the most conspicuous figures among his countrymen."

Allegiance to the law was the master passion of his life. He loved the brotherhood, and was foremost in all that tended to maintain its usefulness and uphold its character. In all the high qualities essential to the thorough exposition and successful application of legal principles, — clear perception, searching analysis, inexorable logic, scientific precision of thought and statement, a convincing and cogent style, and an unerring and imperturbable practical sagacity, — he was without a superior, if not without a rival. These great gifts did not disdain, but were always reinforced by, the most elaborate, exhaustive, and painstaking preparation. Indeed, for such preparation he had a positive genius, and of many of his triumphs in the forum it might be truly said that they had been already won in his study. As an adviser and administrator in the most important and intricate affairs, he was consummate; and his services in this respect were as invaluable and successful as were his more brilliant and conspicuous achievements at the bar.

One incident related of Mr. Bartlett was of such a character that it ought to be impressed upon the minds not only of all lawyers, but also of all literary men, of artists, and, in fact, of every one who aspires to do a superior piece of work in the world. "Once," said the friend of Mr. Bartlett who told the story, "I saw him, at the end of a long evening's labor, throw into the fire a bundle of manuscript, his brief in a very important and difficult suit, saying, 'There goes the third brief that I have made in this case.'" An ordinary man thinks when he has made one conscientious effort that he need require no more of himself, but the master spirits put the mark so high that it is only just within their reach.

But the day when he shone was when he came to argue the questions of law. His way of disregarding ramifications and cutting at the root alone was something never to be forgotten by those who heard him.

Chief-Justice Shaw once said to Mr. Bartlett, when he was arguing a case: "If you would state your line of reasoning a little more fully, Mr. Bartlett, we should like to have you. Your mental operations are so rapid that others do not sometimes see the connections between your premises and conclusions so readily as you do." Senator Hoar once said of him that "his processes of reasoning bore about the same relation to those of ordinary lawyers that logarithms bear to common arithmetical processes."

Engrossed as he was in the law, he touched life at many other points. He enjoyed the pleasures of life to a great degree. In his early life he was extremely fond of fishing. Before Martha's Vineyard became a fashionable resort, he used, for many years, to go there with his close friend Judge Curtis, on account of its attractions as a fishing place. He was eminently social, fond of young people, and of hearing of their doings and knowing of their ways. Simple in his tastes, he yet enjoyed the higher pleasures of the table, and wherever there was good conversation he held up his end. His reading was not confined to the law. He enjoyed history, biography, the sciences, and, above all, the novels of the day. He was kindly constituted, just, and fair-minded on all questions of politics, religion, and law, and on all questions of the day; he was always ready to hear all sides. He was capable of being convinced against his will, which all men are not.

Mr. Bartlett was a member of the Massachusetts Legislature in 1851. He was also a member of the Constitutional Convention in 1853. Of the others who represented Boston at that time, Hon. Francis Brinley, ex-Mayor F. W. Lincoln, and Hon. Henry J. Gardner, afterward Governor of the State,

are the only survivors. In 1858 Harvard conferred upon him the degree of LL.D.

Most of his eminent professional contemporaries have passed away. Chief-Justice Shaw was one of them. Benjamin R. Curtis, a brilliant lawyer with whom Mr. Bartlett often crossed swords and with whom he was socially intimate, and who died when he was sixty-five, was another; and others were Franklin Dexter, who passed away at sixty-four; Webster, who reached only his seventy-first year; Jeremiah Mason and Chief-Justice Theophilus Parsons, who lived to the age of eighty and sixty-three, respectively. Had Rufus Choate lived, he would have been about the same age as Mr. Bartlett. Horace Binney is probably the only distinguished lawyer who survived to a greater age than that reached by Mr. Bartlett. He lived to be ninety-five, but retired from active general practice when he was fifty-six. He argued the famous Girard will case in the United States Supreme Court when he was sixty-four, but refrained from giving written opinions upon legal questions after he was seventy. The wonderful preservation of Mr. Gladstone's mental powers has often excited comment, yet Mr. Bartlett, who retained his mental vigor to the last, was his senior by ten years.

The extraordinary length of Mr. Bartlett's career is forcibly brought home to the minds of the legal fraternity by the fact that while he was at the bar the membership both of the Supreme Court of the United States and of the Supreme Court of Massachusetts was twice renewed. Moreover, only two members of our present Supreme Court had even gone so far as to be born when Mr. Bartlett began to practise.

On the 6th of March, 1889, this wonderful life came to its close. The happiest of us can hardly hope for a destiny so complete and fortunate as that which has just been fulfilled. We shall be fortunate enough if we shall have learned to look into the face of fate and the unknown with a smile like his.

EARLY LEGISLATION AGAINST FRAUDULENT CONVEYANCES.

WE are permitted to give to our readers the following extract concerning pre-Elizabethan legislation touching fraud, from the second volume of Mr. Melville M. Bigelow's work on Fraud, now in the press: —

"The earliest statute worthy of particular notice, which deals directly with fraudulent conveyances, is of the year 1376–7; that is, about two centuries before the more famous statutes of Elizabeth. In that statute, which is in Anglo-French, the Commons pray that, whereas divers persons, as well heirs of tenements as others, borrow money or goods of many people of the kingdom, and then give all their tenements and chattels to their friends, by collusion of having the profits thereof at their pleasure, and then betake themselves to Westminster, St. Martin, or other privileged places, and there live in great state ('contenance') on other goods in manner aforesaid, so that their creditors shall be greatly put to it to get a small part of their debts on releasing the rest, and then the debtors return to their houses and have back their tenements, goods, and chattels at their pleasure by assent of their said friends; and by reason of such frauds and collusions many persons of the kingdom are very sorely grieved, and some entirely destroyed; therefore the Commons pray remedy by a writ of debt against the occupiers of such tenements and chattels, or other suitable remedy. In answer the King wills that if it shall be found that such feoffments were made by collusion, the creditors shall have execution on the said lands as before, as if no such feoffments had been made.

"A statute of similar type, of the reign of Henry the Seventh, follows, after an interval of a century and more, by which time statutes had come to as-

sume a more familiar and formal style. This one recites in English that, where (as) oftentimes deeds of gift of goods and chattels have been made to the intent to defraud creditors of their duties, and the person that maketh the said deeds goeth to sanctuary or other places privileged, and occupieth and liveth with the said goods and chattels, their creditors being unpaid, it is ordained that all deeds of gift of goods and chattels, made or to be made of trust, to the use of that person that made the same deed, be void and of none effect.

"This second statute, it will be noticed, appears to supplement the first; that one, notwithstanding the prayer, relating only to conveyances of land. This second statute, too, brings into prominence what is but matter of inference before, to wit, that trusts were obnoxious as being fraudulent devices for avoiding 'duties,' as debts were called; and from this time on, until modern times, trusts are looked upon by the courts of law as a convenient cover for fraud. The fact is brought out again in the Statute of Uses, A. D. 1535. The statute recites that while lands, tenements, and hereditaments ought not to be transferred but by solemn livery, yet divers imaginations, subtle inventions, and practices have been used, whereby hereditaments have been conveyed by fraudulent feoffments, &c., to secret uses, intents, and trusts, by occasion of which heirs have been unjustly disherited, and lords have lost their wards, marriages, &c., it was enacted that he who had the use in lands conveyed should henceforth stand and be seised thereof; an enactment which, it need hardly be said, was at once evaded by the technical trusts of modern times.

"From this time on, the trusts that fall under the condemnation of the law — for the courts continued to reprobate trusts as much as ever — were the untechnical trusts, generally speaking, arising from the retention of possession, or the secret reservation of benefits, by a vendor of property conveyed, to outward appearance, absolutely. 'Here was a trust between the parties,' it was said in the leading and most famous case on the subject;[1] 'for the donor possessed all and used the goods as his own, and fraud is always apparelled and clad with a trust, and a trust is a cover of fraud.'

"All this, and more, by way of statute and statutory intimation before the Elizabethan legislation. But the existence of the earlier laws began to fade from memory in an age when letters were not greatly cultivated; the fact itself in course of time turned to a tradition; and the tradition soon forgot its ground. So it seems; and this, in connection perhaps with the old unwritten law of deceit, which, however, was a very different thing, is probably the foundation of the modern belief that the statutes of Elizabeth were only declaratory of the *common* law. Indeed, in this country, familiar English statutes, passed before the separation, are in some cases spoken of as part of our common law.

"It is easy, then, to see how the earlier of the two statutes of Elizabeth (13 Eliz. c. 5), relating to creditors, might be considered as little if anything more than a stringent, though not exhaustive, declaration of the old law, as being common law, and also to see how belief should come to be acted upon as founded upon fact. In regard to the later of the two Elizabethan statutes (27 Eliz. c. 4), relating to purchasers, the case is different. There is indeed the suggestion of the Statute of Uses, — 'scantly any person can be certainly assured of any lands by them *purchased*,' — but the only remedy given is annexing the seisin to the use. But doubt is removed by a case decided only about ten years after the passage of the statute, — a case which fell without the statute.[1] The Common Pleas adjudged in that case that if a man makes a lease for years by fraud, and afterwards makes another lease *bona fide*, but without fine or rent reserved, the second lease should not avoid the first lease; for it was agreed that by the common law an estate made by fraud should be avoided only by him who had a former right, title, debt, or demand. And to make the matter still plainer, the court add that even he who hath right, title, interest, debt, or demand more puisne (later) shall not avoid a gift or estate precedent by fraud by the common law.[2]

"From this it appears that there was neither statute, to which the rule of liberal construction could be applied, nor common law, to reach the case of a purchaser having no precedent right; and what has been said shows also how far and in what sense it is true that the legislation of Elizabeth was declaratory of the common law. Were it not for the intimation of Lord Mansfield, or from the fact behind that intimation, the expansiveness of

[1] Twyne's Case, 3 Coke, 80.

[1] Upton *v.* Basset, stated in 3 Coke, 83.

[2] 22 Ass. 72.

the common law, the conclusion could scarcely be doubtful, — the common law took care of the rights of creditors; for purchasers it had no help. But a hundred years ago Lord Mansfield, in some respects a hundred years ahead of his time, thought that the principles of the common law, as then understood, were such towards fraud as to have enabled it to attain every end proposed by the two statutes of Elizabeth;[1] and if that was a somewhat sanguine statement, it was a very good prophecy, assuming the later growth of the common law generally to be fair evidence of what would have proved to be its expansiveness in dealing with the kind of fraud under consideration.

"It is not necessary to take Lord Mansfield narrowly. By the 'common law' he probably did not mean the law administered in the courts of law alone and unaided, though he was ever drawing equity that way. The common law as a whole, whether administered by courts of law or courts of equity, would meet the requirements of society, — that was probably his lordship's meaning; if not, the statement was too wide even as a prophecy. Modern equity, in the technical sense, has certainly had its share in establishing a common-law doctrine in regard to fraudulent conveyances, and that in cases beyond the reach of jurisdiction at law in any view.

"One or two illustrations may be given. A man named Attwood executed a voluntary mortgage to his sisters to secure a past debt, and was allowed to retain the title deeds to enable him to give a first mortgage to a creditor who was pressing him with suit. Attwood deposited the deeds with this creditor, but afterwards, without the creditor's concurrence, obtained them again, and with them made a mortgage to the plaintiff, without notice, for a sum larger than the amount due to the sisters. On a question of priority, it was held that the sisters must be postponed to the plaintiff. The case fell without the statute of 27th Elizabeth, unless the theory of the 'equity of the statute' could be invoked. This the court was inclined to apply; but Lord Cranworth declared that if the case did not fall within the statute at all, so that the sisters could not maintain ejectment for want of a legal title, that would not affect the case. The jurisdiction of equity had existed prior to the statute, and had not been taken away by it; the statute had only given a more clear and extended remedy.[1] Again, it is held in some States that where a debtor, in fraud of his creditors, pays for property and procures the title to be made to another, the transaction is not within the statute of 13th of Elizabeth,[2] but that equity will treat the transaction as invalid on common-law grounds.[3]

"Nor have the courts of law in like recent times stopped with asserting the common-law jurisdiction; they too have acted upon the assertion both in England and in this country.[4] In the case first cited an information had been filed on behalf of the Crown, praying the benefit of a judgment of outlawry and that a certain deed by the outlaw might be set aside as fraudulent and void against the Crown. This was a matter clearly without the statutory law; but the jurisdiction was sustained as being founded upon the common law.

"Thus stands the case of fraudulent conveyances apart from the statutes of Elizabeth. It is believed that upon this evidence one cannot go far wrong in asserting that where statute, liberally interpreted, fails, a remedy still exists by the common law 'as now understood' (in the language of Lord Mansfield), whether by a suit at law or in equity, for every case of 'endeavor to alter rights by wrongfully evading the law in a matter in which the person to be wronged is not a party.'[5] And that may have some special significance for the newer States of the Union, and for the Territories, and for yet newer and remoter lands in which the English-speaking race is planting itself, where legislation may be wanting or imperfect; for it is to be remembered that the 'expansiveness of the common law' means not only growth from a germ, but adaptability of the growing principle to new surroundings and to new systems of government. America has attested this on a scale large enough."

[1] Cadogan *v.* Kennett, 2 Cowp. 432, 434.

[1] Herrick *v.* Attwood, 2 De G. & J. 21.

[2] Edmonson *v.* Meacham, 50 Miss. 34; Crozier *v.* Young, 3 T. B. Mon. 157; Gowing *v.* Rich, 1 Ired. 553.

[3] Edmonson *v.* Meacham, *supra*.

[4] See *e. g.* Richards *v.* Attorney Gen., 12 Clark & F. 30; Hudnal *v.* Wilder, 4 McCord, 294.

[5] The author's definition of Circumvention, a term including, *inter alia*, fraudulent conveyances, under 13 Eliz. c. 5.

LIVING IN CHAMBERS.

THE ideal chamber life in London is, of course, to be found in the Temple or any other of the law inns. The kind of existence passed by the inhabitants of these *hospitia* is unique. The young freshman installing himself in college rooms feels a delicious sense of independence take possession of him as he surveys the tiny domicile in which for a year or two he will play the host and petty king according to his own free will. But his will is not really so free, after all. He comes to find, although these college days make the greenest memory in any man's life, that inside the precincts of a university a young fellow has to surrender a considerable portion of his liberty, and is, in some respects, more under authority than if he were within the paternal mansion. The young student at Paris, flitting in and out of his *mansarde* in the Latin quarter, is indeed about as irresponsible a creature as the sparrow nestling in the walls of the house; but next week his garret may be the abode of a market porter or a milliner. His quarters have not been reserved through centuries for the occupation of educated bachelors, and he may be turned out of them at any moment at the mere caprice of the landlord, who comes monthly for his rent.

The Inns of Court and Chancery, however, are the great republic of bachelordom. Dating from the days when monkery flourished in our land, they have survived that monastic system, and in themselves preserve all the characteristics of what may be termed lay monasticism. Within the walls of these buildings, once you are admitted as a tenant, and provided you will pay the rather exorbitant rent, you are free to live in whatever manner of single blessedness you may choose. You are a High Church-man; fit up one of your rooms as an oratory if you like, and your neighbor who practises an esoteric Buddhism will not quarrel with you, or even take the trouble to find out what you are about. You are a somewhat sceptical Bohemian; on Sunday morning throw open your window and enjoy your dressing-gown, cigar, and "Observer," while the "blessed mutter of the Mass" and the sweet choir strains from the adjoining church waft themselves to your ears. You are free, if such is your mind, to enjoy the music in this fashion, and read the theatrical news while the clergyman delivers his discourse. You may keep a servant or servants to wait upon you, or you may, like a good independent gentleman, require no more assistance than the laundress can render in half an hour daily. You black your own boots with Nubian blacking; you become an expert at omelettes, and even venture at times to cook cosey little suppers for two or three. Generally, however, your eating is all done outside, in the restaurants. There are six or seven very respectable places of the kind, so near that to step out to any one of them is hardly more trouble than to walk downstairs to one's ordinary private dining-room. No conventionality governs your hours. Rise when you please; there is no household to consult. Dine when you please; there is no cook in your establishment to mutter about joints being burned, and sauces wasted, because the master has not returned in time. Stay out as late as you please; the night porter is paid for nothing else than welcoming you with a civil smile at four or five in the morning, and is not likely to give warning because you keep him out of bed so long. Your abode is twenty times safer by night than any West-End mansion, for it is well walled in, and no burglar can pass the sentinel at the gates. No rumble of traffic disturbs your sleep. Your rest is as secluded as that of a friar in his cell. Is not all this the very ideal of liberty and bachelor bliss? To-morrow you may wish to start away for Switzerland or the moors. Your bag is packed; you call a cab, and slam your double doors behind you, perfectly assured that all your goods and chattels are

safe till you return. Diogenes, even, was not so unencumbered; for had he gone to Switzerland he would have required to take his tub with him.

The peculiarity of this Utopian bachelorland is that you can pass so readily across its frontier into the big world. In Oxford or Cambridge you cannot breathe any but scholastic air. Here you take but a couple of steps, and out of an atmosphere filled with the past, you turn into the exciting din of Fleet Street, alive with echoes of the moment from all quarters of the earth. In meditative mood you may pace about the Temple precincts in summer moonlight, — *nunquam minus solus quam cum solus*, — and people its hoary courts with fitting figures of the many departed great, whose lives, so to speak, have been built into its walls. Then, by way of a rousing contrast, lounge round the corner, with slippered feet, into the office of some friendly editor, and listen to the click of the telegraph machines, and the gossip bandied among the leader writers waiting for subjects, and you will realize to the full the sense of delightful anachronism that gives lives in any of these ancient inns so piquant a flavor. The West-End man of fashion, living in a gorgeous suite of rooms near St. James's Street, might as well be the guest of a hotel. The walls of his abode are not clothed with associations stretching back through generations.

We write these lines at an open window, immediately outside which is a hall surmounted with a quaint clock and bell. Beyond the hall is a quadrangle richly carpeted with mossy grass, and studded with a dozen leafy trees, sleepily rocking a few sharp-voiced sparrows on their branches. On the other side of this foliage the red-tiled roofs of a building as old as the Charleses shine with a mellow and cheerful softness in the warm sun; and immediately beyond these roofs, again, one can see against a blue sky the massive mullions and numerous turrets of a large ecclesiastical-looking building designed in the Lombardo-Gothic style. Any painter sitting in our seat could produce a picture that might be taken to represent an exquisite work in some old-world cathedral town. Yet the ecclesiastical-looking building is not a cathedral, but the London Record Office, — a fine structure hidden away from the sight of most people. Under the red-tiled roof dwelt George Dyer, and thither Charles Lamb wended his way many a time to enjoy chat with the worthy bibliophile. The same red roof covered the office of the clerks of the Marshalsea Prison; and it has been said that from the room occupied by these worthies emanated more misery than from any other room in the metropolis.

It was of our own quarter of this beautiful Inn of Chancery that the old gentleman at the Magpie and Stump, in "Pickwick," tells the strange ghost stories; and Charles Dickens loved the place well. This little inn, with a whole history of its own, is as modest as it is delightful. Standing at the back end of a passage leading from Fleet Street, it obtrudes itself so little on the passer-by that not one Londoner in a hundred knows of its existence, and many a cabman will be found to confess that he does not know it by name. In such nooks it is that men grow into confirmed old bachelors. Like Elia, they "hang posterity," and love antiquity more and more. We will not say that a long life altogether spent like this is well spent. Human sympathies are apt to become musty and wither if they are too long subjected to the test of such isolated existence. A few years of chamber life, for any thoughtful man in his youth or prime, will probably do him more good than harm. But too long experience of its loneliness tells on the character. Further, a man past his best is subject to actual calamities attendant on this loneliness. It is only recently that a distinguished baronet retired to his rooms in the Temple one evening, and next day was found in bed lifeless. He had passed away in the lonely darkness, with no human ear to hear his dying groan. And such cases are far from uncommon. — *Irish Law Times.*

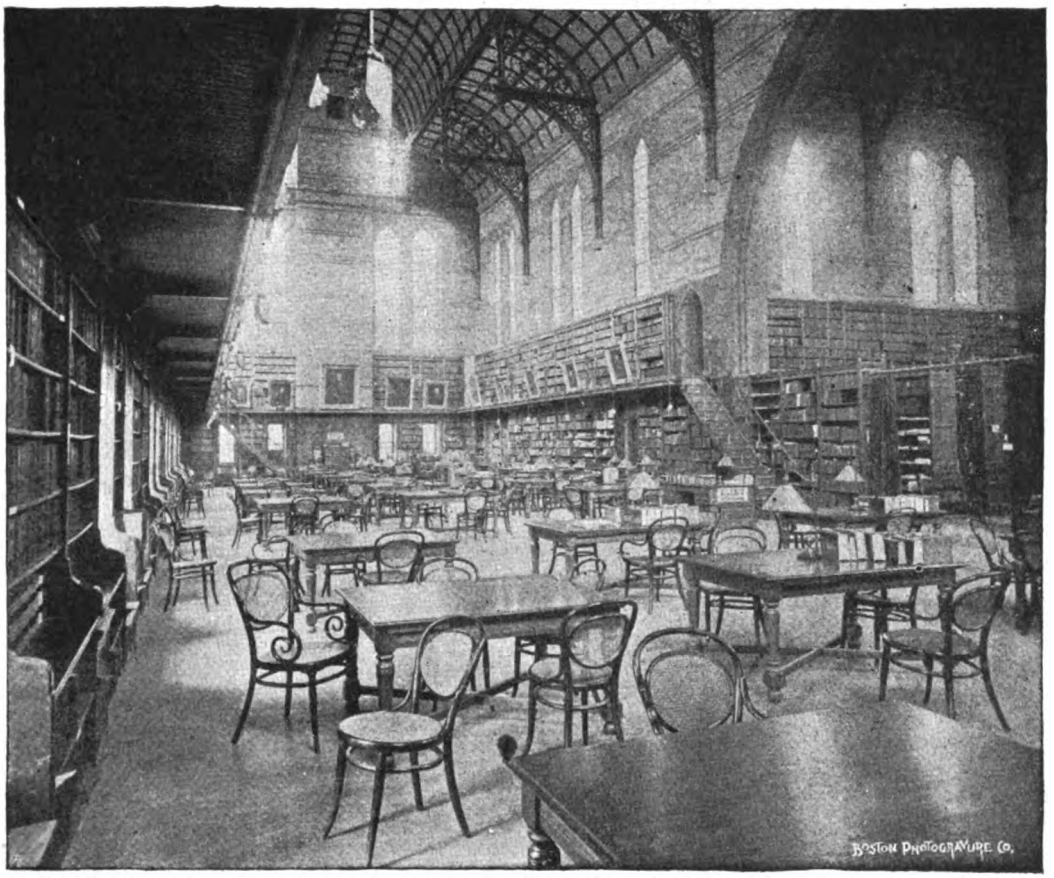
PUTTING NEW WINE INTO OLD BOTTLES.

By Seymour D. Thompson.

NOTHING strikes the intelligent layman with more astonishment than the way in which lawyers reason when they are called upon to decide a new question. They do not reason at all; but they begin to hunt back through the old musty books to find some analogy on which to decide it. They go back to year-book times, at least to the times of Coke and Bacon, to find if some judge has not decided some similar question, thereby making a rule for us to follow in the full blaze of the nineteenth century. If these lawyers would read history instead of law, it would perhaps make this habit less frequent.

England in the time of Coke and Bacon had probably less than three million inhabitants. Its roads were nearly impassable during most of the year, so that intercommunication was extremely difficult. The city next in size to London was Bristol, and London had more than twenty times the population of Bristol. Carriages mired in the mud in the principal streets of London. Pedestrians jostled each other and fought for the wall, so that to "give the wall" is still a figurative expression in our language. Where ducal palaces now stand, there were then open squares covered with ashes, dumpings of all kinds, offal thrown out from kitchens, dead dogs, dead cats, and the like. Even the nobility ate with their fingers, as the Turks do yet. Forks were first introduced from Italy in the reign of Queen Elizabeth. The island was in a state of constant political and social turmoil. The highways in the immediate vicinity of London were unsafe by reason of highwaymen. The northern border swarmed with bandits scarcely more human than our Apache Indians. The indifference to human life was something that we can scarcely understand now. The brutality of the judges absolutely justified the expression of Shakspeare, "Your hungry judge will hang the guiltless rather than eat his mutton cold." Torture was still practised; and the last prisoner was put to torture in the Tower of London in the year 1640, the year the celebrated Long Parliament met. Prisoners were still tortured in Scotland at a later day; and the Duke of York, when governing that portion of the island during the reign of his brother Charles the Second, was accustomed to gratify his ferocious and detestable nature by having prisoners tortured in his presence. Old women were tried on the charge of being witches and found guilty by the verdicts of juries and put to death, even in a court presided over by a judge as enlightened and humane as Sir Matthew Hale. A prisoner was not allowed counsel, because no barrister was allowed to speak against the King. Trial by battel was customary, on the fantastic theory that God would not suffer the wrong to prevail; and it has been but seventy-one years since this relic of barbarism was abolished. Blood flowed for political offences. Atrocious and cruel penalties were annexed to crimes of a minor character. The stealing of a chicken was a capital felony.

In fact, our ancestors of those days were barbarians, not as far advanced as the Bulgarians of our own time. When, therefore, we have a new question of law to study, why should we go back and try to find what the opinion of Lord Coke, whose infamous prosecution of Sir Walter Raleigh can never be forgotten, was on the question? Why should we try to find what Sir Francis Bacon, who bought and sold justice, thought about it? Why, in short, should we not stop rummaging the old books and do a little thinking for ourselves? Our ancestors in their day did their parts as well as they could, with the light they had and amid such surroundings as they had. But, as compared with us, they were barbarians compared with the civilized man. In intellectual stature they were children compared with the moderns.



THE LIBRARY.

COLUMBIA COLLEGE LAW SCHOOL, NEW YORK.

By Prof. Theodore W. Dwight.

THIS institution came into existence about thirty years ago (Nov. 1, 1858). It was considered at that time mainly as an experiment. No institution resembling a law school had ever existed in New York. Most of the leading lawyers had obtained their training in offices or by private reading, and were highly sceptical as to the possibility of securing competent legal knowledge by means of professional schools. Legal education was, however, at a very low ebb. The clerks in the law offices were left almost wholly to themselves. Frequently they were not even acquainted with the lawyers with whom, by a convenient fiction, they were supposed to be studying. Examinations for admission to the bar were held by committees appointed by the courts, who, where they inquired at all, sought for the most part to ascertain the knowledge of the candidate of petty details of practice. In general, the examinations were purely perfunctory. A politician of influence was not readily turned away. Few studied law as a science; many followed it as a trade or as a convenient ladder whereby to rise in a political career.

There was, however, a considerable number of the profession, men perhaps who had been trained in law schools elsewhere, who strove to improve this condition of things. They had been, however, thwarted in a variety of ways. The tradition still lingered that a lawyer merely held an office, instead of being a member of a learned profession. All the early lawyers had been admitted to practice by the mere mandate of the governor, without any examination as to professional ability or training. More than a hundred of these appointments still exist in the records of the State, in the Secretary of State's office at Albany, running through a period of seventy years just preceding the American Revolution. They are simply letters patent, appointing a specified person an attorney at law, with authority to appear and practise "in all his Majesty's courts of record," or perhaps only in some specified court. Though this method disappeared at the organization of the State, the idea lying at the root of it prevailed long after the State government was formed. The mass of the public regarded the profession of the law as a legalized monopoly. Politicians determined to sweep this last feature out of existence; and accordingly in the State Constitution of 1846, a clause was inserted (Article Six, Section 8), that "any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be *entitled* to admission to practise in all the courts of the State." This clause required no special mode of training, no attendance in a law office, no period of time devoted to study. Any person, no matter how ignorant of law or literature, could present himself for examination as to his moral character and as to his learning and ability. The examination was held by sporadic committees, appointed by any one of eight sections or divisions of the Supreme Court, each composed of a distinct set of judges, administering, as was said by a highly distinguished lawyer, "octagonal law." If the examination was satisfactory to the committee, which was a law unto itself, the candidate was admitted to practise as an attorney and counsellor at law in all the courts of the State. The questions asked were for the most part trivial. Little knowledge of the great principles of law was called for or exhibited. Sometimes the examination resembled a screaming farce, as when some pretentious negro, having a full vocabulary of words at command, but with the most scanty knowledge of their meaning, submitted himself to the scrutiny, or more accurately to the mercy, of the examiners. If the candidate were rejected summarily, he had only to wait for a time, perhaps change his residence to another judicial division where the examination was understood to be even more lax, and try the temper of a different set of examiners. He might thus go the round of the districts and commence anew. No regulation required, after his rejection, any additional period of study. Matters were not much better before the new Constitution. As the writer of this article came to the bar in 1845, he is able to state from personal experience that admission could be had even under the old régime from a committee of leading lawyers by a successful answer to a single and narrow inquiry. This was on what morning of a particular week in the term of the Supreme Court a specified motion should be made, the day being fixed by a rule of court. If this was the outcome of a bar examination under a court of three judges, headed by Judge Nelson, afterwards of the Supreme Court of the United States, it may be conceived what it must have been under the eight-branched court of the Constitution of 1846, and its ever-changing committees of examiners.

This system, or rather no system, prevailed when the Columbia Law School commenced its existence (Nov. 1, 1858). There had previously been some lectures delivered, under the auspices of the College, by the distinguished Chancellor James Kent, to

such students as chose to hear him. That great jurist was compelled, under the constitution of the State as it then existed, to retire from the high judicial office upon which he shed such enduring lustre at the comparatively early age of sixty. He was then in the full maturity of his powers. It is unquestionable that the State, by rejecting his services at the time when they were most valuable, sustained a most serious check to what may be fitly called the classical development of its jurisprudence; for Kent was truly many-sided. He was a fine classical scholar, a great student, a most persuasive and lucid writer, accustomed to broad lines of thought, in character most admirable, and wholly unaffected and genuine in manners, as befitted a man of eminent ability. He held judicial office for more than twenty-five years (from 1797 to 1823). His fitness for the position of Professor of Law had long been observed by the Trustees of the College; for they offered him the post in 1793, while he was at the bar, and again thirty years later, in 1823, when he retired from the bench. His reasons for acceptance are well and somewhat pathetically given in the preface to the first volume of the first edition of his Commentaries. He says: "This renewed mark (in 1823) of the approbation of the Trustees of the College determined me to employ the entire leisure in which I found myself in further endeavors to discharge the debt which, according to Lord Bacon, every man owes to his profession. I was strongly induced to accept the trust from want of occupation, being apprehensive that the sudden cessation of my habitual employment, and the contrast between the discussions of the forum and the solitude of retirement might be unpropitious to my health and spirits, and cast a premature shade over the happiness of declining years." Fortunate was he in the fact that the day of his retirement from the bench was the commencement of the brilliant career as a legal author for which he will be chiefly and most favorably remembered.

JAMES KENT.

The lectures of Chancellor Kent in the course of four years had developed into the first two volumes of his Commentaries, the second volume being published November, 1827. Kent did not, however, succeed in establishing a law school or department in the College. He may not have made the effort. His course of lectures was personal to himself, and he left no successor. Some of his lectures have not been published, not from want of merit, but because they did not apparently form a part of a complete system. His Commentaries as they stand are imperfect as Commentaries on *American Law*, since they do not include torts, criminal law, administrative law, or procedure. There is evidence that his plan embraced at least some of these topics. As far as can be now ascertained, he simply read lectures to his hearers. He held no examinations, had no regular course of study, and held no moot courts. No degrees were con-

ferred by the Trustees on his students. He had no associates in instruction. There was, consequently, no Law Faculty. He was simply a professor reading a course of lectures. He held his hearers to attendance by the excellence of his expositions and the corresponding interest aroused in themselves. They paid him the respect due to his talents and the reverence due to his virtues. The writer speaks positively upon these points, from the information supplied to him by one of his students, no longer living, a man of great ability and spotless character.

After his retirement, the Trustees of the College filled their law professorship by the appointment of William Betts, Esq., a highly esteemed member of the New York Bar. It is not known that any courses of lectures were delivered by him. It is certain that none were when the existing Law School originated. His relations to legal instruction were then purely nominal. He was active and earnest in promoting the organization of the Law School as it now exists.

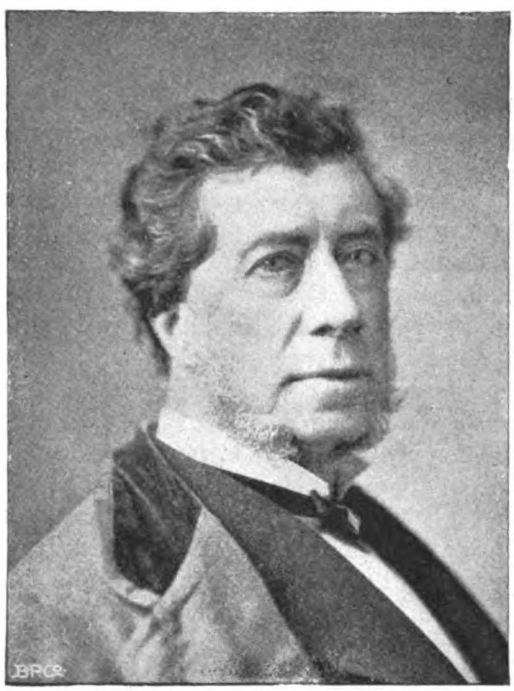
In fact, in 1858, the City of New York was, so far as legal instruction is concerned, unbroken and virgin ground. The memory of Chancellor Kent, as a lecturer, had practically died away. He was without a successor anywhere, not merely in the College, but throughout the city. Even thinking men, who believed in schools of theology and in colleges of medicine, had little or no faith in schools of law. The law was deemed for the most part to be a collection of "modern instances," to be found in the late reports, rather than a science to be mastered by the process of deduction from great and leading principles. Some praiseworthy attempts had been made to establish courses of lectures; but all had failed, as they were founded on erroneous methods. It was not without misgiving, it may be not without trepidation, that a new effort was made to cultivate ground apparently so unpromising.

The beginning of the Law School as it exists at present is now reached. It is unfortunate that most of the members of the Board of Trustees who were the most active in promoting the foundation of the Law School are not now living. The writer is alone cognizant of many of the leading facts. Some of them are very deeply imprinted upon his memory, as the result of controversies, now extinct, in which he participated. Others are the memorials of the sacrifices and toils of a lifetime, — for it is not allotted to many to devote thirty years of unremitting and at times exhausting labor to a single institution, — labor of the kind which is the lot of pioneers, and yet is not without its recompenses. While he may appear in the course of this article to be open to the charge of egotism, still, by reason of the special circumstances of the case, he begs the indulgence of his readers.

The foundation of the Law School by the Trustees of the College, in 1858, was part of a more general scheme. Columbia College, having, by reason of an increase in value of its real estate, a large accession to its means, resolved to offer to the public a post-graduate course of instruction, with a view, if there appeared to be a public desire for such a course, permanently to establish it. The whole plan was tentative or experimental. Four distinct courses of lectures of this class were then established: one on Philology, in charge of that distinguished scholar and statesman, the late George P. Marsh; a second by Dr. Francis Lieber, a standard writer upon topics of Political Science and of International Law, then a professor in the College; a third course on Ethics, by Professor Nairne, also of the College; and a fourth on Municipal Law, by Theodore W. Dwight, then Professor of Law in Hamilton College, New York, in which institution there was at the time a flourishing Law School. These courses were all entered upon at the rooms of the Historical Society, at the corner of Eleventh Street and Second Avenue. The first three of these courses, though thoroughly well-manned, did not seem to meet a public want, and after languishing for some time were discontinued.

As to the courses of lectures in law, the outcome was different. An experience of a few weeks showed that there was a clear public desire for instruction in law, and it was resolved by the authorities that a two years' course should be established ; and from that time to the present moment there has been no lack of students.

The methods of instruction then established have continued, in substance, down to the present time, with such enlargements and modifications as experience has shown to be beneficial.



HAMILTON FISH.

The central idea in instruction has always been this: The student is assigned daily a certain portion of an approved text-book for his reading prior to listening to expositions of the subject involved. To make the assignment effective, he is asked questions upon the topic, mainly to make it certain that he has studied the subject and has in a measure comprehended it, and is thus in a position to listen with advantage to expositions. This is a prime element in legal as well as other instruction, since experience shows that the mere reading of lectures to students upon an unfamiliar subject is of but little value, and that the impressions made are evanescent. The expositions are for the most part oral and in familiar language. Pertinent illustrations are resorted to, and every available means adopted to awaken attention and arouse interest, as a stimulus to future research or inquiry. Nothing is more certain than that, in order to make progress, the interest of the student must be aroused. Young men come to the study of the law from a great variety of motives, and these are often mixed. Some choose it as an avenue to wealth ; others to political preferment ; others because business is stagnant, and because it is better to have some occupation rather than to remain idle ; others still, because their fathers recommend or direct it; and others, finally, because the ladies of their choice insist upon it as a condition precedent to the relief for which they sue. In more than one instance the writer has been made aware of this last requirement, stated in the imperative mood, with the further condition that the final examination shall be most creditable. He is happy to add that the youths won the prize in the contest nobler than the Olympian games. Few pursue the study of the law in the jubilant spirit of Lord Coke, and simply follow "the gladsome light of jurisprudence ;" for, let it shine as it may, there are too many brambles and thickets about it to make the distant and obscured light at first attractive. Even when the better students approach the study of the law, they are frequently in a condition of benighted perplexity. They are confronted by an uncouth and unknown language, yet in the highest degree precise in its meaning. They are apt to transfer the popular meaning of words to those used in the technical sense. In every direction they need an earnest and determined leader who will not merely inform, but also encourage and

stimulate them. If this be true of the better students, it is far more so with those of the inferior grades. There is regularly a class of inefficient young men hanging about the skirts of every large institution, who desire the credit of being members, yet are not willing to do the work which the rules of the institution require. Others who are well meaning and faithful in attendance are mentally slow or even sluggish, and need a special treatment. An institution which does not take due care of all these classes and see that they attend faithfully to their duties, only partially fulfils its mission. For these various purposes, it is of prime importance that regular attendance should be secured, and that the professors should know, by roll-call or otherwise, whether the students attend or not. Many who in the outset are remiss in this respect become constant when they become interested. It is extremely difficult to arouse interest unless attendance in the beginning is compulsory; after a time they will begin to relish that which at first they treated with indifference or even with dislike. There is no doubt an opposing theory in education, which holds that attendance in the so-called University courses of study in the higher institutions should be voluntary. This method may suffice for a certain class of students. They are the few, the picked men. These need no care, no watching. But the larger number will be occasionally absent or inattentive, yielding to slight indisposition or other plausible but insufficient causes. But as the topics in law are continuous, not one unnecessary absence should occur during the entire course. To borrow a phrase from James Harrington, students "should be driven like wedges," with a regular and unceasing pressure.

Some remarks recently made by Sir Frederick Pollock (the distinguished author of the work on Contracts), who has had great experience in legal education, are well worth quoting. He says: "Education is a difficult art; not the least of the difficulties is to make boys and young men do things which they would not do of themselves, and of which they cannot at the time understand the value" (Nineteenth Century, February, 1889, p. 289). This thought must not be merely apprehended; it must be firmly grasped and made effective in legal as well as other educational training.

It is particularly essential in the New York Law Schools to insist upon actual and regular attendance, since by a rule of court an attendance in a law school not exceeding a fixed period can serve as a substitute for a corresponding time of clerkship in a law office. The attendance is to be shown by the certificate of the Dean or Warden of the Law School; and this, of course, cannot be conscientiously given without authentic evidence at his command establishing the fact to be certified.

The writer is well aware that other systems of legal instruction are warmly advocated by law instructors of great ability and experience, and pursued with much success. One of these is well described in an article in the first number of this magazine. Much can properly be said in favor of it, particularly in reference to the superior class of students. But it is not to be forgotten that there exists and always will exist in the profession of the law a great and important class of men of average ability, who fill most respectably and usefully the humbler avenues of professional life. These men must be trained as well as those of superior powers. During the course of their educational training they thrive best with daily leadership and constant suggestion and stimulation. While it is not conceded that the alternative method is better for any students, it seems clear that it is inferior to true teaching in its effects upon those of average powers.

Again, it is worthy of remark that the methods pursued in the Columbia Law School closely connect themselves with collegiate training. Graduates of the Colleges find substantially the same methods of education in use here to which they have been already accustomed. They traverse the field

of law, and obtain an outline of its principles. It is the business of their later lives to fill up this outline with detailed knowledge, partly worked out by the exercise of their reasoning powers, which have been constantly called into requisition, and partly by the examination of adjudged cases. They are in a position in which they can profit by such studies and trace the line of adjudication from its original sources. It seems to be a wise and natural method in the study of other sciences to obtain an accurate outline before crowding the mind with details. Why not in law?

SAMUEL B. RUGGLES.

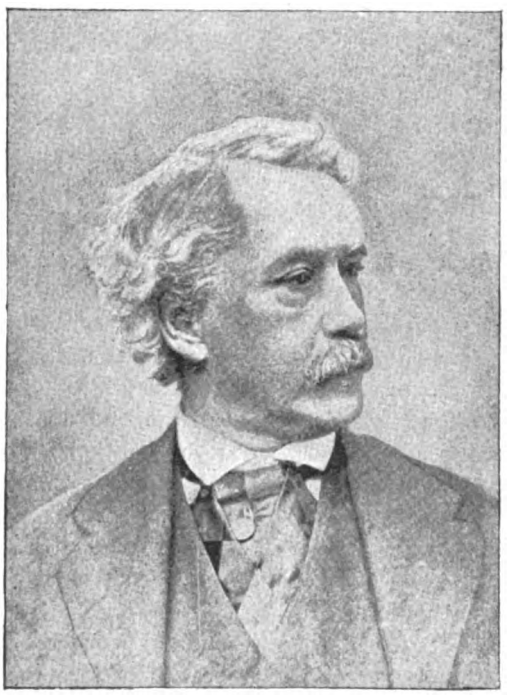
It is not out of place in this connection to refer to the chosen methods of acquiring the Roman law, both as sanctioned by great jurists and by imperial authority, after an experience continuing through centuries. It cannot be denied that the system of rules worked out by the jurists of the Empire was far more scientific than those which prevail in the common law, so far as these are not borrowed from those very jurists. The Roman jurists had "cases" to deal with, precisely as we do. They were not mere legal philosophers, but disposed of practical and "burning" questions of their time. They were, however, in the habit of referring back to a legal principle in disposing of a concrete case, and believed that great principles could be so stated as to win the attention of students and give them a solid basis for future detailed acquisitions. Hence it happens that posterity, by the aid of the great historian Niebuhr, has the advantage of studying the Institutes of Gaius, though in a fragmentary state, — a work compact in form, scientific in treatment, clear and accurate in its method, and persuasive in its reasoning. Assume that Gaius completed this work about the close of the life of the Emperor Marcus Aurelius (say A. D. 178), it continued to be used for the instruction of students for three and a half centuries, down to the time of Justinian, who in the course of his reign issued another book of Institutes based on Gaius, *avowedly for the use of students*. It is significant that this later work was largely composed in *the very words of Gaius*. It is reasonable to suppose that this happened not from mere servility of expression, but because Gaius, like Blackstone or Kent, was a handbook in constant use for legal teaching, and so it was inexpedient to change its phraseology, unless where it became necessary to do so by reason of changes in the law, made by Justinian, principally under the influence of a later public opinion. The justness of these statements is borne out by a sentence or two in the forefront of Justinian's own Institutes, Book I., Title I. His words, no doubt composed by the lawyers who made this later adaptation of the Institutes of Gaius, will bear quotation. The accurate translation of J. B. Moyle (Clarendon Press, Oxford, 1883), is followed: "Our object being the exposition of the law of the Roman people, we think that the most advantageous plan will be to commence with

an easy and simple path, and then to proceed to details with a most careful and scrupulous exactness of interpretation. Otherwise, if we begin by burdening the student's memory, as yet weak and untrained, with a multitude and variety of matters, one of two things will happen, — we shall either cause him wholly to desert the study of law, or else we shall bring him at last, after great labor, and often too distrustful of his own powers (the commonest cause among the young of ill-success), to a point which he might have reached earlier, without such labor and confident in himself, had he been led along a smoother path." These words seem wise and suited to the subject. Justinian's plan was that students should thoroughly master the Institutes; and this the name of his book imports. Though easily brought within a couple of hundred of printed pages, the Institutes have gained a legal immortality, and have been, and are still, the source of knowledge for students of the Roman law, as well as for lawyers in England and in the United States, few of whom resort to the great collection of cases in the Pandects, while such as do, enter that wilderness through the gate of the Institutes. This work, as is well known, comprises the first elements of the science of law, arranged in four books. This arrangement is apparently borrowed by Blackstone in his Commentaries, who first succeeded in treating the materials of the common law in an orderly manner, and who first relieved the student from fathoming the "laws of disorder" in Lord Coke's comments upon Littleton. So it happens that the methods and many of the rules of Justinian not only serve for education in the Roman law, but for discipline and thought in our own.

Only one remark more needs to be made in justification of the course of study pursued in the Columbia Law School. It lends itself readily to the purposes of a review. The great value of a review is not to be lost sight of. This statement will be sustained by all educators in collegiate courses. It is equally applicable to legal study. It is highly important that a student should go over a subject more than once. It is in this manner that early difficulties disappear. The materials for thought become permanently lodged in the mind. The pernicious habit of cramming is avoided. The student's interest in his subject increases. The law may still be a labyrinth, but he has a clew which enables him to work himself through its mazes. More than all, the student gains that confidence in his attainments which Justinian so justly declares, in the passage already quoted, to be a prime condition of success in legal pursuits.

The methods of study outlined in this paper appear to have been adopted in England in the early period before law instruction fell into decay. There were no suitable treatises then at hand. The lecturers, then termed "readers," discussed before an audience of students a legal topic from a systematic point of view. The lectures of this kind that have come down to us are very satisfactory. Reference may be made to Lord Bacon's reading on the Statute of Uses, or Sir Francis Moore's reading on the Statute of Charitable Uses. A number of a valuable character are still in existence, but unpublished, awaiting exhumation by the Selden Society. This system, it is true, after a time failed. That failure was not due to any defect in method, but to more general causes. The lectures were but occasional; there were no regular instructors. Large sums of money were expected to be laid out by the lecturers in the way of entertainment of the students who had honored them with an invitation to "read." Such an assessment, for it was practically that, after a time became burdensome, and lawyers invited to lecture declined the invitation. Add to this that the Inns of Court were, particularly during the period of the Stuarts, places for the cultivation of jollity and merriment. They were houses where the fun was "fast and furious," and where the sobriety of the law came to be out of place. Instruction in the principles

of law altogether ceased there. Whatever legal instruction there was, was relegated to the law offices. This was in general little enough; for we have the testimony of the poet Cowper, who at one time entered a law office as a student, that the students of his day for the most part spent their time in "giggling and in making others giggle, instead of studying law." From this double failure of the Inns of Court and the law offices came the pernicious idea, long prevalent but now passing away, that systematic instruction had no true place in legal education.



GEORGE T. STRONG.

To sum up this branch of the subject, the Columbia method is true *teaching*, and presupposes for its highest success the teaching faculty in the professors. This is sometimes not possessed by men of the very highest ability. It is of the greatest importance that it should be cultivated.

An important result of this method is, that where the number of students is not too large, the relation between them and their professors is quite a personal one, and leads to mutual interest and it may be to mutual affection. The private intercourse between them under such circumstances is free and unrestrained. Counsel and advice are eagerly sought and faithfully given. The relation becomes practically fraternal. For example, until the number of students became very large, it was the regular course of things at Columbia for members of the graduating class, after they had been examined and received a recommendation for a degree, to meet at their own request the professors who during their course had the principal charge of them, to obtain a farewell greeting with words of affection and expressions of desire for kindly remembrance in their future career. Such influences reacted upon their conduct, making discipline wholly unnecessary. Not an instance of it occurred for the first twenty years of the life of the institution.

Another remark may be made shedding light on the value of this method. During a period of thirty years not a single instance has transpired of any former student's expressing dissatisfaction with it. On the other hand, hundreds of instances have occurred of indications of very high satisfaction. Several leading lawyers have sent to the school four or five sons in succession. A large number of the students attend upon the recommendation of the Alumni, who now commence to show their estimation of the value of the method by sending their own sons. The classes are abundantly filled without special effort to obtain students.

To sum up the whole matter, is not this, in substance, the "Socratic method" of teaching? A few words may be quoted from Mr. Grote: "In the Phœdrus of Plato the Platonic Socrates delivers the opinion that writing is unavailing as a means of imparting philosophy; that the only way in which philosophy can be imparted is through *oral colloquy adapted by the teacher to the mental necessities and varying stages of pro-*

gress of each individual learner; and that writing can only serve after such oral instruction has been imparted to revive it, if forgotten in the memory both of the teacher and hearer who has been orally taught." [1]

Methods such as these were adopted, after mature deliberation and some experience, when the institution was organized. Valuable suggestions had been obtained from the experience of Hon. Samuel J. Hitchcock, for many years Law Professor in the Yale Law School, a most accurate thinker and an admirable Law Professor. Many men of legal eminence still living profited greatly by his teachings. No student under his instruction admired him more or looked more to his methods for suggestions than the first Professor in Columbia College Law School.

Columbia College, at the time of the foundation of the Law School, was very fortunate in its Trustees. There were several of them who took a keen and enlightened interest in the Law School, and who did much to insure its growth and prosperity by their wise and prudent counsels and by their zealous efforts in its behalf. Prominent among them were the Hon. Hamilton Fish, afterwards the distinguished Secretary of State of the United States during the administration of General Grant; the Hon. Samuel B. Ruggles, a distinguished citizen of the city of New York; George T. Strong, Esq., a fine lawyer and a man of high culture and varied accomplishments. Mr. Justice Blatchford, now of the Supreme Court of the United States, was from the beginning and has been ever since a Trustee and a constant friend of the institution, though his judicial duties have prevented him from taking the active part in its management attributable to the other gentlemen who have been named. Mr. Gouverneur M. Ogden, long the Treasurer of the College, gave much time and attention to this subject. It would not be just to omit in this survey the name of Marshall S. Bidwell, a lawyer of most extensive and varied legal training, educated by English methods, but extremely attached to this country, and possessing a constant and unwearied interest in the promotion of legal education. It is due to these gentlemen to say that though most of them were heavily burdened with professional avocations, they were unwearied in their attention to this department. Several of them were the more active members of a committee of the Trustees on the Law School, and for many years personally attended the final examinations of the members of the graduating class. The attendance of Mr. Ruggles was very remarkable. He was then far advanced in life, but full of the spirit and earnestness of youth. Nothing could dampen his ardor; more than once, while sick in bed and under the constant attendance of a nurse, he sent for the writer to make some suggestions which he thought of use to the Law School. On one occasion his physician interfered and forbade the visit, but found that the prohibition increased his patient's restlessness to such an extent that he permitted an interview, with the gravest forebodings as to the result, though his apprehensions were still graver if the interview was forbidden. After an hour's discussion, in which Mr. Ruggles explained and enforced his views and patiently listened to opposing considerations, he became tranquil, and soon beginning to mend, rapidly recovered. He was one of the few men that make real the vivid but slightly altered description of Dryden: —

> "A fiery soul, that, working out its way,
> Fretted the feeble body to decay,
> And o'er-informed the tenement of clay."

Mr. Ruggles was a far-seeing man, of statesmanlike views and of prophetic vision. His eloquent and glowing predictions while in the State legislature at an early age of the future of the West, and of its great highway to the East, the Erie Canal, though at the time deemed visionary, were more than justified in the event. The Law School owes much to his untiring zeal, wise suggestions, and surpassing interest in its prosperity.

[1] Grote's Plato, 183.

Firm friendship for his juniors in years was in him but another name for a truly paternal affection.

It was, further, a fortunate thing that in the outset a number of the most prominent judges and lawyers in New York, while not members of the Board of Trustees, aided the institution by their support and by the delivery of occasional lectures. One of these still survives in a green old age, still practising at the bar, though for a long period on the bench where he remained until disqualified by age to serve, — a man interested in every direction in the advancement of science and education. Reference is made to Hon. C. P. Daly, long Chief-Justice of the Court of Common Pleas, and also for many years the venerable President of the American Geographical Society, an office which he still fills and adorns.

The first lecture in the Law School was delivered on Monday, Nov. 1, 1858, by Mr. Dwight, at the rooms of the Historical Society. It was an introductory lecture, afterwards printed. The audience consisted mainly of lawyers. It was plain that many of them could be counted upon as friends of a system of legal education. The result was an immediate attendance of thirty-five students, who showed their intention of pursuing a regular course of study by at once paying a tuition fee for instruction throughout the year. Such assurances were given of a future increase of numbers that it was determined to divide each class at the beginning of the coming year into two sections, for their convenience. The next year, the number of students was sixty-two. In the third year there were one hundred and three. Many of these early students were members of the bar. In one year the lawyers in attendance numbered seventy-five. What better commentary could be supplied of the inefficiency of instruction obtainable in the law offices?

It will be convenient in this connection to show the number of students in the succeeding years, exhibiting the fact that the growth of the institution has been quite steady instead of being sudden or spasmodic.

Year.	No. of Students.
1858–59	35
1859–60	62
1860–61	103
1861–62	117
1862–63	150
1863–64	171
1864–65	170
1865–66	178
1866–67	168
1867–68	184
1868–69	204
1869–70	230
1870–71	243
1871–72	291
1872–73	371
1873–74	438
1874–75	522
1875–76	573
1876–77	526
1877–78	462
1878–79	436
1879–80	451
1880–81	431
1881–82	471
1882–83	400
1883–84	365
1884–85	365
1885–86	345
1886–87	399
1887–88	461
1888–89	491

Some remarks should be made as to these figures. The numbers in 1875–76 were swollen by the fact that the requirement of a preliminary examination went into effect in the succeeding year, and some students entered then to escape it. The number was reduced in 1883 to 1885, owing to a considerable increase both in the tuition fee and the diploma fee. It will be seen that since 1885 there has been a regular increase. These numbers embrace two classes, — a senior and a junior class. In October, 1890, there will be a third year's class formed, which will presumably swell the attendance to a still larger number than at present.

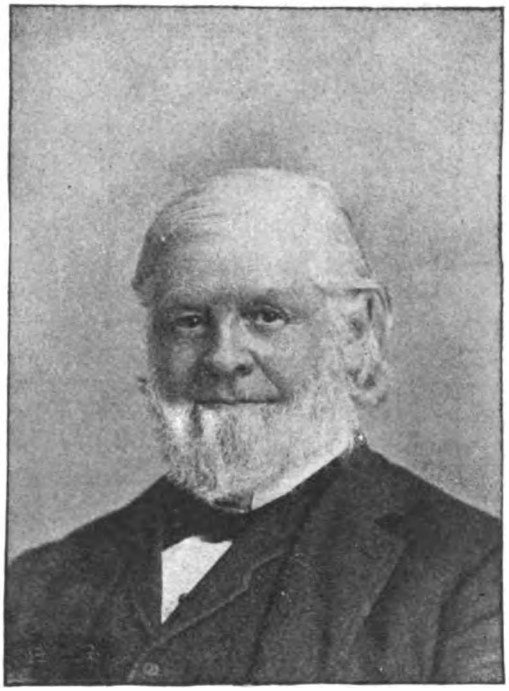
The theory of the course has regularly been to give the classes an outline of the whole domain of municipal law. Of course, in two years only a mere outline was possible. In the early history of the institution, it was quite difficult to hold the students for that time, since by the rules of court, as already stated, no time whatever was required. Here were two parallel methods offered to each aspirant for legal honors. One was offered in this manner: attend the Law School, remain two years, and then upon an examination be admitted to the bar. The friends of the other method remonstrated: why attend any lectures? go up to your examination when you please, trust to your good fortune and the leniency of the examiners; you will readily attain your end.

It was determined at an early day that it was wise to confine the attention of the students mainly to the principles of the law, paying comparatively little attention to the details of local practice. There was, however, a formidable obstacle in the way of this course. The examiners appointed by the court practically paid no attention to legal principles, although there was but one examination for admission for both attorneys and counsellors. Besides, as new examiners were appointed four times a year, there was no established or prevailing method of proceeding in that respect. If one Board favored theoretical study, the next adopted a different view, and confined all their inquiries to trivial and useless details. Taking all things together, the outlook for the success of a regular and systematic course of study was unpromising and discouraging.

This state of things led to an application to the legislature to allow the graduates to be admitted to the bar on a certificate from the College that they had attended the lectures for two years, and had passed a satisfactory examination before its Law Committee. This Committee consisted of the Professors in the Law School and the members of the Board of Trustees belonging to the Law Committee, all of whom were highly reputable lawyers, some of them having a national reputation. Among them were Hamilton Fish, Mr. Justice Blatchford, Alexander W. Bradford, formerly Surrogate and a distinguished lawyer, George T. Strong, and at a later date, Stephen P. Nash. Legislation of this kind was not new, but then existed in favor of several Law Schools in the State; among others, one at Albany, still in operation. The Law Committee for a number of years acted under this law, personally attending public examinations at a great personal sacrifice, and passing upon the fitness of the applicant for admission to the bar, as well as for the bestowment upon them by the Trustees of the degree of Bachelor of Laws. The "pass" examination to which candidates for graduation were required to submit covered the whole range of their studies. This method was adopted to secure greater familiarity with the subjects in which they had been instructed, every effort being made to avoid cramming. This system is still continued. It has resulted in great thoroughness of study and close acquaintance with the subject. The better students have their resources at immediate command. Ground that has been so thoroughly traversed does not need to be traversed again. These "pass" examinations have been mainly oral. If the candidate is unsuccessful, another trial is conceded upon written papers. It is by such a variety of modes that the knowledge or want of knowledge of every student, both day by day and finally, can be ascertained. Mr. Pollock has recently given expression to the principle: "*Viva voce* questioning and discussion . . . and whatever may bring the order of examination into contact with real life and make it less of a routine apart, should, so far as possible, be introduced and encouraged" (Nineteenth Century, February, 1889, p. 300).

The first class graduated in the year 1860. A motion was made to that branch of the Supreme Court holding its terms in the City of New York for the admission of the grad-

uates on the certificate provided by the Legislature in the law above described. The court held the law to be unconstitutional and void, on a theory that the power to admit attorneys, etc., was inherent in the court, and that the legislature had no authority to provide for admission in any other way. This preposterous decision, unexpectedly adverse to the graduates, since no such question had been raised in other judicial districts as to the other Law Schools, led to an appeal to the Court of Appeals, in which two points altogether new in our jurisprudence were presented. One was, whether an appeal could be taken from an order denying the petition or motion of an applicant for admission to the bar; and the other, on the merits of the case, as to the power of the legislature over the whole subject of the practitioners in the court. This second question branched out into an historical as well as legal inquiry, in which all the English legislation and practice were considered, from the earliest period down to the time of the argument. The argument was published in full in a separate pamphlet. A mere outline of it is presented in the report of the case, in 22 New York R. 67, under the name of *the matter of Cooper*. The Court of Appeals held that the order was appealable as involving a substantial right, and thereupon reversed the decision of the Supreme Court. The graduates were accordingly admitted under the statute, and continued to be for a number of years. The great justification for this legislation at this time was, that the Supreme Court, though intrusted with the power of admitting attorneys and counsellors to practice, had conspicuously failed in establishing any satisfactory method. The Law Schools needed temporarily a different mode of proceeding. After their modes had had a fair trial before the public, legislation was no longer necessary, since the later judges have more thoroughly realized their responsibility to the profession, and the court examinations are more reasonable, though, be it said with respect, there is still in some quarters room for improvement.



THEODORE W. DWIGHT.

In the same year (1860), in order to stimulate excellence in attainments of the students, a series of annual prizes was established, commencing with $250, and diminishing regularly by $50, until the sum of $100 was reached. These were adjudicated by leading members of the bar upon the combined merits of written answers to printed questions, and of essays upon topics selected by the instructors. None could compete for the prizes except those who had fully completed the two years' course. The questions covered the range of studies for the whole course. Stringent rules were adopted in reference to the answers, so as to secure the absolute fidelity of the candidates in their work. The first committee of award consisted of Judges D. P. Ingraham of the Supreme Court, Lewis B. Woodruff of the Superior Court, and Chief-Justice Daly of the Common Pleas; all jurists of great emi-

nence, and having the confidence of the public. They declared the "result as evinced in the essays and answers as creditable in the highest degree both to the students and to the institution." It is believed that this method of ascertaining excellence in attainments was adopted for the first time in this country by this Law School. Did space admit of it, this first list of questions, answered in writing in the presence of a professor in five hours by the candidates, would be inserted in this article. At that time no miserable printed question-books, with their numerous asinine answers, were in existence to mislead unwary students. The prizes, with the same general methods of ascertaining excellence, have continued down to the present day. The questions were intended to be fair and at the same time searching. A number of the question papers have in recent years been resorted to by the Supreme Court examiners in the regular bar examinations. The *combination* of the two tests has proved highly useful, in the manner about to be detailed. The student, when he submits his essay to the examiners, must make a solemn declaration that he has had no direct aid in the preparation of his essay. Still, the prize is considerable in amount, and the credit of obtaining it is not without its value. Accordingly, he may yield to temptation and violate his pledge, obtaining assistance from others; still, if he be in fact a student but of moderate excellence, his tell-tale answers will disclose the falsity of his declaration, and forfeit his chances for a prize. Great care has been taken to exclude the participation of the Law School Faculty in any form whatever in the award. It is a fixed rule that none of them shall read or examine the papers until after the award is made, and not even then, unless they appear in print, as they sometimes do. In this way all heart-burning, so common with defeated candidates, is wholly avoided, at least so far as the Law School authorities are concerned. In later years it has been possible to select Law School Alumni as the judges. There is considerable advantage in this practice, as they are acquainted with the methods in use, and above all as they take a very deep interest in the work, in many instances puting off cases and surrendering gratuitously weeks of valuable professional time to the service, the number of papers being frequently large. There is a fine and healthy feeling among them that they owe a kind of debt to the profession in promoting the education of its members.

In the same year (1860), Francis Lieber, LL.D., then a Professor in the School of Arts in Columbia College, became a professor in the Law School, as an instructor in Political Science. After a time he became attached solely to the Law School, surrendering his work with the undergraduates. Great interest was felt in his instruction, as he was the author of many valuable works, and a high authority upon questions of public law. He was of great service to the Government, during the Civil War, in the preparation and preservation of valuable public papers of permanent value. Dr. Lieber at an early day attracted the highly favorable regard, among others, of Mr. Justice Story, who complimented him in the warmest terms on the excellence of his great work on Political Ethics, referring to its "sound principles, striking and original views, and varied learning." He adds that "he recommends it constantly to all his friends, and especially to young men, as leading them in the right track" (Life and Letters of Joseph Story, vol. ii. pp. 278, 329). He speaks with almost equal praise of his more strictly legal work on Interpretation and Construction of Written Language (Hermeneutics), characterizing it as "full of excellent hints and principles and guiding rules, written in a clear and compact style, with great force of illustration and accuracy of statement, and in a spirit of candor and without partisanship" (Life and Letters, p. 283). This work survives to our own day, under the excellent editorship and valuable contributions of Prof. W. G. Hammond. It is much to the credit of Dr. Lieber,

that, though born and educated in Germany, he thoroughly understood American political institutions, and treated them with an intelligent insight and skill rare even among American students. He was a true friend of a well-regulated political liberty, which on all suitable occasions he was wont to expound and to extol.

No one could be more proud of the title "jurist" than Dr. Lieber. He greatly preferred it to that of Professor. When called by the latter title, he was wont playfully to correct the speaker, if well acquainted with him, saying, "Doctor, if you please." He was fond of legal maxims and sententious phrases carrying with them sound or far-reaching principles. He would sometimes print these in large type, and surround them with gilt frames and present them to friends, to be hung up for constant recognition in offices and libraries. One to which he was particularly attached concerned the relation between duties and rights, in Latin dress: "*Nullum jus sine officio; nullum officium sine jure.*" Such phrases as these appeared, as it were, to be engraved on his heart. His whole instruction had an elevated tone. The title of his work, "Political Ethics," well expresses the general current of his thoughts. In his view a political structure without ethical principles was built upon the sand. His lectures were highly useful and suggestive to those students who constantly listened to him. If he failed in any respect, it was in the lack of that regular system so dear to the American student's heart; his mind was so deep in thought, so rich in suggestion, so affluent in illustration, that to an ordinary student there might seem to be a break in the continuity of treatment of his subject, when there were in fact only elegant accessories and delightful excursions, from which he would in due time return to the main track of his discourse. The writer desires to acknowledge his great indebtedness to Dr. Lieber for most valuable suggestions made in conversation and in correspondence, and his profound respect for his thorough comprehension of the principles of a true political science. His death in 1872 was sudden, and caused a great loss to the cause of education and the interests of the country at large.

FRANCIS LIEBER.

The vacancy thus created in the department of Political Science was filled in 1876 by the election of Prof. John W. Burgess of Amherst College to that chair. The title of this professorship has been so changed in later years as to extend it to Constitutional and International History and Law.

In the year 1878 the organization of the Law School was modified. The office of Warden (created in 1864) was continued, and five professorships were established: (1) of the Law of Contracts, Maritime and Admiralty Law; (2) of Real Estate and Equity Jurisprudence; (3) of Criminal Law, Torts, and Procedure; (4) of Constitutional History and International Law; (5) of Medical Jurisprudence.

Theodore W. Dwight was continued in the

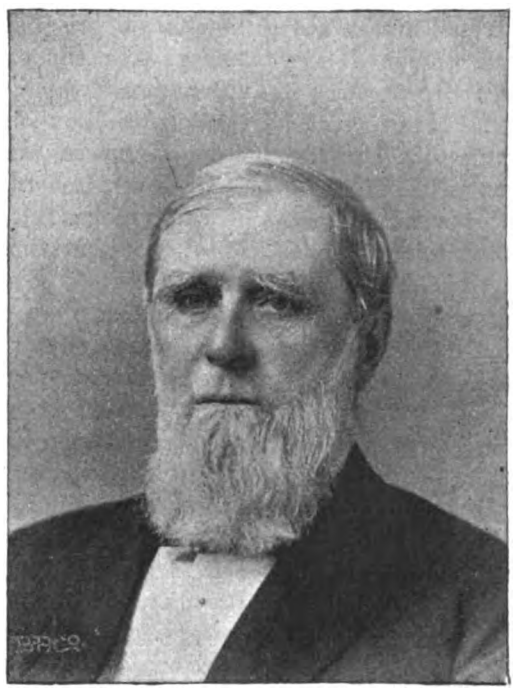
office of Warden, and appointed to the first of the professorships the Hon. John F. Dillon, Circuit Judge of the United States for the Eighth Judicial Circuit, was appointed to the second; George Chase, a graduate of the Law School, was appointed to the third; John W. Burgess, to the fourth; and the Hon. John Ordronaux, M.D., LL.D., to the fifth. Dr. Ordronaux was the author of valuable works on the subject of Medical Jurisprudence.

Judge Dillon, having resigned his judgeship and having become a citizen of New York, entered upon the duties of his department with great zeal and interest. He was fond of instruction, and would have been pleased to devote his life to legal study and the preparation of legal works for the use of students and the profession. His great judicial experience and eminence soon made such demands upon his time as a practitioner as to induce him to devote himself wholly to litigated business. He accordingly retired from the professorship in 1882. Some time later, the professorship was filled by the appointment of Benjamin F. Lee, a graduate of the Law School, residing in the city of New York. Mr. Lee was then in large practice, particularly in that branch of the law to which his professorship relates.

The legislature in 1876 committed the whole subject of admission to the bar to the charge of the Court of Appeals. The matter was to be regulated by rules of court. Rules were accordingly established by the court affecting students in law schools as well as in lawyers' offices. The Statutes permit the court in framing its rules to dispense with the whole or any part of the period of clerkship required from clerks in offices in favor of students in the law schools. (Code of Civil Procedure, §§ 57, 58.) The rules made under these provisions in substance require a three years' course of study for admission at one and the same time to the degree of Attorney and Counsellor in all the courts of the State. There may, however, be received in lieu of one year's study a degree of graduation in a literary college and one year's study in a law school. Where there is no degree in a literary college, two years' study in a law school is allowed. But in every case there must be at least one year's clerkship with a practising lawyer in the State. Law-school students now have no privileges whatever in connection with admission to the bar. They must pass an examination before the court in the same manner as other students. The court examinations have much improved of later years, at least in some of the judicial districts. The term of the examiners has been much lengthened, and there is a much greater disposition on their part to ascertain the knowledge of candidates for admission upon points of substantive law than there was formerly. The candidates in the Law School for the degree of Bachelor of Laws must sustain an additional examination at the close of their course, covering the entire period of study.

Not long after the establishment of these rules, the members of the Court of Appeals assented, at the request of the Warden of the Law School, to a personal interchange of views on the subject of admission to the bar. Among other matters, a preliminary examination was strongly recommended by the Warden. Such an examination had been already established in the Law School, and was then in full operation. The court acceded to this view, though not concurring in the recommendation that some knowledge of Latin should be required. In lieu of that a preliminary examination in English branches of study, established by the Board of Regents of the University (and popularly called "Regents' Examination"), is now required to be passed by all candidates for admission (unless they are college graduates), whether they be students in law schools or not. This regulation is made perfectly effective by the rule that no course of study shall legally commence until the examination is duly passed, though, when passed, the time will relate back for a period not exceeding three months in favor of those who have already commenced their clerkship or sub-

stituted course of study. There is, however, still open an opportunity for evading the preliminary examination, since the rule is not applied to those who have been admitted in other States and who come to New York to practise. It would have a great influence in promoting the cause of legal education, if such regulations could be made uniform, at least in substance, throughout the country. How can the practitioners in law be called a *learned profession*, when one who is profoundly ignorant of arithmetic, orthography, or English or American history, not to say Latin, and every modern language, can be made a lawyer without any demur, as he can be in some of our States, through the good will of examining Boards? The New York method is unquestionably the correct one, as it commits to an independent body of men the duty of inquiring into a student's general attainments in other branches of study besides the law. The only ground for criticism is that the preliminary examination does not embrace as many subjects as are desirable, though this defect may perhaps erelong be supplied.



CHARLES P. DALY.

There are thus, at present, two parallel modes of going to the bar in the State of New York: one is partly through the law schools and partly through the law offices; the other, exclusively through clerkship in an office. The former is expensive; the latter is without expense, and in some instances slightly remunerative. In each method the court directs the examination for admission to practice. It is creditable to the young men studying the law, that they still crowd the law schools, notwithstanding that they have no exclusive privileges. This many of them do with much labor and self-sacrifice to procure the necessary means. Their motive is to obtain systematic knowledge. It should be added, as to the tuition fees in Columbia, that they are considerably reduced in favor of such students as are shown by proper evidence to be in want of sufficient pecuniary means and are at the same time faithful to their studies. Their fidelity is tested every half-year by a certificate of the Warden of their satisfactory attendance as shown by the college books, and of their proficiency as ascertained by conference with their instructors.

In recent years, owing among other things to the great increase in the number of students, it has been determined to augment the tests of attendance and proficiency. To this end a series of prize tutorships was established, three in number. These tutors are selected from the leading students in their classes, hold office for three years, and are so classified that one goes out of office each year. An exercise under the charge of these tutors, known by the students as a "quiz," meets with great favor and is largely attended, particularly in the case of those tutors who develop an aptitude for the successful performance of their duties. The attendance is voluntary and without charge.

It is a very pleasant feature of the Law School work, that strong friendships spring up among the students, following them in later life. Their intercourse leads to constant discussion of legal questions, developing frequently differences of legal opinion which are finally referred to the professor in charge of their work. It is noteworthy that this was, of old, the method of the barristers who met in or near Westminster Hall and put questions to one another.[1] Moreover, partnerships in business grow out of this friendship, as well as other important legal connections. There is a fine spirit of mental activity prevailing, sometimes leading to excess of intellectual labor and requiring suitable checks from older friends. If a professor's life and work are under any circumstances agreeable and self-satisfying, it is under those which prevail at Columbia, where with most of the students no stimulus is needed, where the spirit of inquiry is eager and satisfied only with replies resting upon reason, and where the courtesy and forbearance of students are sincere and admirable. A majority of them are college graduates. Many of them were marked men in their undergraduate courses. These set a high standard of work for their fellows who have not had equal literary advantages. Upwards of fifty literary colleges are represented, with varying types of undergraduate education.

The opportunities offered at Columbia for training in the principles of political science and of International and Constitutional Law should now be stated. In the year 1876 Prof. John W. Burgess became Professor of this class of subjects, both in the School of Arts and in the Law School. The Trustees of the College displayed an enlightened interest in this branch of education, until it was raised to the rank of a department by itself. It was proper that this should be the case, since a quite considerable number of students desired to confine their attention to the ordinary branches of municipal law, — "the bread and butter studies." Arrangements were thus readily made for them, while those who desired a wider range of study had full opportunity accorded to them. Moreover, there was a class of students who desired only to study political science and other branches closely associated with it. At the present time any law student may, at his option, study any one or more of the topics assigned to that department without further tuition fee, and may matriculate as a candidate for a degree therein on payment of the nominal fee of $5. The professors in this department were trained in the best European universities. Several of them are graduates of this Law School.

The regular course of education in the Law School has hitherto occupied two years. In the spring of 1888 the Trustees decided to have a three years' course. Actual attendance (except in the case of those who were students when this statute was passed) will be compulsory for this whole period, as a prerequisite to a candidacy for the degree of Bachelor of Laws. The first class to which this rule will be applicable entered on the first Monday of October, 1888. The third year's course will, accordingly, not go into actual operation until the fall of 1890. The specific topics to be assigned to the third year are not yet determined upon, though under discussion. So much as this has been decided, that there will be in the third year two Elective Courses, — one in topics of private law, and the other in branches of public law, including Constitutional and International Law. The result is that a student can then

[1] Reference is here made to a passage from the opinion of JUNE, J., found in the Year Book of 7 Henry VI. pl. 20. He says: "One day, while passing between Westminster and Charing Cross, I put a case to the late Justice Hankford (whom may God assoilzie), and before he would answer, he put a question back to me, whether, if he should convey to me *provided* that he should have forever the profits of the land, he or I would in law have the profits, and I replied that I would have them, for the deed should be construed more to the advantage of the grantee than of the grantor; in other words, the conveyance would be good and the proviso void. Whereupon Hankford said that my inquiry resembled that case, and that his opinion was the same as mine." This little glimpse of these barristers, both afterwards judges, "talking law" between Westminster and Charing Cross, is certainly instructive.

obtain the degree of Bachelor of Laws by a two years' course in private law, with the addition of a third year either in private or public law, on passing the requisite final examination.

For quite a number of years the Law School labored under the disadvantage of inadequate accommodations. This fact was partly due to an unexpected number of students, and partly to a desire on the part of the Trustees to make temporary provisions until a suitable building could be erected. Such a building was constructed at great cost, on the block bounded by 49th and 50th Streets and Madison and Park Avenues. This block is entirely devoted to the uses of the College. The building is understood to be fireproof. The upper part of it is used for the College Library, while the lower rooms are assigned to the Law School. There are two large lecture-rooms, each having a sufficient capacity to accommodate two hundred and fifty students, and suitable rooms for offices, etc. The library is open to all students every secular day in the year (with the exception of one or two days) from eight o'clock in the morning until ten o'clock at night. The law students in large numbers make use of the books, not merely in law, but in history and political science.

The corps of instructors in the Law School at present (March, 1889) is as follows: Theodore W. Dwight, Warden and Professor of the Law of Contracts, etc.; Benjamin Franklin Lee, Professor of Real Estate and Equity Jurisprudence; George Chase, Professor of Criminal Law, Torts, Evidence, and Procedure; John W. Burgess, Professor of Constitutional History, International and Constitutional Law and Political Science; John Ordronaux, Professor of Medical Jurisprudence; Robert D. Petty, Instructor in Municipal Law; Paul D. Cravath, Alfred Gandy Reeves, and Philo Perry Safford, Prize Tutors. Of this number, Professors Dwight and Chase make their professional work, as lawyers, subordinate to attendance to Law School duties throughout the scholastic year. A course of lectures on the Private Law of Corporations is in course of delivery by Victor Morawetz, Esq., of the New York Bar.

The professorships in the third year's course have not as yet been definitely established. It is, however, presumed that in the Elective Course in Constitutional and International Law instruction will be given by some of the professors in the existing department of Political Science; namely, Prof. John W. Burgess, Prof. Edmund Monroe Smith, lecturer on Roman Law and Comparative Jurisprudence, and Frank J. Goodnow, Professor of Administrative Law.

Owing to the recent introduction of the third year's course, and the possible rearrangement and redistribution of studies to take place within a few weeks, it is not deemed expedient in this article to state the existing courses of study. It is altogether certain that the new courses will embrace all that has been heretofore taught in Contracts, Real Estate, Equity Jurisprudence, Torts, Evidence, and Procedure, and as much more as can reasonably be brought within the increased time allotted to legal study. This extension of the course is largely due to the persistent and enlightened efforts of Stephen P. Nash, Esq., an eminent practitioner at the New York Bar, to whom the Law School owes a permanent debt of gratitude.

The success of the work of the Law School for the last thirty years must naturally be shown by the character and work of its students and graduates. It must be remembered, however, that the oldest of them have but just reached middle life, while there are but few surviving who have passed the age of forty-five. The results of the work done here have certainly been highly satisfactory. The three Circuit Judges of the first and second judicial circuits, Judges Colt, Wallace, and Lacombe, were trained under the system prevailing here. A very large number of the younger men of promise and ability at the New York

Bar are graduates or were students. A number of them hold or have held high judicial positions in the State and Territorial courts, several of them reaching the rank of Chief-Justices and Chancellors. The men who have been active in political reform in New York have been trained here, including Seth Low and Theodore Roosevelt. The same remark may be made of the better element in New York political life. The prominent offices are held by these students, including such positions as that of the Mayor, Corporation Counsel, City Chamberlain, etc. As prosecuting officers they have been highly efficient and successful. In the City Councils they have been unflinchingly opposed to corruption, sometimes standing almost alone in their efforts to prevent it. Some of them have exhibited remarkable talents in the management of great public enterprises. Diplomacy has had through them fit expression. They have borne their part well in high executive and legislative positions, frequently having in the latter that commanding influence which springs from knowledge, ability, and purity of purpose. Their arguments before courts exhibit in numerous instances thoroughness, breadth of research, and strength of reasoning, deserving and receiving high compliments from judges who know what good argumentation is.

A single fact shows their general spirit in connection with membership of the Bar Association of the City of New York. There is perhaps no institution of this kind in this country which is more meritorious and successful. It originated with the leading members of the bar. None can join it except such as pass the ordeal of a careful inquiry by a thoroughly well-selected committee on admissions, — an inquiry into the training, ability, and character of the candidates. An admirable library containing upwards of thirty thousand volumes, many of them rare and of great value, bespeaks the energy and intelligence of the Society. Of this association of picked men, having on its rolls nine hundred and fifty members, a majority (477) consists of graduates or former students of this Law School. This is a pregnant fact, showing their earnestness in broad and comprehensive study. With many of them, membership is won with the first scanty savings made in the outset of their professional life. So much and more has been achieved by these young men in the face of an active and relentless competition from lawyers crowding into this city from all parts of the United States. Nor is the success of the graduates confined to the city of New York. Similar results might be cited from various parts of the country.

The managers of the Law School have reason to think that they have not spent their strength in vain. They look forward with some solicitude to their new departure. Will the three years' course be sustained by the community? It is believed that it will be. The time seems ripe for it. The signs of success are flattering, particularly in the fact that the number of students remains constant, notwithstanding the announcement of a longer curriculum of study. Such institutions have no governmental support here to uphold them, as on the continent of Europe. Attendance is in the face of easier methods tolerated by the State. If the proposed course be successful, it will be another instance of the willingness of the American people to submit to sacrifices and to practise self-denial in the hope of attaining a higher education. It casts a serious responsibility upon the Board of Instruction here to see that the hope turns out to be well grounded.

FROST v. KNIGHT.

(L. R. 7 Ex. 111. Temp. 1872.)

By John Popplestone.

I.

"HE loves me, — nay, he loves me not!"
She tore the petals two by two
From off the stem, and idly threw
Them from her, 'plaining of her lot.

She stood by the untrodden ways
Where they in other times had met;
With cheek and eyelash all unwet
She mused of love and other days.

She watched the fading autumn leaf,
The sky was gray, the wind a-cold;
Her heart grew with the season old,
And nursed an angry, tearless grief.

"My love," she said, "is turned to hate, —
My love, that should have crowned his life.
He lightly wooed me for his wife,
And now he seeks a richer mate."

II.

Stands not the woman higher than
The dog that follows at his heel?
Shall she before her tyrant kneel
Whom Nature equalled with the man?

"He took my love, nor recked the cost;
My heart was warm to him, my *Knight.*
He took away the warmth and light,
And left me an unchanging *Frost.*

"I know him now. I never knew
Till now how false his suit could be.
He says he ne'er will wed with me,
And shall I not for vengeance sue?

"But when? 'T was when his father died
He vowed that he with me would wed;
I would his father now were dead,
But still he treads the hither side.

"And must I wait the uncertain day
He passes from our moaning shore?
Or may I sue the son before?
Counsel's opinion is, I may.

"Already he derides me: 'Lo!
Thy path and mine shall never meet.'
He makes my bitter wrong complete.
The writ is ready: let it go!

III.

"We rate too highly, says the sage
Who knew our little nature's strife,
The power of love, whereto our life
Is less beholden than the stage.

"Perchance our spirits, from the flaw,
The taint of earthy mould made free,
Shall know how great our love may be;
For great is Love, yet greater Law.

"Love did the wrong the law redressed,
I take the gold the jury gave;
No more the love he vowed I crave,
The gold I have, methinks, is best.

"This truth the student shall recall,
Who reads of Angelina Frost:
'''T is better to have loved and lost
Than never to have loved at all.'"

Lays of a Limb of the Law.

CAUSES CÉLÈBRES.

IV.

JACQUES VERDURE.

[1780.]

IN 1780 there lived in the parish of Berville, in Lower Normandy, a poor farmer by the name of Jacques Verdure. His wife was dead, and he was left with six children, two of whom were of tender years, — a boy of five, and a little girl only six weeks old. The oldest daughter, Rose, beautiful and a perfect picture of health, had for a long time taken the charge of the affairs of the house, and at her mother's death filled her place as far as possible, in the care of the two young children. She was twenty-one years old.

This girl, so necessary to the poor family of Verdure, was suddenly taken from them by a terrible crime.

On the night of the 14th of October, 1780, the father, uneasy at not seeing Rose return, went out to seek for her in the neighborhood. A few steps from the house he found her lying dead near a ditch. Two balls had struck her in the heart, and she must have died instantly.

This event, which deprived the family of one of its two supports, was not merely for Verdure a source of grief. We shall see that this misfortune was only the prelude of irreparable disasters.

On learning of the murder, the chief magistrate of Berville repaired to the place, accompanied by the procureur fiscal, the greffier, and a surgeon. They examined the two wounds, which were about two inches apart, and in one of them they found a rough, jagged ball.

Who could have committed this murder? Rose was discreet as well as industrious; it was not known that she had any enemies. What reason was there to suspect any of her family? What possible motive could there be to urge the father or her elder brother to commit this deed? Her death was an irreparable loss to them.

The witnesses at the investigation, neighbors, and idle gossips, were lost in conjectures, when a word, uttered in a whisper, and then repeated in louder tones, directed suspicions toward the father, Verdure. One of those who had been present when the body was examined had noticed upon the neck of the victim a dark mark of extravasated blood. From this it was imprudently concluded that Rose had not been killed in the place where the body was found. Absurd as was this conclusion, it found partisans. This Verdure must have assassinated his daughter in the house, and then undoubtedly carried the body to the spot where it was found.

But why had he committed this crime? They did not consider that question. The removing the body, the murder committed in the house of Verdure, must have left some traces; they sought vainly for them. No matter; Verdure had committed the deed. It was probable; it was certain. But Verdure had no gun, and at his house they found neither lead nor balls. The investigation was temporarily suspended, but an impression had been made upon the minds of the magistrates, and later it had been revived and strengthened.

The matter was referred to the parliament of Rouen.

Before this jurisdiction the fatal rumor made its way. The new magistrates, who had taken no part in the first investigation, seized upon this vague suspicion, emanating from the imbecile populace. They must have a guilty one; the popular prejudice furnished him.

The 19th of November an order was issued for the arrest of Verdure, and his two daughters and his oldest son were summoned as

witnesses. Verdure was arrested at his house by officers of the Marshalsea.

A thunderbolt from heaven striking the house could not have more surely destroyed this family than this monstrous act, accomplished in the name of pretended justice. The three young children, deprived of their only remaining support, objects of the senseless indignation of the neighbors, fled terrified from the scene of their unhappiness. The boy, only six years old, begged through the streets of Berville, and the youngest born soon died for want of proper care.

The unwarranted investigation of the parliament of Rouen lasted five years. Yes, five years! and nothing was developed by it. At the expiration of this time the judges decided in favor of a more ample examination for three months.

But these absurd and cruel delays seemed to some to be altogether too favorable to the accused. The procureur-general protested against the leniency which was being shown in the affair, and an order was issued for the arrest of the three children who had previously been summoned as witnesses. The little boy, who was only six years old at the time of the murder, was not excepted from their barbarous and utterly unjustifiable order of arrest.

All this poor family languished in the prisons of Rouen, threatened with an endless accusation, and without any hope save in the merciful forgetfulness of their judges, when Providence raised up a defender for them.

When legal justice is false to its duties and unfaithful to its divine mission, the spirit of individual justice is deeply wounded, and takes upon itself the omitted duties and the neglected mission.

There was in the parliament of Rouen, in 1787, an advocate named Vieillard de Boismartin; he was still a young man, not yet forty years of age. The son of a doctor at the head of the medical faculty of Paris, he possessed a noble and sympathetic nature, and was ever ready to espouse the cause of the unfortunate. This honest man learned that in a prison in Rouen an unfortunate family was suffering, tortured in the name of the law. He gave his whole soul to the ungrateful if not dangerous task of saving them.

His first care was to examine carefully into the investigation whose fatal errors had plunged the Verdures into this abyss of misery. He perceived at once the glaring errors with which it abounded. The interest which might have armed the hand of the father or the brother against the daughter and the sister was entirely wanting; the contrary interest appeared plainly throughout the whole case. There were no evidences of any dissensions in this united family, of which Rose was the indispensable member. The character of the young girl was spotless; at least, it was believed to be so. She had no suspicious acquaintances, and no other *rôle* could be attributed to her than that of a mother to the family, — a position which had been forced upon her by the death of a beloved parent. The public rumor, so ridiculously absurd, had not the slightest foundation.

It was, however, this senseless rumor which had influenced the examination, perverted the good sense of the magistracy, and subjected these innocents to the arbitrary rigor of the law.

M. Vieillard determined to trace to their source these popular reports. He found that the first author of them was a young miller of the parish by the name of Jacques Lefret, a married man, who was a great friend of Rose. This young man, learning of the death of the girl, rushed to the house of Verdure, and presently came out in a state of great excitement. Questioned by a neighbor, he replied wildly, "No, it can be no other than Father Verdure who has killed her."

This was the germ of all this evil. It was this imprudent statement which was the spark that was so soon fanned into a flame. Was it merely a wild utterance of grief, or

was it a true statement of fact? In either case, the magistrates knew where to look for an explanation. As was natural, they had summoned Lefret, and before them he did not dare to reassert his accusation.

However, the germ had fructified; the flames had spread. And this statement of Lefret was of greater weight than any evidence, and the prejudice born from it established itself firmly in the minds of all. What would a cool, unprejudiced judge have done? He would have endeavored to ascertain what secret motive had prompted Lefret to make this statement, so quickly abandoned by him; he would have demanded of this man an explanation of an accusation which perhaps had for its end the putting of justice upon a false track.

The magistrates did nothing of the kind. If they had they would have learned that on the very night of the crime several neighbors saw at the house of Lefret two guns, one of which was known to belong to him. They would have learned that a short time before Lefret had bought some lead, for the purpose, as he said, of making weights for his clock. The ball found in the body of the victim bore the marks of numerous blows of a hammer; it had been modelled cold, and very roughly.

At the house of Verdure, on the contrary, no one had ever seen any firearms, and no one could say that Verdure had ever bought powder or lead. On the evening before the murder Verdure went to the mill to have three bushels of wheat ground; he was in great spirits; he played upon Lefret's violin, and remained there until late at night. Lefret himself related some of his (Verdure's) innocent jokes.

If they had taken the further trouble to ascertain, they would have learned that Lefret himself, on that same evening, was pensive, silent, and dejected; while the father, upon the point, as they said, of killing his daughter, was gay and jovial. Lefret, seated upon the bed, his head resting upon his hands, his eyes fixed, and his whole appearance distracted, seemed like a man completely engrossed by some absorbing thought.

That was not all. Immediately after testifying, Lefret disappeared. That ordinarily would be an indication of crime. Lefret abandoned a wife and two children who were dependent upon him for support. Verdure, on the contrary, refused four times to share the privileges of his companions in captivity, who were allowed almost absolute freedom. He remained alone in his cell, the door of which was open, chained there only by a sense of his innocence. Assured by this extraordinary conduct of a prisoner accused of such a crime, the concierge placed no other guard over Verdure save his own honor; and he carried his confidence in him to such an extent that when business called him away, he installed Verdure in his place.

What a difference between this calm, dignified attitude and the flight of Lefret!

One objection was, however, always opposed to the partisans of the innocence of Verdure and his family. Rose had been assassinated before the very door of their house. How was it that neither the father nor any of the children had heard the two reports of the gun? Was it not more reasonable to suppose that they had shot the victim in the house and then carried the body outside to avoid suspicion?

That was the only indication of the guilt of the Verdures. A fragile foundation for so grave an accusation! If they had desired to seek for the truth carefully and calmly, the truth would have made itself apparent. A neighbor, a simple and irreproachable man, would have informed the judges that on the night of the crime, about eleven o'clock, as he was going out of his house, he heard the report of a gun which was fired, apparently, near the ditch in front of Verdure's house. Immediately after the report he heard a plaintive voice, — that, no doubt, of the person who had been shot.

Further, if the crime had been committed in the house of Verdure, the shot must have been fired in close proximity to the victim,

and marks of the powder would have been found upon the body of the victim, or at least her garments would have been burned.

Three witnesses had furnished all the evidence admissible against the Verdures. In the first place there was the testimony of a woman named Bouillon, a former neighbor of these unfortunates. She was a person of violent temper, and noted in the parish for her evil doings and venomous language; and Verdure, after bearing with her patiently for four years, had ended by forbidding her to enter his house. For lack of proofs against Verdure this woman had recourse at first to vile insinuations. Then she drew upon her imagination, and swore that the father maltreated Rose, — that she had often heard the cries of the unfortunate girl. She said that Verdure had frequently threatened her (Bouillon), and that he and his children had more than once profited by the absence of her husband to break the windows and doors of her house.

Not one of these assertions could be proved, and not one of the dwellers in the neighborhood had ever heard of these pretended violences of Verdure.

The next evidence upon which they relied was that furnished by the son of Verdure, that child of six years, reduced to begging by the arrest of his father. Wandering from door to door, interrogated by those who assisted him as to the circumstances of a crime at which they took it for granted he was present, his mind filled with the contradictory recitals which he heard, the poor little one retold, for a piece of bread or an apple, some one of these ridiculous stories. The magistrates had with great care collected all these statements in order to choose from these versions, which flatly contradicted one another, some one which might be fatal to Verdure.

The third witness was one Gentil. He swore that at a certain date, in a certain place, and under certain circumstances, Verdure had announced to him his intention of killing his daughter.

Confronted with this Gentil, Verdure declared that he did not even know him. He offered to prove that he could not have been in the place in question on the day designated. Gentil, put to the proof of his assertions, retracted them entirely.

Of these three pieces of evidence, that of the woman Bouillon had not the slightest bearing upon the case. It was evidently the product of personal malevolence. That of the son was contradicted by his own statements. A single witness had offered against Verdure not a proof, but an indication, and when shown that his statement was false, had at once retracted.

The strange conduct of the magistrates in this affair can no longer be characterized as an error; it was a crime.

All these facts and glaring iniquities M. Vieillard urged before the proper tribunals. Finally, after seven long years, the Parliament of Rouen issued a decree dated Jan. 31, 1787, declaring Lefret contumacious, and guilty of having participated in the assassination of Rose Verdure, and condemning him to be broken alive, after having been put to the torture to force him to disclose his accomplices.

One would suppose that after this further proceedings against Verdure would have been abandoned. Nothing in the investigation, not a single fact, not a particle of evidence, except perhaps the contradictory stories of the young Verdure, showed the possibility of any complicity between Verdure and Lefret. But justice at that time, like the greedy Acheron, did not willingly relinquish its prey. The same decree which condemned Lefret deferred doing justice to Verdure and his children, until after the dying statement of the condemned absent man. The conditional liberation of all but the father and the oldest son was ordered.

The deferring action until after the dying statement of a man of whom the authorities had lost all trace was in effect condemning to an indefinite imprisonment an accused

against whom they acknowledged they had no sufficient evidence.

M. Vieillard entered upon a new struggle with this absurd and iniquitous decree. This was a bold act on his part, for already the authorities were annoyed by his efforts and seemed to consider them as a personal insult on his part. A decree was issued enjoining the procureur-general to forbid any further petitions being presented in favor of the accused.

What infinite pains to repress the truth!

M. Vieillard, however, was not discouraged. He appealed to the Council of State.

Two years more passed by before success crowned these new efforts. The Revolution had commenced, and disorder reigned supreme. It was not until the 14th of November, 1789, that the Council of State set aside the decree of the Parliament of Rouen, and ordered the case to be brought before the Council for final disposition.

A hearing took place on the 3d of January, 1790. The procureur-general, M. Blanc de Vermeil, showed that the Parliament of Rouen had wilfully violated the laws protecting innocence; that there was not a shadow of a proof against the accused; that their innocence was completely demonstrated; that Lefret was convicted by four witnesses of having wickedly and calumniously imputed to Verdure the assassination of his daughter; that this same Lefret was the only one upon whom suspicion of the crime could justly rest. Therefore he asked for the honorable discharge of the Verdures, and that Lefret, as a punishment for his atrocious calumny, should be condemned to the galleys for life.

On the 7th of January M. Vieillard addressed the Council. He divided his argument into three parts: the first establishing the legal innocence of his clients; the second their actual innocence; the third demonstrating the spirit of persecution which had distinguished the proceedings.

The following passage gives a good idea of the terrible disadvantage under which the defence labored in those times: —

"Have you," said he, addressing the judges, —"have you out of the ninety-eight witnesses, heard at the former investigation, found a single one who swears to anything concerning Verdure, from which you might infer that he was a man without character or guilty of any action which might render him suspicious? No; these ninety-eight witnesses are all favorable. That is not all; I offered a list of a hundred and forty-seven witnesses. Well, what did these honorable magistrates do? They shut their eyes to the ninety-eight witnesses who had been heard; they shut their eyes to my list, and asked the father *how it happened that he had such a bad reputation in his parish.* A question which resulted from a wicked prejudice, a prejudice which has been the cause of all the misfortunes of these unhappy ones. It was this same prejudice which dictated this proposition which was presented to Verdure. They said *that if he could not tell who assassinated his daughter, it must be that he himself committed the crime;* a proposition which leads to the most serious reflections. Hereafter, when a child is murdered, of all the individuals who compose society, they upon whom the strongest suspicions must fall will be the father and the mother. Yes, I repeat, it is this prejudice which is responsible for all."

The procureur-general then made a concluding argument, paying a great tribute to the counsel for the defence, for his noble firmness and indefatigable and disinterested zeal. After this last act in a procedure which had lasted more than nine years, the accused finally had the satisfaction of having their innocence proclaimed.

On Feb. 1, 1790, the family were presented to the National Assembly.

M. le President Target addressed them as follows: —

"Your long sufferings have deeply moved the Assembly. Such painful experiences have for an end the correcting of errors which have made so many victims. Forget,

if it is possible, the cruel wrongs you have suffered, and rejoice at least in the thought that the epoch in which your innocence is recognized is that of a new order of things, which will in future prevent such sad mistakes."

This celebrity did not profit the family of Verdure. Two of the children died miserably; Verdure himself died shortly after, while he was filling the humble position of concierge in a factory in the Faubourg Poissonnière.

GERMAN CUSTOMS—A SOURCE OF COMMON LAW.

THE English law, like the English language, is mixed and compounded of many elements. To understand it in a thorough and scholarlike manner, we must trace the sources from which it springs. These sources are many, and drawn, too, from a sufficient distance. Although we are indebted to the civil law for many principles of our own (especially in equity and commercial jurisprudence), yet it is from our sturdy and roving ancestors of the north, that we have derived the broad and bold outlines of that happy system under which we live, and whose very end and aim is liberty.

Strange as it may seem, it is nevertheless true, that those hordes of Goths and Vandals that swarmed from the northern hive, and whose name has become a reproach and a by-word for all that is barbarous, are the very people that spread law, language, and liberty over our western world. If, therefore, it is to be regretted that they overturned an empire which would soon have fallen of itself, and destroyed monuments of art which time in its course must necessarily have swept away, should we not rejoice that they brought with them customs as free as they themselves were wild, and planted institutions which have grown in wisdom, as they ripened with time?

Fortunate indeed is it for the lawyer no less than the scholar, that those customs have been sketched by the graceful pen of Cæsar and painted by the masterly hand of Tacitus. Cæsar, indeed, fought and travelled through Gaul and Britain, and therefore records what he himself had either seen or heard among the natives. But Tacitus wrote at home. The precision and accuracy with which he has pencilled the manners of the Germans may well excite wonder; for Germany was at that time a distant, unknown, and barbarous province, and he himself had never wandered among its wild forests and still wilder warriors. His little treatise, however, sheds a flood of light upon the early antiquities of the law.

Of all the features of the common law, the boldest and broadest are its love of liberty, its devotion to good morals, and its abhorrence of fraud. In this system fraud vitiates everything which it touches, and no obligation is enforced which is founded on a breach of sound public morals. It declares that the consent of the governed is the only true source of all law. Here it stands in bright contrast with the law of imperial Rome, and clearly shows its origin and descent. Of all uncivilized nations of which we have any record, the Germans were the freest, most moral, and most trustworthy. In such sacred regard did they hold their word, that after they had lost their property at play, they would wager their persons and their liberty. If the die was cast against them, they suffered themselves to be bound and sold as slaves; and what to others would seem obstinacy, they dignified with the name of faith. Nothing could surpass the esteem in which they held the fairer sex. None but noblemen had more than a single wife. Adultery

was rare, and punished in the most severe and public manner. A second wedlock was forbidden. The wife looked upon her husband as upon herself, without the desire or expectation of another marriage. And thus by good morals were sown the seeds of good laws.

From this institution of marriage among the Germans, so pure and excellent for so barbarous a people, is plainly derived that union of husband and wife at common law, upon which depend almost all the legal rights, duties, and disabilities which either of them acquire by marriage. In the civil law, husband and wife were separate persons; at the common law, they are one and the same. The difficulty of procuring a divorce, the tenderness of the parental power, the severe punishment of adultery and other crimes against the married state (in which points the English law differs from the Roman), may readily be traced to the same source. Again, different as these two systems are in their regulations relating to landed property, in none are they more so than in those relating to dower. In the civil law, dower signified the marriage portion which the wife brought to the husband; in the common law, the estate to which the wife is entitled on the death of the husband, out of such lands and tenements as he was seized of at any time during the coverture, and of which any of her children might by possibility have been heirs. Some have ascribed the introduction of dower as it stands with us to the Normans; but Blackstone thinks that it is a Danish custom, being introduced into Denmark by Swein, the father of Canute the Great, out of gratitude to the Danish ladies, who ransomed him with their jewels when taken prisoner by the Vandals. We think, however, that its source can be traced still higher up in point of time. For with the Germans, the husband brought dower to the wife, not the wife to the husband. At first it consisted of oxen, horses, helmets, and other articles of personal property in chief esteem and use among them. The manner of endowing was very similar to those two species still known in the English law, *'ad ostium ecclesiæ* and *ex assensu patris*. Among wild and roving tribes personal property is always the subject of ownership before real; but as the country peoples, the lands are parcelled out and occupied, and thus very naturally dower, which was at first confined to the one, was afterwards extended to the other.

No point in the antiquities of the law has been so learnedly searched or warmly disputed, as the original constitution of parliament. As usual, parties have arrayed themselves against each other on the subject. It is, however, sufficiently agreed on all hands, that the English parliament sprung from the Saxon *wittenagemote*. But whence was the *wittenagemote* itself derived? Evidently from German assemblies. The constitution, the powers, and the methods of the two are so nearly identical as to leave no reasonable doubt upon the subject.

It is well known that King Alfred, when he revised and remodelled the Saxon laws, divided England into counties, hundreds, and tithings. The division into tithings, Alfred may be said to have invented, but that into hundreds, and which naturally suggested the other, he doubtless borrowed from Germany. The German States were divided into cantons and hundreds, and the only difference between the German and the English hundred is that the one was a military and the other a civil establishment.

Anciently, and even until after the time of Blackstone, wager of battle was a species of trial at common law. The origin of this mode of trial has been ascribed to the combat between David and Goliath. But we think we need not go back so far; for it is plainly derived from a custom which prevailed among the Germans and other northern nations, and which sprang from their military spirit and ambitious turn of mind. The Germans were particular in their observance of auspices and lots, the flight of birds, and the neighing of horses. When they were at war with any

people, they seized the first captive they could, and compelled him to fight in single combat with one of their own champions. Each was armed with the weapons of his own country, and the victory of either was looked upon as prophetic of the event of the war.

Before the Norman conquest, and for a long time after, the law of England was noted for the fewness, as it afterwards was for the number, of crimes punishable with death. Whenever an enormous offence was committed, a fine called *weregild* was paid by the malefactor to the friends and relatives of the person injured or killed. This pecuniary satisfaction owes its origin to the Germans, among whom homicide itself was expiated by the gift of a certain number of herds and flocks; and with this gift the whole family must be satisfied, in order to stifle their animosity and thirst for revenge. A fine was always paid by offenders to the State, and to the person injured or his relatives. These customs are the original of the law of appeal, which is an accusation by one subject against another for some heinous crime, demanding satisfaction for the particular injury suffered, rather than for the offence to the public; and of the law of forfeiture, whereby a man loses his lands and they go as a recompense for the wrong which he has done to an individual or the public. The essence or principle, both of the German custom and the English law, is the same; to punish the party who commits the offence and compensate the party injured, and thus at the same time to suppress both crime and a desire to revenge it in individuals.

It is undoubtedly true that a vast portion of the law, and especially of real property, hangs upon the feudal system; it is equally true that this system itself, although finally and firmly planted in England by William the Norman and his mail-covered barons, was not unknown to the Saxons, and was brought over by them from Germany. To the German law of descent may also be traced gavelkind, borough-English and many other customs. Nor must we forget the trial by jury, that boast of the English law and bulwark of English liberty. For that we are indebted for its introduction, neither to classic Greece nor imperial Rome, but to a people who, equalling either in chivalry and arms, surpassed them both in the unfettered freedom of their lot.

These are a few of the leading and living principles of the English law, which may clearly be traced to the forests and marshes of Germany. They are simple, and were naturally brought into life by the wants of a wandering uncivilized people. We know that the idea of deriving from such a source the vast and intricate machinery of the English government, is treated by many writers of learning and fame as fond and fanciful. We know that the sketch of Tacitus has often been looked upon rather as a lively portrait of the manners of a free and generous people, drawn in a great degree from his own imagination, and intended to rebuke and reform the morals of Rome, rather than to describe those which really prevailed in Germany. Upon what ground this opinion is based we are at a loss to know, unless it be in the vanity of those who advance it. Tacitus was a historian and not a novelist, and his treatise on Germany is no mere piece of fancy.

It is undoubtedly difficult to say, that this custom was derived from the Germans, and that from the Britons; that one law was introduced from Rome, and another from Germany. But can it be denied that the Saxons brought their laws as well as their language into Britain, when they subdued it? Is it likely they would have left behind the customs in which they were bred, and tamely yielded or slavishly adopted those of the country which they had so lately conquered? Is it not more likely that they would have blended their usages together, and thus made a system more perfect than either? The customs of the Germans are plainly one of the streams which, uniting their waters, form the broad and deep and clear river of the law. — *American Jurist.*

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 "Law Journal" (London) disputes the correctness of the statement made in our January number, as to the antiquity of the *green bag* as the badge of a lawyer. It says: "The passage from Wycherley's 'Plain Dealer,' cited by the editor of the 'Green Bag,' does not go far enough to show, as he supposes, that barristers carried green bags or that they were the badge of a lawyer. Widow Blackacre, the lady litigant in person of the days of Charles II., carried a green bag, and Jerry Blackacre, a raw squire under age, bred to the law, was laden with green bags, following her; but neither of them was a lawyer. When the widow roundly rated the counsel engaged on the other side, and called him 'green-bag carrier,' she meant to give him the name of the humblest attendant in the courts." We must confess that we were at first rather taken aback by this statement of our esteemed contemporary; but upon further examination into the subject, we feel that there is certainly very good authority to support our statement as to the antiquity of the *green bag* as the badge of a lawyer.

In his "Book on Lawyers" Mr. Jeaffreson says: "On the stages of the Caroline theatres the lawyer is found with a green bag in his hand; the same is the case in the literature of Queen Anne's reign; and until *a comparatively recent date* [the italics are ours] *green* bags were generally carried in Westminster Hall and in provincial courts by the great body of legal practitioners." Again he says: "So also in the time of Queen Anne, to say that a man intended to carry a *green bag* was the same as saying that he meant to adopt the law as a profession. . . . It must, however, be borne in mind that in Queen Anne's time green bags, like white bands, were as generally adopted by solicitors and attorneys as by *members of the bar.* . . Some years have elapsed since green bags. altogether disappeared from our courts of law. Evidence sets aside the suggestion that the color of the lawyer's bag was changed from *green* to red because the proceedings at Queen Caroline's trial rendered green bags odious to the public and even dangerous to their bearers."

The foregoing statements certainly seem to confirm our position in this matter. Does the "Law Journal" pretend to have more information upon the subject than Mr. Jeaffreson? One of the two must be wrong. Which is it?

WHILE the "Green Bag" has received a most cordial greeting from its legal contemporaries in this country, it is pleasant to find that on the other side of "the great pond" it has been welcomed with kindly and appreciative words. "Pump Court" says: "This admirable magazine [The Green Bag] is replete with matter of interest to the profession; and, as we have always maintained, what interests lawyers must interest everybody. We say 'interest' advisedly, and we mean what we say. The day for ponderous journals copiously larded with clippings from the 'Gazette' is gone hopelessly, if indeed they ever had any day really; cheap law reports have killed what little life they ever had. The contents of the first number are sufficiently varied to suit all tastes of the profession."

The "Law Times" (London) also thus signifies its approval: "Legal journalism is manifestly in progress of development, more particularly in the United States. We have received from Boston, Mass., the first number of an exceedingly well-printed and well-edited publication under the title of 'The Green Bag.' It contains some admirable engravings, and both prose and verse," etc.

The verdict of the "Scottish Law Review" is as follows: "A magazine for lawyers with no law in it is something of a novelty, yet such the 'Green Bag' professes to be. Its publisher states: 'Its

scope excludes reported cases, digests, discussions of "points of law," and other "practical" matter, but includes everything else likely to interest the legal profession.' In strict accordance with this idea we have in the new publication no dull reports of cases or dry disquisitions on legal points, but in their place sparkling rhymes, humorous anecdotes with a stronger or weaker court flavor about them, and interesting bits of gossip on legal matters. The result is a readable collection of matter interesting particularly to lawyers, but which will no doubt find favor also with a wider circle. The 'Green Bag,' however, is by no means limited, as its title would seem to imply, to the task of making legal jokes. In the article on 'The Harvard Law School' we have an admirable description of an institution which, so far as we are aware, is without a parallel on this side of the water. The teaching of the law is there conducted in a way which should afford some grounds for reflection to our own University reformers. The portraits of some of the more celebrated teachers in the School, including Judge Story, Judge Parker, Professor Parsons, and others, are beautifully done, as is also the portrait of Chief-Justice Fuller, which stands at the beginning of the number."

Modesty and lack of space compel us to omit many other pleasant allusions.

LEGAL ANTIQUITIES.

THE OLD COURT OF EXCHEQUER. — The history of the Court of Exchequer and its judges is highly interesting to the archæologist. "The Exchequer," says Lord Chief-Baron Gilbert, "was the ancient and sovereign court in Normandy, to which they appealed from all inferior courts and jurisdictions, it being the Grand Court of the Duke." The derivation of the word "Exchequer" has been the subject of some doubt; Basuage thinking that it came from the German *skecken* (to send), because the court was composed *de Missis Dominis*, or of such great lords as were particularly sent for to hold court with the Seneschal, or Steward, on any occasion. But the more common derivation of the word is from a chequered board, or chess board. "They call the board at which they play chess a chequer," remarks Gilbert, "because in that game they give cheque; and this court was so called because they laid a cloth of that kind upon the table upon which the accomptants told out the king's money and set forth their account." The Court of Exchequer in Normandy, as in England, consisted of two divisions, — the Receipt of the Exchequer for the management of the royal revenue, and the Court (or Judicial) part of it; and though Gilbert appears to hesitate in his opinion, it seems sufficiently clear *a priori* that the idea of this tribunal was imported from France. But whether it was established in England by the Conqueror or not, it is certain that it formed part of the old *Curia Regis*. It was commonly called *Curia Regis ad Scaccarium*, and it sat "at a four-cornered board about ten feet long and five feet broad, fitted in manner of a table to sit about, on every side whereof is a standing ledge, or border, four fingers broad. Upon this board is laid a cloth bought in Easter Term, which is of black color, rowed with streaks distant about a foot or span, like a chess board," upon which counters were ranged for the purpose of checking the computations. Originally the only business of the court was to adjust the king's revenue, which in early times was paid partly in kind and partly in money, — the different farms supplying necessaries for the daily use of the royal household, and the cities and towns furnishing money for the soldiers and other purposes of the State. Pleas between private individuals were afterwards heard here, and fines levied and recorded, though no instances occur previous to the reign of Henry II.

At first all the judges of the Exchequer were actual barons of the realm, having seats in the *Curia Regis*, and until the reign of Henry III. they were indiscriminately styled *Justiciarii et Barones*. On the division of the courts in that reign — the real barons having in the mean time seceded from the employment — special persons were assigned to sit in the Exchequer *tanquam Barones*, thus retaining the style of "Baron;" and, in order to distinguish their business from that of the two other courts, from which they were now separated, their duty was expressly limited *pro negotiis nostris quæ ad idem Scaccarium pertinent*. All these barons were, till the reign of James I., of a much lower degree than the other judges, and indeed were not considered men of the law at all, nor ever employed to go on the circuits.

But upon the general increase of litigation occasioned by the extension of commerce, and the

gradual combination of civil and revenue cases requiring the aid of learned lawyers for their decision, it was determined to place the barons on precisely the same footing as the other judges; and consequently those who were appointed after the twenty-first year of Queen Elizabeth were selected from the serjeants-at-law, and were distinguished from their predecessors by the term "Barons of the Coif." It had always been common to take the Chief-Baron (first appointed in the reign of Edward II.) from the rank of the legal profession. From the time of the Stuarts the status of the barons may be said to have been considered equal to that of the other judges. They had an equitable as well as a legal jurisdiction, which, however, was taken away from them in 1814. In 1880 the Exchequer and Common Pleas were merged in the Queen's Bench Division of the High Court of Justice.

FACETIÆ.

"MAY it please your Honor, I desire to apply for a writ of *supersedeas*," said a lank, cadaverous-looking member of the bar.

"A very appropriate thing for him to ask for," remarked a bystander, "for he certainly is the very picture of a *super-seedy-ass*."

"WHAT do you understand by the term *socage?*" asked an examiner of a youthful aspirant for the bar.

"Well," replied the aspirant, hesitatingly, "I should say it meant an age of from one to three years, although older people sometimes wear them."

AN irate attorney who had made motion after motion to the court, all of which had been successively overruled, unable longer to restrain his wrath, indignantly exclaimed: "Well, your Honor, grant me a writ of *error*, then, as that seems to be the only thing this court is capable of issuing."

GOING down the Chesapeake Bay on an excursion when the wind was fresh and the white caps were tumultuous, Judge Hall, of North Carolina, became terribly seasick.

"My dear Hall," said Chief-Justice Waite, who was one of the party, and who was as comfortable as an old sea-dog, "can I do anything for you? Just suggest what you wish."

"I wish," groaned the seasick jurist, "that your Honor would overrule this motion." — *Splinters.*

WHEN the late Chief-Justice Chase chose to unbend himself he could be witty as well as wise. At a social gathering at his house during the war, the subject of taxation having been mooted, a distinguished naval officer present said he had paid all his taxes except the income tax. "I have a little property," said he, "which brings me in a yearly rental, but the tax-gatherers have not spotted it. I do not know whether I ought to let the thing go that way or not. What would you do if you were in my place, Mr. Chase?" There was a merry twinkle in the eyes of Secretary Chase as he answered archly, "I think it the duty of every man to live unspotted as long as he can." — *Splinters.*

"AND so you have received a divorce from that vagabond husband of yours, Mrs. Smith?"

"Yes, I am glad to say that I have."

"Did n't you feel quite overpowered when you heard the decision of the judge?"

"Not exactly. I felt sort of unmanned, so to speak." — *New York Sun.*

A LAWYER'S clerk wants to know if a cross-examination can be a good-natured one?

GREAT criminal lawyers are born, not made. They draw their inspiration not from musty tomes of black-letter lore, but from the fountains of their own native genius. As an example of this class we may refer to a story told of Mac Anderson, Esq., of San Antonio, Texas.

On one occasion he was arguing an important felony case before the court, when the judge inquired if he had any authority to support his position. "Not at hand, your Honor," said Mac, "but I can send and get one. Mr. Bailiff, will you step over to my office and bring me the book?" The bailiff immediately started, but re-

turned in a moment, and said, "Colonel Anderson" (in Texas when a lawyer successfully defends a murder case they call him Colonel), "you forgot to tell me what book it was." "Oh, go along, you blockhead! there is only one book there," said Mac; and aside to his colleague, "And that is a copy of the Republican Campaign Text-book."

A DISTINGUISHED Federal judge, who is said to be somewhat too caustic in his wit, at a complimentary dinner recently given him in a Southern city, wishing to produce a laugh at the expense of a prominent lawyer, cut off the ears of a roasted pig and directed a waiter to take them to the lawyer with his compliments. The lawyer, who had long considered himself, as the company well knew, unfortunate with his cases in the judge's court, received the ears gracefully, and directed the servant to say to the judge that he felt especially thankful for the gift, as he had vainly sought for a long time before *to get the ear of the court.* — *Virginia Law Journal.*

A GOOD story is told of the late Chief-Justice Mellen, of Maine. A very deaf old man was the defendant in a suit in which the judge, then at the bar, argued the cause of the plaintiff. As Mr. Mellen was proceeding with his argument with much earnestness, the defendant became greatly excited, and making many ineffectual attempts to hear what Mr. Mellen was saying to the jury, he at last exclaimed: "I don't know what you are saying, 'Squire Mellen, but I can swear it's a d——d lie."

A LAWYER of Temple Court was looking over some papers his German client had brought, and every signature had a menace in it, as it stood, —

"A Schwindler."

"Mr. Schwindler, why don't you write your name some other way, — write out your first name, or something? I don't want people to think you are a swindler."

"Vell, my Got, sir, how much better you dink dat looks?" and he wrote, —

"A dam Schwindler." — *The Hotel Man's Guide.*

"I DON'T know about that, I don't know about that," exclaimed a New York judge, interrupting a counsellor whose pungency was equal to his learning and ability.

"I perceive that your Honor does not know, but I do," was the reply.

FIRST FEMALE JUROR (some years hence). That fool of a woman who wants a divorce admits that her husband hung up a lot of pictures, and put up ten curtains and six lengths of stovepipe without saying one bad word or even losing his temper.

SECOND FEMALE JUROR. Yes; the man must be an angel. Let 's give her the divorce, and maybe one of us can get him. — *Philadelphia Record.*

AN action was recently brought before Mr. Justice Hawkins in England, to recover the value of two casks of herrings furnished many years before.

"Why such long delay?" asked the judge.

"Why," said the plaintiff, "I again and again, whenever I could find him, asked for payment, until at last he told me to go to the devil, upon which I thought it was high time for me to come to your lordship."

THE strong point of a member of the bar in a neighboring State is his faculty for getting the truth out of witnesses. The following is a sample of his system of cross-examination: —

"Are you a married man?"

"No, sir, I am a bachelor."

"Will you please tell this court and jury how long you have been a bachelor, and what were the circumstances that induced you to become one?"

"WELL," said an Irish attorney, "if it plaze the court, if I am wrong in this I have another point that is equally conclusive."

"HAVE you," asked the judge of a recently convicted man, "anything to offer the court before sentence is passed?"

"No, your Honor" replied the prisoner; "my lawyer took my last cent."

"I SHALL give you ten days or ten dollars," said Judge Walsh to a trembling wretch.

"All right, Judge," answered the trembling wretch; "I 'll take the ten dollars." — *Judge.*

AN amusing incident transpired the other day in the Civil Court in New Orleans. The suit was one in damages resulting from a collision between a buggy and a milk-cart. The counsel for the defendant argued for fully half an hour to show that the buggy had struck the cart several minutes before the cart had touched the buggy. The judge, the audience, and the members of the bar laughed, and the counsel thought it strange!

NOTES.

IF some of our State Legislatures keep on in the mirthful vein manifested by them in various bills which have been introduced of late, the Statute books will presently become as entertaining reading as the works of Mark Twain or Josh Billings. Here is the text of the first section of a bill lately passed by the Nebraska Legislature: —

"It shall be unlawful for any person to fire off or discharge any pistol, revolver, shotgun, rifle, or any firearms whatsoever on any public road or highway in any county of the State of Nebraska, or within sixty yards of such public road or highway, except to destroy some wild, ferocious, and dangerous beast, *or an officer in the discharge of his duty.*"

However, as officers are rarely seen on or near the public highways, especially when wanted, they may not, perhaps, run any special risk under this act.

On January 10 Assemblyman Cottrell, a back-country member, introduced a bill into the New York Legislature to protect the rights of persons discovering "bee trees." It was read twice and referred, and has just been reported favorably from the committee with amendments. How much of the original bill remains it is hard to say. The first three sections are as follows: —

An act to establish the rights of persons, male or female, discovering bee trees or other natural receptacles containing bees or honey.

SECTION 1. It shall be lawful for any person, Indian or Chinaman, first discovering or finding a bee tree, or tree or other natural receptacle containing bees or honey, to mark the bee upon his business end with a rubber stamp or indicate the locality and discovery thereof with the initials of his or her name distinctly and openly marked and so placed upon such bee as above indicated so that it may be readily seen. Such marking shall be due notice of the discoverer's rights and shall be respected as such, and shall establish the ownership in said discoverer of the bees, honey, comb, and contents.

SEC. 2. If such tree be cut or such bees be caught or honey be taken or unnecessarily damaged or the sting of such bee be removed or disturbed to the detriment of the discoverer, unless such sting be lodged in discoverer, the depredator shall on conviction be held guilty of a "beeacide," and shall be punished by any court having jurisdiction of horse-stealing by a fine of $500, and the discoverer may authorize his bees to sting the depredator.

SEC. 3. This act shall not be construed as giving permission to commit a trespass or as relieving a trespasser from obligation for damages or prosecution therefor, but the discoverer of such tree, bees or bee stings, or honey may, after having given to the owner or occupant of the premises upon which they were found reasonable written notice of such discovery and its locality, with a sample bee duly marked and stamped and honey, accompanied by an offer to pay the damages done to the premises consequent thereon, (and in case of consent he shall pay the same at the time of removal,) may, in a civil action, recover of such owner or occupant $7 for damages therefor.

ACCORDING to a bill under the consideration of the Delaware Legislature, the Judges of the Superior Court of the counties of the State shall appoint a person of known moral character and of proper clerical ability to take the names, ages, occupations, and residence of all applicants for marriage, and shall publish them in some daily newspaper eight days or post a printed copy of the same in some public place for eight days. Objections to the marriage of any one advertised shall be in writing by the complainant, with his or her name and residence, and directed to the appointee of said county, who shall notify all the parties of the time and place for the hearing before the Judges of said county, whose decision shall be final. The fees to be paid in advance by the complainant. Any clerk of the peace, deputy clerk of the peace, or any persons issuing any marriage licenses in violation of the provisions of this act to any person, male or female, in any county of this State, shall, upon conviction before the Superior Court, be fined in a sum of $500, and shall stand committed without bail until the fine is paid.

This is extending the jurisdiction of the court with a vengeance, and the unfortunate judges will probably have but little time to devote to anything

except the hearing of complaints from disappointed suitors and vindictive spinsters who will willingly pay the fee demanded in advance for the sake of showing up their faithless sweethearts.

THE bill, recently introduced in the Massachusetts Legislature, allowing towns the same rights and privileges in "great ponds" which is accorded to the larger cities, is said to be the work of the prohibitionists in anticipation of the passage of the proposed prohibitory Constitutional Amendment.

WAGER OF BATTLE still seems to be in vogue in some of our Southern courts, if the following report clipped from the "Boston Transcript" is to be relied upon: —

"During the argument of a petit larceny case before Justice of the Peace Nixon, at Hoxie, Kansas, J. L. Patterson and William Langley, both muscular lawyers, became involved in a dispute as to their relative fighting powers. The two exchanged words and taunts for some time; then each bared his muscular arm and called on the justice to decide the dispute. Justice Nixon, who is a lover of the manly art, decided that the only way in which the affair could be settled was with bare knuckles, and declared his willingness to adjourn the case for a time to allow the attorneys to settle the dispute. The two accepted the proposition and adjourned to a large hall. About all the men in the place gathered to see the fight. Patterson and Langley stripped to their undershirts, and, with the justice as referee, squared off at each other in regular pugilistic style. Suddenly Patterson's right shot out, and a moment later Langley was sprawling on the floor. This unnerved the doughty lawyer, and picking up his things he left the hall. Langley arose a moment later, but was not bent on fighting; and the battle was declared a draw."

COMPLAINT is often made that jurors usurp the prerogative of judges and undertake to pass upon the law as well as the facts. But has it ever occurred to those who make this complaint, that judges sometimes undertake to instruct the jury upon the facts as well as the law? If the bench forgets its duty in this respect, there is less reason for surprise that juries do likewise.

"SELECTED PLEAS OF THE CROWN." — The Selden Society are republishing, under this title, certain manorial court rolls, — those of the thirteenth and fourteenth centuries. This will give our American lawyers and judges of super-conservative tendencies material to draw from when an absolutely new question of law comes up for decision. They may find in these mouldy archives what some judge said in a foreign language on some more or less analogous subject, at a time when roast beef was a rarity on the tables of the aristocracy of England, and when England itself contained but a million of inhabitants.

WHAT do our readers think of this verdict, which, according to a contemporary, was delivered at the present Oxford Assizes, Coleridge (C.-J.) presiding, on the trial of the case of Cornish *v.* The Accident Insurance Company? We are of opinion that in consequence of his lordship's summing up, we are compelled to find that the plaintiff lost his life by incurring obvious risk, but we are of opinion that he met his death by ordinary misadventure. — *Pump Court.*

THE variation of age in judges of the United Kingdom is considerable. The oldest judge in England is Mr. Justice Manisty, of the Queen's Bench Division, aged eighty-one; the youngest, Mr. Justice Charles, of the Court of Appeal, aged fifty. In Scotland the oldest of the Lords of Session is Lord Glencorse, Lord Justice-General, aged seventy-nine; the youngest, Lord Wellwood, aged fifty. In Ireland the Hon. J. Fitz Henry Townsend, of the Court of Admiralty, aged seventy-eight, is the oldest judge; and Mr. Justice Gibson, of the Queen's Bench Division, aged forty-four, is the youngest. — *The Legal News* (Montreal).

THE devil is a land-owner by legal right in Finland. A man of evil repute died, and bequeathed all his property to the devil. The lawyers are in great anxiety about the matter. — *Boston Budget.*

SPEAKING of the pleasantries of the reports and text-books, a contemporary remarks that the metaphors which are to be found therein are at once amusing and beautiful. One such, for example, occurs in Bright *v.* Legerton, 2 D. F. & J. 607, where it is remarked with respect to the emblem of Time, who is depicted as carrying a scythe and

an hour-glass, that while with the one he cuts down the evidence which might protect innocence, with the other he metes out the period when innocence can no longer be assailed. And perhaps the observation of the Michigan judge in Farmers and Mechanics' Bank *v.* Kingley, 2 Doug. (Mich.) 379, is worthy to rank with these, where he says: "It would be as difficult for me to conceive of a surety's liability continuing after the principal's obligation was discharged, as of a shadow remaining after the substance was removed." Of all text-writers, Mr. Joshua Williams is, perhaps, pre-eminent in his liking for the use of metaphors. There is one which is especially amusing, and which, as perhaps a little too pointed, he omits altogether in subsequent editions of the work in which it occurs. In a former edition of his work on Real Property he remarked, with reference to the act to render the assignment of satisfied terms unnecessary, that it was like saying that every one should leave his umbrella at home, except that such umbrella, which shall be so left at home as aforesaid, shall afford to every person, if it should come on to rain, the same protection as it would have afforded to him if he had it with him. And, again (Real. Prop., ed. 11, p. 460), he speaks of the present fashion of tinkering the laws of real property, preserving untouched the ancient rules, but "annually plucking off, by parliamentary enactments, the fruits which such rules must, until eradicated, necessarily produce." In the Court of Appeal, at Lincoln's Inn, in the course of a case involving the doctrine of a wife's equity to a settlement, Lord Justice Bramwell said: "There 's no such thing as an equity since the Judicature Acts came into operation, — is there?" Counsel ventured to suggest that it was rather law than equity which had been abolished. "It 's like shot silk," observed Lord Justice James; "both colors are there, and it depends upon the light in which you look at it which color you see." — *Central Law Journal.*

A MEETING of attorneys was held recently at Fargo to organize a Cass County Bar Association. Thirty-six attorneys were present. Judge Hudson was elected temporary chairman, and Walter Smith, secretary. A committee of five was appointed to draft a constitution and by-laws, and report at an adjourned meeting. In view of the near approach of statehood similar associations will soon be formed in all the organized counties of North Dakota.

Recent Deaths.

STANLEY MATTHEWS, Associate Justice of the Supreme Court of the United States, died at Washington, March 22. Judge Matthews was born in Cincinnati in 1824. He was a man of unusual ability, and before his elevation to the bench was one of the foremost advocates of the West.

In our May number we shall publish an admirable portrait of the late Justice, with a sketch of his life.

CYRUS WOODMAN, of Cambridge, died suddenly on March 30. Mr. Woodman was born in Buxton, Me., in 1814. In 1836 he was graduated from Bowdoin College, and afterward studied law. He entered the Harvard Law School in 1838, and was admitted to the bar in the following year. Shortly afterward he went West as agent for the Boston and Western Land Company, and remained with this concern till 1843. He formed a partnership with Gov. C. C. Washburn, of Mineral Point, Wis., and they continued together for eleven years. He remained in the West till 1863, when he removed to Cambridge, where he had since resided. The deceased was for many years one of the Overseers of Bowdoin College, and was a prominent member of the New England Historic-Genealogical Society. He leaves a widow and four children.

WILLIAM J. MORRIS, one of the oldest members of the Merrimack County Bar, died at his home in Danbury, N. H., on March 30, aged sixty-eight. Mr. Morris was leading counsel for the respondent at the several trials of Joseph La Page for the murder of Josie A. Langmaid at Pembroke.

SIR WILLIAM FOSTER STAWELL, K. C. M. G., who for nearly forty years has occupied various positions of the highest eminence in the colony of Victoria, is dead. He was born in 1815. From 1851 to 1857 he held the post of Attorney-General in Victoria, and was also a member of the Executive Council. In 1857 he was promoted to be Chief-Justice of Victoria, and this high office he held for nearly twenty years.

SEÑOR JOSE EUGENE E. BERNAL, the well-known Cuban lawyer, and one of the founders of the automonist party, is dead.

ALEXANDER MCCUE, Assistant Treasurer of the United States, died at Brooklyn, N. Y., on April 2. He was born at Metamora, Mexico, in 1826, and graduated from Columbia College in 1845. Three years later he was admitted to the bar, and began his practice in Brooklyn. In 1861, 1862, 1867, and 1868 he was corporation counsel for that city, and from 1870 until 1885 was one of the judges of the City Court. The latter position he resigned when President Cleveland tendered him the appointment of Solicitor of the United States Treasury at Washington. On the death of Professor Baird, in 1887, the President gave to Judge McCue the vacant position of United States Commissioner of Fish and Fisheries.

REVIEWS.

JOHNS HOPKINS UNIVERSITY STUDIES, seventh series, IV. — This last number of this interesting series is a sketch of the "Municipal History of New Orleans," by William W. Howe. Beginning with the foundation of the city, in 1718, the writer follows its history through the French and Spanish régimes until 1803, when Louisiana was ceded to the United States, and from that date up to the present time. A curious experiment in city affairs was attempted in 1836, when the territory of New Orleans was divided into three separate municipalities, each having a distinct government with many independent powers, yet with a Mayor and General Council, with a certain superior authority. It was the idea of local self-government pushed to an extreme. It existed for sixteen years, and during its existence many important public improvements were made.

The charter of 1870, vesting the control of the city's affairs in the Mayor and seven Administrators, is one worthy of study by the advocates of reform in municipal government. The plan seems to have worked admirably in New Orleans, satisfying every one but the politicians.

THE following remarks of Hon. Thomas M. Cooley in a paper on the "Comparative Merits of Written Prescriptive Constitutions," published in the March number of the HARVARD LAW REVIEW, are, to say the least, significant. Speaking of interstate commerce, he says: —

"It may be that by and by the federal legislature, surveying the field of interstate commerce, and taking note how State commerce encroaches upon and intermingles with it, crowding it in the same vehicles on the same roads, sharing with it in the same expenses, the rates which are imposed on the one necessarily affecting the rates that can be accepted on the other, and being handled at the same time by the same hands, under the same official control, will come to the conclusion that a separate regulation of State commerce must necessarily be to some extent at least, and may be to a large extent, inconsistent with complete federal regulation of the commerce that is interstate. Should that conclusion be reached, the federal legislature is not unlikely to take to itself complete regulation of the whole."

What will our railroad corporations say to this?

THE CHICAGO LAW TIMES for April contains an admirable portrait of William Blackstone accompanied by a sketch of his life. "The Woman Lawyer," by Dr. Louis Frank, is continued; the "Blair Amendment to the Federal Constitution" is discussed by Charles B. Waite, and there is an interesting paper on "The Death of Young Harry Vane," by Judge Elliott Anthony. The LAW TIMES is certainly one of the most readable of our exchanges, and is always heartily welcomed.

WE have received an able and exhaustive paper on "Legislative Control over Private Corporations," by T. Gold Frost, LL.B., of the Minneapolis Bar. The same paper is published in the March number of the COLUMBIA LAW TIMES.

TO the March number of the CHICAGO LAW JOURNAL Dr. H. N. Moyer contributes an interesting paper on the "Relation of Insanity to Crime," in which he advances the two propositions: first, "that habitual criminals are moral imbeciles; second, that the scale of punishments now in vogue is not the best plan of dealing with crime."

"The moral imbecile," he says, "cannot refrain from crime, and is therefore not deterred by pun-

ishment. . . . If anything has been conclusively shown, it is that the miserable and cruel spectacle of excessive punishments does not lessen crime, but, on the contrary, only hardens and renders the criminal classes more indifferent to their fate. If all the criminals now confined in our penitentiaries were taken out and hanged to-morrow, it is doubtful if it would lessen, to an appreciable extent, the number of crimes committed next month."

It has been stated that statistics show that in France a public execution is almost invariably followed by an increase in capital crime, a fact which would seem to confirm the position taken by Dr. Moyer.

BOOK NOTICES.

LAWYERS' REPORTS, ANNOTATED. Book I. Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1888. $5.00.

THERE are but few members of the profession who have not found the voluminous reporter system irksome in the extreme. To be obliged to wade through a mass of useless stuff before reaching a really useful or practical point, involves the expenditure not only of a vast deal of patience but also of much valuable time. This new departure in the system of reports is one which must recommend itself to every lawyer. The cases reported in this series are only those which give judicial form to a new principle of jurisprudence, apply an old principle to a development of new circumstances, or include a valuable discussion of a generally important point. The reports embrace the decisions of every State and the Federal Courts.

The annotations are by Robert Desty, whose eminent fitness for the work guarantees its thorough, accurate, and exhaustive character.

It is proposed to issue four books each year, delivered either in semi-monthly parts or in bound book every three months.

We wish this new undertaking every success.

THE POWERS AND DUTIES OF POLICE-OFFICERS AND CORONERS. By R. H. VICKERS of the Chicago Bar. T. H. Flood & Co., Chicago, 1889. Sheep. $2.50 net.

This compact little work will be especially serviceable to those officers whose duties and powers the author has set forth with great clearness and conciseness. It is at the same time of much real value to the profession, and in fact to every citizen. There is much conflict in the minds of the community as to the lengths to which the police on the one side and the people at large on the other may legally and properly go. As the author says: "When those duties are better defined and more generally known by all persons, there will be less difficulty in the path of the police."

A TREATISE ON THE LAW OF BENEFIT SOCIETIES. By FREDERICK H. BACON of the St. Louis Bar. F. H. Thomas Publishing Co., St. Louis, 1889. $5.50 net.

This is, we believe, the first work of any importance which has been published upon this subject, and, in view of the vast amount of litigation to which Benefit Societies have given rise within the past few years, it should meet with a hearty welcome from every lawyer. In addition to an able exposition of the law governing Benefit Societies, the entire law of Life Insurance is covered in this work, giving the latest decisions as to Suicide, Intemperance, and Effect of Misrepresentation.

A DICTIONARY OF LAW. By WILLIAM C. ANDERSON. T. H. Flood & Co., Chicago, 1889. $7.50.

This new Dictionary of Law seeks to define and otherwise explain law terms and expressions, to show the application of legal principles, and to present the judicial interpretation of common words and phrases.

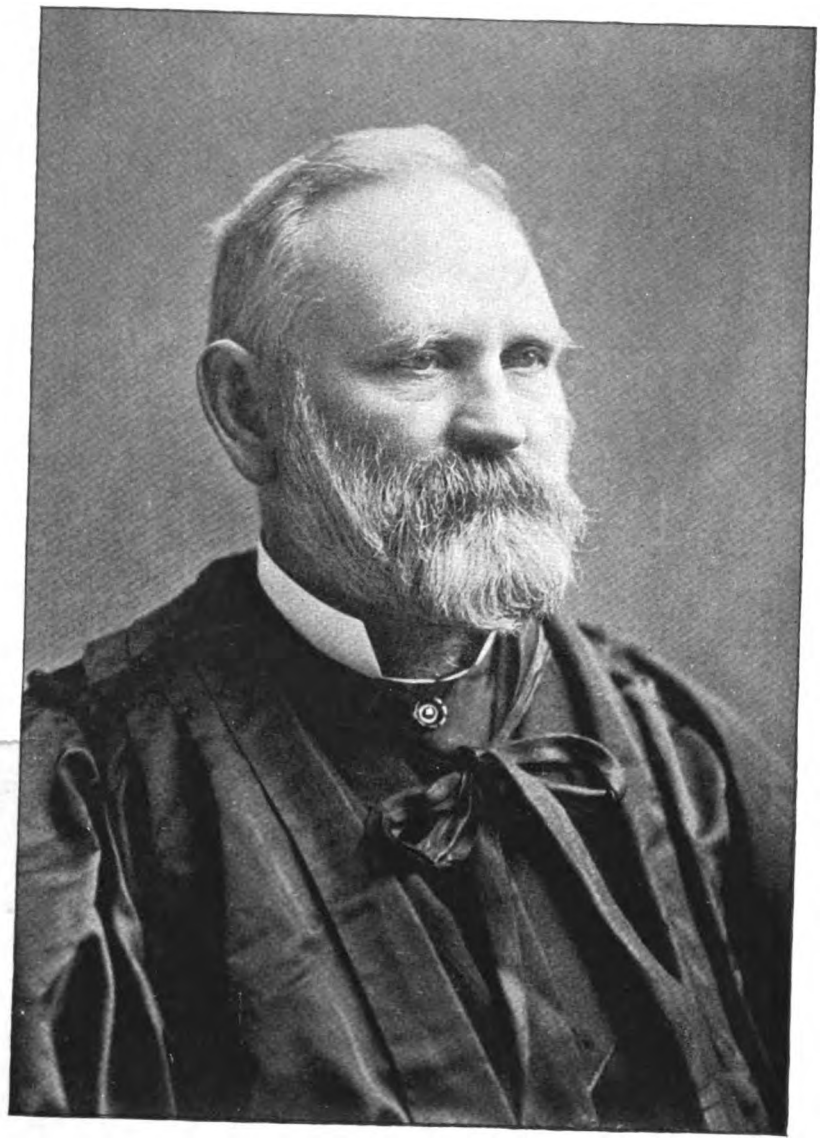
Mr. Anderson appears to have done his work thoroughly, and the result is a comprehensive, practical, and thorough Law Dictionary. All words and phrases of legal significance are given, and some twenty-three thousand cases besides Standard Text-books and Law Periodicals are cited. It is an indispensable work to all members of the legal profession.

OUR REPUBLIC. By Prof. M. B. C. TRUE and Hon. JOHN W. DICKINSON. Leach, Shewell, & Sanborn, Publishers, Boston and New York.

This little work, which is a text-book upon the civil government of the United States, is designed by the authors to promote a systematic study of civil government in our common schools. The subject is treated under the following heads: The State; Civil Polity; Division of Powers; Relations of the States. To these are added the Declaration of Rights, Articles of Confederation, Declaration of Independence, and the Constitution. The different chapters are subdivided into short sections, each with an appropriate heading. The work seems to be so admirably adapted for its purpose, and the inportance of the subject of which it treats is such, that its usefulness as a text-book in our schools cannot be doubted.

THE CONFLICT OF JUDICIAL DECISIONS. By WILLIAM H. BAILEY, LL.D. M. Curlander, Law Publisher, Baltimore, 1888. $5.50 net.

This work is peculiar in one respect. There is, so far as we know, nothing like it in our legal literature. It is not, as might be supposed, a treatise on the conflict of laws, but the author's design is to show how the various courts have differed in their judgment of certain important subjects. The great usefulness of the work cannot fail to be appreciated by any lawyer who will carefully examine it. Here, by a rapid glance, he may see at once the position of the various courts of last resort with reference to the many topics included in its pages. The text covers four hundred pages; the table of cases cited, seventy-six pages. Great care and much labor have evidently been expended by the author in the gathering and arranging the cases *pro* and *con*, upon the different judicial questions. The work is certainly one of great practical value to the profession.



Stanley Matthews

The Green Bag.

VOL. I. NO. 5. BOSTON. MAY, 1889.

JUSTICE STANLEY MATTHEWS.

STANLEY MATTHEWS, Associate Justice of the Supreme Court of the United States, died in Washington, March 22, 1889. In his death the country mourns the loss of a great advocate, and a judge of remarkable ability.

Stanley Matthews was born in Cincinnati July 21, 1824, and sixteen years later was graduated at Kenyon College. After studying law he was admitted to the bar of Maury County, Tennessee, but returning to Cincinnati shortly afterwards, he soon became recognized as one of the most promising young lawyers of Ohio. With the early opponents of slavery he joined hands cordially, and in 1846–1849 was an assistant editor of the Cincinnati "Herald," which was the first anti-slavery paper published in that city. Two years later he was elevated from the bar to the bench, becoming judge of the Court of Common Pleas of Hanover County, Ohio. In 1855 he was elected a member of the State Senate, and in 1858–1861 was United States Attorney for the Southern District of Ohio.

His interest in the abolition of slavery carried him into the war as lieutenant-colonel of the Twenty-third Ohio Regiment. His command was first located in West Virginia, participating in the battles of Rich Mountain and Carnifex Ferry. In October, 1861, he became colonel of the Fifty-seventh Ohio Regiment, and in that capacity commanded a brigade in the Army of the Cumberland, and was engaged at Dobb's Ferry, Murfreesborough, Chickamauga, and Lookout Mountain.

He resigned from the army in 1863 to accept a seat on the bench of the Superior Court of Cincinnati. This seat Judge Matthews held only one year, however, as he felt it incumbent on him to return to the more profitable practice of his profession. In the years following, he was also able to take a more active part in public affairs. In 1864 he was a presidential elector on the Lincoln and Johnson ticket; and in the same year he was a delegate from the Presbytery of Cincinnati to the General Assembly of the Presbyterian Church in Newark, N. J., and as one of the Committee on Bills and Overtures reported the resolutions that were adopted by the Assembly on the subject of slavery. Four years later he was a presidential elector on the Grant and Colfax ticket, and in 1876 he was defeated for Congress on the Republican ticket. His name was among those considered for a place in the Supreme Court of the United States when the late Chief-Justice Waite was appointed.

It was in 1877 that Mr. Matthews first attracted national attention, when he, as one of the counsel before the Electoral Commission, opened the argument in behalf of the Republican electors in the Florida case, and also made the principal argument in the Oregon matter. In March of the same year he was chosen by the Ohio Legislature to the seat in the United States Senate made vacant by John Sherman's confirmation as Secretary of the Treasury. Senator Matthews remained in office until March, 1879, and during that period introduced in the Senate the resolutions that were passed in favor of the restoration of the silver dollar to rank as lawful money. His general course

in the Senate, however, was such as to arouse strong opposition when, in 1881, his name was sent to that body to be Associate Justice of the Supreme Court.

Admitting his abilities as a lawyer, it was argued that he had displayed such a lack of knowledge and judgment upon many important public questions as to make his elevation to the court of last resort highly injudicious and, many claimed, even dangerous. It was also felt in many quarters that his nomination by President Hayes for so high a judicial office was very unbecoming in view of Mr. Matthews's active participation in removing the objections to Mr. Hayes's inauguration. These objections, backed by the strong opposition of Senator Conkling, prevented a confirmation of the nomination. It was renewed by President Garfield soon after his accession. It was held under consideration by the Senate Judiciary Committee for weeks, and on May 9 was reported adversely. Curiously enough, the only vote for a favorable report by the committee was said to have been cast by Mr. Lamar. Against confirmation were arrayed, it is said, Messrs. Edmunds, Logan, Ingalls, McMillan, Davis of Illinois, and Bayard. But when the report came up before the Senate in executive session, on May 12, the nomination was confirmed by a vote of yeas, 22; nays, 21. The affirmative and negative totals were about equally divided between the two political parties.

After his elevation to the bench, Mr. Matthews showed himself to be eminently possessed of all those qualities which go to make up the honest, conscientious, and impartial judge. Those who had most strongly opposed his appointment were forced in the end to acknowledge that there had been no mistake made. The tributes paid to his memory show the estimation in which he was held by those who were intimately associated with him. Senator Evarts says: —

"Stanley Matthews was a noble figure in all the affairs of public and common interest to the country. He was a noble figure in the dignity of his person and the grace of his demeanor. He was a noble figure in our great profession, upon whose power, upon whose intrepidity, such vast interests of society, of government, and of the administration of justice depend. He was a noble figure, although for so brief a period, in the soldiery of the people, a volunteer to fight his share in a great contest on which hung the fate of his country. He was a noble figure on the bench, to the profession and the lawyers of the country, and in every respect in which a lawyer is to be regarded. He was a noble figure in all the great interests and duties which permeate, enlighten, and purify our society, without which our numbers and our wealth will not continue our permanency among the nations of the earth. And in that greatest of all spheres, character, there was in him neither variableness nor shadow of turning."

Chief-Justice Fuller, in response to the resolutions presented to the Supreme Court by the Bar Association, thus sums up his estimation of his late associate: —

"Before he came to grace a seat upon this bench Mr. Justice Matthews had in high public place — political, professional, and judicial — acquired eminent distinction, and displayed the qualities which invite attention and command admiration and respect; while as a member of the bar his conspicuous ability, faithfulness, and integrity had given him a rank second to none, and the felicity was also his of having rendered his country gallant service as a soldier. He brought here the garnered wisdom of years of varied experience, and constantly added to it the fruit of cultivation in this exalted field of exertion, whose margin faded before him as he moved, growing in strength with exigencies requiring the putting forth of all his powers. In intercourse with counsel cordial but dignified; conscientious in investigation; honest and impartial in judgment; full of resource in supporting given conclusions by accurate and discriminate reasoning; ample in learning and comprehensive in scholarship; luminous in exposition and apt in illustration, — he demonstrated such fitness for this sphere of action that his removal in the midst of his usefulness cannot but be regarded as a severe loss to the bar, the judiciary, and the country.

"To the associates of years, of personal companionship in the administration of justice, that loss

is quite unspeakable. The ties between those thus thrown into close intimacy are extremely strong; and when one is taken away upon whose painstaking scrutiny, clearness in explanation, and fulness of knowledge reliance has been justly reposed by his brethren, and whose amenity of temper and kindness of heart have naturally inspired affection, a keen sense of personal bereavement mingles with common sorrow.

"In view of a life like this, crowned with the success that waits upon absolute devotion to duty, how false the desponding exclamation of the preacher, 'That that which now is, in the days to come shall all be forgotten.'

"The remembrance of the just and wise is with the generations always, and the works of this faithful public servant will follow him 'in the days to come,' now that he rests from his labors."

A PECULIAR CHARITY.

By George F. Tucker.

ON the 10th of August, 1878, a little old man died in a cottage in the outskirts of Boston. So quietly had he lived, and so disinclined had he been to seek associates or to make friends, that it was some time after his decease before that event was known to those who resided in the immediate neighborhood. To the people he had been known as a mechanic who, no longer able to work, was eking out his last days upon a pittance saved from his former wages. And yet this uninteresting man of bent form and sober countenance left an estate valued at nearly one hundred thousand dollars, which he disposed of by will in a way highly creditable to his intentions and instincts, but which disclosed a unique and unexampled method of conferring a public benefit.

His extraction was humble; he was born in the State of Maine, and came to Boston, a penniless and friendless boy, in the early days of the century. He obtained employment, and in the course of time became an average mechanic. He never earned more than ordinary wages; but as he was unmarried and had no one dependent upon him for support, he was enabled, through diligence and frugality, to lay aside each year a small sum of money. These savings were safely invested, and every few years, after they had attained to respectable proportions, were exchanged for productive real estate. Thus the savings of a lifetime, increased by the accumulations of interest and rents and the continual enhancement of the investments in real estate, amounted at his death to ninety-seven thousand dollars.

While the man's endowments were meagre, his education limited, and many of his views narrow, he was by no means a fool. He cultivated a taste for reading, and the entire absence of domestic engagements and responsibilities afforded considerable time for this kind of enjoyment. He took a lively interest in public affairs, and entertained strong preferences and dislikes. He was generally reticent, and rarely expressed his views except by the briefest approval or disapproval of the subject under discussion. His only adviser was a lawyer of ability and good standing, who, as will be seen, faithfully carried out the peculiar instructions of his client.

Intimations of age and infirmity suggested the necessity of making a will. The old mechanic had long entertained the idea of bestowing his wealth upon the public, but his personal knowledge of the mismanagement of several estates bequeathed for charitable purposes inspired him with the determination to provide for the disposal of his own property in the fairest and most economical manner. Upon consultation with the lawyer

a will and letter of instructions were drawn and executed; and not many months after, the old man was carried to the grave.

The will was as follows: —

Know All Men by These Presents. That I, S——— H———, of Boston, Massachusetts, do make this my last will and testament.

After the payment of my just debts and funeral expenses, I give, devise, and bequeath all the estate, both real and personal, of which I shall die seized and possessed and to which I may be entitled at the time of my decease to R——— E——— of said Boston and to his heirs and assigns forever.

I constitute and appoint the said R——— E——— the executor of this will, and exempt him from giving a surety or sureties on his official bond.

In Witness whereof I have hereunto set my hand and seal this 5th day of April, A. D. 1878.

S——— H———

Attestation clause with three witnesses. SEAL.

Simultaneously the testator signed the letter of instructions referred to above. It was carefully drawn by the attorney conformably to notes furnished him by the testator, and was as follows: —

BOSTON, April 5, 1878.

To R——— E——— of Boston, Massachusetts.

I have this day executed my last will, in which you are named executor and sole legatee. While by the terms of that instrument you are given the unrestricted use of my entire estate, yet I feel confident that you will comply with the instructions herein given, although they may have no legal force and effect. My purpose in making no reference in the will to my real intentions is to avoid publicity, and also the expenses and embarrassments of possible litigation. However, I have no fear of any attempts to disturb the provisions of the will on the grounds of insanity or undue influence, as I have no near relatives, and am also generally believed to have meagre pecuniary resources.

It has long been my purpose to confer some benefit on the people. It is my impression that many bequests of benevolent testators are faithfully carried out; but I have heard of the misappropriation in some cases of funds given for charitable purposes, and I am aware that the course of events often interferes with original plans, and thus thwarts the cherished intentions of testators. In these latter cases recourse is had to the courts, — a proceeding probably never contemplated by the founders of trusts. To avoid a result of this kind, I request you to dispose of the property given you by the will in the manner indicated below.

You may use your judgment as to the management of my estate for two years succeeding the day of the probate of my will. At the expiration of said two years (my debts, which will be found to be few and small in amount, having been first paid), I request you to convert my entire estate into money. From the proceeds I desire you to retain five thousand dollars, which you will receive both as a mark of personal esteem and as compensation for your services in the settlement of my affairs. You will also retain six hundred dollars, which you will equally divide among the witnesses hereinafter referred to. The remainder of my estate you are directed to turn into Legal Tender Notes, which you will then destroy in the following way. I request you to call in three reputable witnesses (the witnesses to my will preferred), upon whom strict secrecy shall be enjoined. You will make an accurate statement in writing of the numbers and denominations of the bills, and this statement you and the witnesses will sign after the bills have been burned in the presence of you all. You will thereupon send the statement to the Secretary of the United States Treasury at Washington, so that he may be informed of the description and number of bills thus forever withdrawn from circulation, with the instruction that the whole transaction is to remain a secret for the period of eight years. It is a matter of indifference to me whether the transaction shall even then be made known to the world. Perhaps it will be better for the people to remain in ignorance of the slight benefit conferred upon them.

I believe that I have always been called a peculiar man, but I do not regard my purpose, just outlined, as in any sense extraordinary. These notes were originally issued as a war measure, and it is a reproach to our Government that they were not long ago redeemed. I propose to contribute my all towards their redemption, and thus, by benefiting the Government, to benefit the people. As the bills of small value are the more likely to be

found in the possession of the people at large; and as, in my opinion, their fingers ought not to be soiled by irredeemable paper money, I request you, if possible, to destroy bills of the denomination of one, two, and five dollars.

Exactly two years from the day upon which the will was proved, which was Sept. 29, 1878, the executor and the witnesses met agreeably to the testator's request. Bills had been provided, and their destruction, after a careful verification, proved a long and tedious undertaking. At last it was successfully accomplished, and a true statement signed and sworn to was sent to the Secretary of the Treasury at Washington. On Sept. 29, 1888, the ten years had elapsed; but neither the authorities at Washington nor the executor and witnesses, all of whom were living, manifested any desire to publish the transaction. The will and letter of instructions were recently brought to the notice of the writer, and he takes this occasion to make public the curious and perhaps creditable generosity of a peculiar man.

TOOMBS.

By Hon. L. E. Bleckley.

A LION harmless to the weakest lamb,
Though fiercely scorning like a lamb to be:
His ruling passion to be wild and free
As winds and waves, with no compulsive calm
Save God's. To God alone he tuned the psalm,
Or bowed the head, or uttered prayer or plea;
To none but God he ever bent the knee,
Or incense burned, or offered bull or ram.
His mind was Space and Time in Spirit swung;
His brain was Reason's self encased in bone;
His speech the Summer Storm with human tongue, —
A storm of logic thundered from a throne.
O'er all our hearts his sceptre might have hung,
Had he but learned to tame and rule his own.

April, 1889.

THE CRIMINAL CODE OF THE ANGLO-SAXONS.

THE criminal code of the Anglo-Saxons will be found, by the general reader, more interesting than any other branch of the laws of that remarkable people. The grand principle remarkable in their criminal laws, and in those of German nations generally, is *pecuniary* punishment.

The Saxons made many distinctions in homicides; but the lives of all men were not of equal value in the estimation of the law. Every man was valued, according to his rank, at a certain sum, which was called his "were;" and whoever took another's life was punished by having to pay this "were" to the family or relatives of the deceased, as a compensation for the loss of his life. The "were," whose amount was thus regulated by a regard to the different ranks in society, became, nevertheless, augmented from time to time; greater pecuniary value being assigned to human life as order and civilization appear to have increased.

If the person slain was an *esne*, a slave, the "were" seems to have become the property of the lord. On the murder of a *foreigner*, two thirds of the "were" went to the king, and one third only to his son or relatives; if the deceased had no relatives, the king had one half, and the "gild-scipe," or fraternity with which he was associated, received the other. The laws of Edward and Guthrun required the punctual payment of the "were" (which was to be made, it would seem, within forty days of the death), to be secured by the responsibility of eight paternal and four maternal relations.

The killing of a *thief* was at one time exempted from the payment of the "were;" but this exemption was afterward made subject to the qualification under oath, that the thief was killed "sinning," — in the act of stealing, or in the act of fleeing on account of the theft.

Our Saxon ancestors, however, were not so ignorant of the true principles of criminal jurisprudence as to fail in recognizing in homicide the *public* crime, and in awarding to the community accordingly a recompense for the wrong inflicted on society. Hence, beside the redress assigned to the family of the deceased, another pecuniary fine was imposed on the man-slayer; this fine was called the "wite." It was paid generally to the magistrate in whose jurisdiction the offence was committed; and its amount appears to have been regulated by reference as well to the dignity of the magistrate as to the rank of the deceased, and the circumstances under which the act was committed. The "wite" in a king's town was fifty shillings; in an eorl's, twelve. If the deceased was a freeman, the "wite" was fifty shillings to the king as lord of the land; if an eorl, six shillings was the "wite." So as to the place, — if the act was done at an open grave, the sum of twenty shillings was sometimes the "wite." If a laec killed the noblest guest, the "wite" was eighty shillings; if the next in rank, sixty; if the third, forty shilings. If the criminal fled from justice, his relations or the guild to which he belonged were made responsible for the payment of the "wite."

Even in the case of what we term *justifiable* homicide, the slayer was by no means free from responsibility; he was bound to make recompense to the family of the deceased by payment of the "were," though he was not, under these circumstances, liable to the penalty of the "wite."

The following extracts from the Laws of Alfred on the subject of injuries to the person will be found remarkably curious. It can scarcely fail to occur to the reader that the principle on which the valuations were fixed was applied in many cases very capriciously.

"If a man strike off another's nose, let him make 'bōt' [*i. e.* pay a fine], with ix. shillings.

"If a man strike out another's tooth in the front

of his head, let him make 'bōt' for it with viii. shillings; if it be the canine tooth, let iv. shillings be paid as 'bōt.' A man's grinder is worth xv. shillings.

"If a man's windpipe be pierced, let 'bōt' be made with xii. shillings.

"If a man strike out another's eye, or his hand or his foot off, there goeth like 'bōt' to all; vi. pennies and vi. shillings and ix. shillings, and the third part of a penny.

"If a man's tongue be done out of his head by another man's deeds, that shall be like as eye-'bōt.'

"If a man be wounded on the shoulder so that the joint oil flow out, let 'bōt' be made with xxx. shillings.

"If the arm be broken above the elbow, there shall be xv. shillings as 'bōt.'

"If the arm shanks be both broken, the 'bōt' is xxx. shillings.

"If a man break another man's rib within the whole skin, let x. shillings be paid as 'bōt;' if the skin be broken, and bone be taken out, let xv. shillings be paid as 'bōt.'

"If the thumb be struck off, for that shall be xxx. shillings as 'bōt.'"

Almost every conceivable injury to a man's person is provided for in this curious set of laws, with valuations fixed as in the instances above cited.

Theft and robbery appear to have been esteemed by our Saxon forefathers as the most enormous of crimes; theft was accordingly rendered a highly expensive pursuit. By one of the earliest of the Anglo-Saxon laws, the compensation to the injured party was threefold, and to the king the forfeiture of all the offender's goods. The punishment bore some proportion, however, to the station in life of the offender; for if not a freeman, he was subject to a twofold retribution only. By a subsequent law, a freeman taken with the thing stolen in his hand was completely at the mercy of the king, who might kill him, sell him, or receive his "were." (It may be assumed, therefore, that if the man was *worth* much, his Majesty's royal clemency was usually extended to the sparing of the wretch's life.)

The amputation of the hand and foot of the thief was afterward added to his other punishments, — a considerable drawback, no doubt, on the facilities and pleasures of hand-craft and foot-pad occupations.

If the standard of morality existing among our Saxon forefathers is to be fixed by reference to nothing more than their legislative zeal on this subject, it must be admitted that a comparison between the moral state of themselves and their successors would tend but little to the credit of the latter. In awarding punishment for offences involving immorality, the Anglo-Saxons did not depart from their grand principle of pecuniary retribution, — in fixing which they regarded, as a matter of course, the station of the female, or, to speak more correctly, the rank of her lord, husband, or father. The penalty in some offences of this nature was as high as that for killing a freeman, and in some cases even more.

PETER BENNETT'S CASE.

SOME years ago, a doctor named Royston, down in Georgia, had sued Peter Bennett for his bill, long overdue, for attending the wife of the latter. Alex. H. Stephens was on the Bennett side, and Robert Toombs, then Senator of the United States, was for Dr. Royston. Mr. Stephens told his client that the physician had made out his case, and as there was nothing wherewith to rebut or offset the claim, the only thing left to do was to pay it.

"No," said Peter; "I hired you to speak to my case, and now speak."

Mr. Stephens told him there was nothing to say; he had looked on to see that it was made out, and it was.

Peter was obstinate; and at last Mr. Stephens told him to make a speech himself, if he thought one could be made.

"I will," said Peter Bennett, "if Bobby Toombs won't be too hard on me."

Senator Toombs promised, and Peter began:—

"Gentlemen of the jury, — You and I is plain farmers, and if we don't stick together these 'ere lawyers and doctors will get the advantage of us. I ain't no lawyer nor doctor, and I ain't no objections to them in their proper place; but they ain't farmers, gentlemen of the jury.

"Now, this man Royston was a new doctor, and I went for him for to come an' to doctor my wife's sore leg. And he come an' put some salve truck onto it, and some rags, but never done it one bit of good, gentlemen of the jury. I don't believe he is no doctor, no way. Thar is doctors as *is* doctors, sure enough; but this man don't earn his money, and if you send for him, as Mrs. Sarah Atkinson did for a negro boy as worth $1,000, he just kills him and wants pay for it."

"I don't," thundered the doctor.

"Did you cure him?" asked Peter, with the slow accents of a judge with the black cap on.

The doctor was silent, and Peter proceeded:

"As I was a sayin', gentlemen of the jury, we farmers, when we sell our cotton, has got to give valley for the money we ask, and doctors ain't none too good to be put to the same rule. And I don't believe this Sam Royston is no doctor, nohow."

The physician again put in his oar with, "Look at my diploma, if you think I am no doctor."

"His diploma!" exclaimed the new-fledged orator, with great contempt, — "his diploma! Gentlemen, that is a big word for printed sheepskin, and it did n't make no doctor of the sheep as first wore it, nor does it of the man as now carries it. A good newspaper has more in it, and I pint out to you that he ain't no doctor at all."

The man of medicine was now in a fury, and screamed out: "Ask my patients if I am not a doctor!"

"I asked my wife," retorted Peter, "an' she said as how she thought you was n't."

"Ask my other patients," said Dr. Royston.

This seemed to be the straw that broke the camel's back; for Peter replied, with look and tone of unutterable sadness, —

"That is a hard sayin', gentlemen of the jury, and one as requires me to die or to have power as I 've hearn tell ceased to be exercised since the Apostles. Does he expect me to bring the angel Gabriel down to toot his horn before his time, and cry aloud, 'Awake, ye dead, and tell this court and jury your opinion of Royston's practice'? Am I to go to the lonely churchyard and rap on the silent tomb, and say to um as is at last at rest from physic and doctor bills, 'Git up here, you, and state if you died a nateral death, or was hurried up by some doctors'? He says, ask his patients; and, gentlemen of the jury, they are all dead! Where is Mrs. Beazley's man Sam? Go ask the worms in the graveyard where he lies. Mr. Peake's woman Sarah was attended by him, and her funeral was appinted and he had the corpse ready. Where is that likely Bill as belonged to Mr. Mitchell? Now in glory, a' expressin' his opinion of Royston's doctrin'. Where is that baby gal of Harry Stephen's? She are where doctors cease from troublin' and the infants are at rest.

"Gentlemen of the jury, he has et chicken enough at my house to pay for his salve, and I furnished the rags, and I don't suppose he charges for makin' of her worse, and even he don't pretend to charge for curin' of her, and I am humbly thankful that he never give her nothin' for her inwards, as he did his other patients, for somethin' made um all die mighty sudden — "

Here the applause made the speaker sit down in great confusion; and in spite of a logical restatement of the case by Senator Toombs, the doctor lost and Peter Bennett won. — *Kentucky Law Journal.*

LAW SCHOOL BUILDING.

LAW SCHOOL OF THE UNIVERSITY OF MICHIGAN.

By Henry Wade Rogers, *Dean of the Department of Law of the University of Michigan.*

THE University of Michigan is one of the two largest universities in the United States, and this position it has attained within a comparatively few years. In June, 1887, it celebrated its semi-centennial; and the University Calendar this year issued shows a Faculty roll of one hundred and eight professors, instructors, and assistants, as well as the names of eighteen hundred and eighty-two students. Harvard University, founded in 1636, and the oldest institution of learning in the country, celebrating its two hundred and fiftieth anniversary in November, 1886, leads it in numbers by only seventeen students. In 1871 the Hon. James B. Angell, LL.D., became President of the University of Michigan, and from that time to the present has continued to act in that capacity, with the exception of the period in which he served the country as Minister to China, and more recently while he was acting as a member of the Fishery Commission intrusted with the delicate duty of attempting an adjustment of the difficulties existing between the United States and Great Britain. He has the satisfaction of knowing that during his administration the University of Michigan has grown from an institution with eleven hundred and ten students and a Faculty roll of thirty-six, to its present proportions.

The founders of the State of Michigan and their descendants have kept in sacred remembrance that memorable article in the Ordinance of 1787, which proclaims that; "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means

of education shall forever be encouraged;" and the authorities of the University have inscribed those words in glowing letters on their University Hall. This was fitting, for the sentiment is the corner-stone on which the whole University has been reared. It was founded by the State and is maintained by the State, but its students come from every quarter of the globe. During the present year its students are drawn from thirty-five of the thirty-eight States and from five of the Territories, as well as from England, Germany, Russia, Japan, Turkey, Italy, Hungary, New Zealand, Porto Rico, Nova Scotia, Hawaiian Islands, Manitoba, Province of Quebec, Province of Ontario, and Mexico.

The University of Michigan is composed of a College of Liberal Arts, termed the Department of Literature, Science, and the Arts; a School of Law; two Schools of Medicine,— the Department of Medicine and Surgery or "regular" school, and the Homœopathic Medical College; a School of Pharmacy; and a College of Dental Surgery. The Department of Literature, Science, and the Arts was first established, but its development was slow. Even in 1850 the Board of Visitors in an official report declared that there were only fifty students at that time in actual attendance in that Department. In 1850 the Department of Medicine and Surgery was established, and in 1859 the Department of Law. The opening of these Departments, although so late in accomplishment, was in accordance with the original plan drafted by the first Superintendent of Public Instruction in Michigan. It is a significant fact, which has been commented on more than once, that the establishment of the Schools of Law and of Medicine contributed much to a rapid increase in the number of students in the Department of Literature, Science, and the Arts.

If we keep in mind the ideas which have prevailed until recently in reference to legal education, we shall be impressed by the wise foresight and liberal views of the men who shaped the educational policy of the State of Michigan, in that they consented thirty years ago to establish a School of Law in their State University. Not that it is matter for astonishment that the State should consent to tax itself for the education of physicians and lawyers. If the State is justified in taxing the people for public education, if it can tax them to teach the scholar to read the languages of other peoples, to analyze the structure of the flowers, to read the story of the earth as written upon the rocks, no one should question its right to teach the physician to heal the sick, and the lawyer to advise the citizen for the protection of his rights to life, liberty, and property. The State is a means to an end. It is charged with the protection of the public health, and it exists to protect the rights of its citizens and to secure the administration of justice. But the administration of justice is only possible when there exists a body of men trained in a knowledge of the laws, and made competent to administer them as judges on the bench, and as lawyers at the bar to advise the court and counsel the oppressed. If the State can teach anything more than the elementary branches at public expense, it certainly should be able to teach a knowledge of the law. But the wisdom of the people of Michigan in establishing a law school is seen when we reflect that they discarded the old notion that the place to learn law is in a lawyer's office, rather than in a University. A law school was established because it was thought that there the law could best be learned.

Professor Bryce, in his "American Commonwealth," comments on "the extraordinary excellence of many of the law schools" of the United States, and adds: "I do not know if there is anything in which America has advanced more beyond the mother country than in the provision she makes for legal education." The compliment is not undeserved; for every one knows, who knows anything about the history of legal education, that England has been behind almost

every civilized country of the world in awakening to a realization of the fact of the necessity and advantages of schools of law. Even Japan has a law school in which a thousand students are to-day engaged in studying the English system of jurisprudence. Upon the continent of Europe the law school has always been deemed indispensable. Bologna, now the most ancient University in existence, was originally purely a law university, and law so predominated there that students of arts and of medicine were admitted only by enrolment in the law university, and on swearing obedience to its officers. Padua was likewise originally a law university, as were all the other Italian Universities with the possible exception of Salerno and perhaps Perugia. In France, Orleans, Bourges, and Poitiers are said to have been distinctively law universities; while Paris was distinctively a philosophical and theological university, although law was represented there. The fact is, and has been for centuries, that in most of the countries of Europe men enter the profession of the law through the Universities. But as recently as 1850, when Professor Amos came to the chair of English Law in the famous old University of Cambridge, the class of English Law in that institution could be counted on the fingers of one hand. It consisted of one A.M., one A.B., and two undergraduates. Of course the Inns of Court constituted a species of law school, and date back to an early period in English history, — that of Lincoln's Inn to the time of Edward II., and that of Gray's Inn to the time of Edward III. They were moreover well attended, as we learn from Chancellor Fortescue. But they were a poor apology for the modern law school as we know it in the United States or as it is known in Germany. In the Inns of Court young men "dined" themselves into the profession. Within the last ten

THOMAS M. COOLEY.

years there has been a marked change of sentiment in England in the matter of legal education, and law has now gained a proper recognition in the English Universities.

If the United States are distinguished from England in the excellence of their law schools, it is nevertheless true that the American law school is comparatively a late development. The American lawyer, trained under the English system of jurisprudence and familiar with the English ideas as to legal education, for a long time thought that law could best be learned in a law office. The result was that medical and divinity schools both won their place before law schools were able to gain recognition. The medical profession were the first to establish professional schools in the United States, a school of medicine having been opened in Philadelphia in 1765, five others being established before 1800. While the first divinity school was not opened until 1804, by 1812 the leading denominations had established their distinctive theological seminaries. Although a law school was founded at Litchfield, Conn., in 1784, it existed as the solitary institution of its kind in the United States until 1817, when the Harvard Law School was established. And in 1859, when the Law Department of the University of Michigan was opened, there were few law schools in the United States, although to-day there are fifty such schools, located in different parts of the country. Under all the circumstances, therefore, the people of Michigan, in establishing thirty years ago a Law School as a State institution, are entitled to commendation. As a matter of fact, however, the Michigan Law School has not been a burden to the tax-payers of the State. It has not only paid its own way, but has actually made money for the State. And in this respect, at least, it has a record which no department connected with the University can approach.

The Faculty of the Law School, as originally constituted, and as it remained for many years, consisted of Thomas M. Cooley, James V. Campbell, and Charles I. Walker. Judge Cooley lived at Ann Arbor; the other gentlemen resided in Detroit, coming to Ann Arbor from time to time to deliver their lectures. The Faculty organized on Monday, Oct. 3, 1859, by electing Judge Campbell dean, and Mr. Cooley — for he had not at that time been advanced to the bench of the Supreme Court — Secretary of the Faculty. On the afternoon of that day Judge Campbell delivered the opening address in the Presbyterian Church, before the law class and the public generally, taking for his theme "The Study of the Law." At that time the Law School had no building of its own, and the regular lectures of the school were delivered in a room on the lower floor of what is now known as the north wing of University Hall. The first lecture to the law students as a body was delivered by Professor Walker on Tuesday, October 4, and his subject was "The Advantages to be expected from the Law School, and the Mode of Conducting it." This was followed on the next day by a lecture from him on the "Law of Personal Property;" and the work was fairly under way. Professor Cooley's first lecture was delivered on October 6, the subject being "The Origin of Title to Real Estate in America;" and Professor Campbell's on October 10, "The History of the Common Law as connected with the Equitable Jurisdiction." The first moot-court case was heard on October 13, Professor Cooley sitting as judge.

From the time the work of the school began (in 1859) to 1886, instruction was given to both classes in common, the Calendar of the University stating that "the course of instruction for the two terms has been carefully arranged with a view to enable students to enter profitably at any stage of their studies, and it is not important which course of lectures is first taken." And this, at the time it was adopted, was the course usually pursued in the law schools of the United States. But in 1886 the Faculty favored the adoption of a graded system of instruction; and as

their recommendation to that effect was approved by the Board of Regents, the change was made. President Angell, in his Report to the Board made in October, 1886, thus refers to the matter: —

"The demands upon the students in the Law Department have been made, during the past year, more exacting and rigorous than ever before, and the Faculty have decided to introduce the most important change which has been made in the method of the school since its establishment. They have graded the course, and instruction will in the main be given separately to the two classes. The training will, we believe, be more thorough and systematic and effective than it has ever before been."

And in his Report for the year following, he again recurs to the subject as follows: —

"In the Law Department the experiment of grading the course has been successful in a gratifying degree. Both teachers and students heartily approve of it. More thorough, systematic, and efficient work is secured by it. The instruction is to be enriched during the coming year by brief courses of lectures on various subjects by distinguished specialists. We may well believe, therefore, that the reputation of the Law School, which had so prosperous a life from its foundation, will be deservedly enhanced during the coming year."

As reference is made in the above excerpts to the greater thoroughness and efficiency of the work of the school, the writer ventures again to quote from the President's last Report, made to the Board in October, 1888, when he said: —

"The work of the Law Department has been carried on in a very satisfactory manner. . . The standard of work required of the students has been materially raised during the last two or three years, and the examinations for graduation are more stringent than they ever were before."

There are three systems of instruction in law, each of which has its merits and its demerits. The mode of teaching law by lectures is the mode which has been pursued in the German universities, as well as in England, and generally in the United States. Some of the law schools in this country have declined to adopt it as a method of instruction, preferring to make use of text-books for that purpose; and notably in one school both these modes have been practically rejected in favor of learning the law through a study of leading cases. Blackstone and Kent taught the law by lectures, and so did Story and Greenleaf. For many years the exclusive method of instruction pursued in the Michigan Law School was by means of lectures, the students being required to take full notes of what was said, with citations of cases. On each day at the close of the lecture, or before it commenced, the class was "quizzed" by the professor as to the contents of the lecture previously delivered by him. The method of instruction by lectures is still pursued, but no longer to the exclusion of the other modes of instruction. The professor quizzes on his preceding lecture for half an hour, and then lectures for an hour and a quarter. When both classes listened to the same lecture, it was not thought practicable, in the time that could be devoted to the purpose, to quiz any but members of the senior class, and the junior class were silent spectators of what was going on about them. They listened to the lectures, but were asked no questions until their senior year, when they were examined on the lectures of both years. The best results could not be attained in this way, and those who could attend but one year, and as members of the junior class, did not reap the benefit they might have obtained had a different course been practicable. But since the separation of the classes and the adoption of the graded system, both classes are quizzed impartially, and the junior year is thereby made much more important than it was before the change was effected.

But while the lecture system continues to find the most favor, the fact is conceded that on some subjects text-book instruction may be employed with advantage. Blackstone's Commentaries, which are simply Blackstone's printed lectures, are put into the hands of

the junior class, and they are required to master thoroughly certain prescribed portions. The introduction of this text-book work was made about 1879. Within the last few years the amount of that work has been materially increased, and extended to the senior class. In addition to Blackstone's Commentaries, the juniors are required to make a thorough study of Anson on Contracts, and Stephen on Pleading. Members of the senior class from the Code States are required to attend recitations in Bliss on Code Pleading. One objection to an extensive use of text-books in law schools has been due to the fact that the most of our text-books on law have been written for the use of practitioners, and have been unsuitable for the use of students commencing the study of law, who wish to become familiar with principles, and not to be burdened with details. Moreover, it must be conceded that spoken words are more impressive than words that are read. So that, while the Faculty have recognized the fact that certain advantages may be derived from a judicious use of text-books, it has not been thought best in the Michigan Law School to adopt that method of instruction to the exclusion of the lecture system. The endeavor has been to make a wise use of both methods.

JAMES V. CAMPBELL.

The idea that law should be learned through a study of leading cases is not a new one, although the Harvard School has been the first to make any extensive use of such a system. Years ago Mr. Justice Bailey of the King's Bench deprecated even the use of text-books of any kind for a student of law, and declared that he would have him "read the cases for himself, and attend to the application of them in practice." It has always seemed to the writer that life was too short and the time that a student could spend in a law school was altogether too limited to permit one's acquiring a knowledge of law simply through a study of cases, and that while such a system might be advantageously used with students whose intellectual powers had been thoroughly developed and whose mental grip was strong, it was quite unsuited to the average student. While the system has not been adopted in its entirety in the Michigan Law School, a study of the leading cases has not been neglected, but has been insisted on to such an extent as in the judgment of the Faculty was deemed advisable.

The purpose of the school is to give instruction that shall fit students for practice in any part of the country; and the course of lectures now delivered is as follows: —

To the Junior Class.

The Law of the Domestic Relations. Professor Rogers.

Torts. Professor Rogers.

Pleading and Practice. Professor Griffin.

Personal Property and Title thereto, by Gift, Sale, Mortgage, and Assignment. Professor Griffin.

Contracts. Professor WELLS.
Agency. Professor WELLS.
Private Corporations. Professor WELLS.
Partnership. Professor WELLS.
History of Real Property Law. Professor THOMPSON.
Fixtures. Professor THOMPSON.
Easements. Professor THOMPSON.
Landlord and Tenant. Professor THOMPSON.
Bailments. Assistant Professor KNOWLTON.

TO THE SENIOR CLASS.

Criminal Law, and Medical Questions bearing on it. Professor ROGERS.
Wills: their Execution, Revocation, and Construction. Professor ROGERS.
The Administration and Distribution of Estates of Deceased Persons. Professor ROGERS.
Jurisprudence of the United States. Professor GRIFFIN.
Evidence. Professor GRIFFIN.
Constitutional Law. Professor WELLS.
Bills and Notes, and Commercial Law Generally. Professor WELLS.
The Law of Municipal Corporations. Professor WELLS.
The Law of Real Property. Professor THOMPSON.
Equity Jurisprudence, and Equity Pleading and Procedure. Professor THOMPSON.
Mining Law. Professor THOMPSON.
Law of Carriers. Assistant Professor KNOWLTON.
Insurance Law. Dr. BIGELOW.
Admiralty Law. Judge BROWN.
History of the Common Law. Dr. HAMMOND.
Special Heads of Medical Jurisprudence. ———.
Toxicology in its Legal Relations. Dr. VAUGHAN.
Legal Microscopy. Dr. STOWELL.

In the great schools of law in Germany attendance on lectures is not generally compulsory, and although the course is most comprehensive, familiarity with a few selected subjects appears to be all that is necessary for graduation; while in Italy, as we are informed, the law students reach graduation only "after due attendance with *diligenza* at lectures on a great variety of subjects." The curriculum of an American law school is not as comprehensive as in either the German or Italian universities, but the American law school adopts the Italian idea that attendance on the lectures should be compulsory. In the Michigan Law School a student who neglected attendance upon the lectures would not even be admitted to examination. He would find himself either summarily "dropped" or required to take the work over again the next year.

The fact is recognized that it is desirable to combine theory and practice in the regular work of the school, and such a course is pursued in so far as it has appeared practicable. With this end in view, moot courts are held, in which students not only discuss cases previously assigned them for that purpose by the Faculty, but are required to draft appropriate pleadings and prepare a brief in which the rules of law applicable to the given case are stated under appropriate divisions and sustained by the authorities. These courts are presided over by the professor lecturing for the day, who at the conclusion of the argument reviews the case and gives his decision upon the points involved. The effort to make not merely theoretical but practical lawyers may be illustrated by a reference to the course pursued in the teaching of equity pleading and procedure.

The class is divided into sections of four each; and each section is required to conduct two cases in equity through all their stages, from the filing of the original bills to the enrolment of the final decrees, two of the section acting as solicitors for the complainant in one case, and as solicitors for the defendant in the other. For these suits statements of fact are prepared which, in the aggregate, involve questions in every branch of equity jurisdiction, and necessitate the use of every form of equity pleading. These statements of fact involve not only questions of pleading and procedure but also questions of law, so that the glamour of a legal doubt is thrown over each case, and success is made to depend upon skill in pleading combined with knowledge of equity

THE CRIMINAL CODE OF THE ANGLO-SAXONS.

THE criminal code of the Anglo-Saxons will be found, by the general reader, more interesting than any other branch of the laws of that remarkable people. The grand principle remarkable in their criminal laws, and in those of German nations generally, is *pecuniary* punishment.

The Saxons made many distinctions in homicides; but the lives of all men were not of equal value in the estimation of the law. Every man was valued, according to his rank, at a certain sum, which was called his "were;" and whoever took another's life was punished by having to pay this "were" to the family or relatives of the deceased, as a compensation for the loss of his life. The "were," whose amount was thus regulated by a regard to the different ranks in society, became, nevertheless, augmented from time to time; greater pecuniary value being assigned to human life as order and civilization appear to have increased.

If the person slain was an *esne*, a slave, the "were" seems to have become the property of the lord. On the murder of a *foreigner*, two thirds of the "were" went to the king, and one third only to his son or relatives; if the deceased had no relatives, the king had one half, and the "gild-scipe," or fraternity with which he was associated, received the other. The laws of Edward and Guthrun required the punctual payment of the "were" (which was to be made, it would seem, within forty days of the death), to be secured by the responsibility of eight paternal and four maternal relations.

The killing of a *thief* was at one time exempted from the payment of the "were;" but this exemption was afterward made subject to the qualification under oath, that the thief was killed "sinning," — in the act of stealing, or in the act of fleeing on account of the theft.

Our Saxon ancestors, however, were not so ignorant of the true principles of criminal jurisprudence as to fail in recognizing in homicide the *public* crime, and in awarding to the community accordingly a recompense for the wrong inflicted on society. Hence, beside the redress assigned to the family of the deceased, another pecuniary fine was imposed on the man-slayer; this fine was called the "wite." It was paid generally to the magistrate in whose jurisdiction the offence was committed; and its amount appears to have been regulated by reference as well to the dignity of the magistrate as to the rank of the deceased, and the circumstances under which the act was committed. The "wite" in a king's town was fifty shillings; in an eorl's, twelve. If the deceased was a freeman, the "wite" was fifty shillings to the king as lord of the land; if an eorl, six shillings was the "wite." So as to the place, — if the act was done at an open grave, the sum of twenty shillings was sometimes the "wite." If a laec killed the noblest guest, the "wite" was eighty shillings; if the next in rank, sixty; if the third, forty shilings. If the criminal fled from justice, his relations or the guild to which he belonged were made responsible for the payment of the "wite."

Even in the case of what we term *justifiable* homicide, the slayer was by no means free from responsibility; he was bound to make recompense to the family of the deceased by payment of the "were," though he was not, under these circumstances, liable to the penalty of the "wite."

The following extracts from the Laws of Alfred on the subject of injuries to the person will be found remarkably curious. It can scarcely fail to occur to the reader that the principle on which the valuations were fixed was applied in many cases very capriciously.

"If a man strike off another's nose, let him make 'bōt' [*i. e.* pay a fine], with ix. shillings.

"If a man strike out another's tooth in the front

of his head, let him make 'bōt' for it with viii. shillings; if it be the canine tooth, let iv. shillings be paid as 'bōt.' A man's grinder is worth xv. shillings.

"If a man's windpipe be pierced, let 'bōt' be made with xii. shillings.

"If a man strike out another's eye, or his hand or his foot off, there goeth like 'bōt' to all; vi. pennies and vi. shillings and ix. shillings, and the third part of a penny.

"If a man's tongue be done out of his head by another man's deeds, that shall be like as eye-'bōt.'

"If a man be wounded on the shoulder so that the joint oil flow out, let 'bōt' be made with xxx. shillings.

"If the arm be broken above the elbow, there shall be xv. shillings as 'bōt.'

"If the arm shanks be both broken, the 'bōt' is xxx. shillings.

"If a man break another man's rib within the whole skin, let x. shillings be paid as 'bōt;' if the skin be broken, and bone be taken out, let xv. shillings be paid as 'bōt.'

"If the thumb be struck off, for that shall be xxx. shillings as 'bōt.'"

Almost every conceivable injury to a man's person is provided for in this curious set of laws, with valuations fixed as in the instances above cited.

Theft and robbery appear to have been esteemed by our Saxon forefathers as the most enormous of crimes; theft was accordingly rendered a highly expensive pursuit. By one of the earliest of the Anglo-Saxon laws, the compensation to the injured party was threefold, and to the king the forfeiture of all the offender's goods. The punishment bore some proportion, however, to the station in life of the offender; for if not a freeman, he was subject to a twofold retribution only. By a subsequent law, a freeman taken with the thing stolen in his hand was completely at the mercy of the king, who might kill him, sell him, or receive his "were." (It may be assumed, therefore, that if the man was *worth* much, his Majesty's royal clemency was usually extended to the sparing of the wretch's life.)

The amputation of the hand and foot of the thief was afterward added to his other punishments, — a considerable drawback, no doubt, on the facilities and pleasures of hand-craft and foot-pad occupations.

If the standard of morality existing among our Saxon forefathers is to be fixed by reference to nothing more than their legislative zeal on this subject, it must be admitted that a comparison between the moral state of themselves and their successors would tend but little to the credit of the latter. In awarding punishment for offences involving immorality, the Anglo-Saxons did not depart from their grand principle of pecuniary retribution, — in fixing which they regarded, as a matter of course, the station of the female, or, to speak more correctly, the rank of her lord, husband, or father. The penalty in some offences of this nature was as high as that for killing a freeman, and in some cases even more.

PETER BENNETT'S CASE.

SOME years ago, a doctor named Royston, down in Georgia, had sued Peter Bennett for his bill, long overdue, for attending the wife of the latter. Alex. H. Stephens was on the Bennett side, and Robert Toombs, then Senator of the United States, was for Dr. Royston. Mr. Stephens told his client that the physician had made out his case, and as there was nothing wherewith to rebut or offset the claim, the only thing left to do was to pay it.

"No," said Peter; "I hired you to speak to my case, and now speak."

Mr. Stephens told him there was nothing to say; he had looked on to see that it was made out, and it was.

Peter was obstinate; and at last Mr. Stephens told him to make a speech himself, if he thought one could be made.

"I will," said Peter Bennett, "if Bobby Toombs won't be too hard on me."

Senator Toombs promised, and Peter began: —

"Gentlemen of the jury, — You and I is plain farmers, and if we don't stick together these 'ere lawyers and doctors will get the advantage of us. I ain't no lawyer nor doctor, and I ain't no objections to them in their proper place; but they ain't farmers, gentlemen of the jury.

"Now, this man Royston was a new doctor, and I went for him for to come an' to doctor my wife's sore leg. And he come an' put some salve truck onto it, and some rags, but never done it one bit of good, gentlemen of the jury. I don't believe he is no doctor, no way. Thar is doctors as *is* doctors, sure enough; but this man don't earn his money, and if you send for him, as Mrs. Sarah Atkinson did for a negro boy as worth $1,000, he just kills him and wants pay for it."

"I don't," thundered the doctor.

"Did you cure him?" asked Peter, with the slow accents of a judge with the black cap on.

The doctor was silent, and Peter proceeded:

"As I was a sayin', gentlemen of the jury, we farmers, when we sell our cotton, has got to give valley for the money we ask, and doctors ain't none too good to be put to the same rule. And I don't believe this Sam Royston is no doctor, nohow."

The physician again put in his oar with, "Look at my diploma, if you think I am no doctor."

"His diploma!" exclaimed the new-fledged orator, with great contempt, — "his diploma! Gentlemen, that is a big word for printed sheepskin, and it did n't make no doctor of the sheep as first wore it, nor does it of the man as now carries it. A good newspaper has more in it, and I pint out to you that he ain't no doctor at all."

The man of medicine was now in a fury, and screamed out: "Ask my patients if I am not a doctor!"

"I asked my wife," retorted Peter, "an' she said as how she thought you was n't."

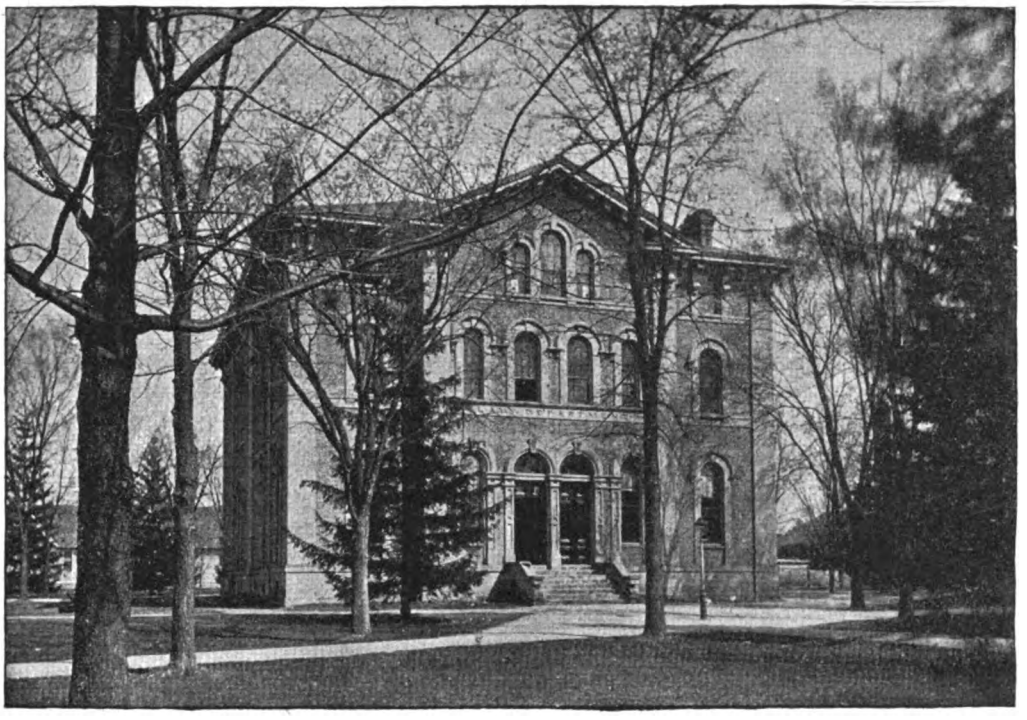
"Ask my other patients," said Dr. Royston.

This seemed to be the straw that broke the camel's back; for Peter replied, with look and tone of unutterable sadness, —

"That is a hard sayin', gentlemen of the jury, and one as requires me to die or to have power as I 've hearn tell ceased to be exercised since the Apostles. Does he expect me to bring the angel Gabriel down to toot his horn before his time, and cry aloud, 'Awake, ye dead, and tell this court and jury your opinion of Royston's practice'? Am I to go to the lonely churchyard and rap on the silent tomb, and say to um as is at last at rest from physic and doctor bills, 'Git up here, you, and state if you died a nateral death, or was hurried up by some doctors'? He says, ask his patients; and, gentlemen of the jury, they are all dead! Where is Mrs. Beazley's man Sam? Go ask the worms in the graveyard where he lies. Mr. Peake's woman Sarah was attended by him, and her funeral was appinted and he had the corpse ready. Where is that likely Bill as belonged to Mr. Mitchell? Now in glory, a' expressin' his opinion of Royston's doctrin'. Where is that baby gal of Harry Stephen's? She are where doctors cease from troublin' and the infants are at rest.

"Gentlemen of the jury, he has et chicken enough at my house to pay for his salve, and I furnished the rags, and I don't suppose he charges for makin' of her worse, and even he don't pretend to charge for curin' of her, and I am humbly thankful that he never give her nothin' for her inwards, as he did his other patients, for somethin' made um all die mighty sudden — "

Here the applause made the speaker sit down in great confusion; and in spite of a logical restatement of the case by Senator Toombs, the doctor lost and Peter Bennett won. — *Kentucky Law Journal.*



LAW SCHOOL BUILDING.

LAW SCHOOL OF THE UNIVERSITY OF MICHIGAN.

By Henry Wade Rogers, *Dean of the Department of Law of the University of Michigan.*

THE University of Michigan is one of the two largest universities in the United States, and this position it has attained within a comparatively few years. In June, 1887, it celebrated its semi-centennial; and the University Calendar this year issued shows a Faculty roll of one hundred and eight professors, instructors, and assistants, as well as the names of eighteen hundred and eighty-two students. Harvard University, founded in 1636, and the oldest institution of learning in the country, celebrating its two hundred and fiftieth anniversary in November, 1886, leads it in numbers by only seventeen students. In 1871 the Hon. James B. Angell, LL.D., became President of the University of Michigan, and from that time to the present has continued to act in that capacity, with the exception of the period in which he served the country as Minister to China, and more recently while he was acting as a member of the Fishery Commission intrusted with the delicate duty of attempting an adjustment of the difficulties existing between the United States and Great Britain. He has the satisfaction of knowing that during his administration the University of Michigan has grown from an institution with eleven hundred and ten students and a Faculty roll of thirty-six, to its present proportions.

The founders of the State of Michigan and their descendants have kept in sacred remembrance that memorable article in the Ordinance of 1787, which proclaims that; "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means

of education shall forever be encouraged;" and the authorities of the University have inscribed those words in glowing letters on their University Hall. This was fitting, for the sentiment is the corner-stone on which the whole University has been reared. It was founded by the State and is maintained by the State, but its students come from every quarter of the globe. During the present year its students are drawn from thirty-five of the thirty-eight States and from five of the Territories, as well as from England, Germany, Russia, Japan, Turkey, Italy, Hungary, New Zealand, Porto Rico, Nova Scotia, Hawaiian Islands, Manitoba, Province of Quebec, Province of Ontario, and Mexico.

The University of Michigan is composed of a College of Liberal Arts, termed the Department of Literature, Science, and the Arts; a School of Law; two Schools of Medicine,— the Department of Medicine and Surgery or "regular" school, and the Homœopathic Medical College; a School of Pharmacy; and a College of Dental Surgery. The Department of Literature, Science, and the Arts was first established, but its development was slow. Even in 1850 the Board of Visitors in an official report declared that there were only fifty students at that time in actual attendance in that Department. In 1850 the Department of Medicine and Surgery was established, and in 1859 the Department of Law. The opening of these Departments, although so late in accomplishment, was in accordance with the original plan drafted by the first Superintendent of Public Instruction in Michigan. It is a significant fact, which has been commented on more than once, that the establishment of the Schools of Law and of Medicine contributed much to a rapid increase in the number of students in the Department of Literature, Science, and the Arts.

If we keep in mind the ideas which have prevailed until recently in reference to legal education, we shall be impressed by the wise foresight and liberal views of the men who shaped the educational policy of the State of Michigan, in that they consented thirty years ago to establish a School of Law in their State University. Not that it is matter for astonishment that the State should consent to tax itself for the education of physicians and lawyers. If the State is justified in taxing the people for public education, if it can tax them to teach the scholar to read the languages of other peoples, to analyze the structure of the flowers, to read the story of the earth as written upon the rocks, no one should question its right to teach the physician to heal the sick, and the lawyer to advise the citizen for the protection of his rights to life, liberty, and property. The State is a means to an end. It is charged with the protection of the public health, and it exists to protect the rights of its citizens and to secure the administration of justice. But the administration of justice is only possible when there exists a body of men trained in a knowledge of the laws, and made competent to administer them as judges on the bench, and as lawyers at the bar to advise the court and counsel the oppressed. If the State can teach anything more than the elementary branches at public expense, it certainly should be able to teach a knowledge of the law. But the wisdom of the people of Michigan in establishing a law school is seen when we reflect that they discarded the old notion that the place to learn law is in a lawyer's office, rather than in a University. A law school was established because it was thought that there the law could best be learned.

Professor Bryce, in his "American Commonwealth," comments on "the extraordinary excellence of many of the law schools" of the United States, and adds: "I do not know if there is anything in which America has advanced more beyond the mother country than in the provision she makes for legal education." The compliment is not undeserved; for every one knows, who knows anything about the history of legal education, that England has been behind almost

every civilized country of the world in awakening to a realization of the fact of the necessity and advantages of schools of law. Even Japan has a law school in which a thousand students are to-day engaged in studying the English system of jurisprudence. Upon the continent of Europe the law school has always been deemed indispensable. Bologna, now the most ancient University in existence, was originally purely a law university, and law so predominated there that students of arts and of medicine were admitted only by enrolment in the law university, and on swearing obedience to its officers. Padua was likewise originally a law university, as were all the other Italian Universities with the possible exception of Salerno and perhaps Perugia. In France, Orleans, Bourges, and Poitiers are said to have been distinctively law universities; while Paris was distinctively a philosophical and theological university, although law was represented there. The fact is, and has been for centuries, that in most of the countries of Europe men enter the profession of the law through the Universities. But as recently as 1850, when Professor Amos came to the chair of English Law in the famous old University of Cambridge, the class of English Law in that institution could be counted on the fingers of one hand. It consisted of one A.M., one A.B., and two undergraduates. Of course the Inns of Court constituted a species of law school, and date back to an early period in English history, — that of Lincoln's Inn to the time of Edward II., and that of Gray's Inn to the time of Edward III. They were moreover well attended, as we learn from Chancellor Fortescue. But they were a poor apology for the modern law school as we know it in the United States or as it is known in Germany. In the Inns of Court young men "dined" themselves into the profession. Within the last ten

THOMAS M. COOLEY.

years there has been a marked change of sentiment in England in the matter of legal education, and law has now gained a proper recognition in the English Universities.

If the United States are distinguished from England in the excellence of their law schools, it is nevertheless true that the American law school is comparatively a late development. The American lawyer, trained under the English system of jurisprudence and familiar with the English ideas as to legal education, for a long time thought that law could best be learned in a law office. The result was that medical and divinity schools both won their place before law schools were able to gain recognition. The medical profession were the first to establish professional schools in the United States, a school of medicine having been opened in Philadelphia in 1765, five others being established before 1800. While the first divinity school was not opened until 1804, by 1812 the leading denominations had established their distinctive theological seminaries. Although a law school was founded at Litchfield, Conn., in 1784, it existed as the solitary institution of its kind in the United States until 1817, when the Harvard Law School was established. And in 1859, when the Law Department of the University of Michigan was opened, there were few law schools in the United States, although to-day there are fifty such schools, located in different parts of the country. Under all the circumstances, therefore, the people of Michigan, in establishing thirty years ago a Law School as a State institution, are entitled to commendation. As a matter of fact, however, the Michigan Law School has not been a burden to the tax-payers of the State. It has not only paid its own way, but has actually made money for the State. And in this respect, at least, it has a record which no department connected with the University can approach.

The Faculty of the Law School, as originally constituted, and as it remained for many years, consisted of Thomas M. Cooley, James V. Campbell, and Charles I. Walker. Judge Cooley lived at Ann Arbor; the other gentlemen resided in Detroit, coming to Ann Arbor from time to time to deliver their lectures. The Faculty organized on Monday, Oct. 3, 1859, by electing Judge Campbell dean, and Mr. Cooley — for he had not at that time been advanced to the bench of the Supreme Court — Secretary of the Faculty. On the afternoon of that day Judge Campbell delivered the opening address in the Presbyterian Church, before the law class and the public generally, taking for his theme "The Study of the Law." At that time the Law School had no building of its own, and the regular lectures of the school were delivered in a room on the lower floor of what is now known as the north wing of University Hall. The first lecture to the law students as a body was delivered by Professor Walker on Tuesday, October 4, and his subject was "The Advantages to be expected from the Law School, and the Mode of Conducting it." This was followed on the next day by a lecture from him on the "Law of Personal Property;" and the work was fairly under way. Professor Cooley's first lecture was delivered on October 6, the subject being "The Origin of Title to Real Estate in America;" and Professor Campbell's on October 10, "The History of the Common Law as connected with the Equitable Jurisdiction." The first moot-court case was heard on October 13, Professor Cooley sitting as judge.

From the time the work of the school began (in 1859) to 1886, instruction was given to both classes in common, the Calendar of the University stating that "the course of instruction for the two terms has been carefully arranged with a view to enable students to enter profitably at any stage of their studies, and it is not important which course of lectures is first taken." And this, at the time it was adopted, was the course usually pursued in the law schools of the United States. But in 1886 the Faculty favored the adoption of a graded system of instruction; and as

their recommendation to that effect was approved by the Board of Regents, the change was made. President Angell, in his Report to the Board made in October, 1886, thus refers to the matter: —

"The demands upon the students in the Law Department have been made, during the past year, more exacting and rigorous than ever before, and the Faculty have decided to introduce the most important change which has been made in the method of the school since its establishment. They have graded the course, and instruction will in the main be given separately to the two classes. The training will, we believe, be more thorough and systematic and effective than it has ever before been."

And in his Report for the year following, he again recurs to the subject as follows: —

"In the Law Department the experiment of grading the course has been successful in a gratifying degree. Both teachers and students heartily approve of it. More thorough, systematic, and efficient work is secured by it. The instruction is to be enriched during the coming year by brief courses of lectures on various subjects by distinguished specialists. We may well believe, therefore, that the reputation of the Law School, which had so prosperous a life from its foundation, will be deservedly enhanced during the coming year."

As reference is made in the above excerpts to the greater thoroughness and efficiency of the work of the school, the writer ventures again to quote from the President's last Report, made to the Board in October, 1888, when he said: —

"The work of the Law Department has been carried on in a very satisfactory manner. . . The standard of work required of the students has been materially raised during the last two or three years, and the examinations for graduation are more stringent than they ever were before."

There are three systems of instruction in law, each of which has its merits and its demerits. The mode of teaching law by lectures is the mode which has been pursued in the German universities, as well as in England, and generally in the United States. Some of the law schools in this country have declined to adopt it as a method of instruction, preferring to make use of text-books for that purpose; and notably in one school both these modes have been practically rejected in favor of learning the law through a study of leading cases. Blackstone and Kent taught the law by lectures, and so did Story and Greenleaf. For many years the exclusive method of instruction pursued in the Michigan Law School was by means of lectures, the students being required to take full notes of what was said, with citations of cases. On each day at the close of the lecture, or before it commenced, the class was "quizzed" by the professor as to the contents of the lecture previously delivered by him. The method of instruction by lectures is still pursued, but no longer to the exclusion of the other modes of instruction. The professor quizzes on his preceding lecture for half an hour, and then lectures for an hour and a quarter. When both classes listened to the same lecture, it was not thought practicable, in the time that could be devoted to the purpose, to quiz any but members of the senior class, and the junior class were silent spectators of what was going on about them. They listened to the lectures, but were asked no questions until their senior year, when they were examined on the lectures of both years. The best results could not be attained in this way, and those who could attend but one year, and as members of the junior class, did not reap the benefit they might have obtained had a different course been practicable. But since the separation of the classes and the adoption of the graded system, both classes are quizzed impartially, and the junior year is thereby made much more important than it was before the change was effected.

But while the lecture system continues to find the most favor, the fact is conceded that on some subjects text-book instruction may be employed with advantage. Blackstone's Commentaries, which are simply Blackstone's printed lectures, are put into the hands of

the junior class, and they are required to master thoroughly certain prescribed portions. The introduction of this text-book work was made about 1879. Within the last few years the amount of that work has been materially increased, and extended to the senior class. In addition to Blackstone's Commentaries, the juniors are required to make a thorough study of Anson on Contracts, and Stephen on Pleading. Members of the senior class from the Code States are required to attend recitations in Bliss on Code Pleading. One objection to an extensive use of text-books in law schools has been due to the fact that the most of our text-books on law have been written for the use of practitioners, and have been unsuitable for the use of students commencing the study of law, who wish to become familiar with principles, and not to be burdened with details. Moreover, it must be conceded that spoken words are more impressive than words that are read. So that, while the Faculty have recognized the fact that certain advantages may be derived from a judicious use of text-books, it has not been thought best in the Michigan Law School to adopt that method of instruction to the exclusion of the lecture system. The endeavor has been to make a wise use of both methods.

JAMES V. CAMPBELL.

The idea that law should be learned through a study of leading cases is not a new one, although the Harvard School has been the first to make any extensive use of such a system. Years ago Mr. Justice Bailey of the King's Bench deprecated even the use of text-books of any kind for a student of law, and declared that he would have him "read the cases for himself, and attend to the application of them in practice." It has always seemed to the writer that life was too short and the time that a student could spend in a law school was altogether too limited to permit one's acquiring a knowledge of law simply through a study of cases, and that while such a system might be advantageously used with students whose intellectual powers had been thoroughly developed and whose mental grip was strong, it was quite unsuited to the average student. While the system has not been adopted in its entirety in the Michigan Law School, a study of the leading cases has not been neglected, but has been insisted on to such an extent as in the judgment of the Faculty was deemed advisable.

The purpose of the school is to give instruction that shall fit students for practice in any part of the country; and the course of lectures now delivered is as follows: —

To the Junior Class.

The Law of the Domestic Relations. Professor Rogers.
Torts. Professor Rogers.
Pleading and Practice. Professor Griffin.
Personal Property and Title thereto, by Gift, Sale, Mortgage, and Assignment. Professor Griffin.

Contracts. Professor WELLS.
Agency. Professor WELLS.
Private Corporations. Professor WELLS.
Partnership. Professor WELLS.
History of Real Property Law. Professor THOMPSON.
Fixtures. Professor THOMPSON.
Easements. Professor THOMPSON.
Landlord and Tenant. Professor THOMPSON.
Bailments. Assistant Professor KNOWLTON.

TO THE SENIOR CLASS.

Criminal Law, and Medical Questions bearing on it. Professor ROGERS.
Wills: their Execution, Revocation, and Construction. Professor ROGERS.
The Administration and Distribution of Estates of Deceased Persons. Professor ROGERS.
Jurisprudence of the United States. Professor GRIFFIN.
Evidence. Professor GRIFFIN.
Constitutional Law. Professor WELLS.
Bills and Notes, and Commercial Law Generally. Professor WELLS.
The Law of Municipal Corporations. Professor WELLS.
The Law of Real Property. Professor THOMPSON.
Equity Jurisprudence, and Equity Pleading and Procedure. Professor THOMPSON.
Mining Law. Professor THOMPSON.
Law of Carriers. Assistant Professor KNOWLTON.
Insurance Law. Dr. BIGELOW.
Admiralty Law. Judge BROWN.
History of the Common Law. Dr. HAMMOND.
Special Heads of Medical Jurisprudence. ———.
Toxicology in its Legal Relations. Dr. VAUGHAN.
Legal Microscopy. Dr. STOWELL.

In the great schools of law in Germany attendance on lectures is not generally compulsory, and although the course is most comprehensive, familiarity with a few selected subjects appears to be all that is necessary for graduation; while in Italy, as we are informed, the law students reach graduation only "after due attendance with *diligenza* at lectures on a great variety of subjects." The curriculum of an American law school is not as comprehensive as in either the German or Italian universities, but the American law school adopts the Italian idea that attendance on the lectures should be compulsory. In the Michigan Law School a student who neglected attendance upon the lectures would not even be admitted to examination. He would find himself either summarily "dropped" or required to take the work over again the next year.

The fact is recognized that it is desirable to combine theory and practice in the regular work of the school, and such a course is pursued in so far as it has appeared practicable. With this end in view, moot courts are held, in which students not only discuss cases previously assigned them for that purpose by the Faculty, but are required to draft appropriate pleadings and prepare a brief in which the rules of law applicable to the given case are stated under appropriate divisions and sustained by the authorities. These courts are presided over by the professor lecturing for the day, who at the conclusion of the argument reviews the case and gives his decision upon the points involved. The effort to make not merely theoretical but practical lawyers may be illustrated by a reference to the course pursued in the teaching of equity pleading and procedure.

The class is divided into sections of four each; and each section is required to conduct two cases in equity through all their stages, from the filing of the original bills to the enrolment of the final decrees, two of the section acting as solicitors for the complainant in one case, and as solicitors for the defendant in the other. For these suits statements of fact are prepared which, in the aggregate, involve questions in every branch of equity jurisdiction, and necessitate the use of every form of equity pleading. These statements of fact involve not only questions of pleading and procedure but also questions of law, so that the glamour of a legal doubt is thrown over each case, and success is made to depend upon skill in pleading combined with knowledge of equity

law. The moot court is presided over by Professor Thompson, to whom the subject of equity belongs. In causes where students from the State of Michigan appear as solicitors the proceedings are governed by the rules in chancery of the circuit courts of that State; in those cases where the solicitors are students from other States, the proceedings are governed by the rules in chancery of the United States Circuit Courts. There is a Register in Chancery, and the records of the court are carefully and systematically kept, and all the proceedings made to conform strictly to like proceedings and causes in a United States circuit court, or a circuit court in Michigan sitting in Chancery.

This plan involves the hearing of from seventy-five to one hundred distinct causes in Chancery; and it is believed, since each student is personally interested in at least two of the cases, and necessarily hears arguments upon a great variety of motions and other interlocutory proceedings, as well as arguments upon demurrers, pleas, and bills and answers, that he acquires a more comprehensive, critical, and practical knowledge of equity pleading, procedure, and jurisdiction than he could obtain during the same time in any law office.

Provision is also made in the Law School for instruction in elocution and oratory, under the direction of Thomas C. Trueblood, A.M. It is thought to be a mistake to suppose that excellency in speaking is simply a gift of nature, and not the result of patient and persistent labor and study.

From the time the Law School was established until 1884, the period of instruction included two terms of six months each, commencing in October and ending in March. It was determined in 1883 to extend the period to two terms of nine months each, the change going into effect, as we have said, in the following year. There has been more or less difference of opinion as to the time which should be spent in a law school in the study of law. The mode of teaching pursued in the law schools of the Roman Empire covered a period of five years. In the University of Italy the law curriculum covers a period of four years, about a thousand students being made Doctors of Law each year. But in this country, at the time the Michigan Law School opened its doors, it was the prevalent opinion that two terms of six months each was all the time needed for the preparation which a law school should undertake to impart. Experience demonstrated that this period was too short for the work to be accomplished, and the time was accordingly extended. Some of the law schools of the country have already decided that this time is also too short for the proper performance of their work, and have accordingly lengthened their course to three years. Such a change is now under consideration in connection with the Michigan Law School. If it is decided to make the change, and to give the degree of Bachelor of Laws (LL.B.) only after a period of three years of study, it is not unlikely that the degree of Bachelor of Law (B.L.) will be conferred at the end of two years of study. It is not known that such a degree has ever been conferred by an American Law School, but it is conferred in the University of Edinburgh on those who pursue a course of law study for two years, and no reason is perceived why a plan that has worked admirably there should not be adopted here. The LL.B. degree is there conferred after three years of study of law, a degree in arts having been previously obtained. But in the United States a degree in arts or science is nowhere a condition precedent to the taking of a degree in law. As many students are unable to remain more than two years in a law school, and much valuable knowledge is acquired in that time, justice seems to require that where a course is lengthened to three years, some degree inferior to the LL.B. degree should be given at the end of the second year of study to those who choose to take it.

When the Law Department was established, the announcement made as to the requirements for admission was as follows: "That the candidate shall be eighteen years of age, and be furnished with a certificate giving satisfactory evidence of good moral character." This statement continued in the Calendar of the University until 1877, when an additional statement was made declaring that it was "expected that all students will be well grounded in at least a good English education, and capable of making use of the English language with accuracy and propriety." If the reader is here disposed to criticise, let him remember that the other law schools throughout the country were then no more stringent in their requirements governing the admission of students than the above statement indicates, and that the most of them are little better now in this respect than they were then. But the Michigan Law School has established a very different standard in recent years, as will be seen from the following statement taken from its annual announcement: —

HENRY WADE ROGERS.

"Graduates of colleges, and students who have honorably completed an academical or high-school course, and who present a certificate or diploma from the academy or high school, will be admitted without preliminary examination. No student who does not present such certificate or diploma will be admitted as a candidate for a degree, until he has passed a satisfactory examination in Arithmetic, Geography, Orthography, English Composition, and the outlines of the History of the United States and of England. The examination will be conducted in writing, and the papers submitted by the applicants must evince a competent knowledge of English Grammar."

The students in the Law School are drawn from every part of the United States, as well as from foreign countries, Japan alone this year sending to it twelve students. This year's University Calendar shows the following States represented in the Law Department: Arkansas, California, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. The following Territories are represented: Arizona, Dakota, Idaho, Montana, Utah, and Washington. In addition, Japan, Manitoba, Nova Scotia, New Brunswick, Province of Quebec, and the Province of Ontario contribute their quota. Students come from San Francisco in the west and Boston in the east, from Minnesota in the north, and Arkansas in the south. Out of the four hundred students one hundred and two come from Michigan.

The following table shows the number of students in attendance since the Law School

was opened, as appears from the University Calendar for the respective years.

Year.	No. of Students.
1859-60	90
1860-61	159
1861-62	129
1862-63	134
1863-64	221
1864-65	260
1865-66	385
1866-67	395
1867-68	387
1868-69	342
1869-70	308
1870-71	307
1871-72	348
1872-73	331
1873-74	314
1874-75	345
1875-76	321
1876-77	309
1877-78	384
1878-79	406
1879-80	395
1880-81	371
1881-82	395
1882-83	333
1883-84	305
1884-85	262
1885-86	286
1886-87	338
1887-88	341
1888-89	400

The decrease in 1884-85 was no doubt occasioned largely by the lengthening of the period of study. For every subsequent year there has been a steady gain, this year the number going up to four hundred. While the Calendar of the University so states the figures, as a matter of fact the Law Announcement will show more than that number in attendance, and that since the Law School was opened there was never a larger body of students in attendance on its lectures than are there this year. Neither the rapid multiplication of law schools in different parts of the country, nor the fact that the standard required for admission and graduation has been materially advanced, have operated to decrease the number of students in attendance. Probably no law school in the United States has a longer roll of Alumni than has this. More than thirty-five hundred of its graduates have gone forth to the active duties of their profession. Mr. Justice Harlan, of the Supreme Court of the United States, has accepted an invitation, extended to him by the law alumni and undergraduates, to address them at the Commencement in June.

Those familiar with the Law School have noted with pleasure the fact that an increased number of college-trained men are here pursuing their law studies. The law students were quite jubilant because at a recent "Pronouncing Contest" held in University Hall, at which the Law and Literary Departments were represented by picked men, the banner of victory floated over the Law Department.

The Law Library is one of the best connected with the Law Schools of the United States. For a number of years it was of humble proportions, but it has within the last five years been much augmented and improved. It now contains about ten thousand volumes, embracing the reports of every State in the Union, as well as those of the Federal Courts, and a good collection of those of England, Ireland, and Canada. The current reports of the United States and of England are placed on the shelves as they are issued. The leading legal periodicals are regularly taken and kept on file, including the Law Quarterly Review (London), the Journal of Jurisprudence (Edinburgh), the Juridical Review (Edinburgh), the American Law Register, the American Law Review, the Criminal Law Magazine, the Albany Law Journal, the Central Law Journal, and the Federal Reporter. Students from any State in the Union are thus enabled not only to consult the reports of their own and other States, but to keep abreast of the best thought of the profession in this and other countries as it finds expression in the leading legal periodical literature, as well as in the

treatises of the best law-writers. The Law School in 1866 was presented by the Hon. Richard Fletcher, one of the Justices of the Supreme Court of Massachusetts, with his valuable law library. Again, in 1885, Mr. C. H. Buhl, a wealthy and public-spirited citizen of Detroit, presented the Law School with the "Buhl Law Library," which was valued at $15,000. These two gifts, with such acquisitions as have been made by the University authorities, make the Law Library an excellent one, and it occupies a large and handsome room on the first floor of the Law Building, — the room formerly occupied by the General Library of the University. But capacious as is the room, the visitor to it on every afternoon will find it full of young men diligently at work examining authorities, and evidently as much in earnest as though they were preparing for the argument of some important case in the courts. Joseph H. Vance, a graduate of the Law School of the Class of 1861, is the Librarian in charge.

LEVI T. GRIFFIN.

As an account of the Michigan Law School would be incomplete without an account of the *personnel* of the Faculty, we shall sketch the career of those who have been engaged in its work of instruction. Professor Langdell, at the Harvard celebration in 1886, declared that what qualified a person to teach law was "not experience in the work of a lawyer's office, nor experience in dealing with men, nor experience in the trial or argument of causes, nor experience in using law, but experience in *learning* law." To be a successful teacher of law surely requires distinctive gifts; and a man is not qualified for such a career simply because he may have been successful as an advocate or trier of causes, or may have had an extended experience at the bar or on the bench. In the Michigan Law School the men who have been engaged in the work of instruction have been for the most part men of extended experience, either on the bench or at the bar; and while it is true that such experience does not of itself qualify for the teaching of law, it is equally true that it does not necessarily disqualify, and they have been, hardly without exception, men specially adapted for that work. We understand that at Harvard, Columbia, and Cornell Law Schools the professors are, as a rule, withdrawn from practice, devoting themselves wholly to the teaching of the law. In the Michigan Law School, while a portion of the Faculty are withdrawn from practice, the rest continue in the active work of their profession.

The Law Faculty originally, and for many years, consisted of three men, — James V. Campbell, Thomas M. Cooley, and Charles I. Walker.

James V. Campbell, of the Supreme Court of Michigan, was born Feb. 25, 1823, in Buffalo, N. Y. Three years later his parents removed to Michigan and settled in Detroit, where he has since resided. He attended school at Flushing, L. I., and

matriculated at St. Paul's College, in the same place, where he graduated in 1841. That institution was under the patronage of the Protestant Episcopal Church, and notwithstanding its work was well done it passed out of existence some years ago. After graduation Mr. Campbell returned to Detroit, and entered on the study of law in the office of Douglass & Walker, being admitted to practice in October, 1844, immediately thereafter entering into partnership with his distinguished preceptors. His practice at the bar only covered a period of thirteen years, when he was elected to the bench of the Supreme Court of the State, where he has since remained. One familiar with his professional life says that "time would have made him one of the best trial lawyers of the day. At the bar, as in every relation of life, he was remarkable for acuteness of intellect, mental and oratorical facility, and for that breadth and exactness of knowledge which well earned him the reputation for learning now vindicated by years of public service." As Judge Campbell took his place on the bench in January, 1858, and by successive re-elections has been kept there by the people of the State, — his last re-election occurring in April, 1887, for a term of eight years commencing with January, 1888, — if life and health permit him to serve out his term, he will have had a most remarkable judicial career, extending over a period of almost forty years. It is doubtful whether any man in the United States has been permitted such a judicial experience in a court of last resort, and especially in a State whose judges are elected by popular vote. We are in the habit of thinking that Marshall and Taney had extended careers in the Supreme Court of the United States, where the appointments are made for life; but their tenure of office did not extend over so long a period as Judge Campbell will have served on the bench of the Supreme Court of Michigan if he serves out his term. He served as a professor in the law school for twenty-five years, beginning in 1859 and continuing until the year 1885–1886. His resignation of his chair was matter of profound regret, and was occasioned by the necessity of giving his entire attention to his judicial duties, the work of the court now having become very great. His subjects in the law school were as follows: Criminal Law, Jurisprudence of the United States, Equity Jurisprudence, and International Law. The lectures which he delivered were learned and lucid, and had a charm about them which attracted all. They were delivered with fluency and elegance, and no one listened to them without being filled with admiration for the man. Not only was he well read in law, but he possessed a wide familiarity with polite literature, and a knowledge of history that was extensive and exact. It was evident to all who listened to him, either in the lecture-room or in private conversation, that he was a man learned in many fields, and one possessed of a memory so marvellously tenacious that it seemed never to forget even apparently insignificant details. The University in 1866 very fittingly made him a Doctor of Laws.

Thomas M. Cooley, chairman of the Interstate Commerce Commission, was born in Attica, N. Y., Jan. 6, 1824. His family descends from Benjamin Cooley, who settled in Springfield, Mass., in 1640. The father of Thomas M. Cooley was poor, and his family was large, so that the boy acquired his education under difficulties, earning the necessary money by hard manual labor, extending through the period of professional study. He never had the benefits of a college training, but at nineteen years of age commenced the study of law at Palmyra, N. Y., in the office of Theron K. Strong, afterwards a Judge of the Supreme Court of that State. He removed to Michigan in 1843, taking up his residence at Adrian, and finishing his preliminary study of the law in the office of Tiffany & Beaman. In January, 1846, at the age of twenty-two, he was admitted to the bar. He had already held the position of Deputy County Clerk, and in 1850 was

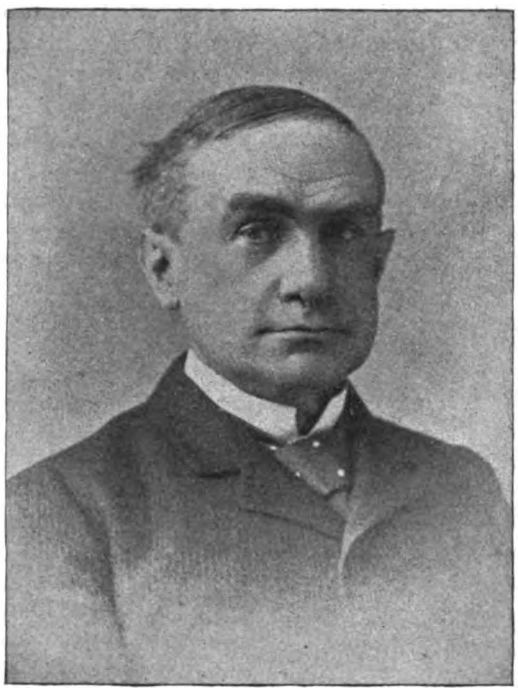
elected a Circuit Court Commissioner, but being restless and dissatisfied removed to Ohio in 1852, taking up his residence in Toledo, where he formed a partnership in the real-estate business. He remained at Toledo until the real-estate boom, which that city was enjoying at that time, collapsed, and then returned again to Michigan, determined to win success, if possible, in the law. He again made his home in Adrian, and was at one time junior member of the firm of Beaman, Beecher, & Cooley. The senior member of this firm, Fernando C. Beaman, was a member of Congress from 1861 to 1863; and in 1879 was appointed by the Governor to fill the unexpired term of Zachariah Chandler in the Senate of the United States, but declined the appointment. Mr. Cooley also became the senior member of the firm of Cooley & Croswell, the junior member being afterwards twice elected Governor of Michigan. In 1857 Mr. Cooley was appointed to compile the General Statutes of the State, and in 1858 he was made the Official Reporter of the Supreme Court of Michigan. In 1859, as before indicated, he was appointed a professor in the University Law School, when he removed his residence to Ann Arbor, where he has since continued to reside. He was then thirty-five years of age, and entered on his duties with zeal and energy. In 1864 he became a Judge of the Supreme Court of the State. His associates on the bench, who already knew something of his high qualifications for the place, welcomed him to the position as a worthy successor of the lamented Manning, who had been removed from the bench by death; and yet, as one of them has since said, they were and continued to be more and more surprised and gratified by the abilities which he continued more and more to exhibit as a Judge the longer he continued on the bench. Judge Cooley retired from the Law Faculty in 1884, and from the Supreme Court in 1885. Since his retirement from the Faculty he has not withdrawn his interest in the school, and has from time to time delivered lectures therein, notably so on Taxation and Constitutional Law. Judge Cooley's career as a University professor, Judge of the Supreme Court, and writer of law treatises is a resplendent one. His works have made him famous in Europe as well as in America, and his name has been a tower of strength to the University of Michigan, which made him a Doctor of Laws in 1873, a similar honor being conferred on him by Harvard University in 1886. As "the one great law book of the last century," the Commentaries of Blackstone, was the fruit of a professorship in law in an English University, so most of the classic legal literature of this country has been the fruitage of similar professorships here. Chancellor Kent's Commentaries were the results of his law professorship in Columbia College. All of Story's works — some thirteen volumes — are the fruits of his work as Dane Professor

WILLIAM P. WELLS.

in the Harvard Law School. It was in the performance of his duty as a law professor that Simon Greenleaf prepared his work on Evidence, and Parsons wrote his work on Contracts, and on Bills and Notes, as well as on Partnership and Shipping and Admiralty. And in the same way Washburn prepared his work on Real Property. Judge Cooley, during his connection with the Michigan Law School, published his Constitutional Limitations in 1868, his edition of Blackstone's Commentaries in 1872, his edition of Story's Commentaries on the Constitution in 1874, his work on Taxation in 1877, his treatise on Torts in 1879, and his Manual of Constitutional Law in 1880. On the appearance of his work on Torts the "Southern Law Review" declared that "neither England nor America, neither the present nor any other period in the history of the common law, has produced an abler or more learned expounder of its principles." As to the book itself, it declared that it was written "in a style of classic propriety; concise, and yet nothing is wanting; full, and yet nothing is wasted." His greatest work is his "Constitutional Limitations," a book of unique excellence, which at once gave him a national and later an international reputation. As a law lecturer Judge Cooley was distinguished for the clearness of his style and the thoroughness of his exposition. The thousands of law students who have sat under his instruction in the University of Michigan hold him in the highest esteem, and no name mentioned in the halls of the University to-day evokes such an outburst of applause as does his. He may well be proud of the grateful appreciation in which he is held by the students in the University of Michigan. An almost life-size portrait of him hangs on the walls of the Law Lecture Room, having been generously presented to the school by Mr. Albert D. Elliot of the Law Class of 1887, and a graduate of the Academic Department of Harvard University of the Class of 1882.

Charles I. Walker, one of the most honored members of the bar of Michigan, came from a sturdy old New England family "of such timber as had furnished much of the best blood of the West, people of education, intelligence, and independence, as far back as their descent can be traced." He was born in the village of Butternuts, Otsego County, N. Y., on April 25, 1814, whither the family had removed from Providence, R. I., in 1812. The grandfather of Charles I. Walker was Ephraim Walker, who married Priscilla Rawson, a lineal descendant of Edward Rawson, who graduated in 1653 from Harvard College, and was at one time Secretary of the Colony of Massachusetts. Charles I. Walker was one of a family of eleven children, and obtained his education at a district school in his native village, supplementing its course by one term at a private school in Utica, N. Y. For some years he engaged in mercantile business in the State of New York until 1836, when he removed to Michigan, settling in Grand Rapids, where he became a land and investment agent. This business he followed for a short period, when it was abandoned by him, and he became the editor of the Grand Rapids "Times," the only newspaper published in those days in the town. But in 1838 journalism was in its turn given up, and having been elected a Justice of the Peace, Mr. Walker entered on the study of the law in the office of George Martin, who afterwards became Chief-Justice of the Supreme Court of the State. In 1841 he determined to complete his legal studies in the East, and removed to Springfield, Mass., and from there to Vermont, in which latter State he was admitted to the bar in September, 1842, being at that time about twenty-eight years of age. He soon succeeded in building up a large and profitable practice, but decided in 1851 to remove from Bellows Falls, Vt., to Detroit, Mich., where his brother, the Hon. E. C. Walker, was engaged in successful practice. He at once entered into partnership with him, and soon made a reputation at the bar. In 1836 he was a member of the second convention called to consider the ques-

tion of the admission of Michigan as a State, and which finally accepted the terms proposed by Congress. In 1840 he became a representative in the State Legislature, and in 1867 was appointed a circuit judge by Governor Crapo, to succeed Judge Witherell, who had died in office. He held the place but ten months, when he resigned because of the inadequacy of the salary. Becoming a professor in the Law School in 1859, he continued to hold his chair for fifteen years, when his failing health and the pressing demands of business compelled him to retire from his professorship. The subjects upon which he had lectured were Contracts, Agency, Bills and Notes, Corporations, and Partnership. It is not passing the bounds of truth and soberness to say that Judge Walker was a most able and successful law lecturer and teacher, and it is doubtful whether any man who has been connected with the Law Faculty of the University of Michigan ever surpassed him in those respects. His lectures were always prepared with the greatest care, his method was excellent, his style clear and elegant, and his citation of authorities was made with great good judgment. No student ever went forth from the Michigan Law School without a profound respect for him. When in the year 1886–1887 he consented to re-enter the Law Faculty for the year to fill a temporary vacancy which had occurred, he was cordially welcomed by all.



HENRY B. BROWN.

Of these three men Walker, Campbell, and Cooley, President Angell in his commemorative address delivered at the semi-centennial of the University in 1887, spoke as follows: —

"Perhaps never was an American law school so fortunate in its first Faculty, composed of those renowned teachers, Charles I. Walker, James V. Campbell, and Thomas M. Cooley, — all living, thank God, to take part in this celebration, and to receive the loving salutations of the more than three thousand graduates, who, as learners, have sat delighted at their feet. The fame which these men and those afterwards associated with them gave to the school was a source of great strength to the whole University."

In March, 1868, Charles A. Kent, a prominent member of the Detroit Bar, was elected Fletcher Professor of Law in place of Ashley Pond, who had resigned after a few years of service. Mr. Kent was born in St. Laurens County in the State of New York in 1834, and was graduated from the University of Vermont in 1856. For a time after graduation he taught school, being the principal of an academy at Montpelier, Vt. He studied theology at the Andover Theological Seminary from 1857 to 1859, but giving up theology for law, he came to Detroit in 1859, and entered the law office of Walker & Russell as a student, and was admitted to the bar in the following year. Mr. Kent has never been a candidate for public office, but has devoted himself entirely to the profession of the law. He consented, however, in 1881–1882, to serve as a member of a commis-

sion that was created to revise the tax laws of Michigan, and in that capacity rendered very valuable service to the State. He is a man of the highest character, sincere and genuine at all times and under all occasions. He is a man of sound judgment and of conscientious devotion to duty, who never does anything half-way. Not only is he a well-read lawyer, but he has studied with care questions of government, and political and ethical science. He came to his professorship in the Law School at the age of thirty-four and held the position for eighteen years, when he resigned and gave himself up to the practice of his profession. The old students will always remember him not only for his learning, but for his humor and good nature. He lectured on Pleading and Practice, Evidence, Torts, Easements, Bailments, and the Law of Personal Property. His lectures were prepared with great care, and gave entire satisfaction.

Prof. William P. Wells was born at St. Albans, Vt., Feb. 15, 1831. His father is said to have been a lineal descendant of Thomas Wells, an early Governor of Connecticut. We take the liberty to incorporate herein the following sketch of Professor Wells's career, which has recently been made public in another connection: —

"William P. Wells 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 State 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 to the present Mr. Wells has continued the practice of law alone in Detroit. His legal talents early won just recognition, and his practice has extended to all the courts of the State and United States. He has been 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. The subjects assigned to this professorship, and of which Mr. Wells had charge, were Corporations, Contracts, Commercial Law generally, Partnership, and Agency. Upon his resignation an address was presented him by the students, and resolutions of commendation adopted by the Regency.

"From Jan. 1, 1887, to the close of the college year, Mr. Wells held the position of Lecturer on Constitutional History and Constitutional Law in the University of Michigan, temporarily discharging the duties of Judge Cooley, Professor of American History and Constitutional Law in that institution. In June, 1887, he was again called by the Regency to the Kent Professorship in the Law School, and he now holds that position. The subject of Constitutional Law was added to those of which he has charge.

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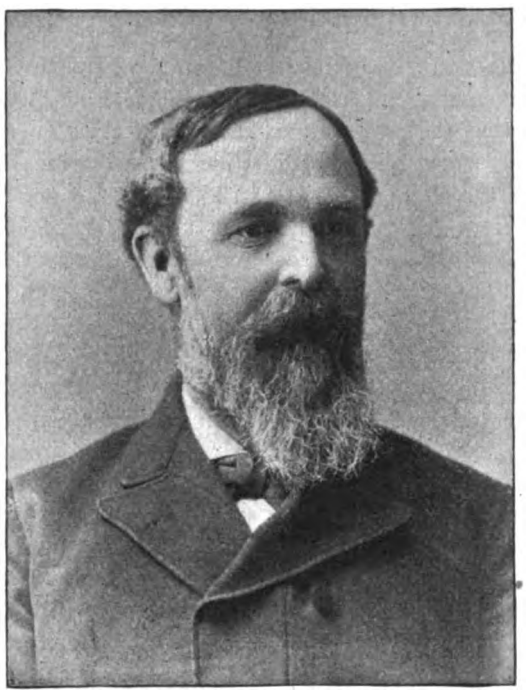
"He was one of the earliest members of the American Bar Association, organized in 1878, which holds its annual session at Saratoga, N. Y., and for several years has been a member of the General Council; and in 1888 was elected chairman of the General Council. At the meeting in 1886 he presented a paper on 'The Dartmouth College Case and Private Corporations,' which has been reprinted from the transactions of the Association, and widely circulated, attracting much attention.

"Among the members of the legal profession, Mr. Wells stands in the front rank. As an advocate, a lecturer, and a gentleman of broad and liberal culture, he holds a place among the best; and his legal attainments, tested by long practice in important cases, justified his selection as a member of the Law Faculty of the University

"His legal studies, however, have not fully engrossed his attention, and the intervals of freedom from pressing professional duties have been devoted to following avenues of intellectual culture opened by a liberal education.

"Naturally a clear and vigorous thinker, and possessing the valuable gift of clear and forcible expression, he needed only the opportunities he has enjoyed to secure eminence as an orator, alike at the bar, in the political arena, and in the halls of the University.

"For his duties in connection with the University he possesses special fitness, and it is by that work that he will be most widely remembered. The professional successes of a lawyer, however useful or beneficial, are comparatively ephemeral; but the teacher who has been the means of giving an intellectual impetus, and who has imparted the clear light of absolute knowledge to the inquiring mind, is sure of being held in grateful remembrance. That Mr. Wells has been greatly successful as a professor is conceded by all who have any knowledge of the University, and especially by the students who have been fortunate in having him as an instructor. His abilities are such as to command acquaintanceship with many persons distinguished in professional and political life."



BRADLEY M. THOMPSON.

In 1879 the Board of Regents created a fifth professorship in the Law School, known as the Tappan Professorship, which was named for Henry Philip Tappan, President of the University from 1852 to 1863. Hon. Alpheus Felch was appointed to the chair thus created. It has been truly said of him that his record is a part of the history of Michigan, and that it would be impossible to write of any branch of the powers of the State and make no mention of him. He was born in Maine in 1806, and is still living, honored and beloved of all. In 1821 he was a student at Phillips Exeter Academy, and in 1827 graduated from Bowdoin College, where he was a fellow student with the poet Longfellow, who was graduated from the same institution two years before his own graduation was attained. He was admitted to the bar of Maine in 1830, and three years later took up his residence in Michigan. He successively became a member of the Legislature of the State, a Bank Commissioner, Auditor-General, a Judge of the Supreme Court, Governor, and a Senator in Congress. He was a member of the Senate at the same time Webster, Clay, and Calhoun had seats in that body. At the close of his senatorial term, in March, 1853, he was appointed by President Pierce one of the commissioners to adjust and settle the Spanish and Mexican land claims in California, under the treaty of Guadalupe Hidalgo. At the close of his labors on the Commission in 1856, Governor Felch returned to his home in Ann Arbor, where he has ever since continued to reside. In 1877 Bowdoin College conferred on him

the degree of LL.D., and two years later he became, as already said, a professor in the Law School. His special topics were Wills and the Administration of Estates, Real Property, and Uses and Trusts. He resigned his position in the Law School in March, 1883, being admonished by his advancing years that it would be unwise to tax his strength by longer continuing to discharge its duties. A man of pure and gentle nature, of wide experience, and full of honors, his presence is a benediction to those who are so fortunate as to come within his influence. The writer was appointed to the Tappan Professorship on the acceptance of the resignation of Governor Felch, and entered on his duties in October, 1883.

In 1886, when Mr. Kent resigned the Fletcher Professorship, Levi T. Griffin, of Detroit, was appointed his successor by unanimous vote of the Board of Regents. Professor Griffin was born in the State of New York in 1837, and ten years thereafter his parents removed with him to Michigan. He became a student in the Academic Department of the University, and graduated with the Class of 1857. He was admitted to the bar in the following year, being one of the first class to be admitted on examination before the Supreme Court of Michigan, as reorganized. After his admission he remained in Detroit for some months, and then removed to Grand Rapids, where he was engaged in practice until 1860, when he returned to Detroit, which is still his home. He entered the army in 1862, and continued in it until mustered out of service, July 1, 1865, having been brevetted Major of Volunteers for gallant and meritorious services. He belonged to the famous Fourth Michigan Cavalry, the regiment that captured Jefferson Davis at the close of the war. When the war closed, Mr. Griffin again entered on the practice of his profession, and in 1875 associated himself with Hon. Don M. Dickinson, Postmaster-General in the Cabinet of President Cleveland. It has been said of Mr. Griffin that he has perhaps tried more cases than any other lawyer in the State of Michigan. It is certain that his clientage has been large, and his practice extensive and lucrative. He was nominated by his party in 1887 as a candidate for Justice of the Supreme Court, but was defeated by Mr. Justice Campbell.

Bradley M. Thompson was born April 16, 1835, in Milford in the then Territory of Michigan. He prepared for college at Wesleyan College, Albion, and matriculated in the University in 1854, graduating in the Literary Department in the Class of 1858, and in the Law Department in 1860, in the first law class. He commenced the practice of his profession at East Saginaw in 1860. In the spring of 1862 he formed a partnership with Hon. William L. Webber, now President of the Flint & Pere Marquette Railroad, and Hon. Chauncy H. Gage, Circuit Judge of the Tenth Judicial Circuit.

In the fall of 1862 Professor Thompson entered the United States service as Captain in the Seventh Michigan Volunteer Cavalry. This regiment was brigaded with the First, Fifth, and Sixth Michigan Cavalry Regiments, and was known as Custer's Brigade, being under the command of that gallant officer. Professor Thompson was mustered out of service in 1865, as Brevet Colonel, for gallant and meritorious services. He did not resume the practice of law until 1869. He held the office of City Attorney of East Saginaw during the years 1873, 1874, and 1875, and the office of Mayor for two terms during the years 1877 and 1878. In 1878 he was the candidate of his party for Congress in a triangular contest in which Hon. R. G. Horr and Hon. H. H. Hoyt were the other candidates; all being residents of the same city and ward. Professor Thompson carried Saginaw County by a plurality of over one thousand, but Mr. Horr was elected. In 1880, there being a vacancy in the office of Circuit Judge in the Tenth Judicial Circuit, composed of Saginaw County, at a meeting of the bar of that county, Professor Thompson was recommended to the Governor of the

State as the choice of the bar for that office. He did not, however, receive the appointment, a person of a different political faith being preferred. In 1887 the Regents of the University appointed him to deliver a course of forty lectures on the subject of real estate. This course was commenced in April, 1888; and at a meeting of the Board in June following, he was made Jay Professor of Law.

Jerome C. Knowlton, Assistant Professor of Law, was appointed as such in 1885. He was born in Michigan, Dec. 14, 1850, and graduated from the University of Michigan in 1875 with the degree of A.B., and from the Law School in 1878 with the degree of LL.B., and immediately entered on the practice of the law at Ann Arbor. In 1888 he edited an American edition of Anson on Contracts, which is used as a text-book in this and other law schools. He has, in the main, had charge of the text-book work of the Department.

JEROME C. KNOWLTON.

Henry B. Brown, LL.D., the lecturer on Admiralty, is the United States District Judge for the Eastern District of Michigan. He was born in Lee, Berkshire County, Mass., March 2, 1836. He graduated from the Academic Department of Yale College in 1856, and spent the year following his graduation travelling in Europe. On his return to this country he commenced the study of law. He spent one year in the Yale Law School, and then entered the Harvard Law School. In December, 1859, he came to Detroit, and in July, 1860, was admitted to the bar. In less than a year thereafter, he was appointed Assistant United States District Attorney, and held that position until May, 1868. In July of that year he was appointed, by Governor Crapo, a circuit judge for the County of Wayne, and held the position until his successor was elected by popular vote. He soon afterwards entered into partnership with John I. Newbury and Ashley Pond, two prominent lawyers of Detroit, and continued with them in the practice of the profession until March, 1875, when he was appointed United States District Judge. Not long ago one of the Detroit papers contained an article relating to Judge Brown, from which the following is taken, as not being without interest: —

"He is a man whose face, head, figure, and gait denote the best of mental and physical strength, and seen a square away, protected by an English cape-coat or an ordinary American overcoat, the stranger would call the man about thirty years old. The judge is in reality about fifty years old; but a strong neck, head, and shoulders at work in producing a swinging yet rather jaunty step, which is accompanied by free and careless manipulation of a slight cane, produces an appearance of athletic youthfulness, quite in keeping with the man's health and strength. On the bench the judge is dignified, almost austere; but he is right. He has remarkable power as a judge in the readiness with which he sees and passes upon a point raised by an attorney practising before him. In this way he is an expeditious judge, saving much valuable time. While he is dignified, he is patient, careful,

fair, and wise, and there is no judge on earth in whom the members of the Detroit and Michigan bar have greater confidence and for whom they have greater respect. Our judge is, besides being a fine lawyer and an able judge, an experienced traveller, and fond of books about travellers; an ardent lover of children, a courtly host, a connoisseur of bric-a-brac and curios, an expert in domestic architecture, a lover of pictures, and a good judge of them."

We may add that, on the death of Mr. Justice Stanley Matthews, the name of Judge Brown has been very favorably mentioned in connection with a nomination to the place on the bench thus made vacant, and his friends are earnestly hoping that he will be elevated to that high station.

In addition to the regular Faculty of the school are some special lecturers of whom mention may be made. Melville M. Bigelow of Boston, the well-known law writer, is a lecturer in this Law School on the subject of Insurance. William G. Hammond, Dean of the St. Louis Law School, lectures here on the History of the Common Law. Special lectures have also been delivered on Medical Jurisprudence by Victor C. Vaughn, Ph.D., M.D., and by Charles H. Stowell, M.D. The Hon. Otto Kirchner, ex-Attorney-General of Michigan, lectured in the school for a time. He is a thorough student, and one of the most prominent members of the bar of Michigan. Prof. Harry B. Hutchins, now of the Cornell Law School, held a professorship here for two or three years. He was a graduate of the Literary Department of the Class of 1871, with the degree of Ph.B., and rendered the University good service as an efficient lecturer and thorough teacher of the law.

The spacious building occupied by the Law School was dedicated to its use in 1863, Judge Cooley delivering the dedicatory address. On the first floor are located the offices of the professors, and the library. The lecture-room, with a capacity for five hundred students, is located on the second floor, as is also a large recitation-room, used for the text-book work of the school. The third floor contains ample debating and society rooms. There are two Literary Societies connected with the school, the Webster and the Jeffersonian. These societies hold their meetings on Wednesday evening of each week during the college year. The Webster Society was organized when the Law School was first established, and it has a membership of more than sixteen hundred.

There are two Greek-letter secret societies existing in the Law School. One of these, the Phi Delta Phi, was founded here in 1869 by John M. Howard of the Class of 1871. Its membership, we understand, is confined to students in law schools and to active practitioners. Since its organization in this Law School it has been established in fifteen of the leading law schools of the country, and numbers among its members some of the most distinguished lawyers and judges, including the late Chief-Justice Waite and Mr. Justice Miller of the Supreme Court of the United States. A chapter of the Sigma Chi fraternity, which in other institutions exists as a literary college secret society, was established here in 1877, and is here composed almost exclusively of students in the Law Department. Both of these societies have been very careful as to their membership.

THE BAD SINGER.

STATE *v.* LINKHAW. (69 North Carolina, 214; S. C. 12 Am. Rep. 645.)

By Irving Browne.

[*The unintentionable disturbance of a religious congregation by discordant singing, when the singer is conscientiously taking part in the services, is not indictable.*]

IN North Carolina's health-inspiring woods
Lived the defendant, poor in worldly goods,
But full of grace, an exemplary man
As ever lived since Methodists began.
Upon acquaintance 't was apparent soon
Nature denied to him the sense of tune,
And though the forests there with pine are rich,
'T was vain to him — he could n't get the pitch.
In church he warbled with enthusiasm,
Infecting every hearer with a spasm.

His fault was worsened by his holding on
After the other vocalists had done,
And so in many a fervid "winding bout"
He showed them "linkèd sweetness long drawn out,"
And with a voice stentorian he sang
Until the dim aisles of the tar woods rang, —
Not with the understanding, but with spirit,
As if he wished the heathen world to hear it.
This made one half the congregation shout
With laughter, while the pious and devout
Were scandalized; the wicked were delighted,
But all the good and sober were affrighted.
Once the sad preacher had shut up his book,
Declined to sing the hymn, and angry took
His seat; the ruling elder had refused
To preach, because the music was abused.
On one occasion when the Holy Ghost
Seemed brooding o'er the expectant humble host,
A member asked the brother not to sing
Lest he should on the cause so sacred bring

Deep ridicule, and he for once complied;
But usually he such requests denied,
Avowing, if he hoped to win the prize,
Not only must he pray, but "vocalize."
And so whene'er it came to singing psalms,
That house was filled with miserable qualms;
Until at last the suffering congregation
Had him indicted for the desecration.

A witness being called, with lungs inflated
The manner of his singing imitated,
Producing inextinguishable laughter
That shook the court-house to the highest rafter,
Convulsing judge, spectators, bar and jury,
Till some lay down and rolled in comic fury.
This testimony wrought a quick conviction;
But on appeal it met with interdiction,
For there was no pretence that he intended
The worship to disturb; he thought he blended
Most scientifically with the rest,—
In short, he always did his "level best."
"And so if he will sing, there 's no help for 't;
His church may discipline him, not the court."
The prosecuting brethren went out sad
At this intelligence: it was too bad;
Not only must they hear him on the earth,
But as he was a man of Christian worth,
Sure of salvation with the godly leaven,
They must to all eternity in heaven
List to that voice, which all the saints would drown,
Of smiling Linkhaw, with his harp and crown!
But for the earthly part of this dire pest,
I might one simple remedy suggest:
Induce good Brother Linkhaw to embrace
The ministry, and then at least his face
He must to some fresh field once in three years
Reluctant turn, and spare the tortured ears.
Devoutly to be wished-for dispensation,—
The Methodist contrivance of "rotation"!

CAUSES CÉLÈBRES.

V.

JACQUES LEBRUN.

[1689.]

JACQUES LEBRUN was a servant. At the age of sixteen years he entered, as a valet-de-chambre, the service of a lady named Mazel, a rich widow, living in a house in the Rue des Maçons-Sorbonne, in Paris. For twenty-nine years Lebrun faithfully served his mistress. Was he still a valet-de-chambre at forty-five years of age? That continued to be the modest name of his office; in reality, he had become the steward of the house and the confidant of Madame Mazel. He it was who bought and paid for all the supplies, and who gave all the orders relating to the house. He had charge of all the money and valuables, which he kept in a strong box in a secret place. No one doubted his honesty, attested by long years of service which had made the old domestic almost a member of the family. He was a servant and he was a friend. Madame Mazel had made a will by which he was to receive at her death six thousand livres and one half of the wearing apparel and linen used in the house.

Lebrun was married; he lived happily with his wife, and brought up his children in the fear of God.

Madame Mazel, strict and exacting, as ladies of her age generally are, did not permit him to have his family with him. He had therefore lodged them in the neighborhood, near the Collége d'Harcourt.

The family of Madame Mazel consisted of (besides Lebrun) two female servants, a cook, a coachman, and two lackeys.

A widow with a large fortune and three sons, she had handsomely provided for all of them. The oldest, René de Savonnières, was a member of Parliament; the second, George de Savonnières, held an office under the Government; and the youngest, Michel de Savonnières, was a major in a regiment at Piémont.

At the time of which we write it was common to find among the household of a rich family an abbé or priest. Madame Mazel harbored an old monk, the Abbé Poulard. It would be difficult to say what duties he was expected to perform. Was he the confessor of Madame? Had he been, was he, anything more? All we know is that the Abbé Poulard was installed in the house as though it were his own. He did as he pleased; he was hard to satisfy, and did not conceal his bad humor on occasions. He was particular as to his living, fastidious as to his sleeping, but not very strict in other matters, and he did not hesitate to ignore the rules of the Church regarding fast days and the eating of meat. At the table he asserted his authority; he found fault with the meats, discussed the merits of the same, and nearly drove the old cook to despair.

His sleeping-room resembled the boudoir of a pretty woman, so elegantly was it furnished, and so many beautiful things did it contain. He found himself so comfortable in his *cell* that it is said that in 1673 he preferred to be excommunicated by the head prior of Cluny rather than leave the house.

Still, in spite of all the satisfaction which his abode furnished him, the dear Abbé was not content. In order that he might be more independent, he hired in the vicinity a room where he often slept. On such occasions he returned to the house very early in the morning, and noiselessly entered by the means of a pass-key with which he opened the door.

Madame Mazel's house was a building of four stories. One entered, on the first floor, by means of the main stairway, a hall which was used as an office and in which was a chest of drawers in which the table service was kept. One of the chambermaids had

charge of the key of this chest. In this hall, on the street side, was a recess where Lebrun slept when he did not pass the night with his own family. The rest of this story was taken up by a large room in which Madame Mazel received her guests when she gave an entertainment.

The sleeping-chamber of Madame Mazel was on the second story, looking out upon the court. To reach this chamber it was necessary to pass through two antechambers, one of which, opening upon the stairway, was always unlocked, the other was locked during the night.

By order of Madame Mazel there had been made in the door of her room, below the lock, a little hole, which was stopped up with a peg. When she was indisposed or did not wish to rise to open the door herself, the servants introduced through this little hole a hook with which they could push back a button which was used as a fastening instead of the lock. In this immense room Madame Mazel slept alone.

Two doors opened into this chamber,—one leading from the back stairway and the other from the bath-room, from which another door led to the back stairs. The first of these doors was near the bed, and Madame Mazel could open it without rising. Behind the bed were two bell-ropes communicating with the servants' chambers.

Except the chamber of the Abbé Poulard, the third story was entirely unoccupied. The room of the old monk was directly over the bath-room, and was reached by the back stairway.

The fourth story was occupied by the two servants and the two lackeys. The cook slept downstairs in a woodshed, and the coachman in a recess under the stairs. This last had charge of the gate, the key of which was kept hanging upon a nail in the kitchen, where all the inmates of the house had access to it.

At the top of the house was a large attic, from which a window opened upon a gutter which extended from the roof of the house to that of an adjoining building. The door of this attic was always open.

These details, though uninteresting, will be found necessary for properly understanding this recital. One fact more must be added. Some time before the moment this story commences, — that is to say, early in the winter of 1689, — Madame Mazel had asked Lebrun for the pass-key which he used for going in and out, and had given it to the Abbé Poulard, although he already had one which he used constantly.

Bearing all these facts in mind, we come now to the 27th of November, 1689.

On that day Madame Mazel supped with the Abbé Poulard as usual. During the meal the Abbé announced that he should sleep in his room in the neighborhood. Madame Mazel retired about eleven o'clock. Lebrun had remained with his family that evening later than usual; they heard him knocking at the door of the back stairs just as the servants, after having attended to their mistress, were about to retire.

"Who is that?" asked Madame Mazel.

"It is M. Lebrun," replied a servant.

"This is a pretty hour to come home," said the mistress.

Finding that no one answered him, Lebrun went round and ascended the front stairs. His mistress gave him orders for the supper the next day, when she proposed to have a reception. Lebrun then attended to his usual duties. He locked the door of the chamber before he went out, and placed the key on a seat near the bed; then, as he did every night, he locked the door of the second antechamber and left the key on the mantelpiece in the first antechamber.

Having done this, he descended to the kitchen, placed his hat upon the table, and took the key of the gate with the intention of locking it. He laid it on the table and sat down for a moment to warm himself before the fire, which still blazed upon the hearth. Insensibly he fell asleep. When he awoke a neighboring clock struck one. He went and locked the gate, which he

found wide open, and carried the key to his room. Early the next morning he went out into the country. He had to buy provisions for the supper that evening, and to go to the butchers at Vallée. He met on the way a bookseller of his acquaintance, with whom, as he himself said, he "gossiped." He was merry, even a little jovial.

Returning to the house, he met near the door three friends, whom he made come into the kitchen. He was in so frolicsome a humor that having removed his cloak he threw it playfully over the shoulders of one of the new-comers, and seizing a leg of mutton pretended to strike, saying, "I have the right to beat my own cloak as much as I please."

He then looked after the preparations for the supper, and sent one of the lackeys with some wood for his mistress's chamber. Eight o'clock struck, and Madame Mazel had not rung for her servant. Lebrun noted this and was troubled, for she usually arose at seven. He waited uneasily some minutes for her bell to ring. Then he went out hurriedly, and going to his house gave his wife seven louis and some half-crowns to keep, as he did not wish to carry them in his pocket. He said to her as he started to return, "Madame has not yet awaked; I do not know what to think of it."

On reaching Madame Mazel's house he found the servants seriously alarmed at the silence of their mistress. He resolved to go up to her room. He mounted the stairs and knocked at the different doors of the chamber, calling, "Madame Mazel!"

No response; his alarm increased.

"Can she have had an apoplectic stroke?" said one of the men.

"I fear it may be something worse," said Lebrun. "I feel very uneasy since I found the *porte-cochère* wide open last night."

M. René Savonnières was at once notified. He arrived, and knocked at the door of his mother's chamber without eliciting a reply. He then sent for a locksmith to open the door. "What can it be?" said he to Lebrun. "She may have had apoplexy."

"Some one should be sent for a physician," said one of the servants.

"It is not that," murmured Lebrun; "it is something worse. There has been some crime committed. I am very much disturbed on account of the gate which I found open last night."

The locksmith arrived, and the door was opened. Lebrun entered the room first and ran to the bed of Madame Mazel, tore aside the curtains, and cried, "Madame has been assassinated!" Then he entered the bath-room, unfastened the bar of the window, and threw open the blinds to admit the light, and disclosed the body of Madame Mazel lying upon her bed, dead, bathed in blood. Her face, her neck, and her hands were covered with wounds.

Lebrun's first thought was that his mistress had been murdered by a robber. He ran to the strong box and examined it. The lock was intact. "She has not been robbed," he said. "Why was it done?"

René de Savonnières sent at once for a magistrate and two physicians to come and view the body of his mother. These last found *fifty* wounds upon the victim, made probably by a knife. No one of these wounds was of itself mortal; death had resulted from the great loss of blood. She must have had the power to resist and to cry for aid.

The magistrate found in the bed a piece of a cravat, with embroidered ends, stained with blood, and a napkin rolled up in the shape of a cap which still preserved the form of the head on which it had been worn. This napkin, all covered with blood, had upon it the mark of Madame Mazel. It was inferred that during her struggle with the assassin she had torn his cravat and snatched off the cap which he wore.

Between the mutilated fingers of the dead woman were found some hairs which resembled in no respect those of Madame Mazel, and which had evidently been torn from the head of the murderer.

An examination of the room and the ad-

joining apartments resulted in some singular discoveries. The two bell-ropes were found twisted around the curtain-rods of the bed and tied in two knots in such a manner that pulling them would merely shake the curtains. The key of the room was not upon the seat where it was usually placed at night, and there were no signs of the door of the chamber or the antechamber having been forced. The peg which stopped up the little hole under the lock did not appear to have been disturbed. The two doors which opened upon the back stairway were both fastened on the inside with a hook. The key of the wardrobe was found in its usual place, under her pillow.

The wardrobe being opened, they found there a purse in which Madame Mazel kept her card money; it contained 278 livres. In the wardrobe was the key to the strong box. They opened it; in it were several bags of money, and in an open purse at the bottom were a half-louis and all the precious stones of the victim, of a value of about 15,000 livres. Finally, in the pockets of Madame Mazel were discovered 18 pistoles in gold.

It would seem then, at first sight, that robbery was not the motive which had actuated the murderer.

The magistrate proceeded to interrogate the chambermaids who had assisted in preparing Madame for bed, and Lebrun, who had seen her last. Upon questioning Lebrun it was found that he had a key to the office and a pass-key to the sleeping-apartment of Madame Mazel. The possession of this pass-key aroused suspicions against him, and he was kept under surveillance.

They tried upon him the napkin which had served as a cap, and it was found to be too small for his head. They examined his hands, which showed no signs of having been washed that day. They made him wash them, but discovered no traces of blood nor any evidences of scratches. Lebrun's trunk was then examined without anything suspicious being found. However, the pass-key seemed to be an ugly piece of evidence against him, and Lebrun and his wife were at once arrested. Seals were placed upon the furniture and the doors of the room of the victim.

The next day, the 29th of November, the investigation was continued; after an examination of the other domestics it occurred to the magistrate, a little late, to examine the back stairway. He found there upon one of the lower steps a rope, apparently new, of considerable length, and knotted at intervals, at the end of which was a large iron hook; it was evidently intended to serve as a ladder.

Lebrun was still more closely examined, but nothing was found upon him or upon his garments, — no wound and no signs of blood.

On the same day that the rope was found, they discovered in a corner of the attic a shirt, the front and sleeves of which were stained with blood, and a part of a cravat at both ends of which were bloody spots. Did these things belong to Lebrun? If they did, it was surprising that they did not find upon his hands and his neck evidences of recent washing.

Some linen-manufacturers, called by the magistrate as experts, failed to find any similarity between the bloody shirt and the linen of Lebrun. One of the servants remembered having washed a similar shirt for a lackey by the name of Berry who had been dismissed from the service of Madam Mazel for theft. Another said she had seen Berry wear a cravat embroidered like that of the assassin. These last statements were valuable, and should have put the magistrate on a new track, but he paid no attention to them.

The cutlers who were examined found no resemblance between the knives belonging to Lebrun and that which the assassin had concealed in the ashes upon the hearth. A barber, called as an expert, testified that there was no similarity between the hairs found between the fingers of the victim and those of Lebrun, either in size or color.

None of the ropes found in the office or at the house of Lebrun corresponded with the rope found upon the back stairway. And to a reflecting mind this rope was a revelation. It showed that the murderer might have come from without, or at least contemplated an escape by the roof or from the windows. The bloody linen found in the attic demonstrated that it was from there he expected to make his exit; that there he had, perhaps, entered the house. They should have examined the roofs and the long gutter which communicated with the neighboring houses, but they did not.

That which seemed most important to the examining magistrate was the fact that Lebrun, although Madame Mazel had taken from him his pass-key, had a second one opening the gate, the door of the sleeping-room, and the doors of the antechamber; that, from the first moment when Madame Mazel did not reply to the calls made to arouse her, and when it was perfectly natural to attribute her silence to sickness or to an apoplectic stroke, Lebrun had seemed *to fear something worse;* and still further that, contrary to his usual custom, Lebrun had on the night of the crime taken to his chamber the key of the gate, which he pretended he had found open in the middle of the night.

What interest could Lebrun have in the death of his mistress?

To this the magistrates replied that Lebrun knew he was left by her will the sum of six thousand livres and half the apparel and linen of Madame Mazel. Might he not have wished to hasten the day when he could come into possession? What seemed to prove this was the fact that it did not appear that his mistress had been robbed after her death. Lebrun himself had declared that fact with a suspicious emphasis. It might have been that, fearing from some words of Madame that he might lose his legacy, lest she should change her will, he had employed for the murder some stranger's hand. Thus they accounted for the evident sojourn of the assassin in the attic, the precautions taken to assure his escape by the roof in case any unforeseen circumstance should render his going out by the door impossible.

So then, if Lebrun's was not the hand which committed the deed, his was the head which had inspired the crime. This was looking at it in the most favorable light, for it was more than probable that the knotted rope had been placed on the back stairway and the bloody linen been concealed in the attic to turn suspicions upon a stranger. The knots in the rope were not drawn tight, and the rope had not been used.

One thing was certain: the perpetration of the crime showed a perfect knowledge of the house and the means of entering Madame Mazel's apartment, and departing without being seen. To Lebrun all this was possible. Alone awake when all the rest of the house slept, having possession of the keys, he could encounter no obstacle. He had an interest for, and the means of, committing the crime.

Such were the reasonings presented by M. René Savonnières, in a petition to the magistrate signed by himself and his brother. He demanded that Lebrun be arraigned and convicted of having assassinated Madame Mazel, and also that he be deprived of the legacy left him by his mistress.

M. Jean Barbier d'Ancourt, a member of the French Academy, undertook the defence of the poor domestic before the judges at Châtelet.

M. Barbier had no little trouble in separating the truth from the mass of errors and prejudices which made up the information. Lebrun, severely interrogated by him, showed at once what he was; naïvely honest, devoted almost fanatically to his mistress, whose weaknesses he sought to palliate even at the peril of his life. It was not from him, but from public rumors, that the advocate learned of certain circumstances which showed in the life of Madame Mazel some mysteries in which without doubt he must seek for the cause of her death.

This Abbé Poulard who had maintained

with the deceased such suspicious relations, who had occupied in her house so strange a position, ought surely to receive the attention of justice.

An old unfrocked monk, the Abbé Poulard, was designated in the will of Madame Mazel under the name of Father Poulard, a *ci-devant* friar. Although he was not named for any special legacy, she had requested that after her death he be permitted to enjoy the same advantages which he had during her life. M. René de Savonnières was charged to look after and provide for the excommunicated monk.

The ex-Dominican had a sister named Madame Chapelain, the widow of a Councillor of Mans. This woman, indigent like her brother, of an attractive person, was admired by M. George de Savonnières, the second son of Madame Mazel. In spite of her poverty she hoped to bring about a marriage with the young treasurer, and by her skilful coquetry had so inflamed M. George that he had shut his eyes to the unsuitableness of such a union. Madame Mazel, very set in her wishes, had opposed this marriage; while the Abbé Poulard ardently desired it.

It was said that some six months before the crime M. George had shown his passion by gifts of great magnificence: he had given the young widow a suit of brocade, the slippers and skirts of which were embroidered in gold and silver. The widow had accepted these gifts, and continued her coquetries towards the infatuated treasurer. M. Barbier saw in these matrimonial intrigues an interest in the death of Madame Mazel far more powerful than any which could have actuated poor Lebrun. The Abbé Poulard, an unscrupulous person, had recently had given to him the pass-key of Lebrun. He had made it a point to announce, during the last meal taken with Madame Mazel, that he was going to sleep that night in his room in the neighborhood. The Abbé had known at the house of Madame one Berry, who had been discharged as a thief, and whose shirt and cravat had been believed to have been recognized in those which the murderer had left behind him.

Another suspicious thing against the monk: since the arrest of Lebrun he had not ceased to make singular charges against him. He affirmed that he alone was guilty of the murder, and mingled with these charges offensive insinuations against the memory of his benefactress. Then he accused Lebrun of complicity with Berry, this man whom the investigation so obstinately ignored. "Madame Mazel," he said, "had in her youth had a child by a great lord, who had given her to educate it a large sum of money. This child was no other than Berry, who afterward became the lackey of his mother. Lebrun, initiated into all the secrets of his mistress, had revealed to Berry the history of his birth, hoping to make him his son-in-law. Lebrun had endeavored to have the bastard, driven from his mother's house, restored to her favor; he had introduced him in the night into her sleeping-chamber, and, supplicating and threatening, Berry had employed, to move Madame Mazel or to frighten her, prayers and entreaties. Passionate as she was, the mother could not listen coolly to his words; she seized him by the throat, and, forced to defend himself, he had drawn a knife and killed her in a fit of rage and without premeditation."

These contradictory assertions, this absurd story, his interest in the death of Madame Mazel, his disreputable past life, all served to arouse the suspicions of the advocate against the monk.

But the magistrates would see nothing, would hear nothing. It was necessary to proceed with caution, for the direction given to the investigation was suggested by M. René de Savonnières. As regarded him, M. Barbier also discovered some facts which set him to thinking.

René de Savonnières had married, some fifteen years before, a young girl, whose scandalous conduct had provoked the harshness of Madame Mazel. She had obtained against her daughter-in-law a *lettre de cachet*,

and for more than twelve years she had kept her shut up in a convent in the Province. René loved his wife, and would never have consented to this separation except through filial deference, and perhaps also through the fear of being disinherited. Several times Madame de Savonnières had escaped from her convent prison; but her mother-in-law, watchful of her movements and always merciless, was not slow in bringing her back. M. Barbier assured himself of the certainty of the fact that in the month of March, 1685, at the same time that the mysterious Berry had stolen the fifteen hundred francs from Madame Mazel, Madame de Savonnières was secretly in Paris. Toward the end of August she had made another escape and was again secretly in Paris. She had been concealed for some time in a house in the Faubourg Saint-Germain, and had said to some friends, "This will not last long; *in three months* I shall have no need of concealing myself, and I will openly re-enter my husband's house."

In our day, whatever might be the interested efforts to stifle such rumors, to conceal such suspicious circumstances, the defender of an innocent man would not hesitate to bring to light all that he could to save his client. To the honor of our magistracy be it said, it does not seek to evade the truth, be the consquences what they may.

M. Barbier could not do what advocates at the present time would surely do; and neither the magistrate nor the judges of Châtelet hesitated, as between the influences interested in concealing the true source of the crime and the innocent head of Lebrun. The Savonnières were rich and powerful, the eldest was a member of Parliament; Lebrun was only a poor devil, whom they could condemn with even an appearance of justice. They did not even interrogate the monk Poulard, nor ask him the reason of his contradictory statements, of the romantic lies invented about Berry, whose true origin the monk knew perfectly well. They did not examine the other domestics; they did not try upon the head of any of them the napkin rolled in the shape of a cap, which had been found too small for the head of the accused. They did not seek to ascertain where Madame de Savonnières was, or what she had said. Berry was from Bourges; Madame de Savonnières was confined in a convent at Bourges, — what a coincidence! The bloody shirt and the cravat belonged, witnesses had said, to the lackey Berry; the name of Berry was not even mentioned in the proceedings!

There was no doubt in the mind of M. Barbier, but he was obliged to content himself with showing strong reasons which proved indirectly the innocence of his client: a life wholly honorable, honest, and devoted; a careful economy in his own expenses; the little motive he could have had for committing the deed; the respectful attachment which the poor man showed for his mistress, even after her death; the tranquillity of his soul; the natural gayety which he had shown on the evening of the crime and the next morning, up to the very moment that he knew of the terrible calamity.

What was there against Lebrun which singled him out to the suspicions of justice, and why was it that he alone was accused? Did he have any marks of blood upon him? Knife, rope, linen, — was there any evidence that they belonged to him? For many years he had not worn a lace cravat. This pass-key? — but what was there strange that an old servant should have known where to find in a house in which he had lived so many years a second key forgotten or unknown?

This pass-key, however, proved the destruction of the unhappy Lebrun. It was a proof to some, a pretext to others. Of eleven judges three decided in favor of a fuller investigation, two for acquittal, and six for *death*.

The sentence, rendered the 18th of January, 1690, declared Lebrun guilty of having taken part in the murder of Madame Mazel; for which he was condemned to make the

amende honorable, to be broken alive, and to die upon the wheel; but first to suffer torture upon the rack, to compel him to reveal his accomplices; all his property to be confiscated to the king. He was also declared to have forfeited the legacy left him by Madame Mazel.

All proceedings against the wife were suspended until after the execution of Lebrun.

Lebrun appealed from this judgment to the court at Tournelle. M. Barbier d'Ancourt again defended him before this new tribunal. The 22d of February the case was heard. Twenty-two judges rendered an opinion. Two only were in favor of confirming the sentence; four favored a fuller investigation, and the other sixteen the application of torture upon the rack, before proceeding further. A decree was made in accordance with the decision of the majority.

The 23d of February M. le Nain, an officer of the court, proceeded to apply the torture. The frightful sufferings upon the rack could not extort from the wretched man the confession of a crime he had never committed. On the 27th a final decree was made annulling the sentence of death rendered by the judges at Châtelet, and ordering a continuance of the investigation against Lebrun and his wife for a year. Lebrun during this time was to be kept in prison, and his wife to be set at liberty. The question as to the nullity of the legacy was reserved.

After this decree Lebrun, who until then had been kept in secret confinement, had at last the satisfaction of seeing his wife and children; but the poor unfortunate did not long enjoy this happiness. Torture had broken him, grief had killed him. Eight days after the decree he rendered his soul to God, protesting his innocence and forgiving his judges.

It should be remarked here that public opinion, only too ready usually to crush an accused, never for an instant admitted the guilt of the poor valet-de-chambre. The body of Lebrun was buried under the altar of the Virgin in the church of Saint-Barthelemy; relatives and friends crowded to his obsequies.

Scarcely was Lebrun sleeping in the tomb when proofs of his innocence presented themselves from all sides. That which some had believed, which others, few in number, had clearly seen, now became apparent to all eyes. Search was made for Berry, who was found and arrested by the magistrate of Sens on the 27th of March, a month after the decree of Tournelles. Berry was carrying on in the Province a trading in horses. When arrested he offered the officer a purse full of louis if he would let him escape.

Berry, whose real name was Gerlat, was, as we have said, born at Bourges, where his father and mother still lived. He had at first entered the service of a prelate in his native town, the Abbé Guenois; then he had been a domestic in the family of M. Bernard de Rosé, and from there went into the service of Madame Mazel.

A watch was found on him which Madame Mazel had at the time of her death.

Berry was taken to Paris. He was recognized by many witnesses as having been seen by them about the time of the murder. He denied this energetically.

The suspicions aroused in the public mind against the Abbé became too numerous and too well founded to dispense with his arrest. He was accordingly arrested and taken to the Conciergerie, where he was confronted with Berry. From that moment no one was heard to speak of the ex-monk. Doubtless to avoid the scandal of a priest compromised by an affair of murder, perhaps also to spare the honorable family of the De Savonnières shame and degradation, he permitted himself to be expelled from the Church by the ecclesiastical authorities.

As for Berry, he was condemned. His crime became more and more apparent from day to day. The shirt and the cravat belonged to him. The napkin rolled into the shape of a cap fitted him exactly. He had been seen to have the knife with which the

deed was committed; he had the watch of his victim upon him when arrested.

Nothing could be clearer; but was Lebrun an accomplice of Berry? He (Berry), unable to deny his participation in the crime, tried to throw the blame upon the valet-de-chambre; but on the day of his execution he freed his conscience. In the presence of M. le Nain and of his counsel Gilbert, he made a full confession, in which he acknowledged that he alone was the author of the crime. His object had been robbery, and he succeeded in obtaining some six thousand livres, which Madame Mazel had in a purse. He had not intended to kill Madame Mazel, but was forced to do so on her attempting to call for aid.

He said nothing of any complicity on the part of the family, or of the persons it was believed were concerned in the affair. He carefully avoided any allusion to them.

In 1694 a decree of Parliament rehabilitated the memory of Lebrun, and, in spite of the efforts of the advocate for the De Savonnières, confirmed the legacy of six thousand livres.

The Savonnières and the administrators of the laws of those times are objects of disgust and shame to modern generations; the poor valet unjustly condemned, the poor widow whose husband's life was actually bargained away, have had added to their denouncing voices the voices of all those of later times, who have unhesitatingly condemned the infamous régime under which such travesties upon justice were possible.

THE CHARACTER OF A SOLICITOR IN 1675.

THE following extract from a pamphlet, dated 1675, illustrates the reputation in which solicitors as contrasted with attorneys were then held: —

A solicitor is a pettifogging sophister, one whom by the same figure that a North Country peddler is a merchant man, you may style a lawyer. List him an attorney, and you smother Tom Thumb in a pudding. The very name of scrivener outreaches him, and he is swallowed up in the praise, like Sir Hudibras in a great saddle. Nothing to be seen but the giddy feathers in his crown. Some say he 's a gentleman, but he becomes the epithet as a swine's snout does a carbuncle; he is just such another dunghill rampant. The silly countryman (who seeing an ape in a scarlet coat, best (*sic*) his young worship and gave his lordship joy) did not slander his complement with worse application than he that names him a law giver. The cook that served up a rope in a pye (to continue the frolick) might have wrapped up such a pettifogger as this in his bill of fare. He is will-with-a-wisp, a wit whither thou woo't. Proteus has not more shapes than he can perform offices. He can instruct with the counsellors, plead as an attorney; he has all the tricks and quillets of an informer, nay, and a bum too, for a need — in a word, he is a Jack-of-all-trades, and his shattered brain, like a crackt looking glass, represents a thousand fancies. He calls himself Esquire of the Quill, but to see how he tugs at his pen, and belaboureth his half-amazed clyents with a cudgel of cramp words, it would make a dog break his halter. The jugling Skip Jack being lately put to his last shift, has metamorphosed a needle into a goose feather, and the sole of an old shoe into a sheet of paper, for the best of his profession have been forlorn taylors, outcast brokers, drunken cobblers, or the offspring of such a rabble rout. He hugs the papers as the devil hugg'd the witch, for they are an advancement of his science, these frisk about him like a swarm of bees, yet he is a man of vast practice if he has but half a score of 'em. If his lowsie clyents chance to recover an old rotten barn or a weather-beaten cottage, he will be sure to have two-third parts for a quantum meruit. He is Lord Paramount among the shifting bailiffs, and a sworn brother to the marshall men, and is behind none of them at the extortive

faculty, having the confidence to demand item for his pains and trouble, when all the while he does nothing but hover over a quart pot. He is as offensive to the attorneys as flies are to a galled horse, and whereas their *ne plus ultra* is ten groats, Mr. Solicitor forsooth claims double fees with authority, and if the clyent prove so saucy to deny it, he will rage like Tom of Bedlam, but if that will not prevail he'll cast a squeezing look like that of Vespasian. . . . In the society of true and genuine lawyers he is like an owl among so many lapwings, and is no more fit to converse with them than a hogherd is to preach a sermon or a cinder-wench to wait upon a countess. . . . He writes a bill of costs in such worm-eaten characters that 'tis past the skill of a Rosicrucian to discover the apocaliptical meaning, yet for all that he will not abate you an ace of the *summa totalis*, and that, to be sure, shall be plain enough. Wherefore, he may very fitly be called the inquisition of the purse . . . and more than that, he scorns to cheat you in hugger mugger, but will not fail to do so before your face. He is like the man that cried, Any tooth good barber, rather than stand out for a wrangler, if he can pump no chink out of you. He will manage your cause for a breakfast, being a notable artist at spunging. Oh! he 's a terrible slaughter man at a Thanksgiving dinner. He outshines a bailiff in all his cheating faculties, and I know none outstrips him except his infernal grandfather. In fine, he is the yeoman's horseleech, the gentleman's rubbing brush, and the courtier's *quid pro quo*. He is the *summum bonum* of knavery; in judgment a meer pigmy; in shew the beard of a demi-blazing star. To be brief, he is like a lamp without oil, a trumpet without sound, a smoak without fire, a fiddle out of tune, or a bell without a clapper; and differs from a lawyer as a shrimp does from a lobster, a frog from an elephant, or a tom-tit from an eagle. — *The Irish Law Times*.

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.

THE LAW JOURNAL (London) appears to have selected the "Green Bag" for a target, and is pouring in a broadside. If, however, it has no better ammunition than its last shot, we think we shall be able to survive its attacks. In its issue of March 30 it says: —

"Green is the color of the ocean in which, according to an ethereal authority, nothing of man that doth fade, but doth suffer a sea change into something rich and strange. Nothing of man fades so much as the stories that attach to his name commonly by a change of one man's story to another's. Some power of the kind appears to affect the 'Green Bag,' the second number of which has appeared. No doubt a receptacle of so much capacity and anxiety for titbits must absorb much foreign matter, which, however, should be treated with respect, and not, like Macaulay's children stolen by gypsies, disfigured so as to conceal its identity. In 'A Generation of Judges,' published in London some two years ago, there are many stories which the literary scissors have been unable to resist. One of these is told in the 'Life of Chief-Baron Kelly,' and concerns a brougham, a cab, an omnibus, and a puzzled woman with a baby. The 'Green Bag,' we grieve to say, extracts the words of the tale, and confuses its identity by attributing it to one 'Mr. Justice Bramwell.'"

We regret to say that at the time of publishing the anecdote in question we had never seen a copy of "A Generation of Judges," and consequently that "titbit" was not derived from that source. Where, then, did it come from? Why, from one of the leading law journals "across the pond"! If the Editor of our esteemed contemporary will turn to his file of the IRISH LAW TIMES, he will find, under date of June 4, 1887, the same anecdote, and will also find that it is there attributed to "Mr. Justice Bramwell."

It was, therefore, in the "United Kingdom" that the horrible crime was committed, and this poor little waif was "stolen like Macaulay's children, and disfigured so as to conceal its identity." The Editor of the "Green Bag" welcomed the "little stranger" and took him in, never dreaming that he was parading under false colors.

A handsome apology from the LAW JOURNAL is now in order.

THE IRISH LAW TIMES, one of the brightest and most readable of our transatlantic exchanges, and to which we are indebted for many of the good things furnished to our readers, has the following pleasant words for the "Green Bag:" —

"Not even the black or blue bag of your barrister, or the red bag of his brother at the Parliamentary bar, could contain anything half so pleasant and agreeable as 'The Green Bag, a Useless but Entertaining Magazine for Lawyers,' the first numbers whereof have come to hand from Boston, Massachusetts. It is, in fact, a new departure in legal journalism: prose, poetry, engravings, — and all of them excellent, — but none of that solid *pabulum* looked for by the lawyer in the daily needs of practice. Light, readable, and entertaining, the new journal addresses itself to his hours of relaxation. It will amuse him, it will interest, but forbears to instruct him. It is not a bag to be associated with him in court, but to be left behind in the robing-room; like the English barrister's bag, used as a mere receptacle of forensic costume. The issues received render us anxious to receive the next; and while greeting the new-born monthly with zest, we hope that it will yet be the means of giving equal pleasure to many other readers in this country."

WE trust our readers will bear in mind our desire for contributions, not only of short articles, but also of anything that will add to our fund of anecdotes, facetiæ, etc. Send along any good stories that you hear, and the Editor will be delighted to "bag" them.

LEGAL ANTIQUITIES.

WHEN pleading was scarcely developed, the courts used to hear suits against animals. The fondness for imaginary trials in the Middle Ages took a practical shape. By the old law of France, if a vicious animal killed a person, and it was proved that the owner knew of its propensity to attack people and suffered it to go at large, he was hanged and the animal also. In 1314, a bull having killed a man by tossing him with its horns, it was brought before the judges in the province of Valois, and indicted as a criminal, and after several witnesses had given evidence, it was condemned to be hanged. This sentence was confirmed by an order of Parliament, and carried into effect. And we are told that an unfortunate pig which had chanced to kill a child in Burgundy, was in like manner solemnly tried in court and suffered the same punishment. So late as 1650, the French law books treated of the proper procedure against animals, such as rats, locusts, flies, eels, and leeches, and the mode of appointing counsel to defend them. In Switzerland criminal prosecutions were often brought against worms.

Nicholas Chorier, a French historian, mentions that in 1584 heavy rains brought on a vast number of caterpillars. The walls, windows, and chimneys were covered with them. The Grand Vicar of Valence cited the caterpillars before him; he appointed a proctor to defend them. The cause was solemnly argued, and he sentenced them to quit the diocese. But they did not obey. It was discussed whether to proceed against these animals by anathema and imprecation, or, as it was expressed, by malediction and excommunication. But two priests and two theologians, having been consulted, changed the opinions of the Grand Vicar, so that afterwards nothing was made use of but adjuration, prayers, and sprinkling holy water. The life of these animals is short; and these ceremonies, having continued several months, received the credit of having miraculously exterminated them.

The famous French lawyer, Chassanee, first established his fame by defending the rats in a process that had been instituted against them in the diocese of Autun. The rats did not appear at the first citation, and their advocate suggested that they had not all been summoned, but only those in a few localities; the proper way was to summon all the rats in every parish. This was held a good plea, and therefore all the rats were duly summoned. They did not, however, attend; but their advocate suggested that many of them were old and sick, and an extension of time should be given. This was again allowed, but the rats did not come into court at the extended time. The advocate then pleaded as the next excuse, that the rats were most anxious to come, but as there were many cats on their way to court, they were entitled to protection in going and coming, otherwise they were afraid to venture out of their holes. Therefore security must be given that the cats would not molest the litigants. The court allowed that this was reasonable; but the owners would not undertake to be bound for the good behavior of their cats, and so the next appointment of sitting of the court fell through, and the hearing was adjourned *sine die.* — *Curiosities of Law and Lawyers.*

THE reign of Richard III. was a remarkable epoch in the legislative annals of England; not only from the statutes being thenceforth in English, but likewise from their having been the first which were ever printed. We accordingly find in these laws exceptions in favor of scriveners (employed in copying books), alluminors (illuminators), printers, and readers of books. Books were then so excessively dear that Daines Barrington conjectures the *readers* above mentioned were booksellers, who received money from an audience who were either incapable themselves of reading, or otherwise could not afford to purchase the books.

FACETIÆ.

A PARTY brought a suit for divorce before a justice of the peace. When the case came up for trial the defendant pleaded the want of jurisdiction. The justice put on his specs, and after careful examination of the statute concluded that he had jurisdiction in all cases where the value of the property did not exceed one hundred dollars. So he told the plaintiff he would have to file an affidavit stating *that his wife and children did not exceed the value of one hundred dollars*; which was done, and the divorce forthwith granted.

As Sheridan was entering court one day, carrying his books and briefs in a "green bag" according to the custom of the time, some of his brother barristers, thinking to play a joke on him, urged some boys to ask him if he had old clothes for sale in his green bag.

"Oh, no!" instantly replied Sheridan; "they are all new suits."

AT the recess of the first day of term, after a large number of inquests and defaults had been taken because a number of attorneys failed to answer when called, Mr. X and Judge Y were talking together in the corridor as Counsellor Z passed.

"Here, Z," said the first, "we were just speaking of you."

"Yes," added the judge, with a twinkle in his eye; "and you must excuse me for being reminded of the old saying, 'Speak of the devil and he is sure to appear.'"

"No, your Honor," promptly replied the counsellor, "that rule does not prevail at this bar; if it did, very few defaults or inquests would ever be taken."

A LAWYER who prided himself upon his skill in cross-examining a witness, had once an odd-looking genius upon whom to operate.

"You say, sir, that the prisoner is a thief?"

"Yes, sir, because she confessed it."

"And you also swear that she bound shoes for you subsequent to the confession?"

"I do, sir."

"Then," giving a sagacious look to the court, "are we to understand that you employ dishonest persons to work for you, even after their rascalities are known?"

"Of course; how else, pray, could I get assistance from a lawyer?"

The witness was peremptorily ordered to "stand down."

A DEBATE once took place among the members of the court of a neighboring State, as to how long they should *set* to dispose of the business before them. *Three weeks* were at last determined on. "Why, in the name of wonder," inquired a wag at the bar, "do they not set four weeks, like other geese?"

"I HEAR," said somebody to Jekyll, "that our friend Smith the attorney is dead, and leaves very few effects."

"It could scarcely be otherwise," returned Jekyll; "he had so very few causes."

"GENTLEMEN, all I ask for is common-sense!" exclaimed an excited barrister, during a closely contested case.

"Yes, that is precisely what you *need*," retorted the opposing counsel.

GILBERT A'BECKETT celebrated his elevation to the office of magistrate at the Greenwich Police Court by a characteristic pun. A gentleman came before him to prefer a charge of robbery with violence, committed in the middle of the night. In stating his case he mentioned that the assault occurred while he was returning home from an evening party. The worthy magistrate interrupted him by observing, "Really, sir, I cannot make up my mind to accept anything like an *ex parte* statement."

ERSKINE, on hearing one day that a member of the bar who was known to have an insatiable appetite had actually eaten away his senses, observed, "Pooh! they would not have made a mouthful for him!"

SERGEANT K——, having made two or three mistakes while conducting a cause, petulantly exclaimed, "I seem to be inoculated with dulness to-day!"

"Inoculated, brother?" said Erskine; "I thought you had it in the natural way."

"Now, sir," said an attorney, examining a medical expert, "how long, in your opinion, can a man live without brains?"

"Well," replied the witness, "that is a difficult question to answer; but if I knew your age, I could tell you exactly."

A FEW years ago, when the Maine Liquor Law was in full force in Vermont, Judge C—— of —— was on a journey. He stopped at a tavern in a cer-

tain town for the night. After supper the worthy judge asked the worthy landlord "for a glass of gin." The landlord said he was sorry he could not accommodate him. "I am obliged by law to keep a temperance house." It was late; so the judge could not go on that night, but he told the landlord he would leave early the next morning before breakfast. "Very well, I will carry your valise and show you to your room." The judge was thereupon taken to a fine room; the landlord said, "I hope you will be comfortable," and retired. There was an open stove in the room, where Judge C—— found a bottle of brandy. He went to the wash-stand and opened it; there he found a bottle of gin, water, glasses, etc. In a cupboard was a bottle of old Bourbon. The judge, after helping himself, went down and told the landlord he would not leave early. After breakfast the next morning, the judge paid his bill, and said to the landlord, "I have been a great opposer of 'temperance houses,' and always refuse to stop at one; but I like the hang of yours, and will call whenever I come this way." "I am sorry," replied the landlord, "I could not let you have some gin last evening; but the law is so strict, and my neighbors keep close watch, so I am obliged to keep a 'temperance house.'"

One of the judges of the West Virginia Court of Appeals tells the following as having actually occurred when he was examining an applicant for license. The applicant was of mature years, having previously held the office of justice.

Judge. What are the requisites of a valid will?

Applicant. Can't tell 'em all, Judge, but I remember one is that it must be read at the burial over the grave of the testator.

Judge. What is a fee simple?

Applicant. I guess about two dollars and a half.

Judge. What is the largest estate in land?

Applicant. A very large estate would, in this country, be about one thousand acres. — *Virginia Law Journal.*

As Rufus Choate was cross-examining a witness, he asked him what profession he followed for a livelihood.

The witness replied: "I am a candle of the Lord, — a minister of the Gospel."

"Of what denomination?" asked the counsellor.

"A Baptist," replied the witness.

"Then," said Mr. Choate, "you are a dipped, but I trust not a wick-ed candle."

There was a very irascible old gentleman who formerly held the position of justice of the peace in one of our cities. Going down the main street one day, one of the *boys* spoke to him without coming up to his Honor's idea of deference.

"Young man, I fine you five dollars for contempt of court."

"Why, Judge," said the offender, "you are not in session."

"This court," responded the judge, thoroughly irritated, "is always in session, and consequently always an object of contempt!"

At a term of Common Pleas in Indiana, during the trial of an Irish will case, Tim Dooley was on the stand and thus testified: —

"I am brother to Molly Flaherty, and I am brother to Betty Hoolahan."

"Then, Mr. Dooley," said Judge B——, "we are to understand that you are *two* brothers?"

"Yis, Misther Judge," replied Dooley, with great deliberation; "aitch of me sisters had a brother!"

A negro who was giving evidence in a Georgia court was reminded by the judge that he was to tell the whole truth.

"Well, yer see, boss," said the dusky witness, "I 'se skeered to tell de whole truth for fear I might tell a lie."

"Your Honor, I am summoned to serve on the grand jury, but I wish you would excuse me."

"What is your business, sir?"

"I am a coal-merchant, your Honor, and very busy this weather."

"You are excused, sir, on the ground that it would be impossible for a coal-dealer to weigh a matter properly and find a true bill."

NOTES.

BOLINGBROKE said: "It is a very easy thing to devise good laws; the difficulty is to make them effective. The great mistake is that of looking upon men as virtuous, or thinking that they can be made so by laws; and consequently the greatest art of a politician is to render vices serviceable in the cause of virtue."

THE true objection to modern statutes (says Barrington) is rather their prolixity than their want of perspicuity; which redundancy hath in a great measure arisen from the use of printing. When manuscript copies are to be dispersed, the trouble of writing an unnecessary word is considered; but a page or two additional in print neither adds much to trouble nor expense.

From the reign of Robert I. words began to be multiplied; before the reign of James III. the evil had increased; it is now familiar. How the chimes are rung in our enlightened age upon any horse, mule, ass, cattle, coach, berlin, landau, chariot, chaise, calash, wagon, wain, cart, or other carriage whatsoever! as if "every quadruped and carriage" would not comprehend all particulars. — *Hist. Memorials*, by Sir David Dalrymple, Edinburgh, 1796.

How we still love to stick to the same old antiquated and ridiculous forms, even in these modern days! Three fourths of the words in all our legal instruments are mere surplusage and vain repetitions. Why should the legal profession alone be obliged to "beat all about Robin Hood's barn," to express that which might be stated clearly and distinctly in a few simple words? It is time that this absurdity was thoroughly and effectually disposed of.

THE first edition (folio, 1698) of "Shower's Cases in Parliament" was published anonymously, the chief peculiarity of the titlepage being a quotation from Horace, running thus: —

—— Quicquid sum Ego, quamvis
Infra Lucili censum ingeniumq; tamen me
Cum Magnis vixisse, invita fatebitur usq;
Invidia —— **Horat.**

It is not perhaps unnatural, but is somewhat amusing, to find this edition catalogued in a Philadelphia list as "Horat's Reports"

ANACHARSIS, the intelligent foreigner of his day, on visiting Athens and hearing of the laws of Draco and Solon, said: "All the laws you can make are but spiders' webs, which the strong will break through, and only the poor fly will be caught."

THE portraits of Justice Rutledge of South Carolina, who died before he took his seat on the bench, and Justices Ellsworth and Matthews, are required to complete the collection of portraits of members of the United States Supreme Court in the robing-room in the Capitol. The portrait of Chief-Justice Waite has just been added. An artist is now at work on the portrait of Justice Rutledge, preparing it from an old picture. The preparation of Judge Matthews's portrait awaits a congressional appropriation.

IT has been well observed by a modern writer, that "we are very apt to mistake the foulness of a crime for certainty of evidence against the individual accused of it; or in proportion as we are impressed with its enormity, the less nice we become in distinguishing the offender." A striking illustration of this remark presented itself in a case tried some years since. An atrocious murder having been committed, an unfortunate individual was accused of being the murderer, and brought to trial. The judge charged the jury that no evidence had been produced against the prisoner, and that therefore they must of necessity acquit him. To the surprise of the court, however, the jury returned a verdict of "guilty." The verdict having been recorded, the judge requested to know upon what shadow of proof it had been found. "My lord," answered the foreman, "a great crime has been committed; somebody ought to suffer for it; and we do not see why it should not be this man."

THE longest lawsuit ever known in England was the famous "Berkeley suit," which lasted upward of one hundred and ninety years, having commenced in 1416 and terminated in 1609.

AN Irish statute-book opens characteristically with "An Act that the King's officers may travel *by sea* from one place to another within *the land* of Ireland."

Recent Deaths.

COL. EDWARD P. NETTLETON, late Corporation Counsel of Boston, died April 17. He was born at Chicopee Falls, Nov. 7, 1834. He graduated at Yale College in the Class of 1856, and having taught in Liberty and in Lynchburg College, Lynchburg, Va., he was in 1857 chosen principal of the high school in his native place. This position he resigned in the fall of 1858, to enter on the study of law in New York. A year later he returned to Chicopee as principal of the high school. In the autumn of 1861 he joined what was known as the Western Bay State Regiment, and on the 10th of December he was mustered in as captain of Company E, Thirty-first Regiment. Returning to Massachusetts after the war, Colonel Nettleton resumed the study of the law in Springfield and at the Harvard Law School, and was admitted to the bar in 1867. January, 1869, he was appointed Assistant United States District Attorney, resigning in 1873 to engage in general practice. In 1876 he was appointed by John P. Healy Fourth Assistant City Solicitor, was promoted to Second Assistant in 1878, to First Assistant in 1879, and was elected City Solicitor in 1881, which office he resigned, in November of the same year, to accept the position of Counsel for the New York and New England Railroad. May, 1882, he was elected Corporation Counsel for the city of Boston, and left the railroad to accept that office, which he held by annual elections and appointments until, on account of failing health, he resigned it Dec. 24, 1888.

THE death of WILLIAM HENRY RAWLE removes one more of the old-fashioned, typical "Philadelphia lawyers," and those now remaining could almost be counted on the fingers of both hands.

Like Horace Binney, Eli K. Price, and Benjamin Harris Brewster, Mr. Rawle came of good family, and received his legal education in Philadelphia when the city was still the legal centre of the country.

While, perhaps, not having the national reputation of the three attorneys named, he was thoroughly learned in the law; and his published works, the first issued in 1852, have become standards on contracts and land titles.

Mr. Rawle's manners were those of the old school, and he was naturally retiring in disposition. This explains, probably, why, after being defeated for Supreme Judge in 1882, he never sought a renomination.

His integrity, ability, and legal knowledge will link his name securely with the history of the most famous period of the Philadelphia bar.

We hope in our June number to give our readers an excellent portrait and a more extended sketch of the life of this eminent lawyer.

MR. WILLIAM R. ARCHER, the "father of the Illinois Senate," died at his home in Pittsfield, Ill., April 13. Mr. Archer was born in Flushing, L. I., June 21, 1815. He studied law, and began practice in Illinois directly after his admission to the bar. He was at one time law partner of Stephen A. Douglas, and ranked at the top of his profession. He was a member of the constitutional conventions of Illinois in 1847 and 1870. He was the oldest member in continuous service in the State Senate, and a lifelong Democrat. One of his most notable legal achievements was the successful defence of a suit against the State of Illinois involving $3,000,000.

COL. GEORGE W. DYER, the prominent patent lawyer, died in Washington, April 13. He was a native of Maine, and was educated at Yale and Bowdoin, being an alumnus of the last-named college. At the commencement of the war he became a member of the staff of the Governor of Maine, with the rank of lieutenant-colonel. Subsequently he was appointed paymaster in the army, and as such was stationed in Washington, and with the army of the Potomac from 1862 to 1869. After being mustered out of the military service he immediately resumed the practice of law, making a specialty of patents and taking a leading position in the Patent Office. He was best known for his connection with the contests over the right to the telephone, the electric light, electric railways, and other large interests. He was largely employed by Mr. Edison.

IN the death of Judge CHARLES E. STUART Virginia loses one of her most brilliant and capable sons. Educated at the University, a lawyer of marked ability, a smooth, graceful, and convincing speaker, he attained at an early age a prominence in public affairs that in Virginia of late years has

been generally reserved for much older men. Mr. Stuart was first elected Judge of the city of Alexandria, and when afterwards he was elected to the House of Delegates, was chosen in his second session the Speaker of that body. He was returned to the bench after declining re-election to the Legislature, and served in that position till his death. Throughout the State there will be many who knew the deceased and put a just and high estimate upon his superior abilities, who will hear with deep regret that this gifted young Virginian has been cut down in the flower of his youth.

THE bar of Staunton, Va., which has numbered many brilliant lawyers among its members, has lost another prominent figure in the death of Judge HUGH W. SHEFFEY, who died on April 7 in his seventy-fifth year. Judge Sheffey was an able lawyer, and had a wide reputation as an authority on parliamentary and ecclesiastical law; and in the general conventions of the Episcopal Church, to which he belonged, his complete mastery of these subjects, says the Baltimore "Sun," made him especially valuable.

HON. CALEB BOGESS, known throughout Virginia for his eminent legal attainments and his prominence in general affairs of the State before and since the war, died suddenly at his home, on April 14, aged sixty-six years. He was a graduate of the Lexington, Ky., University, in the Class of '54, and later was a member of the Virginia Legislature and the secession convention.

JOHN C. PARK, one of Boston's oldest lawyers, and in his day a famous orator, died on April 21 at his home in Newton. Mr. Park was born in Boston in 1804, graduated from Harvard in 1824, and later was admitted to the Suffolk bar. He was associated in legal practice with the late Charles G. Loring, Judge Jackson, and Sidney Bartlett. Mr. Park served six terms in the State House and two in the Senate. He was also at one time District Attorney for Suffolk County, Clerk of the Supreme Court, and Justice for the Probate Court for West Newton.

In noticing the death of WILLIAM T. NORRIS, of Danbury, N. H., in our April number, the name was, by an error, made to read William J. Morris.

REVIEWS.

THE leading article in the April number of the LAW QUARTERLY REVIEW is on "Manorial Jurisdiction," by G. H. Blakesley. The well-known American writer, Melville M. Bigelow, contributes an interesting chapter on the "Definition of Circumvention," taken from his new work on Fraud which is now in press. In "Murder from the Best Motives," Herbert Stephen takes issue with the ideas advanced by Dr. Thwing in a paper entitled "Euthanasia in Articulo Mortis," read before the New York Medico-Legal Society, in which he argued that in some cases of hopeless suffering a physician is morally justified in putting an end to his patient's life. The other contents of this number are "On the Amendment of Law relating to Factors," "County Court Reform," "The Swiss Federal Court," "Federation and Pseudo-Federalism," "Employer's Liability," and "The Squatter's Case."

THE March-April number of the AMERICAN LAW REVIEW is uncommonly interesting and entertaining. This is perhaps to be attributed to the fact, as intimated by the genial editor, in the "Notes," that he (the editor) "has been spurred up by his new business rival 'The Green Bag.'" We congratulate our friendly rival on his determination to follow in our footsteps. In the first place there is a very readable article on "The Use and Value of Authorities," by Mr. Justice Samuel F. Miller of the United States Supreme Court. Irving Browne contributes a paper on "Dead-Letter Laws." Conrad Reno discusses the "Impairment of Contracts by Judicial Opinion;" and the address of Walter B. Hill, President of the Georgia Bar Association, on "Bar Associations" is published in full. The "Notes" are made more of a feature than usual, and include poetry as well as prose. Judging from the results, the "Green Bag" has done a good work in spurring up its Western brother, and we shall do our best to make him toe the mark in the future.

THE April number of the JURIDICAL REVIEW is fully up to the excellent standard of its first issue. For a frontispiece there is a fine picture of Pasquale Stanislao Mancini, the eminent Italian jurist, which is accompanied by an interesting sketch of his life. The other contents are "The

Oregonian Railway Decision," "How Law is Taught in Italy," "County Councils in Scotland," "The 'Negligence Clause' in Charter Parties," "Local Government in France," "Lord Fraser," and "The Judicial System of Germany." This new Review must commend itself to the profession, and we are confident will meet with the success which it certainly deserves.

MESSRS. WARREN and Brandeis continue the discussion of "Great Ponds" in the April HARVARD LAW REVIEW, in an article entitled "The Law of Ponds." The paper is an able reply to the argument of Hon. Thomas M. Stetson, published in the February number of this periodical. Prof. James B. Ames contributes an interesting article on "The Disseisin of Chattels."

THE COLUMBIA LAW TIMES for April contains a paper on "Direct Taxes," by Prof. F. M. Burdick. The following statement, made by the writer, will perhaps be novel to many of our readers: —

"Were one, unfamiliar with the Federal decisions on the subject, to be asked what was meant by 'direct taxes' in the United States Constitution, he would undoubtedly answer: 'Taxes assessed upon the property, person, business, income, etc., of those who can pay them.' If his definition were called in question, he would support it not only by quotations from political economists of opposite schools, but from jurists like Judge Cooley (Cooley on Taxation, p. 6). He would be astonished to learn that the Supreme Court had given to these words as used in the Federal Constitution a different — a purely conventional — meaning, limiting them substantially to real estate and poll taxes."

THE adoption of electricity as a means of execution in capital cases in the State of New York has naturally called forth much discussion upon the subject. In the March number of the MEDICO-LEGAL JOURNAL, Henry Guy Carlton contributes a paper upon the manner of carrying into effect the sentence of death by means of electricity, and there is also an account of an interesting series of experiments with the "Death Current" at the Edison Laboratory. J. Hugo Grimm has an article, in the same number, on "Insanity as a Defence to the Charge of Crime."

BOOK NOTICES.

THE AMERICAN DIGEST, 1888 (United States Digest, Third Series, Vol. II.). West Publishing Co., St. Paul, 1889. $8.00 net.

This Digest gives full and intelligible statements of all points of law decided in each case, excluding *dicta*. The whole judicial law of the United States for 1888 is embraced in this volume, and the practitioner can turn to it with a certainty that *every* case is to be found in it, with full, clear, and reliable statements of all points decided. The work is so well known to the profession through the first volume (1887), that we need only say that the present volume is fully up to the standard of its predecessor, and has even been improved in certain minor respects. The classification of paragraphs is such that reference is made extremely easy, and the lawyer is thus saved a vast amount of valuable time. The Digest is in fact almost indispensable to every member of the legal profession.

WHARTON'S LAW LEXICON (Eighth Edition). Edited by J. M. Lely-Stevens and Son, Publishers. London, 1889.

This admirable Law Lexicon is too well known by the profession to need any formal introduction. Forming, as it does, an epitome of the law of England, and containing full explanations of the technical terms and phrases thereof, both ancient and modern, as well as the various legal terms used in commercial business, it is invaluable to both the student and the practitioner. This last is an improvement over all former editions, the editor having made many additions and alterations, thereby much enhancing the value of the work.

The volume is exceedingly attractive in form; paper, type, and binding being all that could be desired.

The Green Bag.

VOL. I. No. 6. BOSTON. JUNE, 1889.

WILLIAM HENRY RAWLE.

BY GEORGE W. BIDDLE.

THE subject of this sketch, William Henry Rawle, of the Philadelphia Bar, was connected on all sides with the profession of the Law. His father (William Rawle, Jr.), both his grandfathers (William Rawle, Sr., and Edward Tilghman), and his maternal great-grandfather (Chief-Justice Benjamin Chew) were distinguished practitioners, and some of them prominently connected with official administration of justice. Among his collateral relatives are to be found Chief-Justice Tilghman, the late Thomas I. Wharton and his sons Dr. Francis Wharton and his accomplished though less distinguished brother Henry Wharton. It would have been strange, if with such surroundings and belongings and breathing such an atmosphere from his infancy, our deceased friend could have taken up any other pursuit than that of the Law; and he seems to have accepted with alacrity the duties and responsibilities thus cast upon him.

Mr. Rawle was admitted to practise at the bar of his native city, at the age of twenty-one, in the latter part of the year 1844. His first appearance in the Supreme Court of the State was in the year 1848[1] in a case involving a point of practice; but the chief interest of his introduction at that time into the highest court of Pennsylvania is that the illustrious John Sergeant was still continuing to exhibit his great forensic powers there, his name being several times found in the same volume of reports. The next case[2] in which Mr. Rawle is found in the Court of Errors was two years later, his argument being pretty fully reported, and when he was on the successful side. It was an important case involving the right of alteration of the charter of a trading corporation and the mode of signifying assent to the proposed changes. After this Mr. Rawle's success was assured, and his name appears regularly in the reports down to within a year of his decease, the last cause argued by him being in the spring of 1888,[1] in which the doctrine of the rule against perpetuities was thoroughly discussed. For forty years Mr. Rawle is thus found actively aiding the administration of justice by his arguments before the highest court of his native State, over which his ancestor Chief-Justice Chew had presided while it was yet a British Province. The amount of thoroughly good work done by him during the whole period of his adult life is difficult to express in words; for the results of his learning and ability were so often unconsciously absorbed and reproduced in the opinions of the tribunal before which he was practising, that it is impossible to adjust the proportion of originality in the processes of legal ratiocination and ultimate judgment between the counsel laying down the reasons for the decision and the judge who finally pronounced it. It is enough to say here that the court was always well supplied with materials for its judgment when Mr. Rawle appeared before it, whatever may have been the conclusion to which it found itself impelled.

But great as his merits were on the active side of his professional life, they were only a part of his title to our respect, and per-

[1] Hobson *v* Croft, 9 Penn. St. R. 363.

[2] Commonwealth ex rel. *v.* Cullen, 13 Penn. St. R. 133.

[1] Mifflin's Appeal, 121 Penn. St. R. 205.

haps the profession will ultimately decide the lesser part of his claims to its gratitude. His book on "Covenants for Title," published as early as 1852 and passing through five editions in his lifetime, will continue an enduring title of honor to him as long as clearness of legal perception, soundness of judgment, and profound learning in dealing with a technically difficult subject shall be estimated at their true value. A work upon so important a branch of the law, the merits of which are attested by the number of editions through which it has already passed, was liberal payment of the debt which the lawyer is supposed to owe to his profession; but much as it was, it was only a discharge in part of the claim which our friend believed himself to be under to it. His treatise on "Equity in Pennsylvania," emitted in the year 1868 in the form of a lecture before the Law Academy of Philadelphia, is an admirable view of the subject which it discusses; and the synopsis found in it, with the Registrar's Book of Governor Keith's Court of Chancery, contained in the appendix, which Mr. Rawle's labors unearthed from its unknown hiding-place among the archives of the State at Harrisburg, greatly enhance the value of the essay. It is not too much to say that, taken as it should always be with the "Essay on Equity" in Pennsylvania, by Anthony Laussat, Jr., the remarkable production of a student of law, there is presented to the inquirer into this head of jurisprudence a most favorable view of the mode in which equitable relief has been and continues to be administered in Pennsylvania, presenting a system well worthy of imitation and adoption.

Mr. Rawle's intellectual activities did not stop here. He was a ready and graceful writer upon general subjects, and two of his occasional addresses are so admirable that it would be a grave omission to pass them over. His address upon the unveiling of the statue of Chief-Justice Marshall, delivered at Washington in the month of May, 1884, is remarkable for its freshness, its neatness, the absence of commonplace in dealing with a hackneyed subject, and the beautiful compendium of the official life of the distinguished subject of the eulogy. The address upon "The Case of the Educated Unemployed," made at Harvard, June 25, 1885, before the Phi Beta Kappa Society, abounds in admirable advice to the young and aspiring, conveyed in polished, sometimes epigrammatic phrases; and a vein of commonsense runs throughout the whole of it. It is one of the best of the many addresses delivered at that time-honored institution of learning.

Although not a frequent speaker upon the occasional gatherings of the profession, either for social purposes or more frequently to pay the tribute of respect to departed associates, some of Mr. Rawle's remarks at such meetings show with what ease and success he handled such subjects. Two of these may be here referred to as good illustrations of his style, — the first his remarks at the Bar Meeting held to take action upon the death of Henry Wharton on the 15th of November, 1880; the other, upon the occasion of the reception given by the Bar of Philadelphia to Chief-Justice Sharswood upon his retirement from the Supreme Court on the 20th of December, 1882. No one who heard or who now reads these addresses can fail to be delighted with the exquisite taste, the happy catching of and adaptation to the tone of the occasion, the nice discrimination of praise awarded to the subjects of the speeches, the high professional tone, and the thorough good-fellowship and sympathy with the members of the profession, exhibited throughout. The only regret upon reading them is that they were not more frequently delivered. But Mr. Rawle's sensitiveness shrank at all times from public deliverances, except in the way of professional work, and a little pressure was necessary to be exerted upon him, except where the outwellings of affection and sympathy flowed spontaneously from his lips

From this short sketch it will be seen that

the bar of which he was a member, when it met in the end of the month of April of this year to show respect to one of its best men, was entirely within the just limits of mortuary eulogy when it asserted that William Henry Rawle "was in himself an example of the best qualities which go to form the character of a sagacious adviser, a high-minded and capable advocate, and a useful citizen, and [that] his death is a loss not only to the bar but to the community at large."

THE GREAT SEAL.

THE office of "Chancellor of the Kings of England" has existed from the most remote antiquity. Lord Campbell, in his "Lives of the Chancellors," says: "The almost fabulous British king Arthur is said to have appointed a chancellor. The Anglo-Saxon monarchs from Ethelbert downwards certainly had such an officer; but although the office then existed, centuries elapsed before it assumed the functions of a court."

The king has ever been considered the fountain of justice. In very early times, as he could not himself in person decide all controversies and remedy all wrongs, tribunals were constituted, over which deputed judges presided to carry the law into execution. Still, applications were made to him personally by injured parties for redress; these were to be referred to the proper forum, and process was to be made out for summoning the adversary, and directing that after both sides had been heard the appropriate relief should be administered. To assist him in this department, the king employed a secretary, on whom, by degrees, it was entirely devolved; and this officer, on a statement of facts by the complainant, framed writs or letters, in the king's name, to the judges, by which suits were instituted. Forms were adopted, to be always followed under similar circumstances; and a place was named to which all suitors might resort to be furnished with the means of obtaining justice. This was the *officina justitiæ*, called Chancery: and the officer who presided over it was called Chancellor.

Again, grants of dignities, of offices, and of lands were made by the king. The writs above referred to, and these grants were in the earliest times verified merely by signature. The art of writing being then but little known, seals became common; and the king, according to the fashion of the age, adopted a seal with which writs and grants were sealed. This was called the Great Seal, and the custody of it was given to the chancellor.

It has generally been supposed that Edward the Confessor was the first English sovereign who used a seal; but Dugdale shows that there were some grants under seal as far back as King Edgar.

At first the chancellors were selected from the ecclesiastical order. The king always had near his person a priest, to whom was intrusted the care of his chapel and who was his confessor. This person, selected from the most learned and able of his order, and greatly superior in accomplishments to the unlettered laymen attending the court, soon acted as private secretary to the king, and gained his confidence in affairs of state; and to this person was assigned the business of superintending writs and grants, with the custody of the Great Seal.

The first layman intrusted with the keeping of the Great Seal was William Fitzgilbert, who was appointed chancellor by Queen Matilda; and from his time no other layman was appointed until the reign of Edward III.

The Great Seal has ever been considered the emblem of sovereignty, — the *clavis reg-*

ni, — the only instrument by which, on solemn occasions, the will of the sovereign can be expressed. Absolute faith is universally given to every document purporting to be under the Great Seal, as having been duly sealed with it by the authority of the sovereign. The law, therefore, takes anxious precautions to guard against any abuse of it. To counterfeit the Great Seal is high treason, and there are only certain modes in which the genuine great seal can be lawfully used.

In stormy times these potent symbols of authority have passed through many vicissitudes. It has been usual to consider the Great Seal as inseparable from the person of an existing chancellor; but there were often concurrently a chancellor and a keeper of the Great Seal. When the king went abroad, sometimes the chancellor accompanied him with the Great Seal, another seal being delivered to a vice-chancellor, to be used for the sealing of writs and despatch of ordinary business; and sometimes the chancellor remained at home while the vice-chancellor attended his sovereign. When Richard I. went to the wars in Palestine, Longchamp, his chancellor, remained in England; but while he held the office he always had vice-chancellors acting under him, who were intrusted with the custody of the Great Seal. Hoveden relates that while Longchamp stayed in England to administer the government, Malchien, as vice-chancellor, attended Richard in Sicily, on his way to Palestine. Off Cyprus the unfortunate man fell overboard, having the Great Seal suspended round his neck; and both man and seal found a watery grave.

In 1206 King John, to raise money for his necessities, put up the Great Seal at auction, and it was purchased by one Walter De Gray, who paid down 5,000 marks (equal to £61,245 of present money) for it during the term of his natural life, and the grant was made out to him in due form. Under this he actually held the chancellorship for six years.

It is somewhat surprising among the "Lives of the Chancellors" to find recorded the history of a woman. The only *lady* keeper of the Great Seal was Queen Eleanor, who was appointed by King Henry custodian of the Great Seal, in the summer of 1253, when he was about to lead an expedition into Gascony to quell an insurrection in that province. She held the office nearly a whole year, performing all its duties, as well judicial as ministerial.

In 1688, on the landing of William the Prince of Orange, James II. conceived the plan of destroying the Great Seal, believing that without it the government could not be conducted. On the night of December 10, he left Whitehall, completely disguised, accompanied by Sir Edward Hales, whom he afterwards created Earl of Tenterden. London Bridge (which they durst not cross), being then the only one over the Thames, they drove in a hackney-coach to the horse-ferry, Westminster; and as they crossed the river in a boat, the king threw the Great Seal into the water, and thought that he had sunk with it, forever, the fortunes of the Prince of Orange. But this seal, the emblem of sovereign sway, which had been thrown into the Thames, was found shortly after in the net of a fisherman near Lambeth, and was delivered by him to the Lords of Council, who were resolved to place it in the hands of the founder of the new dynasty. This finding called forth the observation from Sir John Dalrymple, "that Heaven seemed by this accident to declare that the laws, the constitution, and the sovereignty of Great Britain were not to depend on the frailty of man."

About a century later, March 24, 1784, London was thrown into consternation by the news that the Great Seal had been stolen from Lord Thurlow, who was then Lord Chancellor; and many who attached a superstitious reverence to this bawble imagined that for want of it all the functions of the executive government must be suspended. A charge was brought against the Whigs, that, to prevent the threatened dissolution, they had burglariously broken into the Lord

Chancellor's house in the night-time and feloniously stolen and carried off the *clavis regni*.

The truth was that very early in the morning of the day in question some thieves did break into Lord Thurlow's house, in Great Ormond Street, which then bordered on the country. Coming from the fields they had jumped over his garden wall, and forcing two bars from the kitchen window, went upstairs to a room adjoining the study. Here they found the Great Seal inclosed in the two bags so often described in the close roll, — one of leather, the other of silk, — two silver-hilted swords, belonging to the chancellor's officers, and a small sum of money. With the whole of this booty they absconded. They effected their escape without having been heard by any of the family; and though a reward was offered for their discovery, they could never be traced.

In 1812 an amusing incident occurred in connection with the Great Seal. During the autumn, part of Lord Chancellor Eldon's house, at Encombe, was destroyed by fire. The scene Lord Elton afterwards described very graphically in his old age: "It really was a very pretty sight," he said; "for all the maids turned out of their beds, and they formed a line from the water to the fire-engine, handing the buckets; they looked very pretty, *all in their shifts*." While the flames were raging he was in violent trepidation about the Great Seal, which, although he was not in the habit, like one of his illustrious predecessors, of taking to bed with him, he always kept in his bedchamber. He flew with it to the garden, and buried it in a flower border. But his trepidation was almost as great next morning; for what between his alarm for the safety of Lady Eldon and his admiration of the maids in their vestal attire, he could not remember the spot where the *clavis regni* had been buried. The entire household turned out and commenced digging for the hidden treasure. "You never saw anything so ridiculous," he said, "as seeing the whole family down that walk probing and digging till we found it."

This was the Great Seal which Erskine held for the brief space of fourteen months, and concerning which, though the loss of office was a serious blow both to his ambition and his purse, he could afterwards afford to joke so pleasantly. At a dinner-party Captain Parry was asked what he and his crew lived upon during the Arctic winter. "We lived chiefly on seals," he replied. "And very good living, too," said Erskine, "*if you keep them long enough*."

Later, William IV. was very angry with Lord Brougham for taking the Great Seal to foreign parts in his valise. A young lady once made it her pleasure to obtain the seal from this gallant old lawyer, and compelled him to go down on his knees to her on a rather public occasion, before she would restore it to his keeping.

The chancellors who have had the custody of the Great Seal have by no means found the office a bed of roses. The history of their lives, in former times, unfolds a series of struggles with disappointed aspirants and even with their sovereigns. In later years the impeachment of these high officials has been of frequent occurrence; and within the last four centuries no less than six lord chancellors have been brought to the bar of their country to answer for alleged malfeasance in office, — Cardinal Wolsey, Lord Bacon, Lord Keeper Finch, Lord Clarendon, Lord Somers, and Lord Macclesfield; and of these Lord Somers alone was acquitted. In 1865 Lord Westbury was forced, by the emphatic expression of the popular will, to resign his office as chancellor, under circumstances which appeared to leave no doubt that his official record was not free from stain.

A DIP INTO MY LAW BOOKS.

OLD Hooker has been pleased to describe law as the mother of peace and joy. I fear, however, that many of her offspring have had reason to lament their maternal inheritance, and to complain that what they derived *ex parte materná* was, in the phraseology of the lawyers, *damnosa hæreditas*, — an injurious inheritance. A very clever satirical writer (G. A. Stevens), after proposing to consider the law, because our laws are very considerable both in bulk and numbers, proceeds thus: "Law is law" (which is perhaps the best definition that can be given of it). "Law is like a country dance, — people are led up and down it till they are tired. Law is like a book of surgery, — there are a great many terrible cases in it. It is also like physic, — they who take the least of it are best off. Law is like a homely gentlewoman, — very well to follow. Law is like a scolding wife, — very bad when it follows us. Law is like a new fashion, — people are bewitched to get into it. It is also like bad weather, — most people are glad when they get out of it." We may add that law is like a battle, — they are safest who are farthest off from it. But notwithstanding all these objections to law, people will run into it; and the numerous battles that have been fought by them are recorded in the Law Reports, into which we intend to look for a few minutes' amusement.

It is actionable to call a counsellor a daffy-down-dilly, or to say of an attorney that "he hath no more law than Mr. C.'s bull," even although Mr. C. actually have no bull at the time; for if that be the fact, said the judge who tried the case, the scandal is greater. And it is quite clear that to say that a lawyer has "no more law than a goose" is actionable; but to say of a man that he has as much sense as a pig is not actionable, because the pig may be a learned pig, and possess a deal of sense; and there is no imputation that the man has not more sense than the pig. To say of a man, "You enchanted my bull," or "Thou art a witch," or that a person "bewitched my husband to death," has been decided as actionable; but it is still unsettled whether an action can be brought against a man for saying to or of a young lady, "You enchanted me," or "She enchanted me;" or, as the case may be, "She enchanted my brother, my dog," etc.; or "She's a bewitching creature;" or, to put the more exact point, "She has quite bewitched poor Charlie."

On the other hand, you may, if you please, say of another that "he is a great rogue, and deserves to be hanged as well as G., who was hanged at Newgate;" because this is a mere expression of opinion, and perhaps you might think that "G." did not deserve hanging. . . . Judge Twisden said he recollected a case in which a shoemaker brought an action against a man for saying he was a cobbler; and this was held good in Chief-Justice Glyn's time. One said of a Justice of the Peace, "He is a logger-headed, a slouch-headed, and a burden-bellied hound." These words were held not actionable. But if I say of another that he smells of brimstone, I am guilty of slander and must abide the consequences.

Some humorous cases have arisen out of wills and testaments. Lord Chancellor Eldon held that the trust of real and personal estate for the purpose of establishing a botanical garden was void, because the testator expressed in his will a hope that it would be for the public benefit (these words bringing it within the statute of mortmain). A bequest for the dissemination of Baxter's "Call to the Unconverted" was declared void. So was a legacy given to a person on condition of his drinking up all the water in the sea, as it was solemnly decided that the condition could not be performed.

Some of our old law books abound in extraordinary actions, brought for what would

now be considered most trivial and ridiculous causes of complaint. There is one case, in the reign of Henry IV., of a man who brought an action against a cook for selling him a fowl which gave him a sick stomach, in which action he recovered twenty shillings' damages.

In some of these cases it is difficult to say whether the reader is more amused with the trivial nature of the complaint or the nicety which the court required in the pleadings. There is a case in which the guardian of an infant brought action against a barber for cutting off the child's hair. The defence made was, that the child was more than sixteen years of age, and had agreed with him, the defendant, for sixpence, that he should have license to take two ounces of hair. This plea was adjudged bad in point of law, because an infant could not give a license, though she might agree with the barber to be trimmed.

The solemn simplicity with which trifles are recorded in the older reporters cannot fail often to amuse the reader. When all the judges in England were summoned to attend the trial of Lord Morley before his peers for murder, they met to consider the points of law likely to arise in that most important case; their resolutions are given by Kelyng, among which the following is recorded with the utmost gravity: —

"We were to attend at the tryal in our scarlet robes, and the Chief Judges with their collars of S. S. which I did accordingly; but my Lord Bridgeman was absent, being suddenly taken with gout; the Chief Baron had not his collar of S. S. having left it behind him in the country; but we were all in scarlet; but nobody had a collar of S. S. but myself for the reasons aforesaid."

But as an instance of simplicity, the following extract from an old continental work, not a law book, defies competition. Says the writer: —

"The English are not dragged to the place of execution, but run there themselves, and die laughing and singing, cracking jokes, and quizzing the bystanders. When the executioners are absent they frequently *hang themselves!*"

In a very old volume of the Reporters it appears that in the country, when women passed cattle, it was usual to say, "God bless them;" otherwise the women were taken for witches. If "A" have a right of entry into his house he ought to have a common entrance at the usual door, and shall not be put to enter at a hole or back door, or down a chimney. Littleton says that in an appeal of death the defendant waged battle with the plaintiff, and was slain on the field; yet judgment was given that he should be hanged, which the judges said was altogether necessary, for otherwise the lord of the manor would lose his escheat.

It was formerly held to be the law that a husband had a right to beat his wife, and call her any names he pleased. A man is justified in the battery of another in defence of his wife; for, says the law, she is his property, which is rather an ungallant reason. If a man lift up his stick at me, I am not bound to wait until he strikes; but I may lay on before in my own defence, peradventure, says the reporter, I may come too late afterwards. A man who has committed an offence may plead not guilty, and yet tell no lie; for by the law no man is bound to accuse himself — so that when I say I am not guilty, the meaning is as if I should say, "I am not so guilty as to tell you. If you will bring me to trial, and have me punished for what you lay to my charge, prove it against me."

Sir William Fish was bound by obligation to pay on such a day, in Gray's Inn, fifty pounds generally, without saying of money; and therefore upon the day, when the gentlemen of the Inn were at supper, Sir William came in and tendered fifty pound weight of stone. This was adjudged no tender. *Libra* signifies "weight;" yet, says Plowden, if one is bound in £50 and forfeits his bond, he must pay money, and not lead and the like. Lord Ellenborough refused to try an action upon a wager on a cock-fight, observing it

was impossible to be engaged in ludicrous inquiries of this sort consistently with that dignity which it was essential a court of justice should observe. On the other hand, an action was maintainable on a wager of a "rump and dozen" whether the plaintiff was older than the defendant. Mr. Sergeant Vaughan urged that instead of any public prejudice arising from the thing betted, it was for the public benefit to promote good humor and conviviality. Lord Mansfield, indeed, said, "I do not, judicially, know the meaning of a 'rump and dozen;'" but Mr. Justice Heath observed that they knew very well, privately, that a rump and dozen was what the witnesses had stated, namely, a good dinner and wine; "in which," said the learned judge, "I can discover no illegality." It was a long time ago decided that a parishioner is not bound to come to his own parish church, provided he goes to another; and that a man cannot have two Christian names. A man cannot bring an action against himself.

We might go on to an interminable length with our pickings, but we must stop, and give only one more; and that is, if a man, for a certain sum of money, agree to do a thing which is impossible, and fails to do it, an action may be brought against him for the non-performance. — *Dublin University Magazine.*

THE PETROLEUM OINTMENT CASE.

WILLIAMS *v.* FIREMAN'S FUND INS. CO. (54 N. Y. 569.)

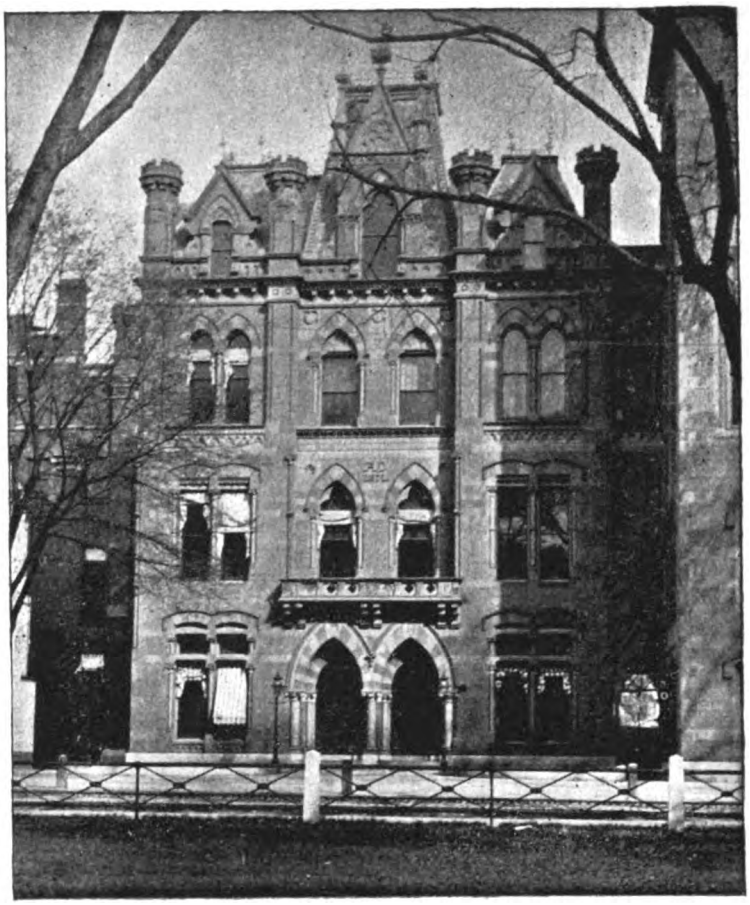
By Irving Browne.

[*The keeping of a small quantity of petroleum in a house, for medicinal purposes only, is not a "storing" within the prohibition of an insurance policy.*]

DEFENDANTS had an office grand
Which cost a heavy rent,
Accountants there on every hand,
A portly president
Who was an elder in the church,
And asked a grace each day,
Nor left his neighbor in the lurch
Save in a business way;
Who with benevolence brimmed o'er,
Who never stooped to sport,
Who never drank, and never swore
Except to the report.
This company was much more wise
Than other companies,
For they avowed they would despise
All technicalities;

Their policies in print professed
  How deeply they were smitten
With a fraternal interest
  For all their underwritten;
They hounded Williams up and down
  To take a trifling risk,
At every point about the town
  He met their agent brisk:
"Some night would come a fire immense,
  And uninsured he 'd rue it,
And if he minded the expense
  They would pay him to do it."
And so they gave assurance sound
  Against all loss by fire
On goods of plaintiff they were bound
  Till twelve months should expire.
But if he "stored" petroleum,
  They cunningly provide
He 'd forfeit all the premium
  And lose his claim beside.
Now, when the Civil War broke out,
  Like a good man and true,
Williams did not stay home and spout,
  But donned the sacred blue.
He fought until a rebel wound
  Subdued his zeal spontaneous,
And sent him from the battle-ground
  With a disease cutaneous.
And when by scratching he was flayed,
  By frequent imposition
Of crude petroleum he allayed
  The heat of his condition.
A little of this stuff he 'd keep,
  But not enough to hurt,
And when at night he could n't sleep
  He 'd saturate his shirt.
One night an accidental fire
  His house and goods did spoil,
But unless Sickels is a liar,
  It spared both shirt and oil.

The company refused to pay,
  Because of this small hoard
Of crude petroleum, which, said they,
  He in his house had "stored."
So Hand and Parsons came to court,
  And wrangled *pro* and *con*;
The cause made much judicial sport
  When it was sat upon.
Said one of the commissioners,
  "Suppose he drank the same,
Or introduced it in his drawers,—
  How would he be to blame?
It was but medicine he took,
  Outside instead of in,
And 'storing,' this in any book
  Hath ne'er decided been."
So Reynolds quoth, and Earl concurred,
  And Johnson, Lott, and Dwight
Looked solemn as Minerva's bird;
  But Reynolds winked outright.
The company, very low in mind,
  Crestfallen sneaked away,
And little comfort could they find
  In the dissent of Gray.
Good men rejoice whene'er they read
  This rare decision, which
Is,—patriots for their land may bleed,
  But are not bound to itch.



THE YALE LAW SCHOOL.

By Leonard M. Daggett.

THE Law School at Litchfield, the most celebrated of the early schools lately described in this journal, was discontinued in 1833. The approximate coincidence, in time, of this event with the establishment of the Yale School is probably the cause of a prevalent notion that the two schools had some formal connection, or that the Yale School succeeded the older institution. It is doubtless true that the dissolution of the one was a material help in the development of the other, and certainly true that through the agency of the Yale School, Connecticut's educators are still contributing their full share to the scholarship and intelligence of the nation's lawyers. But except for the inheritance of a few books, the succession is one of responsibility only, the connection limited to the accidents of situation. The descent of the Yale School can be directly traced to one which flourished in New Haven for many years before the dissolution of the Litchfield School.

Mr. Seth P. Staples, a graduate of Yale College in 1797, and doubtless now remembered by some of the older members of the New York Bar as a leading commercial and patent lawyer in that city, was in the ear-

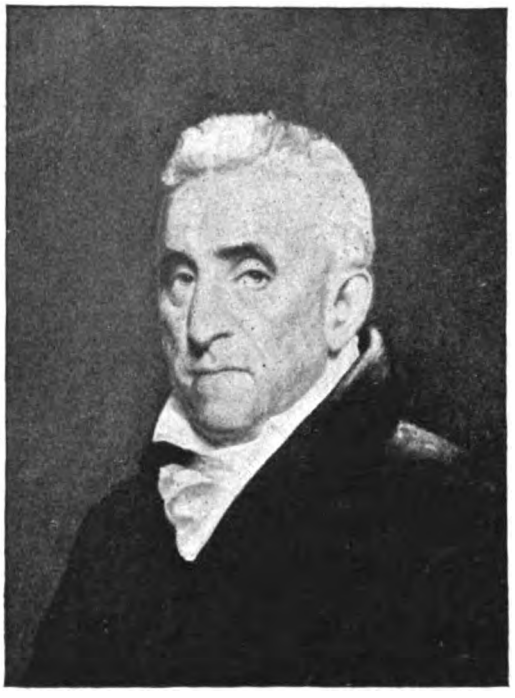
liest years of this century settled in New Haven. Here he enjoyed an active practice, and had an unusually valuable working library. As the same considerations which now influence a student in the choice of an office in which to "read" law must have been equally decisive in those days, it is not surprising to hear that Mr. Staples soon had several young men studying in his office. He seems to have soon found it advisable to adopt a regular system of instruction. Among those whose studies he directed was Samuel J. Hitchcock, a young graduate of the college, who held a tutorship there while he was reading law. Mr. Hitchcock, a careful and thorough student, was invited in 1822, by Mr. Staples, to assist him in the work of instruction. In 1824 Mr. Staples removed to New York to engage in practice, leaving his school, which must have become by this time an institution of importance, in the charge of Mr. Hitchcock and Judge Daggett.

The connection of the school with the college is reckoned from that year because then for the first time the names of the pupils were published in the College Catalogue. Two years later, in 1826, the connection was made more formal by the appointment of Judge Daggett, already at the head of the school, to be Kent Professor of Law in Yale College, upon a foundation established by the friends of Chancellor Kent. These two gentlemen, Judge Daggett and Judge Hitchcock, continued in charge of the school for over twenty years, and under their successful management it grew prosperous and celebrated.

Judge Hitchcock was not a public man. The only important public office held by him was that of Judge of the New Haven County Court. From the time of his first connection with the school until his death, in 1845, he devoted himself to the work of instruction, an occupation suited to his scholarly tastes and retiring disposition. A methodical and exact man, he never failed to make his students feel the value of diligent and accurate scholarship in the law, or to surprise and delight them by his intimacy with a wide field of reading, from which he drew many of his illustrations. He ranked with the most successful legal instructors of his time, and was frequently compared with Story and Greenleaf by those who had listened to them all. The acknowledged ability of Judge Hitchcock and the eminence of Judge Daggett brought large numbers of students to the school. It is, perhaps, not out of place to note a curious accident by which Judge Hitchcock's instruction has continued even after his death. His bequest in trust "for the support of indigent, pious young men preparing for the ministry in New Haven, Conn.," was adjudged by the Supreme Court void for uncertainty, and is each year cited in the class-room in illustration of the familiar rule.

Judge Daggett was considerably older than his associate, and came to his work of instruction with a broader and more active practical experience if with less scholarship. He held a ready pen, and had been the author of a number of political pamphlets of great local celebrity, in which force of argument was well set off by powers of sarcasm and invective, reminding one of Swift. The few years immediately preceding his connection with the school had been devoted exclusively to private practice, but previously he had for twenty-five years almost continuously held office. He had been elected several times to the State Assembly, being for three years Speaker of the House, had been for eleven years at different times a member of the "Governor's Council," a body with functions very similar to those now exercised by the State Senate and the Supreme Court of Errors. He had also been United States Senator from 1813 to 1819, being one of the last of the old-time federalists sent to Washington. At the bar he was an accomplished and celebrated "pleader," and one of the most successful practitioners of the State. During his professorship he sat for six years as an Associate Justice of the Supreme Court, and for two years as its Chief-Justice, retir-

ing only upon reaching the age set by the constitution for the retirement of judges. His lectures upon Constitutional Law, delivered before both the Law School and the seniors of the college, were made especially interesting by the recollections of a long public service and familiarity with the practical application of constitutional principles, and also by his intimate fellowship with men of national fame and influence. Old federalist that he was, he undoubtedly shaped the views of many a future lawyer toward a conservative national policy. During the last few years of his connection with the school he took little active part in its work on account of his extreme age. He died in 1851, at the age of eighty-six.



DAVID DAGGETT.

Between 1842 and 1847 three professors served for short periods. One of these was Judge William L. Storrs, who was at the time of his appointment a judge of the Supreme Court of Errors, and later its Chief-Justice, and had been in the State Assembly and National Congress. A scholarly and brilliant lawyer, he became one of Connecticut's most distinguished judges, and was unfortunately compelled to relinquish his professorship because of its interference with his judicial duties. During the present year some members of his family [1] have founded in the school a lectureship which will bear his name.

[1] The daughters of the late Lucius F. Robinson, of Hartford, a nephew of the Chief-Justice and a graduate of the school in the Class of 1845.

Mr. Henry White, an able and well-known real-estate and probate lawyer, assisted in the school for about two years. Professor Isaac H. Townsend was connected with the school about four years, was appointed professor in 1846, but died early the following year at the age of forty-four. He was peculiarly well fitted for such work, and by his untimely death the school lost an instructor of much promise.

At this time the school had become fully identified with the College, or University as it is now called. The connection, as said before, dates from the publication of the names of the students in the College Catalogue in 1824, and the appointment of Judge Daggett in 1826. Degrees were conferred upon graduates for the first time in 1843, and in 1846 the school had been formally constituted, by vote of the Corporation of Yale College, as one of its co-ordinate branches.

When it became necessary in 1847 to find new instructors, the choice fell upon Hon. Clark Bissell and Mr. Henry Dutton. The former was at the time Governor of the State, and had been for ten years a judge of the Supreme Court of Errors. He discharged his duties in the school with great ability until 1855, when he retired from active life. Governor Dutton is still well remembered, especially by his old pupils, for his brilliancy and versatility and his warm kindly disposition. At the time of his appointment he already had considerable experience in public life, and was known as

one of the leaders of the State bar. While connected with the school he served one term as Governor of the State and five years as a judge of the Supreme Court of Errors. He was three times selected by the legislature a commissioner for the revision and compilation of the State Statutes, and himself thoroughly revised Swift's Digest of the Laws of Connecticut. Owing to his more active professional duties, he was unable to devote as much of his time to the school and its work as Judge Hitchcock had done, but was assisted, after the retirement of Governor Bissell, until 1865 by Judge Thomas B. Osborne.

Judge Osborne received his legal education in Mr. Staples' school, and had been a judge of the County Court and served two terms in Congress. As a lawyer he had directed his attention mainly to office practice and the execution of private trusts. As an instructor he was able and conscientious, careful in statement and conservative in the spirit of his teachings. He resigned his position in 1865, and died in 1869, the same year in which Governor Dutton's death occurred.

This closes the first stage of the history of the school. It had educated about a thousand men, many of whom had attained professional eminence. Among them may be named Justices Davis and Strong of the United States Supreme Court, Judge Julius Rockwell of Massachusetts, Judges Seward Barculo and Alexander S. Johnson of New York, Judge H. B. Brown of Michigan, Chief-Justice Sheldon of Illinois, Governor Polk of Missouri, Gov. William Warner Hoppin of Rhode Island, Hon. Alphonso Taft of Cincinnati, Hon. William H. Hunt of Louisiana, Hon. Edward J. Phelps of Vermont, Chief-Justice Smith of North Carolina, Chief-Justice Watkins of Arkansas, Attorney-General Edwards Pierrepont, Governors Hubbard, Ingersoll, and Harrison, and Judges Pardee, Loomis, Phelps, and Shipman of Connecticut, Chief-Justice Brown of Georgia, Chief-Justice Atwater of Minnesota, Judge Shiras of Iowa, and Professors Dwight of the Columbia Law School, Bicknell of the Indiana University Law School, and Booth of the Chicago Law School.

The second period of the school's history begins in 1869, when, after one or two temporary changes in the management, three prominent members of the local bar were selected by the Corporation to assume control. They were Hon. William C. Robinson, Simeon E. Baldwin, and Johnson T. Platt, who are all of them still actively engaged in the work of the school. In 1871 Hon. Francis Wayland was chosen Dean of the Law Faculty, which office he still holds, and since that time Professors William K. Townsend and Theodore S. Woolsey have been added to the Faculty. The history of the school for the twenty years which has elapsed since then, and its present character and position, prove the selection of these gentlemen to have been peculiarly fortunate. The attendance, which had been for a few years quite small, very soon became larger than ever before and has lately been rapidly increasing. There are one hundred and six students in attendance at present.

During this period several other gentlemen have been connected with the school for varying periods of time as special lecturers. Prof. James Hadley, LL.D., delivered his valuable lectures introductory to Roman Law, which have been published since his death. Rev. Leonard Bacon, D.D., LL.D., the Nestor of American Congregationalism, lectured on Ecclesiastical Law; Ex-President Woolsey on International Law; Judge Charles J. McCurdy on Life Insurance; Hon. LaFayette S. Foster, LL.D. (by whose will the school was given $60,000 with which to endow a professorship), on Parliamentary Law and the Science of Legislation; Chief-Justice Origen S. Seymour on Code Pleading; Frederick H. Betts of New York on Patents; Prof. James M. Hoppin, D.D., of New Haven on Forensic Oratory, and Dr. Francis Bacon on Medical Jurisprudence. These auxiliary courses, con-

ducted by men of such eminence in those departments of knowledge, have been a most successful innovation, and are an established feature of the school. Among the special lecturers and instructors who are now associated with the regular Faculty are the following: Hon. Edward J. Phelps, LL.D., and Hon. Henry Stoddard, lately one of the Judges of the Superior Court of the State, on the Law of Evidence; Hon. William E. Simonds, a well-known and successful patent lawyer, on Patent Law; Hon. Morris W. Seymour on Corporations; Mark Bailey on Elocution; M. Dwight Collier, on Attachments, Judgments, Executions; Thomas Thacher on Corporate Trusts; James M. Townsend, Jr., on the Transfer of Monetary Securities; Roger Foster on Federal Jurisprudence; George M. Sharp, of the Maryland Bar, for several years Legal Editor of the "Baltimore Underwriter," on Insurance. Of these gentlemen Mr. Simonds resides in Hartford, Mr. Seymour in Bridgeport, Mr. Sharp in Baltimore, and Messrs. Collier, Thacher, Townsend, and Foster in New York City. Except in the cases of Professor Phelps and Mr. Bailey, none of those named are otherwise connected with the Faculty of the University, the list not including those members of the University Faculty who also deliver lectures in the special and graduate courses of the Law School. The President of the University is *ex officio* one of the Law School Faculty. Professor Phelps has been absent for four years as Minister of the United States to England, but resumes his work of instruction with the coming year.

WILLIAM L. STORRS.

Hon. Francis Wayland, LL.D., Dean of the Law Faculty, is a man of very wide acquaintance among prominent men, having held many other positions of honor, and been prominently connected with many liberal and charitable movements. He graduated at Brown University in 1846, and studied his profession at the Harvard Law School, commencing his practice at Worcester, Mass. Soon after his removal to New Haven he was elected Judge of Probate for the New Haven District, was afterwards Lieutenant-Governor of the State with Gov. Marshall Jewell, is now President of the Board of Directors of the State Prison at Wethersfield, and an active and prominent member of the National Prison Reform Association, being President also of the Connecticut Prison Society. He was for several years President of the American Social Science Association. The executive duties of his position as head of the Faculty require his constant attention; and although he formerly taught the classes in the Law of Evidence, he now takes no part in the work of instruction except to deliver two courses of lectures upon English Constitutional Law and International Law. He also presides at the meetings of the Moot Courts. During the years that he has been at the head of the school, its increased prosperity and the uniformity of its develop-

ment have proved the efficiency of his management.

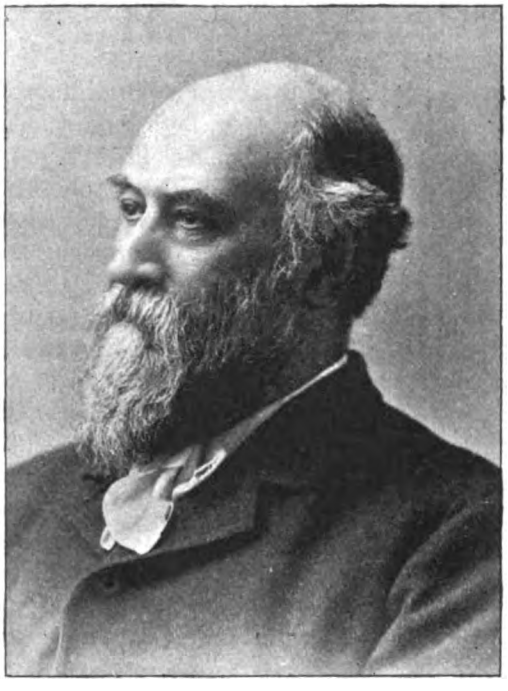
Hon. William C. Robinson, LL.D., Professor of Elementary and Criminal Law and the Law of Real Property, is the senior member of the Faculty. He was graduated at Dartmouth College in 1854, and is a man of broad education and large experience. For several years he has withdrawn from active practice, and devoted his time to private research and the duties of his professorship. He is the author of Robinson's Elementary Law, — as orderly, concise, and accurate a guide to the study of the Common Law as can be desired, — and has for several years been engaged in preparing an exhaustive work on Patent Law which has just been completed for publication. A remarkably intimate knowledge of the Common Law and its history, a quick perception of the real difficulties of the student, and a clear, logical method of exposition make his instruction unusually successful. In such a difficult subject as the Law of Real Property its value is especially felt. Professor Robinson devotes his time more exclusively to the work of instruction than any other member of the Faculty.

Simeon E. Baldwin, M.A., Professor of Constitutional and Mercantile Law, Corporations, and Wills, graduated from Yale College in 1861, and studied his profession partly at the Yale and partly at the Harvard Law School. He is descended from Roger Sherman, and comes of a family of lawyers who have for a century been distinguished for their scholarship and professional ability. As a constitutional and corporation lawyer he has a wide reputation and a large and lucrative practice, having been engaged in many important cases in the highest courts of the State and United States. He has also a large estate practice. He is President of the New Haven Colony Historical Society, has published a complete digest of the State Reports, was one of the commission chosen by the State Legislature for the revision of the Statutes concerning Education in 1872, of that to revise the General Statutes in 1873, of that to prepare a Practice Act to introduce Code Pleading in 1878, and of that to revise the State system of Taxation in 1885. He has been for several years chairman of the committee on Jurisprudence and Law Reform of the American Bar Association, and has prepared a number of reports and papers which appear in its publications. His activity is not limited to matters of a professional character, but extends to those of general and local interest. In whatever he undertakes his work is characterized by method, industry, and accuracy, and never fails of a definite result. At the bar his large experience, skill in practice, and familiarity with the *technique* of the law make him an especially formidable antagonist in any case. The same general features characterize his work as an instructor, to which he brings an intimate knowledge of constitutional history and gives the results of careful personal investigation. Every moment of his hour is fully utilized, every question and statement important. The exercise is made a guide for future private study, the value of which the students are not slow in realizing and in proving by faithful work.

Johnson T. Platt, M.A., Professor of General Jurisprudence, Torts, and Equity, is a scholar in the philosophy of the law, thoroughly equipped with material for his work. He was graduated at the Harvard Law School in 1865, was Corporation Counsel of the City of New Haven in 1874, and for many years has been one of the two standing Masters in Chancery appointed by the United States Circuit Court for the District of Connecticut. Though in active practice and frequently engaged in important cases, he is a diligent and enthusiastic student. Two years ago he was the leading counsel for the defence in the celebrated "Boycott" case, which was so energetically fought in the Connecticut Supreme Court, and in which the law of criminal conspiracies, at that time a matter of critical importance, was exhaustively discussed. Professor Platt is one of

those few who have found in the law more than a means of livelihood and more than a technical science, — who find in its literature and the lives of its leaders a means of culture and of recreation. His courses in Equity and Torts are made especially interesting by his careful citations of cases, which are always appropriate and instructive.

William K. Townsend, D.C.L., "Edward J. Phelps Professor" of Contracts and Admiralty Jurisprudence, a graduate of Yale in the Class of 1871, received his legal education in the Yale School, taking his degree of D.C.L. in 1880, some time after admission to the bar. He is an unusually enthusiastic and energetic man, a thoroughly practical and successful lawyer and instructor. At present he is Corporation Counsel of the City of New Haven. Professor Townsend, whose subjects are such as appeal more strongly than many of the others to the interest of the students, takes great pains to emphasize the more practical points and to develop each topic fully by the citation and discussion of leading and recent cases, and succeeds to a remarkable degree, not only in guiding his classes to the knowledge of facts, but also in arousing among all the students a hearty enthusiasm for their professional work.



FRANCIS WAYLAND.

Theodore S. Woolsey, M.A., Professor of International Law, a son of ex-President Woolsey, is the only member of the Faculty who has not been in active practice. He was graduated at Yale College in 1872, and at the Yale Law School in 1876, after pursuing special studies in International Law for a year or two abroad. Although his special branch is an honor study, not being required of any but candidates for a high rank, the exercises are well attended and followed with interest. Professor Woolsey aims to give particular attention to questions of present interest in International relations.

The Faculty is as a whole, as well as individually, peculiarly efficient. The division of labor is such that each professor is able to employ himself in those lines for which he is by taste and ability especially qualified. Whatever the eminence of any of its members in public or political life, they have not been chosen on that account, but for their legal ability and scholarship. But their success is greater than can be accounted for by even legal ability and scholarship, and its reason is to be found in the personal enthusiasm which they bring to their work; in fact, the distinctive peculiarity of the school is the generous disposition of the professors, not only in the routine work, but also in friendly aid and suggestion outside the class-room.

Since the gentlemen who are now in charge of the school assumed its management, and through their efforts, two important changes have been made by which its present location and its library have been gained. The school occupies the whole upper floor of the County Court-house, a handsome building completed in 1873 at a cost of

$134,000, facing upon the Green, or public square. By arrangement with the county authorities that floor was planned with special reference to such use. The rooms are large, high, and well-lighted, and in most respects satisfactory, though it is not unlikely that the further expansion of the school will before long necessitate a change. But the present situation has been and still is very fortunate and appropriate. On the lower floors the County Court of Common Pleas and the Superior Court are almost continually in session, where all the important civil causes in the county are tried. The Supreme Court of Errors holds two terms each year in the rooms usually occupied by the Superior Court. In addition to these courts, in another portion of the same building are held two terms of the Superior Court and more frequent sessions of the Court of Common Pleas for the trial of criminal causes. It was in this building that the famous Hayden and Malley murder cases were tried. These exceptional opportunities for observing the actual conduct of trials of all kinds are of very great practical importance. The students take a keen interest in some of the trials and arguments, especially when their own instructors are engaged as counsel.

The school owes its present library also largely to the personal efforts of the present Faculty. Until about the year 1845 it is probable that the students were principally dependent upon the library of Judge Hitchcock, which they used freely. Upon his death it was purchased for the use of the school by the proceeds of a subscription and an appropriation from the college funds. This, with several hundred books from Judge Daggett's library and some additions by purchase, made a fair collection which was well maintained until about the time of Governor Bissell's death. From that date few books were bought until 1869, when some of the leading sets were filled up by the liberality of Hon. William Walter Phelps, of New Jersey, and soon afterwards, through the efforts of Professor Wayland, a subscription of $20,000 was raised. This was applied to the purchase of the necessary reports and books, in the selection and arrangement of which much is due to Professor Platt's aid. Since that time Hon. James E. English, of New Haven, has generously given a permanent fund of $10,000 for its maintenance. Owing to these and other private contributions, the library is now well equipped, containing all the English and American Reports and standard treatises and periodicals, also a large and valuable collection of books for reference in the study of both American and English constitutional and political history and of Roman Law; in all, about nine thousand volumes. The library of the County Bar Association on the floor below that occupied by the school contains a complete set of standard English and American legal treatises. The two libraries are used in common by the students and the members of the association, and are managed in conjunction with each other so that there may be as little duplication as possible, — an arrangement which is mutually advantageous. The books are directly accessible to the students without the intervention of the Librarian, but cannot be taken from the rooms except for use in court. The libraries of the University are also open to members of the school.

With this outline of the history of the school and general view of its Faculty and equipment, a discussion of its organization and methods will be better understood. The requirements for admission to the undergraduate course are the exhibition of a degree from some collegiate institution or of a certificate that the student has passed a "Regents' Examination for Law Students" in New York, or, if the applicant can show neither degree nor certificate, he must pass an examination upon the outlines of English and American history and the text of the Constitution of the United States. Admission to the second year by those who have not been through the first is granted upon

passing the same examination as is required of regular students and satisfying strict requirements insuring the same preparation. Upon the completion of the second year, and after thorough examination, the degree of Bachelor of Laws (LL.B) is given. The Faculty believe that more than two years' study should be required before the bachlor's degree is conferred, but have felt that it is impracticable to insist upon such a requirement at the present time. There is no school in which such a degree cannot be obtained after two years' attendance, though there are several in which the required course extends over three years, in one at least of which the bachelor's degree is conferred after two years' residence, and that of Master of Arts added for those who complete the full course. The policy of the Faculty of the Yale School has been to insist upon a high standard of work for two years, and give the opportunity for further study in the graduate courses.

Following is the curriculum of the regular undergraduate and graduate courses:—

UNDERGRADUATE COURSE.

Junior Year.

Judge Stoddard: Recitations — Evidence.
Professor Wayland: Lectures — English Constitutional Law, International Law.
Professor Robinson: Recitations — Elementary Law, Pleading.
Professor Baldwin: Recitations — Mercantile Law. Lectures — Nature and History of American Law, Wills.
Professor Platt: Recitations — General Jurisprudence, Torts. Lectures — Jurisprudence.
Professor Townsend: Recitations — Contracts.
Professor Woolsey: Recitations — International Law.
Mr. Bailey: Lectures — Forensic Elocution.

Senior Year.

Professor Robinson: Recitations — Real Property, Criminal Law. Lectures — Estates, Conveyancing, Forensic Oratory.
Professor Baldwin: Recitations — Mercantile Law, Corporations. Lectures — American Constitutional Law, Public Corporations, Wills or Roman Law, Practice.
Professor Platt: Recitations — Equity.
Professor Townsend: Recitations — Contracts.
Professor Woolsey: Lectures — International Law.
Mr. Seymour: Lectures — Private Corporations.
Mr. Simonds: Lectures — Patents.
Mr. Collier: Lectures — Attachments, Judgments, and Executions.
Mr. Thacher: Lectures — Corporate Trusts.
Mr. J. M. Townsend: Lectures — Transfer of Monetary Securities.
Mr. Foster: Lectures — Federal Jurisprudence.
Mr. Sharp: Lectures — Insurance.

GRADUATE COURSE.

First Year.

Professor Robinson: Recitations — Patents.
Professor Baldwin: Recitations — Railroad Law, Practice in United States Courts. Lectures — American Constitutional Law.
Professor Platt: Recitations — Municipal Corporations, Statute Law.
Professor Townsend: Recitations — Admiralty Law, Sales.
Professor Woolsey: Lectures — International Law.
Professor Sumner: Lectures — Political History and Science.
Professor A. M. Wheeler: Lectures — English Constitutional History.
Professor Hadley: Lectures — Railway Management.
Dr. Raynolds: Lectures — Roman Law.

Second Year.

Professor Robinson: Lectures — Canon Law.
Professor Baldwin: Recitations — Comparative Jurisprudence, Code Napoléon, Conflict of Laws.
Professor Platt: Recitations — General Jurisprudence.
Professor Wheeler: Lectures — English Constitutional Law.
Professor Sumner: Lectures — Political and Social Science.
Mr. A. S. Wheeler: Recitations — Roman Law.
Professor Hadley: Lectures — Economics of Transportation.

In addition to the regular courses there are two special courses arranged, the first of which occupies one year, and is a selection of those studies of the regular course which deal with commercial relations rather than with technical legal science. The second of the special courses occupies two years, and includes the more abstract studies combined with some of the studies of what is termed the Political Science Course of the University, of which a word will be said later. This special course is not intended as a preparation for practical professional or business life, but to give a better understanding of politics and government; and upon its completion the student may apply for the degree of Bachelor of Civil Law (B.C.L.) These courses are elastic, capable of variation according to the preferences of the student subject to the approval of the Faculty.

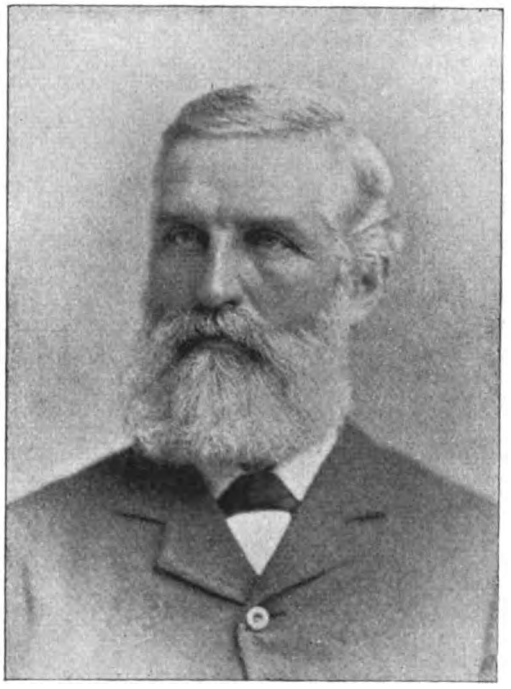
EDWARD J. PHELPS.

Within a few years a new course of lectures and reading has been arranged by the University authorities for graduate students, known as the course of Political and Social Science. It covers two years, and is conducted by such eminent men as Professors William G. Sumner, William H. Brewer, and Arthur T. Hadley, with the assistance of other younger lecturers, all of them enthusiastic students in that department of science. The topics and reading required are such as commend themselves to a law student, especially if he has any inclination toward public life, or an active interest in politics. Some of the lectures, as can be seen by the curriculum, are included in the graduate courses of the Law School; but whether falling within the requirements of his course or not, the student may very profitably select a portion of that course, and pursue it in connection with his legal studies.

An attempt was made about the year 1840 to organize a class for advanced studies in Jurisprudence; but although a course of lectures was prepared, the experiment failed because a class of twenty could not be formed. But the present graduate department of the Law School is not an experiment; it was organized in 1876, and its establishment and conduct are one of the notable accomplishments of the present management. Among those who have thus far studied in it are graduates of twelve different law schools; and four of them have since become Professors of Law.

There are two of these regular courses of graduate instruction, of which the outline may be seen in the curriculum already given. The first of them is open to any one who has taken the degree of LL.B. at this or another Law School, and after a year's course the student may apply for the degree of Master of Laws (M.L.). The topics are chosen for their general interest and as an introduction to the higher grades of practice, although it is likely that the average student, looking at its more practical features, would choose the course because it deals largely with practice in the United States Courts, and subjects of which those courts have

jurisdiction, including Patent and Admiralty Law. The second of these graduate courses is only available to those who have successfully completed their studies for the degree of Master of Laws, and have pursued a course of Roman Law. A good knowledge of Latin and of either French or German is also an essential requirement. The Faculty aim to make the completion of this course a test of real attainments in legal scholarship, insisting upon an unusual standard of ability and industry, and never giving the degree unless the candidate has proved himself especially worthy of the distinction. The degree conferred is that of Doctor of Civil Laws (D.C.L.). It is believed that there is no other Law School in the country which offers a fourth year of study, or which gives this degree regularly in course. There are certainly no better opportunities offered elsewhere for obtaining a finished legal education.



WILLIAM C. ROBINSON.

The special and graduate courses, however, are but auxiliary to the undergraduate course, which gives the necessary preparation to practice, and by which we must measure the usefulness of the school. In considering and comparing methods of instruction, we shall therefore have the undergraduate course especially in mind, and for convenience will notice in their order the general arrangement of the curriculum, the character of the work in the class-room and of that which is required outside of the class-room.

The burden of the work is borne by four of the Faculty, Professors Robinson, Baldwin, Platt, and Townsend, each of them devoting a certain number of hours a week to each class regularly during the college year. A glance at the curriculum will show that the principal subjects of study in the first year are Elementary Law, Pleading, Torts, Contracts, and Mercantile Law, which are intended to give a general classification of the law, and a knowledge of its fundamental principles. Under Contracts, those subjects are selected at first which are of general application, such as Agency, The Statute of Limitations, and the Statute of Frauds. Evidence and the Law of Wills, to which considerable time is devoted, are especially valuable as familiarizing the student with the general rules of construction. The study of the law of Evidence, particularly, not only is an excellent training in the logic of the law, but also gives to the beginner an idea of its *motives* or *spirit*, and aids in the development of a critical and legal habit of mind. The accompanying courses on International and Constitutional Law are not so evidently appropriate as first-year studies, but serve to open up to the student a wider view of his chosen science. In the second year the separation of topics is carried much further, and the more important divisions exhaustively studied, many of them being included in the curriculum under the general term "Contracts." During the whole course practical work is required wherever possible, as in the drawing of wills and contracts,

and in pleading and conveyancing, especially the last two. An important feature of the practical work is the trial of cases by moot courts. These are trials held each week, always presided over by one of the professors as judge, in which the students act as counsel, thoroughly preparing the case for trial and conducting the argument, whether it be on an issue of law to the court alone, or one of fact to a jury composed of their fellow-students. Within the last two years a new interest has been aroused in these moot courts by carrying them a step farther. With the assistance of one of the professors, the groundwork of actual fact for a case is carefully laid and counsel chosen for the parties. The counsel then bring the action by the proper pleadings, and prepare the case for trial. The witnesses are examined and cross-examined before the judge and jury, questions of evidence raised and argued, depositions taken and read, and everything made to conform as nearly as possible to the conduct of an actual trial,—and the event watched with intense interest. The two or three cases which have so far been conducted in this way have each necessitated two or more sessions of the court. Their value is proved beyond question by the interest and enthusiasm of the counsel and of the other students. Lately a more informal court for practice in the preparation of pleadings has been tried with success. Judges are appointed in rotation from among the students, to whom counsel bring their cases by appropriate pleadings, and argue the questions in pleading thus raised, and from whose decisions an appeal lies to the professor.

SIMEON E. BALDWIN.

In addition to the work thus far described, and which is a part of the regular course upon which examinations are based, there are voluntary organizations among the students which carry such work still further, and which may properly be noticed in this connection. The three "Quiz-clubs" of the Junior Class are under the indirect supervision of the Faculty, the Assistant Librarian, a recent graduate of the school, representing them at all the meetings and aiding the members in the choice and discussion of topics. But there is no interference with the freedom of their formation, so that the groups may be made up of men who will be congenial and work well together. The clubs of the Senior Class, of which there are now two, are independent of any supervision. All these clubs meet in the rooms of the school, have the use of the library, and are given ready aid and encouragement in every way. Frequent moot-trials are held by them, in which those not engaged as counsel sit as judges and deliver opinions, sometimes in writing. There is also a weekly debating society open to all the students of the school, and another select society which does work similar to that of the Quiz-clubs. This auxiliary work, independent of the curriculum proper, besides being peculiarly beneficial to those who en-

gage in it, is one of the surest indications of the earnest spirit of the school.

The four professors who have been spoken of as doing the substantial part of the work follow in the main the system of oral recitations upon reading which has been previously assigned. They deliver lectures in cases where the nature of the subject or special circumstances make treatment by recitations inexpedient; but in such cases the student is required to take down dictated abstracts or notes, and to prepare himself upon them as he would from a text-book. The other lecture courses are some of them in expansion of important subjects which have been previously taught by recitation, some of them discussions of the law in its higher and broader applications and relations. They give the opportunity of investigating the subject in detail if desired, but are rather designed to supplement other work so that a general and systematic view of the whole field of legal science may be presented. This is a general statement of the relation which the lecture courses bear to the recitation work, especially in the undergraduate course. The point here to be emphasized is this, that the basis of work is the recitation system.

JOHNSON T. PLATT.

It is intended that the student shall have, as nearly as practicable, the benefit of private instruction from his professors. To this end the recitation is made quite informal. A large portion of the hour is usually spent in questioning the students individually upon the general principles of the matter in hand, and asking for their application to actual or hypothetical cases in illustration. They are encouraged to ask questions freely, in order that no points of obscurity or difficulty may be left in doubt, and that the students may be trained to a careful criticism of their reading. This is never time wasted, for even questions which seem foolish may indicate a real difficulty and enable the instructor to meet it. This method is much more productive of good results than the lecture system; for however able a lecturer may be, and however well prepared his lecture, it cannot reach the student as effectively as an exercise in which he is required to do some of the thinking, — where to catch the connection of one question with another, as his companions are called upon, and to find a solution for the one which may at any moment be asked of himself, he must be constantly on the alert. Whether earnest in their work or not, few students are so careless of their instructor's efforts or of their own reputation for readiness and ability, as to be found inattentive when so called upon. The question which requires thought generally receives it, and makes the more permanent impression; if not convinced by the logic of the professor, there may and probably will be discussion by the student with his companions or private investigation. The advantage of this system is that, besides insuring a careful study of the text, the student is trained to ready analysis of facts and quick

application of principles as well as the expression of conclusions in words; and further, it enlists in his service the pride of the naturally careless student who would dream through the exercise if there were no danger of being caught napping. The Faculty of this school have excellent opportunities for a comparison of results, and their experience has dictated the present system as the most efficient.

In preparation for the recitations, the study of text-books or treatises is required, regular portions being assigned by the professors. The reading of many cases in the reports is not encouraged in the first part of the course, but later is required in connection with the other reading. Each professor is of course free to conduct his department according to his own judgment and the demands of the subject-matter; and cases are more freely used by one than by another. But it is the general policy of the school to postpone their study until a groundwork has been laid for their proper comprehension. Some of the more excellent text-books, prepared by instructors of experience, in their arrangement and argument, represent years of constant effort to overcome effectually the difficulties encountered by every student. They are the forms through which we make other generations contribute to our advancement.

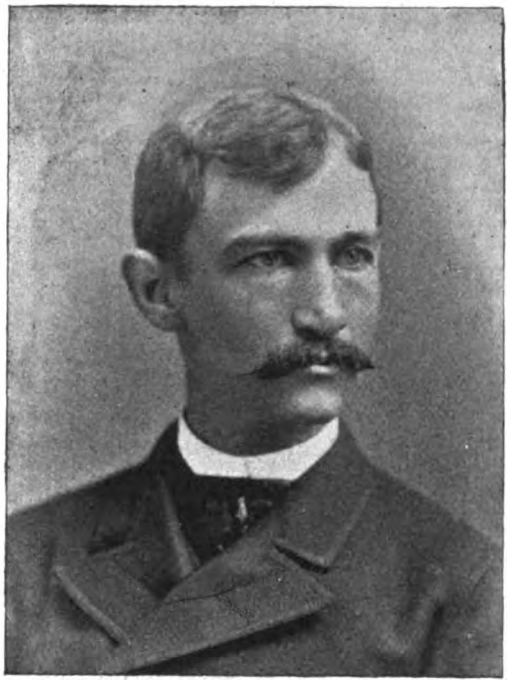
The work of the graduate courses, in both general plan and detail, is arranged and conducted upon these same principles, modified only in their application by the higher character of the studies and by the further consideration that they are pursued from choice, and not because their study is a prerequisite to admission to the bar.

A few students are compelled by their circumstances to serve in offices while studying law. Others do so from preference. But the best time for acquiring a familiarity with office-practice is after the close of a Law School course. A knowledge of a science, it would seem, should precede an inquiry into the art of its application. There is ample work in the prescribed course of a professional school properly organized, to keep the student fully occupied; and if he has any spare time it might to advantage be devoted to the study of kindred liberal branches, as has already been suggested. Yet, although New Haven does not afford the same opportunities for office-practice that are offered by its neighbors, New York and Boston, it has now grown to be a city of over eighty thousand inhabitants, and there are many good law offices where the students of the school can and do find places if they so desire.

One of the distinctive features of the school has always been the wide range of territory from which its students come. Every State and Territory is represented in its catalogues except Idaho, Nebraska, Utah, and Wyoming. The list also includes graduates of seventy-nine different collegiate institutions, as follows: Amherst, Athens, Bates, Bethany, Bowdoin, Blackburn, Brown, Chicago, Columbia, Cornell, Dartmouth, Drake, Eminence, Emmetsburg, Emory and Henry, Fisk, Georgetown, Hampden Siding, Harvard, Haverford, Hamilton, Illinois, Illinois Wesleyan, Iowa Wesleyan, Jefferson, Kansas College, Kings (Nova Scotia), Knox, Kenyon, Jolliet, Lafayette, Lebanon Valley, Lewisburg, Lincoln, Louisville, Marietta, Mass. Agricultural, Mercer, Middlebury, Mount Union, Mount St. Mary's, Nashville, National Normal University, College of City of New York, Penn. Military Academy, Princeton, Pritchell School Institute, Rochester, Rutgers, Santa Clara, St. Charles, St. Francis, St. Ignatius, St. James, St. John's, St. Joseph, Syracuse, Tokio, Trinity, Tuscumbia, Union, University of Alabama, University of Georgia, University of Michigan, University of New York, University of North Carolina, University of Ohio, University of Oregon, University of Pennsylvania, University of South Carolina, University of Vermont, Vanderbilt, Washburn, Washington (Md.), Washington (Penn.), Western Reserve Wesleyan, Williams, Wooster, and Wurtzburg. Alumni of fifteen Law Schools have also studied either in the undergraduate

courses or in the advanced courses in the graduate department, as follows: Chaddock, Chicago, Columbia, Columbian, Georgetown, Iowa State, National, Northwestern, University of Georgia, University of Louisville, University of Maryland, University of New York, University of Pennsylvania, University of Virginia, and Yale.

A number of the Japanese students who have in recent years come to this country to study law have taken the special and graduate courses in the Yale School. Some also have taken the undergraduate course. Among them are Kazuo Hatoyama, who is now at the head of the law department of Tokio University, Under-Secretary of Foreign Affairs, and head of the treaty-making power in the Empire of Japan; Sawada, who is a member of the House of Commons of the Japanese Parliament; and Soma, now Judge of the Court of First Instance. There are five in attendance at the present time, two of whom are studying for the degree of M.L. Hatoyama was one of the first applicants for the degree of D.C.L. after the establishment of that course.



WILLIAM K. TOWNSEND.

The Rev. Dr. Woolsey, then President of Yale College, in an address delivered at the celebration of the fiftieth anniversary of the Law School in 1874, made an eloquent plea for what he termed the ideal Law School, — where might be acquired a knowledge of the history of law, the doctrines of finance and taxation, comparative legislation and the other liberal branches. Such a plea comes with peculiar force from so true a scholar, whose contributions to political science have been so generous, and whose devotion to the cause of education so constant. Since then there has not only been a rapid development in political and social science, but more especially there have been many new opportunities offered for their study. In these departments, as we have seen, Yale University and its scholars are in the foremost rank; and in the Law School, while the practical side of legal education has been the first consideration, yet the courses as now arranged show that the ideal of President Woolsey is being made a reality, and that the advantages of a connection with a large university have been seen and improved. The value of such advantages as are here touched upon can hardly be overestimated. The student who, while acquiring his technical professional knowledge, broadens his mind by a glance at the kindred sciences and by contact with those who are absorbed in their pursuit, goes to his life-work not only better equipped for the race, but with a finer conception of his duties to himself, and of the dignity of his profession, and a nicer appreciation of constancy and truth in its practice. Whether the student enters the broader fields of scholarship into which he is invited, or merely gains an idea of their reality and extent, something has been accomplished. The school, pervaded by the spirit of scholarship, is working powerfully for the elevation of the profession.

ENIGMAS OF JUSTICE.

I.

By George Makepeace Towle.

PAUL FÉVAL, in one of his subtile and sensational romances, in which the intricate web woven by a "doctor in crime" is traced beneath an apparently tragic event, arraigns French justice and judges as too much absorbed in system and theory. The courts are the slaves of appearances; the "instruction" or preliminary examination of a crime moves in the narrow grooves to which it has been confined by tradition. The *motif* of Féval's remarkable novel, *Le Dernier Vivant*, is to show how easily, under the French system, a masterly conjuror in crime can divert the eyes of justice from the real criminal.

Indeed, the history of English and American as well as of French justice is almost as notable for its miscarriages as for its triumphs. It is true that in these days justice seldom errs in hanging or imprisoning the wrong man. Such cases as that of Bourne in Vermont, who was condemned to death for the murder of a man who opportunely turned up alive and well on the eve of the execution of his supposed assassin, are exceedingly rare. If justice arrests and tries an innocent person, the restrictions of the law are commonly sufficient to protect him by at least giving him the benefit of a doubt. The failures of justice more often consist in letting criminals free for want of evidence. Men of whose guilt the outer world have no moral doubt escape by the inadmissibility of evidence which would convict them, by the fine-spun reasonings and artificial theories of crafty counsel, and sometimes, doubtless, by the pity, the excessive timidity, and even the prejudices or corruption of juries.

Justice is human, and therefore prone to err. It would be treating justice unjustly were we not to recognize the various, intricate, bewildering difficulties by which, especially in cases of grave crimes, it is surrounded. While insisting that justice should do a wise and thorough work, we must not forget that the struggle between the blind goddess with the even scales and crime is always an uneven one. Crime is dark, tortuous, and crafty. It often chooses its own ground. It has ample opportunity, before it strikes, for concealment and defence. It is easier to propound a puzzle of which you have the key than to guess it out. It is easier for a man to hide a utensil — a pistol or a knife — than for forty men to find it. Before a criminal is taken he knows that he is suspected; he is aware, to some degree at least, of the steps that are being taken for his detection. He is more watchful than the most skilful detective; for if the detective is laboring to sustain a reputation, the criminal is defending life, or at least liberty.

So justice is almost always in presence of a puzzle which criminal ingenuity, sharpened in proportion to the stake at issue, makes as complicated as possible. Almost every mysterious case of crime is to be solved by what is called "circumstantial evidence;" that is, it is a crime which no eye except those of the criminal and his victim has seen committed, the guilt of which must be fastened by inferences from the proof of surrounding and accusing circumstances. In such cases the liability of justice to err is almost indefinite; the prospect of certainty is more or less dim; experience shows that often accusing circumstances envelope and close around an innocent man.

Yet the collection and array of circumstantial evidence have become, in process of time, a science. Not only authorities strictly technical and legal, but writers of

learning outside the limits of the legal profession, have arranged and classified the methods of solving the commission of a crime and the identity of its perpetrator. Greatest, perhaps, among these was Jeremy Bentham, whose "Rationale of Judicial Evidence" is an admirable analysis of this species of proof. Those crimes which are committed "far from any human eye, ear, or dwelling-place in the darkness of the night, in the solitude of the forest or ocean, or in the misty recesses of the impenetrable past," must be discovered and brought home by the proof of a chain of facts, the conclusion from which is irresistible, — a conclusion to which every discovered fact must point, and with which every such fact must be consistent. According to Bentham, every crime witnessed must include some or all of the following circumstances, and no others: they must be proved by reference to a disposition or character of the accused indicating a motive, to preparations for the crime, to opportunities to commit it, to instruments for the work, to the violation of some person or thing, to the possession of the fruits of the crime, to the concealment of it, to fear of discovery, and, finally, to confessions made of its commission.

It is our purpose to narrate some of the more remarkable cases which have occupied the attention of justice, and wherein circumstantial evidence has been employed to secure conviction. Some show the errors into which justice may fall in following the path indicated by this kind of proof; others demonstrate the overwhelming force with which a single thread of circumstantial evidence sometimes crushes an accused person otherwise shielded, by his own cunning or by fortunate accidents, from the detection of his deed. Of the former sort was a case of mistaken identity which occurred many years ago in Paris. It may here be said that the failures of justice have often resulted from a fatal mistake in persons. An old woman kept a small shop in a square on the left side of the Seine. It was generally thought that she had hoarded considerable money in the course of her trade. She lived in a room back of the shop, quite alone; but she employed a boy who lived in the fourth story of the building where the shop was. This boy kept the key of the shop, which he regularly locked every night. One morning the shop door was observed to be open before the customary hour. The curious neighbors peered in; seeing nobody stirring, they finally penetrated to the old woman's bedroom. There they found her, lying dead in her bed. She had been stabbed several times, and a bloody knife lay on the floor in the shop. This knife, it was easily proved, belonged to the hired boy. Not only that: in one of the dead woman's hands was clasped a lock of hair, and in the other a necktie. The necktie was fully proved to belong also to the boy; the hair, so far as could be judged, was exactly like his. It was found, moreover, that the front door had not been broken open, but quietly unlocked. Now the boy, and he alone, so far as anybody knew, had a key which fitted the lock. On being arrested, this boy, when confronted with the proofs, confessed the crime. He suffered the penalty of death. Not long after, a boy who was employed in a neighboring shop fell ill. Being told that he was on his death-bed, he declared that he had murdered the old woman for her money. He had been in the habit of dressing the hair of the boy who was executed; had collected locks of it as he had an opportunity; had put the hair and the cravat into the dead woman's hands; had taken a wax impression of the lock, and thus procured another key; and having got possession of the other boy's knife, had with it inflicted the fatal wounds. In this case there seems, indeed, to have been a complete chain of circumstantial evidence, sufficient to identify the hired boy as the assassin. Motive was present in the boy's supposition that his mistress had hoarded money. Opportunity was present in the fact that he held the key of the shop. An instrument belonging to him, which had

undoubtedly been used for the crime, was at hand. Yet justice was deluded and the innocent suffered.

A very singular case of judicial error, in which there was a fabrication of evidence similar to that just described, occurred in England about a century ago. It was in the romantic but dangerous days of masked highwaymen, when many a moor and heath, and even many a highroad leading from English towns, was infested by these marauding gentry. A gentleman was travelling to Hull. Within a few miles of the town he was stopped by a man in a mask, and politely but firmly deprived of a bag of twenty guineas which he was carrying with him. Receiving no other injury from the encounter, he proceeded on his way, and in due time safely reached a cosey inn outside the town. He loitered in the kitchen while his supper was being prepared, and there related to a group of curious listeners the story of his adventure, adding that he had, for precaution's sake, taken care to put upon each several guinea a peculiar mark. Supper was soon ready, and he sat down to it with a relish. While he was satisfying his hunger, the landlord came in, and began to make rather eager inquiries about the robbery. On learning the facts, and especially that the guineas were marked, the landlord at once declared that he could give a clew to the robber. "I have a waiter, one John Jennings," he said, "who has latterly been very flush with money, and recklessly extravagant in his expenditures. This evening, about dusk, I sent him out to change a guinea for me. He has only just returned, and says he could not get it changed. On returning me the guinea I observed with surprise a mark upon it which was not upon that which I intrusted to him. I should have thought no more of it, however, had I not been told of the circumstance of your robbery and your marked guinea pieces. Unluckily, before hearing of it I paid away the guinea to a man who lives at a distance."

The landlord had sent Jennings, who was drunk, off to bed. It was now agreed between him and his guest that the man's room should be searched. In his pocket was found a purse with exactly nineteen guineas, which the guest recognized as those of which he had been robbed. Jennings was of course arrested and accused of the crime. Denial was useless; every fact fitted to the charge against him. Tried at the assizes, the jury found him guilty, without leaving their seats, and he was executed.

Yet Jennings was as innocent of the robbery as a babe. A year had not elapsed before the landlord was arrested for a robbery committed on a guest at the inn. The proof in this case, at least, was too clear for doubt. The landlord was convicted and sentenced. While awaiting the doom of death, he confessed that he himself had committed the robbery for which Jennings had suffered. He had hurried home after getting the guineas, and had heard soon after with alarm of the arrival of his victim. He had been forced to part with one of the guineas to pay a bill; so he invented the story of sending Jennings to get a guinea changed, and had availed himself of the man's intoxication to conceal the rest of the money in the poor fellow's pocket.

We doubt if there ever happened a more melancholy instance of what is termed "judicial murder" than the famous case of Eliza Fenning. The tragic history of that unhappy young woman, though well remembered by old Londoners, is probably forgotten, or at least but little known, in the United States. Eliza Fenning was a fair girl of twenty-two, of more than usual intelligence for one of her class; bright, coquettish, but well-disposed and amiable. The daughter of a poor couple who dwelt in High Holborn, on the very spot where Day & Martin's blacking establishment now stands, she was employed as cook in the family of a Mr. Turner, a law-stationer in Chancery Lane. That family consisted of the Turners, man and wife, two apprentices named Gadsden and King, Sarah Peer, a housemaid, and Eliza Fenning, the cook. One day the father of Mr. Turner went to his

son's house to dinner, and Mrs. Turner ordered Eliza to make some yeast dumplings. When dinner-time came, the three Turners sat down at table and began to discuss the savory dish. The dumplings had scarcely been tasted, however, when all three were seized with sharp and agonizing pains. The dish was taken out into the kitchen, and there Gadsden, one of the apprentices, partook of it, and also fell violently ill. Eliza herself next ate of the dish, and was attacked by the same strange symptoms. The apprentice King and Sarah the maid, who had dined earlier, did not taste the dumplings, and were not ill.

The physician who was called declared the symptoms of the sufferers to be those of poisoning by arsenic. Then every component part of the dish of dumplings was examined. It was clear that the poison was not in the sauce, of which the elder Turner had not partaken; neither was it in the flour, for a pie-crust made of the same flour had been eaten by King and Peer with impunity. Some of the dough of which the dumplings were made was examined, and poison discovered therein. It appears that Turner used arsenic for killing rats, and was in the habit of leaving it carelessly in an open drawer.

Suspicion at once fell upon Eliza Fenning, and she was arrested and arraigned on a charge of attempting to poison the Turners. From the first, she earnestly protested her innocence. It was proved that she, and she alone, had mixed and made the dumplings; the circumstantial evidence went to show that no one else could have had access to them until they were served upon the table. She had been in the kitchen all the time that they were there, and most of the time alone; here, then, was proved opportunity. It was shown that when the apprentice Gadsden was on the point of eating some of the dumplings, Eliza urged him not to do so, saying that they were cold and heavy. It was in evidence that Eliza had not taken the poisoned food until she observed its effect upon others, and it was thence inferred that she either took it to conceal her crime or with a suicidal idea. It moreover appeared that Eliza's statements about the matter were inconsistent, contradictory, and in some instances untrue. She declared that the poison must be in the milk, and not in the dumplings. Now, the milk had been fetched by Sarah Peer; it was thence inferred that Eliza was trying to divert suspicion from herself to her fellow-servant. The analysis proved conclusively that the arsenic was in the dumplings, and not in the milk. To further disprove the presumption of innocence raised by her eating herself of the poisoned food, it was shown that she had shortly before had a hearty meal off a beefsteak pie, and therefore was not likely to have eaten the "cold and heavy" dumplings, as she described them to Gadsden, because she was hungry. Having tried in vain to persuade people that the poison was in the milk, she turned around and declared that it was in the yeast. The yeast was proved by analysis to be perfectly pure.

Here, then, was a group of important circumstantial evidence. Opportunity was proved, so was an instrument (the arsenic) at hand in a drawer to which she had free access, and a desire betrayed to conceal the crime by diverting suspicion to another, and by telling untruths. Upon the evidence, as we have sketched it, Eliza Fenning was convicted by the jury and sentenced to death. The case, however, created so wide-spread an agitation in the public mind, that justice hesitated to execute its fatal decree. The utter absence of a conceivable motive was a serious blow in the case. Why should this light-hearted, amiable young girl, whose worst-known fault was her coquetry with the apprentices, poison a whole family? The great Irish advocate Curran, then in the height of his fame, exclaimed in burning eloquence against the horrible cruelty of her fate. She was reprieved for three months, in the hope that new evidence would transpire to save her. None was forthcoming.

She was executed amid the greatest excitement throughout the metropolis; and on a warm July day she was borne, amid the sorrowing faces of ten thousand spectators, and her pall upheld by six young girls robed in white, from her humble home to the graveyard of the Foundling Hospital. One who lived amid those scenes wrote, long after: "Poor Eliza Fenning! So young, so fair, so innocent! Cut down even in thy morning with all life's brightness only in its dawn! Little did it profit thee that a city mourned over thy early grave, and that the most eloquent men did justice to thy memory!"

For more than half a century the guilt or innocence of Eliza Fenning was a disputed point. Then the confession of the real murderer came out, and her innocence was established beyond a doubt.

DREAMS BEFORE THE LAW COURTS.

IN the year 1695 a Mr. Stockden was robbed and murdered in his own house in the parish of Cripplegate. There was reason to believe that his assailants were four in number. Suspicion fell on a man named Maynard, but he succeeded at first in clearing himself. Soon afterwards a Mrs. Greenwood voluntarily came forward and declared that the murdered man had visited her in a dream, and had shown her a house in Thames Street, saying that one of the murderers lived there. In a second dream he displayed to her a portrait of Maynard, calling her attention to a mole on the side of his face (she had never seen the man), and instructing her concerning an acquaintance who would be, he said, willing to betray him. Following up this information, Maynard was committed to prison, where he confessed his crime and impeached three accomplices. It was not easy to trace these men; but Mr. Stockden, the murdered man, again opportunely appeared in Mrs. Greenwood's dreams, giving information which led to the arrest of the whole gang, who then freely confessed and were finally executed. The story is related by the curate of Cripplegate, and "witnessed" by Dr. Sharp, then Bishop of York.

On this story, be it remarked that Mrs. Greenwood's dreams only verified suspicions already aroused. Maynard had been suspected at first; her dream brought home the guilt to him. It did not deal with his accomplices until Maynard, in his turn, had implicated them.

A somewhat similar incident came before a legal tribunal nearly a century afterwards, when two Highlanders were arraigned for the murder of an English soldier in a wild and solitary mountain district known as "the Spital of Glenshee." In the course of the "proof for the Crown," to use the phrase of Scottish law, another Highlander, one Alexander McPherson, deposed that on one night an apparition appeared to come to his bedside, and announced itself as the murdered soldier, Davies, and described the precise spot where his bones would be found, requesting McPherson to search for and bury them. He fulfilled but the first part of the behest, whereupon the dream or apparition came back, repeated it, and called its murderers by their names.

It appears that, with the strangely stern common-sense which in Scotland exists side by side with the strongest imaginative power, the prisoners were acquitted principally on account of this evidence, whose "visionary" nature threw discredit on the whole proceedings. One difficulty lay in the possibility of communication between the murdered man and the dreamer, since the one spoke only English and the other nothing but Gaelic! Years afterwards, however, when both the

accused men were dead, their law agent admitted confidentially that he had no doubt of their guilt.

Singularly enough, a story strikingly similar in many of its details found its way before a criminal tribunal in our own century.

In the remote and sequestered Highland region of Assynt, Sutherland, a rustic wedding and merry-making came off in the spring of 1830. At this festivity there figured an itinerant pedler named Murdoch Grant, who from that occasion utterly disappeared. A month afterwards, a farm-servant, passing a lonely mountain lake, observed a dead body in the water, and on its being drawn ashore, the features of the missing pedler were recognized. He had been robbed, and had met his death by violence. The sheriff of the district, a Mr. Lumsden, investigated the affair without any result, — in his searches being aided by a well-educated young man of the neighborhood, one Hugh Macleod, ostensibly a schoolmaster, but then without employment.

One day the sheriff, chancing to call at the local post-office, Macleod's name, probably owing to the part he was taking in these investigations, came into the conversation, and the postmaster casually remarked that he should not have thought Macleod was so well off, he having recently changed a ten-pound note at his shop. Mr. Lumsden's suspicions were aroused by this, and on his asking Macleod a few questions on the matter, he proved the young man to be untruthful. Therefore he put him under arrest, and caused his home to be searched. But none of the pedler's property being found there, and no other suspicious circumstance transpiring, he was about to be released, when a tailor named Kenneth Fraser came forward with the following extraordinary story.

He declared that in his sleep the Macleods' cottage was presented to his mind, and that a voice said to him in Gaelic, "The merchant's pack is lying in a cairn of stones, in a hole near their house." The directions given in this dream were carried out by the authorities: articles belonging to Grant were discovered, and the murdered man's stockings were presently found in Macleod's possession. He was accordingly charged with the crime. Kenneth Fraser formulated the evidence of his dream with great firmness and consistency. Macleod was condemned and executed, but not before making a full confession of his guilt.

Here, again, as in the case of Mrs. Greenwood, we may notice that the dream is only revealed after suspicion had been already aroused. Fraser was a boon companion of Macleod's, and it has been suggested that in their carousings he got some hint of his comrade's terrible secret. A somewhat similar explanation might serve to account for McPherson's dream of the murdered English soldier, and even the antique visions of Mrs. Greenwood. The form of a dream was a convenient one in which either to veil a guilty complicity, or in the case of the Highlanders to escape that imputation of being an "informer" which is so hateful to the Celtic heart.

There is, however, an equally modern and less remote instance of a similar sort. In 1828, in Suffolk, Maria Martin was slain by her false lover, — a crime known in sensational literature as "The Murder in the Red Barn." The stepmother of the deceased (says Mr. Chambers in his "Book of Days") gave testimony on the trial that she had received in a dream that knowledge of the situation of the body of the victim which led to the detection of the murderer.

The late Mr. Serjeant Cox, at a meeting of the Psychological Society in the year 1876, narrated a remarkable case which had come within his own experience in which dreams had played an important part, and the evidence for which he had himself heard given on oath in open court.

A murder had been committed in Somersetshire. A farmer had disappeared and was not to be found. Two different men, living in different villages, some distance from where the farmer had disappeared, both had a dream upon the same night, and stated the particu-

lars to the local magistrates. They said they had dreamed on that particular night that the body was lying in a well in the farmyard. No well was known to be there at all, so the two men were laughed at. Some persons, however, went to the yard, and although there was no appearance of a well, they at last found one under some manure, and the body was in it; then, of course, on the principle of the proverb, "He who hides can find," the public began to suspect the two men themselves. But it was finally proved that the farmer had been murdered by his own two nephews, who had afterwards disposed of his body thus. Before these dreams the dreamers had known nothing about the well in the yard. The nephews were hanged for their crime. — *Argosy.*

CAUSES CÉLÈBRES.

VI.

D'ANGLADE.

[1687.]

HUMAN justice, alas! like all that is human, is subject to injustice and error. The long list of its decrees shows only too many iniquitous or deplorable mistakes. On more than one page of its record we see an innocent man condemned, it may be through passion, or perhaps, through blindness or negligence. It is but just to remark, however, to the honor of modern times, that the number of cases of error has notably diminished in our day. The rights of the accused are now better protected, and the strong arm of the law is stretched forth for his defence as well as for his punishment.

But before the introduction of the modern spirit into justice, error reigned supreme. It would be an almost hopeless task to attempt to enumerate the judgments, anterior to the nineteenth century, which were tinged with it. Among the many unfortunates who have been the victims of judicial error, certain names will forever be held up before the world as deplorable types of the weakness of human justice. Prominent among these is the name of D'ANGLADE.

. . . . . .

In 1687 a large and beautiful mansion in the Place Royale in Paris was inhabited by two families. The basement and first floor were occupied by the Count and Countess de Montgomery, persons of wealth and position, who kept up an expensive establishment. This house was for them only a temporary abiding-place, however, as they passed the greater part of the year on their estate in Villebousin.

The second and third floors were rented by Laurent Guillemont d'Anglade and his wife, whose means were comparatively small, but who had many friends in distinguished position.

Friendly relations existed between the two families, although they had never been on terms of intimacy. For the first time, in the autumn of 1687, the Montgomerys, upon the point of departing for their estate, invited the D'Anglades to accompany them. D'Anglade accepted the invitation; but a short time before the day set for their departure, he informed the Count that he should be unable to go with him.

The Montgomerys did not insist. On Monday, the 22d of September, 1687, the Count and Countess, accompanied by their almoner and retinue of servants, started for Villebousin, announcing that they should return on the following Thursday. On Wednesday evening, however, twenty-four hours

before they were expected, they suddenly reappeared in Paris. At the moment of their arrival D'Anglade was absent from the house. The Count and Countess were still at the supper-table when he returned, about eleven o'clock, accompanied by the Abbés de Fleury and de Villars, with whom he had been supping at the house of President Robert. The three were in excellent humor. Seeing a light in the Count's dining-room, D'Anglade entered and presented his compliments.

"What unexpected affair brings you back so soon?" he asked.

"You will tax me with superstition," replied M. de Montgomery. "Yesterday, as I was dining, I was struck by some drops of blood which I saw upon a napkin and upon the table-cloth. I feared this presaged some misfortune, and I returned at once, impelled by a sort of presentiment."

"It is not for us to complain, Monsieur, but rather for those you left so quickly," said D'Anglade; and bowing politely, he rejoined his companions and went up to his rooms.

The next day, Thursday, towards evening, M. de Montgomery repaired to the Lieutenant-Criminel of Châtelet, and entered a complaint against D'Anglade and his wife, charging them with robbery. He declared that during his absence some one had broken the lock of the strong box in his office and taken thirteen bags, each containing one thousand livres in silver, and eleven thousand five hundred livres in gold in pieces of two pistoles, one hundred louis d'or, and a pearl necklace, valued at four thousand livres. "The robbery," he added, "could only have been committed by persons living in the house."

The Lieutenant-Criminel, with the Procureur du Roi and a Commissary of Police, went at once to the house. A search of the apartments was naturally made, and it clearly appeared that, as the Count had stated, the crime must have been committed by persons familiar with the house. D'Anglade and his wife earnestly desired that this search should commence with the rooms which they occupied.

The Lieutenant-Criminel was conducted by them through the various apartments. Boxes, cabinets, wardrobes, beds, mattresses, all were searched with the greatest care; but in vain, nothing was found. It was then proposed to visit the attic. Madame d'Anglade at this moment excused herself, pleading a sudden faintness. The officers of justice, accompanied by D'Anglade, went up to the attic; and after a short search found, in an old box full of wearing apparel and linen, a roll of seventy louis d'or wrapped up in a piece of printed paper which the Count de Montgomery declared he recognized as a leaf from his genealogy. He further remarked that these louis, like those which had been stolen, bore the dates of 1686 and 1687.

This discovery of course confirmed the suspicions which the Lieutenant-Criminel had formed against D'Anglade. Interrogated as to this money, the unfortunate man did not know what to reply; his hesitation, very natural under the circumstances, only increased the suspicion of his guilt.

The authorities then descended to the ground floor, and at the desire of Madame d'Anglade visited the dormitory in the basement, where the almoner, the page, and the valet-de-chambre of the Count slept. In her despair Madame d'Anglade recollected that the Count's men had spoken of this room, the door of which had been left securely locked, but which was found, on the Montgomerys' return, to be only latched. It was possible, according to her, that the crime might have been committed by some one of the domestics who usually slept in this room.

"I will answer for my servants," replied the Count, coldly.

Nothing could have been more natural than this observation of Madame d'Anglade; yet to minds already prepossessed with a belief in the guilt of D'Anglade and his wife, this remark served to confirm it when,

on visiting this dormitory, five bags, with a thousand livres in each, were found in a corner, and a sixth containing the same amount less two hundred and nineteen livres and nineteen sous.

This new discovery settled the matter. The Lieutenant-Criminel cast a severe look upon the D'Anglades, and addressing the husband said sternly, "*Either you or I committed this robbery.*"

Here was a prejudice irremediably established in the mind of the magistrate. It was in the D'Anglades' attic that a sum of money had been found, proving the robbery; it was upon the interested suggestion of Madame d'Anglade that another portion of the amount stolen had been discovered in a chamber occupied by the Count's servants; and then, besides, when it had been proposed to visit the attic, Madame d'Anglade had suddenly felt indisposed. There could be no doubt; there was no need of seeking further, the robbers were before him.

At the very outset the investigation, whoever might be the guilty ones, is tainted with a first vice; it is incomplete. It accepts as a definite proof an indication, serious it is true, but not conclusive. What then remained for the authorities to do? The Count, it is true, answered for his servants; but justice, which is from its very nature systematically incredulous, should not have admitted this excess of confidence. It should, while closely examining into the private life of the D'Anglades, have carefully scrutinized that of the Count's men, asking itself how this door, which had been so carefully locked on the family's departure, was found simply latched on their return?

The Lieutenant-Criminel, however, did nothing of the kind; he interrogated no one, stopped all further investigations, and assured himself of the persons of those whom he considered guilty.

The Commissary of Police, who searched the D'Anglades, found upon them seventeen louis d'or and a Spanish double pistole. A new and aggravating circumstance; a portion of the money stolen was in just such pistoles! The unfortunate couple were at once arrested. The husband was conducted to Châtelet, the wife to For-l'Évèque. They were confined in close cells, like recognized criminals, and completely isolated from the outer world.

At the trial, which took place almost immediately, numerous proofs were forthcoming against the prisoners. Are they not always found against an accused declared guilty in advance? The Count's servants and friends were ready with important evidence. One of them recollected perfectly that D'Anglade, on seeing the Montgomerys return before the day fixed, appeared to be greatly disconcerted. Two others declared that they had seen D'Anglade near the door of the dormitory both before and after the return of the Count with his establishment. Another witness affirmed that D'Anglade was an habitual gambler; and still another deposed to having resided with him in a house from which some silver plate had been stolen and never traced.

The Lieutenant-Criminel thereupon rendered a *jugement de competence*, from which D'Anglade appealed, and on the 25th of October the Grand Council set this judgment aside.

Upon this decree being made, D'Anglade attacked the whole proceeding, taking the Lieutenant-Criminel severely to task. This was a mistake; for by a decree of Parliament, on the 13th of December, the case was remanded to this same magistrate, who to his first prejudice now added a dangerous malice.

Several new circumstances favored this hostile disposition of the Lieutenant-Criminel. It was proved, for example, that on Tuesday, the presumed day of the robbery, D'Anglade, contrary to his usual custom, did not go out for his supper, but remained in his rooms. Taking this circumstance in connection with his refusal to accept the Count's invitation to accompany him to Villebousin, was it not

easy to see in all this a premeditation of the crime? It was further proved that D'Anglade knew, from M. de Montgomery himself, that he had received and kept in his rooms a considerable sum of money.

In addition to all this, D'Anglade's life seemed to be enveloped in a mystery which no efforts could clear up; he called himself a gentleman, but he could furnish no information as to his family. He lived expensively, and he could show that he possessed only an income of nineteen hundred and fifty livres. Were these resources sufficient for the style of living in which he indulged? It must be that he had some secret string to his bow,—gambling, swindling, or robbery.

On the 19th of January, 1688, the ordinary and extraordinary question was applied to D'Anglade. Torture could tear no confession from him, although he was naturally weak and feeble. All these efforts proving unavailing, on the 16th of February the unfortunate man was condemned to the galleys for nine years. As for the poor wife, she was condemned to banishment for the same term of years. The two were also ordered to replace the jewels and the money stolen, and to pay the Count three thousand livres.

We may mention that the judgment, giving the prisoners the benefit of a doubt, did not declare the D'Anglades *atteints et convaincus* of having committed the robbery, but only *strongly suspected.* The first formula would have necessitated a sentence of death.

Broken down by the torture, D'Anglade was taken back to his cell, and, a few hours later, was transferred to the darkest and most frightful dungeon of that tower which bore — a strange coincidence — the name of Montgomery. From this tower he was taken, almost lifeless, to the Château de la Tournelle, the last resting-place for convicts before reaching the galleys; there he was to await the departure of the chain.

He lived there, as all convicts did at that time, subsisting upon public charity. Struck down by a serious illness, considering that his last hour had arrived, he received the *viaticum*, protested anew his innocence, pardoned his enemies and his judges, and prepared for death.

But death did not come. D'Anglade was destined to undergo new trials. When the hour for the departure arrived, it was necessary to carry him on a cart and attach him, almost insensible, to the chain.

The Count de Montgomery, it is said, had the cruelty to be present at this sad spectacle. He witnessed the departure of the chain, and it was upon his urgent insistence that the unfortunate man was forwarded to the galleys in this pitiable state.

D'Anglade dragged out for some time longer his miserable existence. It was not until the 4th of March, 1689, that God granted an end to his sufferings. Transported to Marseilles, he died in the prisoners' hospital after, for a last time, calling upon God to witness his innocence.

It seemed that D'Anglade's death was the term providentially assigned to the error which had killed him. Scarcely had he expired when certain anonymous letters were put in circulation The writer said that before retiring to a cloister, in expiation of his sins, he felt himself obliged, to ease his conscience, to declare that D'Anglade was innocent of the crime for which he had been condemned; that the real authors of the robbery were one Vincent called Belestre, the son of a tanner at Mans, and the almoner of the Count de Montgomery. A woman named De la Comble, these letters stated, could furnish more precise information.

These anonymous statements caused an investigation to be made as to the antecedents of this almoner of the Count, who was named François Gagnard. It was found that he was from Mans as well as Belestre; it was ascertained that he was absolutely without resources at the time M. Montgomery took him into his service. If the Count had made any inquiries regarding his moral character, he would have learned that Gagnard, the son of the jailer of the prison at Mans,

had left that town with anything but an enviable reputation. Coming to Paris, where he barely subsisted on the price of the Masses which he said at Saint-Esprit, he had, by his assumed piety, succeeded in winning the confidence of M. and Mme. de Montgomery. After entering the Count's service, Gagnard had lived lavishly, spending far more than his salary.

As for Pierre Vincent, the son of a poor tanner of Mans, he had been, while yet a youth, an accomplice in a murder. To escape the pursuit of justice, he sought an asylum in the army and enlisted in a regiment in Normandy, under the name of Belestre. Once a soldier, he did not renounce crime, and he deserted after having killed a sergeant. Returning to his home, where he had the audacity to reappear, he had lived by begging and stealing. After his intimacy with Gagnard, a change seemed to take place in his fortunes, and he bought, near Mans, a farm for which he paid more than nine thousand livres.

These two men were arrested, not on suspicion of having robbed the Count, but, as often happens, on account of another crime, which delivered them into the hands of justice. Belestre was taken in the act of robbing a pedler. Gagnard fell into the hands of the police for having been present at the murder of a carpenter.

The woman De la Comble was found, and she told all that she knew of these two men, and furnished the most precise details as to the robbery executed in the Place Royale. Belestre had done the deed, and Gagnard had furnished the necessary information as well as impressions of the locks, by the aid of which Belestre had manufactured false keys.

Vincent Belestre suffered the torture without confessing; Gagnard, less firm, confessed the crime, and Belestre also confessed before being hanged.

The innocence of the unhappy D'Anglades was now clear, as well as the error of justice. Madame d'Anglade had no difficulty in obtaining letters of revision from the king. She commenced a suit against the Count de Montgomery for damages. The struggle was long and bitter. Finally, by a decree, dated June 17, 1693, Parliament rehabilitated the memory of the dead, justified Madame d'Anglade, and ordered the Count de Montgomery to restore the sum which had been adjudged him, and, besides, to pay all the expenses of the trial.

A poor reparation, however, for all these two poor innocent persons had suffered!

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.

REFERRING to the title of the "Green Bag" ("a useless but entertaining magazine for lawyers") the "Canadian Law Times" says: —

"It requires a good deal of ability to become absolutely useless; and if the editorial staff fails in its attempt, it may fall back upon the satisfactory argument that if it is not entirely useless it cannot be condemned for having proved somewhat useful. It is hinted in this title that it is useless to entertain lawyers. We should like to hear from the 'Green Bag' upon this."

Our esteemed contemporary seems to have taken a hint which was not intended, and certainly is not implied, in our title. If it were useless to entertain lawyers, the "Green Bag" would never have come into existence. That is the sole aim and object of its being. We propose, however, to do our entertaining with "useless" (so far as being of any *practical* value is concerned) material. If by eschewing everything in the shape of *digests* or *reports of cases*, throwing aside in fact all that would be *useful* to a lawyer in his practice, and presenting to our readers only light, interesting legal miscellany, we give an hour's pleasure to the profession, our mission is accomplished, and we have justified our claim to being, as our title asserts, "a useless but entertaining magazine for lawyers."

SPEAKING of the history of lawyer's bags, their colors and uses, the "Canadian Law Times" gives the following interesting facts: —

"As our custom in Ontario has varied a little from the English custom, it may not be out of place to allude to it. The black bag is generally carried by a solicitor; but as there are but few solicitors who are not barristers as well, the black bag is rarely seen, except with busy students who have within the past few years adopted it. The barrister carries a blue bag; and though he may carry a red bag if a Queen's Counsel presents him with one, such an event has never occurred, to the writer's knowledge, in this province; it would probably require a good deal of courage on the part of a barrister to accept a red bag under such circumstances. The Queen's Counsel carries a red bag, and the judges alone display the green bag. Finally, black leather bags have largely come into fashion, and are carried indiscriminately by all branches of the professions."

THE "Chicago Law Journal" says: "Opinions may differ as to the origin of the 'Green Bag,' but as to the excellence of its contents the verdict must be unanimous. The names of some of the most popular writers on law, literature, and fiction are among its contributors. . . . In all candor the 'Green Bag' is a magazine which is replete with rich thought and racy reading, and ought to be patronized and read by lawyers and laymen."

LEGAL ANTIQUITIES.

AN ordinance of Edward III., in 1336, prohibited any man having more than two courses at any meal. Each mess was to have only two sorts of victuals, and it was prescribed how far one could mix sauce with his pottage, except on certain feast-days, when three courses at most were allowable. The Statute of Diet of 1363 enjoined that servants of lords should have once a day flesh or fish, and remnants of milk, butter, and cheese; and above all, ploughmen were to eat moderately. And the proclamations of Edward IV. and Henry VIII. used to restrain excess in eating and drinking. All previous statutes as to abstaining from meat and fasting were repealed in the time of Edward VI.; but by new enactments, and in order that fishermen may live, all persons were bound under a penalty not to eat flesh on Fridays

or Saturdays or in Lent, the old and sick excepted. The penalty in Queen Elizabeth's time was no less than three pounds or three months' imprisonment. The exemption of the sick from these penalties was abolished by James I. In fact, until the last two centuries, the legislatures of all ages took for granted that they could not choose but lay down rules of this minute personal and harassing description. The Statute of Diet and Apparel, above referred to, and later statutes fixed the proper dress for all classes, according to their estate, and the price they were to pay; handicraftsmen were not to wear clothes valued above forty shillings, and their families not to wear silk, fur, or silk velvet; and so with gentlemen and esquires, merchants, knights, and clergy, according to gradations. Ploughmen were to wear a blanket and a linen girdle. No female belonging to the family of a servant in husbandry was to wear a girdle garnished with silver. Every person beneath a lord was to wear a jacket reaching to his knees, and none but a lord was to wear pikes in his shoes exceeding two inches. Nobody but a member of the royal family was to wear cloth of gold or purple silk, and none under a knight to wear velvet, damask, or satin, or foreign wool, or fur of sable. It is true, notwithstanding all these restrictions, that a license of the king enabled the licensee to wear anything. For one whose income was under twenty pounds to wear silk in his nightcap was to incur three months' imprisonment, or a fine of ten pounds a day. All above the age of six, except ladies and gentlemen, were bound to wear on the Sabbath day a cap of knitted wool.

Of all such delusive notions as to the proper business of Government, Montaigne aptly disposes in a sentence: "To enact that none but princes shall eat turbot, shall wear velvet or gold lace, merely set every man more agog to eat and wear them."

Some sumptuary laws went to extravagant lengths, but each probably had some evil of the time in view. Tiberius issued an edict against people kissing one another when they met, and against tavern-keepers selling pastry. Lycurgus even prohibited finely decorated ceilings and doors.

During the reign of Henry VIII., when family quarrels among the Berkeleys raged, and a riotous company of Maurice Berkeley's servants entered the park of Lady Anne Berkeley at Tate, and killed the deer and fired the hayricks, she repaired to court and made complaint. The king at once issued a special commission under the great seal, authorizing her and others to inquire into and determine the riots, and made her one of the quorum. She returned to Gloucester, opened the commission, sat on the bench, impanelled a jury, and heard the charge, and on a verdict of guilty pronounced sentence accordingly. — *Curiosities of Law and Lawyers.*

FACETIÆ.

An accomplished practitioner of law in Jacksonville, Ill., having occasion to file in the circuit court a legal paper in behalf of himself and partner, affixed to the firm signature the Latin term *per se* — thus: "Doe & Stokes, *per se*." His partner suggested that the term meant "*by himself*," and that, as it was in the singular number, it was not appropriate to accompany a firm signature. Not at all at a loss for a correct term, he changed the signature; and the records there show a paper signed "Doe & Stokes, *per 2 c's*"!

In a case in Connecticut, the judge ruled that certain evidence was inadmissible. The attorney took strong exceptions to the ruling, and insisted that the offered evidence was admissible.

"I know, your Honor," said he, warmly, "that it is proper evidence; here I have been practising at the bar for forty years, and now I want to know if I am a fool!"

"That," quietly replied the court, "is a question of fact, and not of law; and so I will not pass upon it, but will let the jury decide." — *Splinters.*

She had sued for breach of promise, and the verdict of the jury was against her. "Want to pole the jury?" she repeated. "Yes, I do; jes gimme the pole for two minutes;" and she threw back her bonnet and bared her arms before the legal phrase could be explained to her by her counsel. — *Grip.*

A writ of attachment — a love letter.

JUDGE (to Witness). Do you know the nature of an oath?

WITNESS. Sah?

JUDGE. Do you understand what you are to swear to?

WITNESS. Yes, sah; I 'm to swar to tell de truf.

JUDGE. And what will happen if you do not tell it?

WITNESS. I spects our side 'll win de case, sah. — *Albany Express.*

AN action was brought in a Wisconsin court, some years since, for shooting the plaintiff's goose and gander. The defendants admitted the killing, but claimed that it was accidental. After hearing the evidence, the court delivered the following able and lucid opinion: —

"It is always best not to be too severe on damages, and yet it is best to give damages to the amount of the plaintiff's claim, and inasmuch as the killing of those geese was wrong by the boys. It is the opinion of the court that the two geese were worth two dollars apiece in the *spring of the year*, and in all probabilities they would have had twelve goslings, and probably about one half of them would have lived and the other half would have died; and it would not have cost the plaintiff much to keep them until fall, and the goslings would then be worth one dollar apiece, which would be six dollars, and the two old ones two dollars, which would make ten dollars, which is the judgment of the court."

A DIVORCE case being called on in one of our Western courts, the judge, addressing the plaintiff's counsel, said, "I don't think people ought to be compelled to live together when they don't want to do so. I will decree a divorce in this case;" and the parties concerned were thereupon declared to be no longer man and wife. Presently the defendant's lawyer appeared, and was not a little surprised to find that all was settled — that the judge had decided without hearing one side, much less both. He protested against such over-hasty proceedings, and appealed to the court to redress the wrong it had committed. The court not being inclined to own itself in fault, he was informed that it was too late to raise objections, the decree had been pronounced; but if he wanted to argue the case "right bad," the court *would marry the parties again*, and give him a chance to air his eloquence.

THE celebrated John Randolph met a personal enemy in the street one day who refused to give him half of the sidewalk, saying that he never turned out for a rascal.

"I do," said Randolph, stepping aside and politely raising his hat; "pass on!"

JUDGE Hoar was trying a case at New Bedford where the witnesses all bore the name of *Cash*, and all appeared badly on the witness-stand. As the district attorney called his fifth witness "John Cash," the judge leaned forward, and said: "I suppose you call your witnesses *Cash* because they are no credit to anybody."

Another good story is told of Mr. Hoar. A case was once given to a jury in which he had been one of the advocates, and the jury was told to retire with the sheriff and make up a verdict. When the officer reached the jury-room, he found he had but eleven jurymen. Returning to the court-room, he found the twelfth man sitting composedly in his seat, and told him he must go out with his associates, and help make up the verdict. His reply was: "My verdict is already made up, Squire. Hoar says it is so and so, and it *must* be so."

SPECTATOR (to Defendant). Well, I guess the jury will find for you. The judge's charge was certainly very much in your favor. Don't you think so?

DEFENDANT (moodily). Oh, I knew all along that the judge's charge would be all right. It 's the lawyer's charge that 's worryin' me. — *Detroit Free Press.*

A LAWYER and a physician, having a dispute about precedence, referred it to Diogenes, who decided it in favor of the lawyer in these terms: "Let the thief go before, and the executioner follow."

A MAN was on trial for stealing a pig. The owner testified to finding a similar pig, taking it home, and setting it loose in the presence of the bereaved porcine ancestress.

"Well," said the solicitor (for the State), "how did the sow receive it?"

"*With outstretched arms*, sir!" triumphantly replied the witness.

NOTES.

THE Legislature of Massachusetts seems to have had decidedly the better of the Supreme Court in its recent encounter with that august body. The Court, having been asked by the House of Representatives for its opinion upon some points of doubtful construction in the Statute providing for the education of the youth of the Commonwealth, declined to give an opinion, denying the constitutional authority of the House to require the same. The Committee to whom the reply of the Justices was referred say: —

Whereas, On the nineteenth day of April last this House of Representatives ordered that the opinion of the Justices of the Supreme Judicial Court be required upon certain important questions of law relating to the construction of certain statutes providing for the education of children in the Commonwealth; and

Whereas, On the fourth day of May instant, said Justices did send a reply to this House, not answering said question, but denying the constitutional authority of this House to require their opinions upon the same: now, therefore, be it

Resolved, That the House of Representatives does not acquiesce in the conclusion of the Justices as to the limitation of the authority of the House to require the opinions of the Justices; and affirms the authority of the House under the Constitution to require their opinions upon said questions.

It is with reluctance that your Committee venture to express an opinion at variance with that of the Justices, and with the greatest deference for their wisdom and learning; but after such inquiry as they have been able to make they have unanimously reached the following conclusion: That this House was justified in regarding the questions relating to the statute which provides for the education of the future citizens of the Commonwealth as important questions of law; that when it was confronted with the duty of considering the propriety of changing this law, a proper occasion arose, if it so decided, for it to require the opinion of the Justices upon points of doubtful construction, within the fair meaning of the words themselves of the Constitution, and as they have been interpreted by the Justices in past times, and as they are illustrated by the practice of the Government from which we have received, and the Commonwealth to which we have given, our laws.

For these reasons, imperfectly stated, the Committee report the accompanying Resolve.

A NEW YORK millionnaire recently died, and when his will was read it was found to contain the following curious clause: "If any one of my heirs becomes idle, a drunkard, a gambler, or a worthless fellow, a rascal, or simply a spendthrift, if until the age of fifty he does not go to business by nine in the morning every day, save Sunday or holidays, if he touches tobacco in any form, or spirits, if he attends races, breaks the Sabbath, etc., he forfeits his right to the share allotted him of my fortune." Such a will as this is, of course, disputed by the heirs; but if it is held good, the heirs will have to look forward to a careful time of it. In our present highly artificial age it is not at all unfrequent to have eccentric testators, who puzzle the courts with strange bequests, often saddled with still stranger conditions. As a contemporary says, "The law in its wisdom has a happy way of treating all too fastidious conditions as if they did not exist; and, thanks to this useful discretion, heirs and legal representatives have frequently to thank the law for attributing to their ancestors much wiser intentions in dealing with their property than they ever possessed." — *The Law Journal (London)*.

DEATH has been administered to dogs by suffocation in coal-gas with perfect success. This death, as far as can be known, is absolutely painless. The writer has several times been rendered totally insensible by inhaling gas, and can testify to the efficacy of the anæsthesia produced. Under its influence a perfectly quiet relapse into unconsciousness ensues, the last memory of events being clear and unclouded. Some such method of inflicting the death penalty would seem far in advance of the electric process. There would be a quick and painless unconsciousness, and the exposure could be so long as to insure a fatal result. It could be applied in an ordinary cell, with no special apparatus, and could even be applied to a criminal while sleeping. It would, above all, be infallible and certain, and would not mar or deface the body. The latter is always liable to happen with electricity. — *Scientific American*.

IN Commonwealth *v.* Williams, 105 Mass. 62, one Ball, who had been robbed, testified that defendant talked with him during the day and had a "very interesting, manly, pleasant, smooth, gentle, handsome voice, — a York State voice;" that about midnight he and his wife were awakened by the "pleasant voice" saying at their bedside:

"Keep still or you are a dead man. If you move I 'll take your heart's blood. You at the window, if these folks move, shoot them." They did not see the owner of the "pleasant voice," and its "pleasant" (?) character was their only means of identifying the enterprising burglar. The defendant, naturally not desiring to accept this compliment to his voice at the expense of a residence in the State prison, sought to show by several friends who drank with him that at the time in question he was at a ball in New York, and was "not a-burgling," but "listening to the merry [drink] a-gurgling." There was also evidence that another midnight gentleman had a "pleasant voice;" but all in vain. His "interesting, manly, gentle voice" convicted him, and he learned a new application of "vox et preterea nihil."

ALTHOUGH most of our readers probably see that interesting periodical, "The Albany Law Journal," the following remarks published in its issue of June 1 are so excellent, we cannot refrain from copying them in full.: —

"Seldom can more sense and satire be found in a page of print than in 'Putting New Wine into Old Bottles,' by Judge Seymour D. Thompson, in the 'Green Bag' for April. The writer shortly describes the state of England three hundred years ago, and concludes: 'In fact, our ancestors of those days were barbarians, not as far advanced as the Bulgarians of our own time. When therefore we have a new question of law to study, why should we go back and try to find what the opinion of Lord Coke, whose infamous prosecution of Sir Walter Raleigh can never be forgotten, was on the question? Why should we try to find what Sir Francis Bacon, who sold justice, thought about it? Why, in short, should we not stop rummaging the old books, and do a little thinking for ourselves? Our ancestors in their day did their parts as well as they could, with the light they had, and amid such surroundings as they had. But as compared with us, they were barbarians compared with the civilized man. In intellectual stature they were children compared with the moderns.' The 'Harvard Law Review' dissents from this view, and wants to be told of a few moderns compared with whom Coke and Bacon were children in intellectual stature. The writer of course was speaking of the mass of the people, and particularly of the lawyers. The critic has picked out two intellectual giants of their day, or at least one. Bacon, however, did not earn his reputation as a lawyer, and we are not aware that he is ever quoted as a lawyer. Certainly there have been scores of greater lawyers since his time. Coke probably was not intellectually great, and although a great lawyer for his time, yet there have been many greater since. There are at least four greater lawyers on the present bench of the Federal Supreme Court. Rapallo was a greater lawyer. He is not worthy of mention in the same day with Mansfield, or Kent, or Story, or Marshall, or Comstock, or Nicholas Hill, or Cowen, either as an intellectual power or as a repository of legal learning. Parsons knew more law; so did Wharton; so does Bishop. In truth, both England and America have outgrown Coke and Bacon, their times and their legal learning. There never was much of the old common law as compared with the common law of to-day, and it is rapidly growing less. We speak respectfully of it from habit, but it was but the scaffolding, which has nearly disappeared in the erection of the great edifice. It is almost as effectually superseded as the philosopher's old knife with its new blades and new handle. If any man wants to learn the real value of the traditions which we call the common law, let him study our commonly accepted sources of it as described in Wallace's "The Reporters," and observe how conflicting, obscure, and untrustworthy they are. Let him read Governor Hoadly's address made at Saratoga last summer. He must then confess to himself that our reverence for it is like that of a negro for his fetich, or an Indian for his curiously carved log. The chief value of the ancient common law is its free political spirit, which gave and preserves for us our State institutions. In admiration of this we are apt to be unconscious or forgetful of the puerility and inconvenience of many of its purely legal notions, of their unsuitableness to modern conditions, and of the fact that we have utterly marched away from them. Our modern law is chiefly admirable for its radical difference from the ancient. Entire branches have sprung up which the old law knew nothing of, — corporation, insurance, negotiable paper, and many others. Mansfield created one branch, Marshall another. In fact, so inhumane and barbarous was the common law, that our ancestors themselves felt compelled to invent a superior article for hard cases, which they called equity. Much of the modern prostration before the ideas of the common law is as unreasonable as would be an adherence by modern physicians to the medical theories and practices of the Middle Ages. When the 'Review' asks if Judge Thompson believes 'that a judge of to-day can safely strike out for himself,' we will take it upon ourselves to answer yes; that is exactly what they are doing and have been doing all along, and that is what the common-law idolaters give them the highest praise

for, — the 'elasticity' of the common law, which enables them to disregard it, and fashion law unto themselves. And yet so laughably forgetful are the worshippers of the empty niche of the ancient common law that the revered figure has been despoiled and carried away, that one of the greatest of them, Mr. Bishop, just now writes: 'I have expressed indignation at modern attempts to smite it to its death and burial in statutes under the name of codification,' — forgetful that it is long since dead and buried and mouldered, except here and there a bone. Now the question of the day is whether the law thus ascertained shall be fixed in statutes, or shall be left for judges to change at pleasure, so that there shall be no determined and invariable rule in any case."

Recent Deaths.

HON. PELEG W. CHANDLER, one of Boston's best-known lawyers, died on May 28. Mr. Chandler was born in New Gloucester, Me., April 3, 1816. His paternal grandfather, Peleg Chandler, emigrated from Duxbury, Mass., in the last century; his maternal grandfather, a Parsons and a relative of Chief-Justice Parsons, from Gloucester, Mass., at about the same time. His early education was obtained at the Bangor Theological Seminary, where he graduated in 1834, and he entered Bowdoin College, finishing his academical course in 1837. His profession of the law was the result of studies with his father, also at the Harvard Law School, and with his relative, the late Professor Theophilus Parsons. Mr. Chandler as a lawyer gave his attention to civil cases, which were more congenial to his tastes and habits of thought. So far as can be recalled now, he seldom deviated from this practice, and then only where his sympathies had been strongly aroused. In arguing a case he was famed for the lucidity of his explanation, which made the law clear, and his forcible, concise presentation of facts, so as to make the most complicated case plain in its main features, not only to the comprehension of the profession, but to that of the average layman. He received the degree of LL.D. from his Alma Mater in 1867, and was made a Trustee of the College in 1871.

FRANKLIN H. CHURCHILL, a well-known lawyer of New York City, died at the residence of his brother, at Newport, R. I., May 22. Mr. Churchill was a descendant of a well-known military family, his father, Brevet Brigadier-General Sylvester Churchill, having been Inspector-General in the United States Army during President Polk's administration. Franklin was born in 1823, and after a course at Harvard, was admitted to the bar at Albany.

HENRY A. FOSTER died at his home in Rome, N. Y., Sunday, May 12, in his ninetieth year. He was the senior ex-United States Senator, having been elected in 1844, one year before Simon Cameron of Pennsylvania. He was elected to the State Senate in 1830, and to Congress in 1836. In 1840 he was again elected to the State Senate. He was a delegate to the convention which nominated General Cass for President. In 1853 President Pierce appointed Mr. Foster United States District-Attorney for the Northern District of New York, but he declined the honor. In 1863 he was elected Justice of the Supreme Court in the Fifth Judicial District. He was twice appointed Surrogate of Oneida County, and held many positions of honor and trust in that community. He was a resident of Rome almost continuously from 1819 till his death. He continued in practice until a very few years ago. He was a man of remarkable talents and learning, and of great mental strength and originality, but of a domineering and sometimes violent temper.

GEN. VOLNEY T. HOWARD, a prominent lawyer, died at Santa Monica, Cal., May 14, aged eighty years. He was a native of Maine, and was elected to Congress several times from Texas. Removing to California in 1853, he was appointed to the command of the militia in 1856 in the attempt to suppress the Vigilance Committee in San Francisco.

HON. FREEMAN N. BLAKE died at Somerville, Mass., on May 19, aged sixty-seven years. He was a native of Farmington, Me., and graduated from the Harvard Law School. He began the practice of his profession in Chicago, and removing to Kansas took part in the early troubles of that State. He was one of the framers of the constitution of Kansas, and was a member of the

Legislature of that State. Under Lincoln he was for a time in the Navy Department, and later was Consul at Erie, Ontario. Mr. Blake was also made Consul to Hamilton, Ontario, by President Grant, remaining there eight years.

GUY C. NOBLE, of the law firm of Noble & Smith, St. Albans, Vt., died suddenly on May 21. He was fifty years old, was attorney for the Central Vermont Railroad, and was well known in legal and other circles throughout the State.

PETER W. LYALL, a well-known lawyer of Lawrence, Mass., died in that city, May 20. He was a member of the Common Council in 1885, Trustee of Public Library three years, and member of the School Committee three years. He was born in Andover in 1854, graduated from Lawrence public schools, Phillips Academy, and Boston University Law School.

PETER C. BAKER, senior member of the firm of Baker, Voorhis & Co., New York, died May 19. In 1850 he established the publishing firm of Baker & Godwin, which made a specialty of printing law books. In 1865 he established the firm of Baker, Voorhis & Co., printing law books entirely. Mr. Baker was one of the founders of the Metropolitan Literary Association. He edited the "Steam Press," a Union periodical during the war. He was the originator of the plan for the statue of Benjamin Franklin in Printing House Square.

COL. GEORGE F. GARDINER, a well-known New York lawyer, died in New York City, May 22. He was sixty-two years old, a native of Washington, D. C. His father was Capt. G. F. Gardiner, who was killed in the Seminole massacre, and his mother was a daughter of Commodore Barnett, U. S. N. He was a page in the United States Senate, afterward went through West Point, studied law in New Haven, served as colonel of the Seventh Connecticut during the war, was subsequently prosecuting attorney of New Haven, and for many years had practised law in New York City.

REVIEWS.

THE UNIVERSITY for May is very attractive in appearance, as well as interesting in its contents. The frontispiece is a fine picture of the University Club House in New York City, and there are excellent portraits of Rev. Bradford Paul Raymond, the President-elect of Wesleyan University, and Leonard W. Jerome, the well-known New York millionnaire. Interesting sketches of the lives of these gentlemen accompany the portraits. The UNIVERSITY aims to reflect the doings at all our higher institutions of learning, and is not devoted to the interests of any one particular college. It is ably edited, and merits the success which it is certain to achieve.

IN an article in the SCOTTISH LAW REVIEW for April, entitled "Recent Literature of Reparation," the writer, speaking of Melville M. Bigelow's "Elements of the Law of Torts," says: "Mr. Bigelow, whose manual was adopted as a text-book in the Law School at Cambridge (England), addresses himself, with singular lucidity, considerable analytic power, and a firm grasp of principles, to the higher class of law students." The leading article in this number is a discussion of the "Marriage Laws" of Scotland.

WITH the May number the COLUMBIA LAW TIMES closes its second volume. Prof. George Chase contributes the leading article, "A Synopsis of the Law relating to Bills of Exchange." The management of the magazine for the ensuing year will be in the hands of Mr. John Norton Pomeroy and Mr. Willard C. Humphreys of the Class of '90 as Editors, and we have no doubt that under their management the TIMES will meet with continued success.

IN the May number of the HARVARD LAW REVIEW, Freeman Snow contributes an exceedingly interesting paper on "Legal Rights under the Bulwer-Clayton Treaty," Heman W. Chaplin discusses "Statutory Revision," and there is an interesting letter from Leipsic on the subject of legal education in Germany.

JOHNS HOPKINS UNIVERSITY STUDIES, seventh series, V., VI. This double number contains

a paper on "English Culture in Virginia," by William P. Trent, M.A. The rise of the University of Virginia is interestingly told, and a study of the Gilmer letters and an account of the English professors obtained by Jefferson for the University are embodied in the article.

VOL. IV. of the POLITICAL SCIENCE QUARTERLY opens with an exceedingly interesting number. "Scientific Anarchism," by H. L. Osgood, gives the reader a clear insight into the real aims and objects of the Anarchists, and draws the line very clearly and distinctly between the Individual Anarchist and the Communistic Anarchist. "The Ballot in New York," by A. C. Bernheim, opens up a very interesting chapter in the politics of the Empire State. The other contents are "Income and Property Taxes," by Prof. Gustav Cohn; "Irish Secession," by H. O. Arnold-Forster; "The Crisis in France," by A. Gauvain.

UNDER its new management, the CHICAGO LAW JOURNAL is certainly a most readable periodical. The leading article in the May number on "The Commercial Power of the Nation *v.* The Police Power of the State," is from the pen of Hon. George W. McCrary. No one is better qualified to speak authoritatively upon the subject of interstate commerce than Mr. McCrary, and the article is one that will well repay a careful perusal. We wish the new Editor, Mr. John Gibbons, every success in his new enterprise. The LAW JOURNAL could not be in better hands.

BOOK NOTICES.

A TREATISE ON THE LAW OF MORTGAGES OF REAL PROPERTY. By LEONARD A. JONES. Fourth edition. Houghton, Mifflin & Co.: Boston, 1889. Two volumes. $12.00.

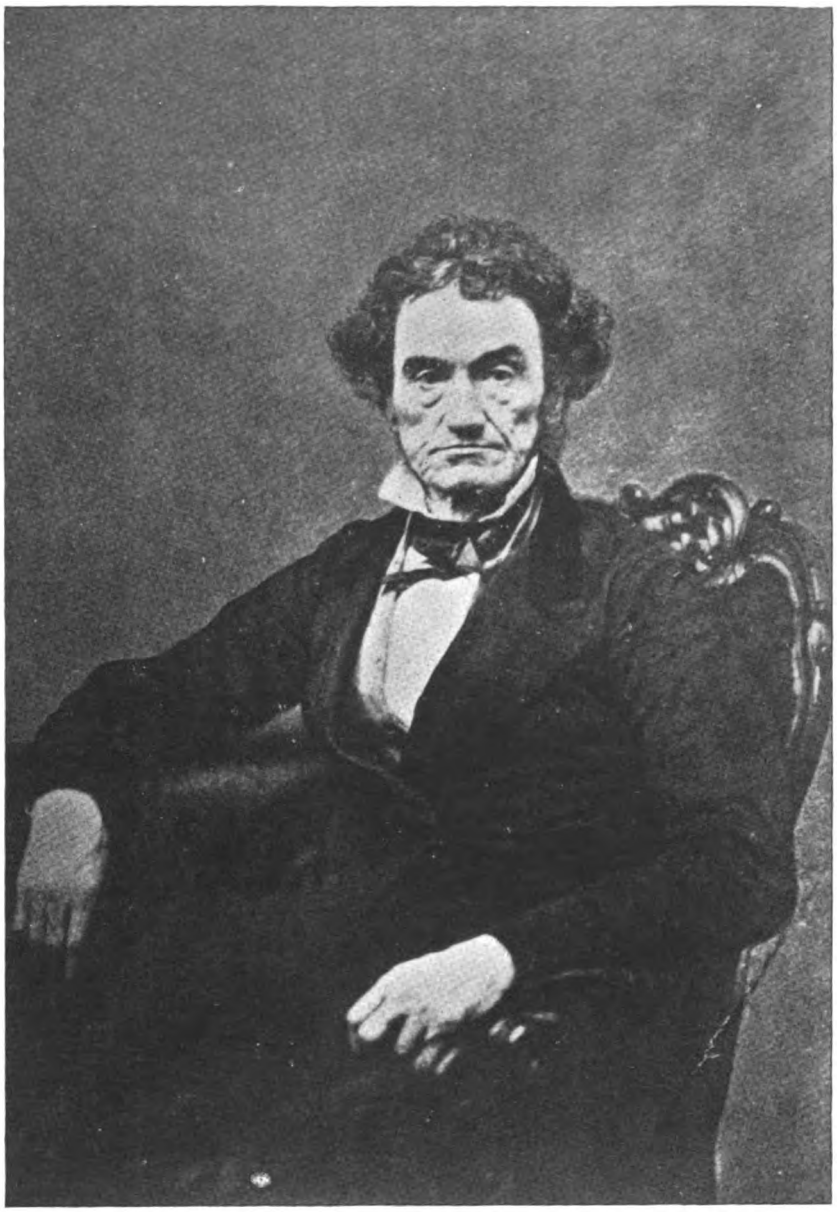
This admirable work by Mr. Jones is so well known to the legal profession that any further words of praise seem almost superfluous. For a thorough and comprehensive treatise upon the subject of Mortgages of Real Property, there is no work to be compared to it, and it is really indispensable to every lawyer. The present edition includes the decisions upon mortgages which have been reported since the preparation of the previous edition. The number of new cases cited is almost four thousand, and nearly one hundred pages have been added to the text. It is said that there is always room for improvement in everything, but it is difficult to see in what respect this last edition could be improved upon.

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

The second volume of this series of Reports only serves to confirm our opinion that this new departure in the system of reporting cases cannot fail to commend itself to every lawyer. It is a relief to have the *wheat* garnered and the *chaff* thrown aside by such skilful hands as Mr. Desty's, instead of being obliged to undertake the task one's self. The practitioner can turn to these Reports in the full confidence that he will find in them every important case decided in the State and Federal Courts. The Co-Operative Publishing Company deserves the unqualified thanks of the profession for undertaking this work; and the Reports should, and we have no doubt will, find a place upon the shelves of every lawyer.

POINTS IN PLEADING AND PRACTICE UNDER THE MASSACHUSETTS PRACTICE ACT. By CHARLES E. GRINNELL. Charles C. Soule, Publisher. Boston, 1889. $3.00 net.

This work of Mr. Grinnell's will be heartily welcomed by the Massachusetts Bar. The Practice Act is taken up by sections, and all cases bearing upon each section are carefully noted, so that the practitioner has before his eyes at a glance all the decisions upon any questionable point. Throughout the book are suggestions in the form of general rules concerning modes of using pleading in the management of cases according to the Act.



The Green Bag.

VOL. I. No. 7. BOSTON. JULY, 1889.

RUFUS CHOATE.

RUFUS CHOATE was born in Ipswich, Mass., on Oct. 1, 1799. He grew up in Essex County, Mass., with but ordinary opportunities of schooling. When he was sixteen years old, he entered Dartmouth College; but a brilliant boyhood had already made him sufficiently known to excite in many quarters of old Essex great expectations of his future achievements. His college course increased these expectations. In studies he was immeasurably and easily the head of his class; and one of his tutors has since said that long before he left college he was qualified to be a professor in any university in America.

After graduating, he taught school, but soon adopted the law as his profession, and fell upon the study of it with the most eager application, as if with prophetic instinct of the destined identification of his renown with it. He entered the Dane Law School, where he remained for a few months, and then went to Washington to prosecute his studies in the office of the Attorney-General of the United States, William Wirt. After remaining there for a year, he returned to Massachusetts to enter the office of Judge Cummins, of Salem. In September, 1823, he was admitted to the bar of Common Pleas of Essex County, and opened his office in the town of Danvers. Two or three years later he removed to Salem, and in November, 1825, he was admitted to the bar of the Supreme Judicial Court.

At that period the Bar of Essex County was adorned by able and learned lawyers, men of large experience and high character. It is doing no injustice to any of those eminent men and lawyers to say that Mr. Choate, upon his first introduction to the practice, immediately placed himself in the very front rank of the profession. He was retained at once in important cases, and was erelong one of the leaders of the Essex Bar. He continued in practice at Salem until 1834, in which year he removed to Boston.

Here in the New England metropolis new scenes of professional encounter, new antagonists, and in some degree new law, rose before him. He was still young, — but little over thirty, — yet he entered at once into the lists with the very ablest leaders of the Suffolk Bar, and advanced for seven years through a steady progress of successes and of fame.

In 1841 he was chosen by the Massachusetts Legislature to the United States Senate. He took Mr. Webster's chair in that body when that gentleman entered General Harrison's Cabinet. In the Senate he made those speeches which drew upon him the attention of the nation. Most of them were carefully revised by himself and officially published. The speech on the Oregon question in reply to Mr. Buchanan, those on the tariff, the annexation of Texas, to provide further remedial justice in the courts of the United States, were printed in pamphlet form for popular circulation. The unfortunate encounter between Mr. Choate and Mr. Clay will be remembered by many of our older readers. Mr. Choate was accused of lack of courage, and unquestionably lost much of his prestige by his conduct on that occasion; but after all it is not surprising that he, still young and with comparatively little experi-

ence in the halls of legislation, should have been surprised into silence by the terrific onset of Henry Clay, chief of the Senate for twenty years.

In 1845 he returned to the practice of the profession of which he was so fond, and in which he was still busily working when death came to him in 1859.

Rufus Choate is to be ranked as the great American advocate. He was an able lawyer, a shining statesman, an all-accomplished man of letters; but these are not his glory. His was that glory of which nightly he had dreamed, and for which he struggled daily from his first entrance upon active life, — the glory of *the great advocate*, the ruler of the Twelve. To gain this particular attitude in history, he made all his endowments and all his experiences contribute. His preeminence was in dealing with man as man; not educated, ermined man, but the mere mortal man. Him he could magnetize and master.

He accomplished this magical mastery, not by a mere transitory eloquence of pathos and beauty, but by concentrating vast energies upon that specific object. A singularly powerful yet delicate organization, a capacious yet prompt understanding, law learning enough for a lord chancellor, and a lettered eloquence which Hortensius might have admired, — all these were the forces in array when Choate ranged his power in forensic action. And then, finally, he had genius, pure genius.

In court or out of court, a romantic interest always seemed to invest him. With his dishevelled locks waving about his head; his gloomy countenance, in which grief and glory contended, — the signature of sorrows and the consciousness of acknowledged power; the Oriental complexion, speaking of an Asiatic type of man; his darkly burning eyes; his walk, swaying along in that singular gait which made his broad square shoulders careen from side to side, like the opposite bulwarks of a ship; his moody loneliness, — for when off duty he was rarely seen other than alone; his self-absorption of thought, producing a sort of impression as of a mysterious silence around him, — he moved about more like a straggler from another civilization than a Yankee lawyer of New England growth and stature.

In his manhood as in his youth, everybody loved this romantic man. His brethren at the bar bore testimony to his unfailing urbanity and his unruffled temper. In a profession of forensic fighting, he was always himself *at peace*. In the management of his cause he was always magnanimous and indulgent to his adversary. Whatever formal concessions he could make to that adversary which would save him trouble, — as of procuring extra witnesses, of guarding against surprise, and such things, — this monarch of the bar would accord with princely liberality. But the miracle about his character was that, with a temperament whose excitableness was daily cultivated on principle to support his eloquence, his self-command was as supreme as his passion was stormy. Though every one else might be in a passion, and he had made them so, he was to be seen as serene as if he had just risen from the breakfast-table; though every one else was galling, ugly, and ill-natured, his words were as composed and honeyed as the utterances in a lady's boudoir.

His humor and wit helped him in every stage of the cause. It relieved the tired attention, and often would kindle up such a sympathetic conflagration of glee all over the court-room, that the dry case seemed to take a new start from that moment, and the lawyers looked up as if they had taken in a sudden draught of fresh air. His humor was most distinguished for its odd association of very opposite ideas, and ideas naturally very distant from one another. Many of his great and sudden mirthful effects were produced by his tone and manner quite as much as by his words.

In a railroad accident case, where they ran over a carriage at a crossing, he was showing that the company could not have

had any lookout. "They say," he exclaimed, "the engine-driver was the lookout. The engine-driver the lookout! Why, what was he doing at this moment of transcendent interest? What was the lookout doing? Oiling his pumps, they say, — *oiling his pumps*, gentlemen of the jury! a thing he had no more business to be doing than he had *to be writing an epic poem of twenty-four lines.*" The association of ideas here between the oily engine man and the creation of an epic poem was one of the most extraordinary ever uttered; but its effect was decisive..

His generalship of a case throughout was Napoleonic. He was as careful as Bonaparte to leave no point unguarded, and to pass over nothing which might by possibility be turned to service. He never committed the blunder of despising his enemy, but always fought on the plan of supposing the adversary to be about to display all the possible power of his side. He never believed himself victorious till he was victorious. Until the last moment he fought hard and guardedly, with both prudence and power.

His examination of witnesses in chief was admirable, and his cross-examination was a model. He had a profound knowledge of human nature, of the springs of human action, of the thoughts of human hearts. To get at these and make them patent to the jury, he would ask only a few telling questions, — a very few questions, but generally every one of them was fired point blank, and hit the mark.

In a sketch brief as this has necessarily been, it is impossible to do adequate justice to the wonderful powers of such a man as Rufus Choate. To attempt to condense into a few pages that which would fill volumes, is a hopeless task. To appreciate his gigantic intellectual strength and his transcendent genius, one must read his arguments and addresses. These may at first strike the reader as being to some extent extravagant and eccentric; but a second thought will reveal their compact strength.

Other jury advocates may have surpassed him in single points; but take him for all in all, we think he brought more varied and higher qualities, more intellectual weight of metal, to the bar than any other man of our time who has made legal advocacy the almost exclusive theatre of his energies and fame.

THE ROMANCE OF THE LAW REPORTS.

PROBABLY the last places in which most people would expect to find light reading are the libraries of the Inns of Court. It is not a little amusing to witness the looks of wonderment and awe with which the sisters, cousins, and aunts of the Bar gaze upon the well-filled shelves, which are the pride and glory of the Benchers, when they are being shown the libraries. Possibly the feminine mind is accustomed to judge by externals, and we can understand that the spectacle of some thousands of volumes bound in the orthodox law-calf is calculated to suggest reading of a somewhat solid type; to the uninitiated, too, books in bulk are always productive of bewilderment. Moreover, the popular notion of the nature of legal studies is practically limited to the Coke-upon-Littleton or Fearne-on-Remainders style of reading. Yet, as a matter of fact, the law reports are a mine of romance. In these musty and dusty volumes lies great wealth of legend and tradition. They faithfully and graphically record "all the changes and chances of this mortal life," and probably in no literature are the permutations and combinations of existence more thoroughly worked out. The heights and depths of

human vice and folly are here wonderfully illustrated. We have only to turn to a single shelf of law reports to find tersely and graphically recorded the outline of countless tragedies and comedies, which no effort of the imagination could equal, and which prove over and over again the veracity of the old adage that "truth is stranger than fiction." Could we invest with life these puppets of the past, who have played their parts in the melodrama of life, and have left behind them these brief records of their happiness and misery, their frailties and foibles, we should have no need to justify ourselves for speaking of the "Romance of the Law Reports." Any single volume of the State Trials will be found to contain horrors that will put the most sensational of Miss Braddon's productions to shame. Again, the vicissitudes of fortune are much better drawn in the law reports than in the whole literature of the imagination. In fact, there is no possible combination of circumstances for which some parallel cannot here be found. Further, the law reports are the truest and most faithful commentary upon the history of the nation; and as the history of one epoch passes into the romance of the next, and the nursery legend of the third, so here we can find the germ of many a story which has long been regarded as the effect of imaginative genius.

There has seldom, if ever, been a more thrilling story than that of the abduction of Miss Turner. It has already served as material for many novelists; but the bare outline of the facts, as recorded in the reports, is sufficiently interesting. To follow the account given by Townsend, Ellen Turner, the daughter and heiress of William Turner, Esq., a gentleman of large landed property, residing at Shrigley Park, Cheshire, when fifteen years old, and while still at school at Liverpool, attracted the attention of Mr. Gibbons Wakefield. Having acquainted himself with the facts as to her fortune and expectations, he formed the design of carrying her off and marrying her after the approved fashion of Vanbrugh's or Wycherley's comedies. Not a little ingenuity was exercised in carrying the plot into execution. A French servant was sent with an empty carriage and a letter to the schoolmistress announcing the dangerous illness of Mrs. Turner, and begging that the young lady would return at once. The *ruse* was perfectly successful. Miss Daulby, the schoolmistress, hastened her pupil's departure, and she was driven to Manchester; here Mr. Gibbons Wakefield introduced himself, and told the young lady a plausible story to the effect that her mother's health was a mere pretext, and that the real reason for her journey was her father's pecuniary difficulties. Since Mr. Turner had made his fortune in commerce, and a mercantile crisis had only very lately been weathered, this story found ready credence with Miss Turner, who anxiously and willingly set out in a post-chaise to join her father, as she was told to do. Gibbons Wakefield was now joined by his brother William. The party posted by a roundabout route through Yorkshire to Kendal, and thence to Carlisle, the two brothers making good use of their time in convincing Miss Turner that her father's affairs were in the greatest confusion, and that his only hope lay in the good offices of an uncle of theirs, who would advance him £60,000. Further, a letter was read purporting to come from Mr. Grimsditch, the Turners' family solicitor, and advising her immediate marriage with Gibbons Wakefield. Probably no heroine of fiction, not even Clarissa Harlowe, Miss Byrom, or Miss Allworthy, was placed in a more peculiar situation. To Miss Turner the horror and anxiety of her position were, of course, as real as if there had been no conspiracy. With a heroism which has seldom been equalled, she agreed, on finding that her father could not meet her at Carlisle, to go over the border to join him. When arrived in Scotland, in the hope that she might thereby save the family fortunes, she gave her hand in marriage to Gibbons Wakefield, in the presence of a drunken blacksmith, the

landlord of a public-house, and a post-boy. But we cannot relate at length the further details of this thrilling story. How she was hurried by her nominal husband, first to London and then to Calais, or some five or six hundred miles in five days; how she was rescued by her relatives, who first knew of her abduction by seeing the announcement of her marriage in the newspapers; and how she had to undergo the scarcely less arduous ordeal of a trial, are all now matters of history. But it must suffice for us here to point out that the case will serve as a fair instance of the romances which are to be found in the law reports. Indeed, so rich and wide is the field before us that it is difficult to choose. But perhaps those instances in which the innocent have paid the penalty for other people's crimes command most ready sympathy and universal interest. Many recent examples will be fresh in the public mind, but in the books many are to be found. For instance, there is a very remarkable case cited in Lord Romilly's "Memoirs," in which a sailor of the name of Thomas Wood was tried by court-martial on a charge of having been concerned in a mutiny, and upon his own confession was condemned to death and executed. The man's relations, who had appealed in vain for a respite, got the case taken up by some of the papers, and this led to the facts being laid before the Attorney-General prior to taking proceedings against the journals for libel. A careful inquiry was made into the facts, with the result that the man's innocence was completely established, and it was proved that he was at Portsmouth, on board the "Marlborough," at the time when the mutiny took place on board the "Hermione." Of course, the old reports, especially the criminal reports, teem with cases where the most flagrant partiality was shown by the judges, and record scenes of trials which were a parody upon justice; but even in more modern times there are many similar cases reported. Thus the conviction of Lord Cochrane of conspiring fraudulently with seven others "to raise the price of the public funds by causing persons, disguised as officers, to pretend that they had arrived at Dover and Northfleet with expresses from France on the morning of Feb. 21, 1814, announcing the overthrow of Buonaparte, and the conclusion of the war," is certainly of doubtful validity. And the humiliation endured by the brave hero of the Basque Roads, not only in this conviction, but in its consequences, which involved the removal of his name from the Navy List, his being deprived of his command of the "Tonnant," and being stripped of his title of Knight of the Bath, while his banner was taken down at midnight from Henry VII.'s Chapel, is very pathetic. In this case, it is true, some tardy reparation was made after a lapse of thirty-nine years, during most of which time he served with distinction in the South American War, and upon his succeeding to the title — Earl of Dundonald — by restoring him to his rank in the navy, and appointing him Vice-Admiral of the Blue. The Bank of England long preserved, and, for anything we know to the contrary, still preserves the identical £1,000 note with which Lord Cochrane paid his fine, and upon the face of which he recorded his fierce protest against his conviction.

But it must not be supposed that the law reports omit to record details of small and insignificant cases, as well as those of national importance or of a romantic interest. As we have already intimated, we can find there the germ of many a nursery legend and childhood puzzle. A single instance will suffice. We are all familiar with that mysterious and complicated sum in arithmetical progression, in which one penny was to be given for the first nail in a horse's shoes; twopence for the second; fourpence for the third, and so on; the puzzle being to find out what was the sum to be given for the last nail. It is, however, at any rate interesting to know that this case actually occurred in real life, and that in the reign of Charles II. (1 Leo. iii.) one Morgan agreed to pay one James, as the price of a horse, a

barleycorn a nail, doubling it every nail. There were thirty-two nails in the shoes of the horse, and the amount came to five hundred quarters of barley. The cause was tried at Hereford, and by the direction of the judge the jury found a verdict for the plaintiff for £8, being the value of the horse. There is another case of the same kind, although neither can very properly be said to belong to the Romance of Law. In this the defendant agreed to give the plaintiff in consideration of half a crown down, and five pounds upon the conclusion of the bargain, two grains of "rye corn" on the next Monday, four grains on the following Monday, and so on for a year. Of course the bargain could not be kept, because there was not enough rye corn in the world to pay the debt. But we must not tax our readers with arithmetical details. These instances will serve to show that the study of the law has its light side, and that it is not difficult to find plenty of light reading even in the library of an Inn of Court. — *Pump Court.*

PRIMITIVE LAW IN NEW ENGLAND.

THE legal proceedings of the early colonists in New England were, as would naturally be supposed, of the most simple character. The pioneers in this New World brought over with them none of the refinements of luxury, and had no time amidst the stern realities of that day to cultivate the graces of life or to be over-scrupulous about its forms. The forest pressed down to the very shore of the ocean; and the habitations which were erected in the midst of it had to be guarded day and night from the insidious assaults of an enemy subtle and vindictive. The means of subsistence, too, were limited and precarious, and oftentimes insufficient for the wants of the people.

Among other luxuries unknown at that day were lawyers and a nice exposition of the law. That profession could not live among a people of such simple habits. The article was not needed, — it was not among the wants of a primitive state of society; and in the division of labor which then took place, which was not very refined and scientific, there was no room for this occupation. The early colonists got along in their own rude way, without the aid of professional skill or technical form. The lawyers who at first attempted to establish themselves among this people wholly failed of success; they were regarded with jealousy and aversion, and were obliged hastily to abandon a field in which they hoped to reap an abundant harvest.

In Massachusetts it seems indeed to have been a matter of special reproach to one of the early magnates that he had been an "Atturney." In 1632 it was ordered, "that Thomas Dexter shall be set in the bilbowse, disfranchised and fined £40 for speaking reproachful and seditious words against the government here established, and finding fault to divers with the Acts of the Court, saying 'this captious government will bring all to naught,' adding, that 'the best of them was but an Atturney.'" In 1634 one John Lee was ordered to be whipped and fined £40 for speaking reproachfully of the Governor and saying "hee was but a lawyer's clerke and what understanding had he more than himself?"

In the case of a delinquency or a crime, the whole company took the matter in hand and made a common concern of it. See how they disposed of the *first offence* committed in Plymouth Colony in March, 1621. "John Billington is convented before the whole company for the contempt of the Captain's lawful command with opprobrious speeches; for

which he is adjudged to have his neck and heels tied together. . . . But on craving pardon he is forgiven." The *second* offence committed in the same colony was, as Governor Bradford informs us, "the first duel fought in New England, upon a challenge at single combat with sword and dagger, between Edward Doty and Edward Leister, servants of Mr. Hopkins. Both being wounded, the one in the hand, the other in the thigh, they are adjudged by the whole company to have their head and feet tied together, and so to lie for twenty-four hours, without meat or drink." Here was no bill of indictment, no jury, no special pleading nor long arguments. The trial, conviction, and punishment followed immediately on the offence, by order and in presence of the whole company. We dare say it was the last duel fought in the old Colony.

In Maine the earliest footsteps in the practice of law were equally simple. There were no lawyers there for about a hundred years after the settlement of the country commenced. The General Court took at first sole jurisdiction; afterwards Courts of Commissioners were held in different towns, to bring justice nearer home; and a pretty rigid discipline was kept up. The first courts held there combined the two-fold duty of making and executing the laws; frequently summary justice was rendered by making and applying a law after the offence was committed, by which they were enabled to suit the punishment to the crime. This was a very convenient arrangement, because, the offence having been committed, they could adapt the penalty to its nature and aggravation, and thus more exactly accomplish the work of justice. They might have sung with the "Mikado:"—

> "My object all sublime
> I shall achieve in time,
> To make the punishment fit the crime,
> The punishment fit the crime."

At these courts some forms were observed, — they had a grand jury consisting of twelve persons, several of whom were witnesses to the offences charged; they also had their register and provost-marshal, who corresponded to the clerk and sheriff in our courts. Thomas Gorges, a nephew of Sir F. Gorges the proprietor, presided over the court, which was called the *General Assembly*, assisted by other gentlemen of practical knowledge. All the proceedings, however, show a want of technical form and precision.

The following process in a civil suit in the year 1647 fully shows the simplicity of the practice at that day. "To his worship Henry Joslyn, Esq., with the rest of the commissioners and assistants, now assembled at Wells; Captaine Francis Champernoone, plf., against Wm Paine, of Ipswich, declareth against the said Wm Paine for certaine monies dew for a cable or harser delivered unto his servant Wm Quicke to the vallew of twenty pounds or thereabout." The verdict of the jury, written upon the back of the writ, is as follows: "Wee find for the plaintiff fourteen pound starling damidge, and cost of court." It is fair to suppose that the foregoing declaration is a fair example of the legal form of the period.

In criminal cases the proceedings were equally summary; and from the numerous presentments for drunkenness and other misdemeanors in Maine, the inference in regard to the morals of the population is not the most flattering. At the court in 1636, held at Saco, four persons were fined five shillings each for getting drunk, and George Cleeves was fined five shillings for rash speeches. In 1663 we find the following entry upon the records: "Francis Small is presented for being a common liar and drunkard." The judgment of the court is, "The Court find the charges against said Small *dubious*." They, however, proceed to fine him ten shillings for drunkenness and discharge him with an admonition.

The punishments, as well as the laws, partook of the peculiarity of the age. The following copy of a record under the year 1665 introduces us to some of the instru-

ments designed to avenge society or reform the morals of the people. "We present the towns of Kittery, York, the Isle of Shoals, Wells, &c., for not attending the Court's order, for not making a pair of stocks, cage, and ducking-stool." These instruments, one after another, long since disappeared from the criminal code and public observation; the ducking-stool first, then the cage, and last of all, the stocks and the whipping-post. The "oldest inhabitant" may perhaps have an indistinct memory of the latest apparitions of the last two mementos of a departed age, — the moss-covered *post* to which culprits were occasionally tied for castigation, and the *stocks*, with their neck and arm and leg holes staring vacantly at his wondering childish gaze. But the ducking-stool! Ah, why was that salutary discipline abandoned? Has the race of scolds and brawling women, for whose especial accommodation it was invented, passed away? Oh no; but the age has become more refined, and more tolerant of the abuse. This machine was a chair suspended by a crane over the water, into which the offender was plunged repeatedly, until her impatience and fretfulness was moderated. This species of punishment was very popular, both in England and this country, in early times.

One of the subjects of this antiquated remedy, the ducking-stool, was an inhabitant of Falmouth, whose name occurs in the following record: "We present Julian Cloyes, wife of John Cloyes, for a talebearer from house to house, setting difference between neighbors." The abolition of the ducking-stool unfortunately does not seem to have been followed by any perceptible diminution in the offences to which it was applicable.

The common penalty for swearing or railing was putting the offender's tongue in a cleft stick; a very painful as well as humiliating punishment.

One other mode of punishment peculiar to that age may be noticed in conclusion of what we have to say of the olden customs in the law. In 1667 one Ellnor Bonythorn, in consideration of her offence, was ordered "to stand three Sabbath days in a white sheet in the public meetings, or otherwise to pay five pounds into the treasury of this division." We know not which most to admire, the singularity of this punishment or the easy manner in which it was commuted. We need not say that on this occasion the penitential sheet was not worn.

We have thus carried our readers back to some of the customs of a former day. From the greatest simplicity in legal forms which amounted to almost no form at all, our ancestors passed to the opposite extreme, and the whole skill and power of the professors of the law were exhausted in puzzling their adversaries, and the courts and themselves, in a maze of special pleading which darkened and marred every case of any importance. Pleas in abatement, demurrers, general and special, rejoinders and surrejoinders, so entirely smothered up causes, that the merits were almost lost sight of, and many a case was driven out of court, upon the mere technicality of pleading, without one thought of the parties or the merits of the suit. The bar became an arena for the trial of the ingenuity of counsel and the display of forensic subtlety. But thanks to the progress of sound principles and a diffusion of the gladsome light of jurisprudence, the profession has got off its stilts, and is now walking upon the solid ground of good sense, untrammelled justice, and enlightened jurisprudence. Free discussion and profound research have opened their ample resources, and the profession of the law now comes to adorn and bless the age. It has passed from the boldness of one era and the subtlety of another, and has reached the open and broad field of free inquiry and simple truth. Let the profession be faithful to its high vocation, "Do nothing against the truth, but for the truth," and in these times of recklessness, radicalism, and wild visions, it will stand a barrier against them all, the palladium of our country's safety.

THE BALLOON AND THE GARDEN-SAUCE.

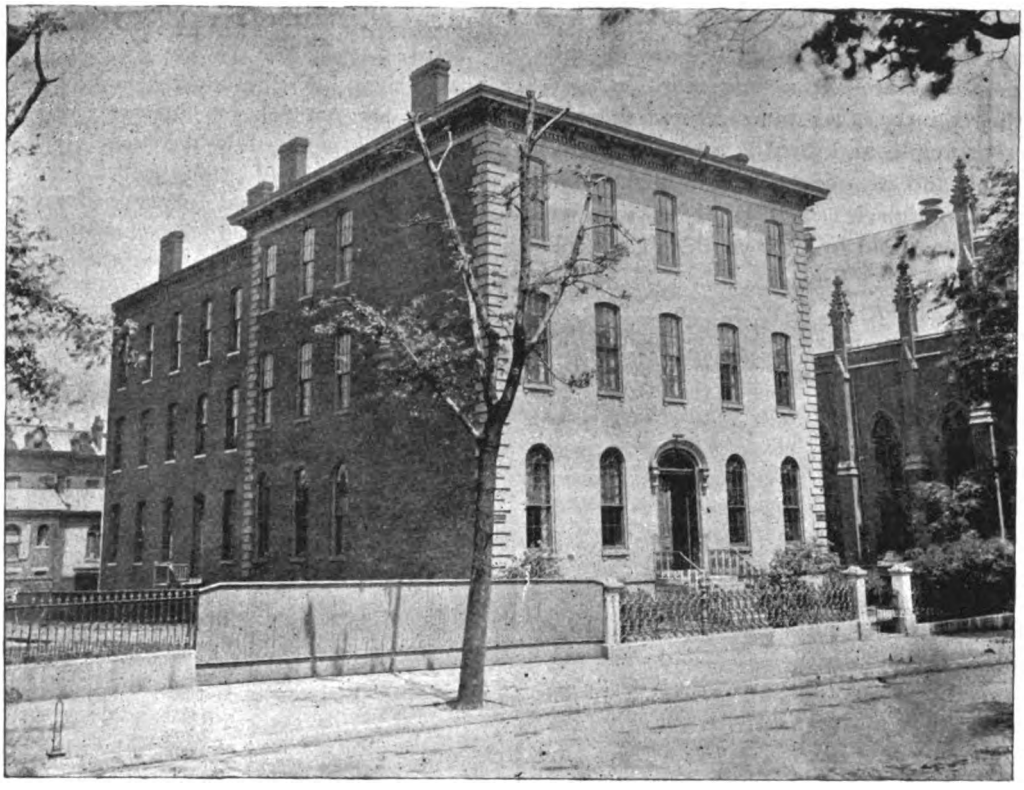
GUILLE *v.* SWAN. (19 Johnson, 381.)

By Irving Browne.

[*A balloonist, accidentally descending into a vegetable garden, called aloud for help, and a crowd rushed in and trampled and destroyed the growing vegetables. The balloon itself did some damage. Held, that he was liable for the entire damage.*]

GUILLE was a man of high ambition,
He looked down on the grovelling crowds;
Men seemed to him of low condition,
His head was mainly in the clouds;
Above the sordid earth high flying
On wings of fancy and of thought,
He sought the cloud-land up there lying;
In fact, he was an aeronaut.
Swan was a different sort of fellow,
He rarely looked above the ground;
In products red or green or yellow,
About twelve inches high, he found
An interesting occupation,
With more of profit than of loss;
A very commonplace vocation, —
He cultivated "garden-sauce."
Guille one fine summer day ascended
In Mr. Swan's vicinity,
But long before his course was ended
He fell, like bad divinity;
Like Phaëton's, quite madly banging,
Sheer from the sky his car came down,
And o'er the side his body hanging
Threatened destruction to his crown.
He landed plump in Swan's smart garden,
The car bumped round with awful din,
He shrieked for help; not begging pardon,
Two hundred rescuers rushed in.
The peelers stamped upon the onions
And turnips upside down forlorn;
The mob mixed their unsavory bunions
With Swan's best article of corn;

They stubbed their toes in his tomatoes,
  Disturbed his pease, tossed beans around;
They disinterred his new potatoes,
  And deep cucumbered all the ground;
His succulent and tender squashes
  They squashed with coarse, unfeeling boots,
And with their clumsy, huge galoches
  They trampled all his savory roots.
They caught the car, and Guille delivered,
  Almost defunct and deadly pale;
But Swan's poor garden-patch was shivered
  Like Eden by the serpent's trail.
The plaintiff for this strange infraction
  Demanded — which Guille disallowed —
Some fifteen dollars for Guille's action
  And seventy dollars for the crowd.
Guille pleaded an aversion rooted
  To paying such a bill for roots,
And claimed that Swan should be nonsuited
  For joining inconsistent suits.
The judges held the consequences
  Might naturally have been inferred,
Should it appear the evidence is
  That no request had been preferred;
It was as if he 'd sharply beckoned
  Unto that curious, gaping throng,
Although of course he had not reckoned
  On such a vegetable wrong;
But here there was an invitation
  Expressly given to the crowd
By Guille, when in his desperation
  He shrieked for succor, long and loud.
So Guille departed sore in feeling,
  Forced to "come down" he was once more;
And ne'er again was seen revealing
  His favorite tendency to soar.
For parachutes the courts care little,
  Balloonatics no rights enjoy;
But they will not abate a tittle
  'Gainst those who garden-shoots destroy.



THE ST. LOUIS LAW SCHOOL.

By Charles Claflin Allen.

WITHIN half a century the wilds of the West have become the heart of a great nation. The centre of population in the United States has passed the Alleghany Mountains and the Ohio River, and before long will have reached the Mississippi.

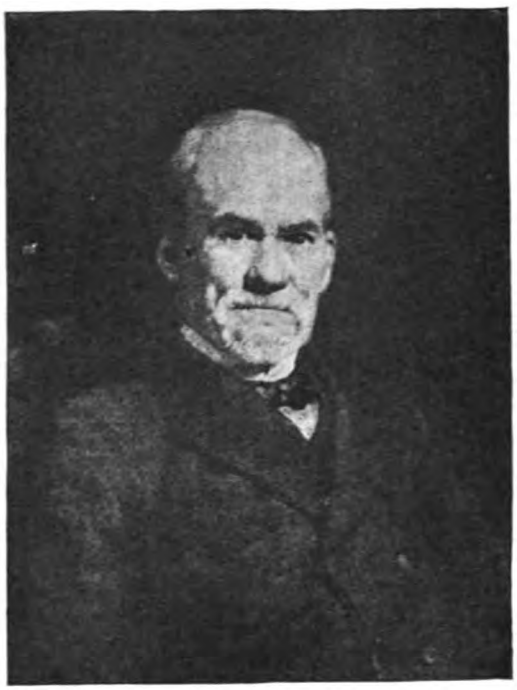
Fifty years ago St. Louis was scarcely more than a provincial town; to-day it is the metropolis of the Mississippi Valley. Its well-paved streets, stately stores, and substantial homes mark its progress in commercial prosperity and domestic comfort. It has libraries, an art museum, and a great music-hall, unsurpassed anywhere for its capacity and fitness for great operatic and dramatic productions.

As a city among cities, St. Louis is essentially substantial. And the Bar of St. Louis, reflecting the city's character, is made up of able, though conservative, honorable, and reliable men. It was such men who projected the St. Louis Law School, and imbued it with their personality; and no account of the school would present a correct picture of it in which was not blended with its history a description of the individuals who have given to the school the tone and character it bears.

The first movement toward the inauguration of the St. Louis Law School was made in 1860. It was fitting that the idea should have originated with the Directors of Washington University.

That institution, incorporated by the Legislature in 1853, with a perpetual charter and comprehensive powers, had already estab-

lished itself in several departments of education as a pioneer university of the West, having a large and constantly growing influence in the intellectual and moral progress of the country. Its founders were men of high principle and broad views, leaders in thought, and prominent in the business and professional circles of St. Louis. At its head as President, and in later years as Chancellor also, was the Rev. William G. Eliot, D.D., of venerated memory. The first Chancellor was Joseph G. Hoyt, of Exeter, N. H., a man equally remarkable for his scholarly attainments, his broad views of the higher education, and his executive ability, and whose early death was deeply lamented. Prof. William Chauvenet, LL.D., famed throughout the United States as a mathematician, the author of treatises on "Plane and Spherical Trigonometry," "Spherical and Practical Astronomy," and "Elementary Geometry," was called to the chancellorship in 1860, and continued in that office until a short time before his death in 1870.



SAMUEL TREAT.

In January, 1860, the Board of Directors of Washington University appointed a committee to take into consideration the subject of establishing a Law Department in the University. The Committee was composed of Samuel Treat, Thomas T. Gantt, John M. Krum, and Henry Hitchcock.

On the 19th of March, 1860, the Committee, through Judge Krum and Mr. Hitchcock, submitted a lengthy report recommending the establishment of a Law Department. In this they said: —

"It is believed that the proper conduct of such a department, wherein should be taught the principles of law, not alone as they are embodied in statutes or expounded in text-books, but as the broad expressions of truth, justice, and order among men and nations, might well exercise a beneficial influence, and even impart a higher tone to the entire institution."

The recommendations of the Committee were approved by the Board, and it was resolved to put the new department into practical operation as soon as possible.

But 1860 was a momentous year to the American people. The mutterings of the approaching storm were already heard; and the dark days of the civil war which followed, disastrous to all interests in a border State like Missouri, put a stop for the time being to further efforts towards opening the proposed law school.

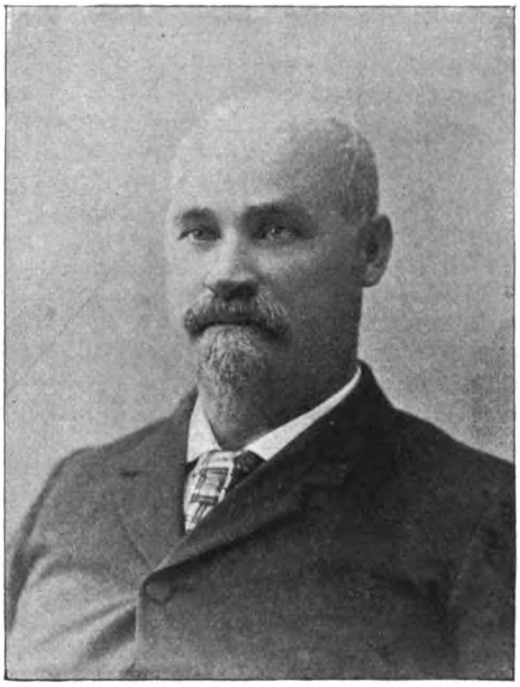
The war was scarcely over before the efforts, so inopportunely suspended, were renewed; and in 1867 the Directors adopted an ordinance establishing the Law Department of Washington University, which was thereafter called, and has ever since been known as, the St. Louis Law School.

The first Faculty included Rev. William G. Eliot, D.D., President; William Chauvenet, LL.D., Chancellor; Hon. Samuel Treat, Judge of the United States District Court, with Mr. Alexander Martin as his assistant; Hon. Nathaniel Holmes, then Justice of the

Supreme Court of Missouri, and who has since been so well known to the legal profession as Professor at the Harvard Law School; Hon. Albert Todd, and Henry Hitchcock.

A special feature of the organization was the appointment of an Advisory and Examining Board, composed of prominent members of the bench and bar, with the duties indicated by the title, and as to which more will be said.

The first Advisory and Examining Board included Hon. Samuel F. Miller, Justice of the United States Supreme Court; Hon. David Wagner, then Chief-Justice of Missouri; Hon. Arnold Krekel, United States Judge in the Western District of the State; Hon. Samuel Reber and Hon. Charles B. Lord, of the St. Louis Circuit Court; and James O. Broadhead, Samuel T. Glover, John R. Shepley, John M. Krum, and C. C. Whittlesey, all prominent members of the St. Louis Bar.



ALEXANDER MARTIN.

Hon. Henry Hitchcock was the first Dean of the Faculty, and upon him devolved the executive management of the new enterprise. From the first suggestion of a law school, Mr. Hitchcock was indefatigable in his efforts to advance it; and by his personal influence, and as a Director of Washington University, he contributed in a peculiar sense to its success.

Mr. Hitchcock comes from a family of distinguished lawyers. Samuel Hitchcock of Vermont, his grandfather, was appointed United States Circuit Judge by President John Adams in 1801. His father, Henry Hitchcock, was Chief-Justice of Alabama, in which State the present Henry Hitchcock was born. He was graduated from the University of Nashville, Tenn., in 1846, and from Yale College in 1848, at the age of nineteen. In 1875 Yale conferred on him the honorary degree of LL.D. Even at the time the St. Louis Law School was first projected in 1860, he was one of the leading lawyers of St. Louis, and he has since acquired a national reputation as a jurist. During the war he was Assistant Adjutant-General and Judge-Advocate on General Sherman's staff.

The scholarly bent of Mr. Hitchcock's mind and the scope of his attainments have made him prominent in the discussion of constitutional questions. He was one of the founders and has been an active member of the American Bar Association; a member of its Committee on Jurisprudence continuously from its organization; he has been President of the Missouri State Bar Association and the St. Louis Bar Association, and is well known as the author of able papers read before all of them, and as the promoter of needed reforms in the law. His paper on "The Inviolability of Telegrams," read before the American Bar Association in 1879, has received the unusual compliment of being quoted as authority in appellate courts.

In 1882 he was associated with Edward J. Phelps, Clarkson N. Potter, William M.

Evarts, Cortlandt Parker, Rufus King, and other celebrated lawyers, on the Special Committee for the Relief of the Supreme Court of the United States, and prepared the majority report which was adopted by the association after a learned and exhaustive debate, and has been the basis of all their subsequent action looking to the relief of the Supreme Court.

In 1887 Mr. Hitchcock, on invitation, read a paper before the New York State Bar Association on "American State Constitutions," in recognition of which he was elected an honorary member by that association; and in the same year, as orator of the American Bar Association, he delivered an address on "General Corporation Laws."

Professor Bryce, in his remarkable work, "The American Commonwealth," has given extracts from both of these papers.

In March of this year Mr. Hitchcock delivered at the University of Michigan an address on "Constitutional Development in the United States as influenced by Chief-Justice Marshall," following Judge Cooley in a series of five lectures by distinguished jurists on the Constitutional History of the United States.

He was the organizer of the Civil Service Reform Association of Missouri, was for several years its president, and has been one of the leaders of national note in that movement.

As professor, dean, and provost of the Law School, Mr. Hitchcock brought to bear the ability, learning, and earnestness of purpose characteristic of all his work. His favorite topics are Constitutional Law, Equity, and Corporation Law; but he has at different times taught Mercantile Law, Evidence, Real Property, Corporation Law, and Equity, and he still lectures each year on the Law of Wills and Successions.

He is, in all things, scholarly, thorough, profound. He never permits the student to skim the surface of his subject, but takes him to its bottom, and by explanation and example lays the subject fully before him.

The formal, public inauguration of the school occurred Oct. 16, 1867. The inaugural address, delivered by Hon. Samuel Treat, LL.D., Judge of the United States District Court at St. Louis, was an erudite compendium of the history of law.

Judge Treat was deeply interested in the development of the school, and was for several years President of the Faculty.

He retained his connection with the institution until recently, when failing health compelled his retirement from the bench and from the active duties of life. A gentleman of the "old school," a lawyer of high attainments, and a judge of unimpeachable integrity and unswerving devotion to duty, Judge Treat has left upon the St. Louis Law School, as well as upon the members of the bar who practised before him and the community in which he lived, the imprint of a remarkable personality.

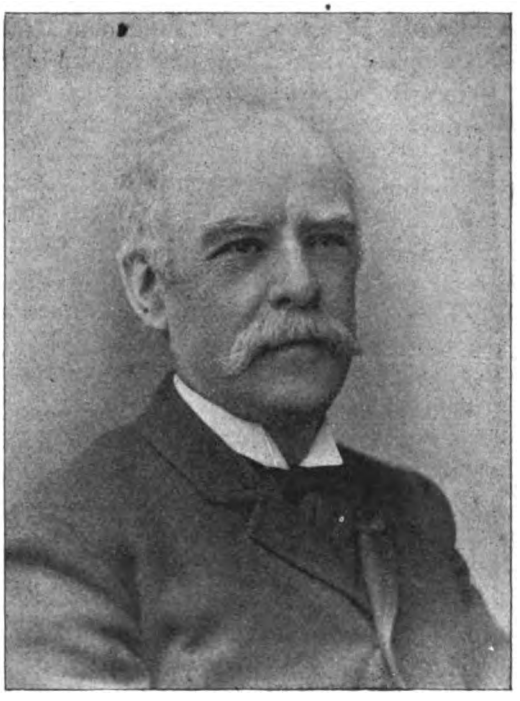
The school was organized without endowment of any kind. By arrangement of the Board of Directors of the University, certain of the necessary expenses were to be paid out of the University treasury; all others were dependent on the income from tuition fees. No salary was provided for the professors. Nor was there any prospect of pecuniary reward for them, save in the chance that there might be a surplus from tuition fees after paying expenses. How slight such a chance seemed at that time must be apparent. Theirs was indeed "a labor of love," — love for the profession, and desire for its advancement.

That the Faculty entered upon their work in this spirit is emphasized by their action when, at the end of the second year, a probable surplus of $1,700 having been reported by the Dean, the entire sum was, by unanimous vote, appropriated for the increase of the library.

Nor had the school at the outset a single book to constitute the beginning of a law library. Yet, by the end of the first year, the library comprised four hundred and eighty-three volumes, which were obtained

through the special efforts of President Eliot, at a cost of $2,000; and from year to year additions have been made, through gifts of books and donations of money, till now, in 1889, the library contains upwards of fifty-seven hundred volumes.

From its inception a high standard was established for the St. Louis Law School. Its founders were determined that the students who obtained its degree of LL.B. should earn it; and that those who went forth from its doors to practise their profession should first pass an examination whose severity should be a voucher of their fitness to enter upon the practice thoroughly grounded in the principles of jurisprudence. Two points were kept specially in view, — practicality and fairness. For the first, they arranged that the body of instructors should be men not only distinguished for their knowledge of the law, but actively engaged in its daily practice, that the students might have the benefit of the experience as well as the learning of their instructors. For the second, in order that every student examined might have the advantage of passing his examination strictly on his merits, and without prejudice of any kind, a board of examiners was chosen from the members of the bar outside of the instructors, who should prepare the papers for examination and grade them, without acquaintance with the students, and without knowing even the names of those examined. The standard established by the Faculty at the beginning has never been lowered, but rather increased.



HENRY HITCHCOCK.

Class examinations are held each term by the professors, and the severe examinations for the degree, conducted in writing, and usually lasting for six days, constitute a test rarely equalled, and certainly not surpassed, by any law school in the country. They prove the fitness of every one who has passed them to practise law in any court.

The Legislature of Missouri, recognizing this fact, enacted a statute in 1874, which is still in force, permitting any graduate of the school to be enrolled as a member of the bar in any court in the State, upon presentation of his diploma; and the United States Courts have, by comity, extended the same privilege. No lawyer familiar with the lax methods which long obtained in examinations for admission to the bar, by standing committees selected for that purpose, will fail to appreciate the contrast. Nor has this strictness of examination been without its influence outside of the school, in raising the standard of excellence and improving the methods in vogue.

Under a recent statute of Missouri, examinations for admission to the bar, formerly in the hands of committees and held in private, are now conducted by the judges, in open court, in the presence of the bar and of spectators; and in St. Louis at least, where the Circuit judges sit in general term for this purpose, candidates for the bar receive careful and often rigid exami-

nations which they not infrequently fail to pass.

If, as is generally believed, the influence of the St. Louis Law School was chiefly instrumental in producing this change, no one is likely to question the beneficial effect of the school, though this were the only advantage traceable to it.

The first class was graduated May 10, 1869, and numbered twelve students: M. Dwight Collier, Daniel Dillon, John W. Dryden, James S. Garland, J. Preston Player, P. J. Taaffe, J. T. Tatum, all of St. Louis; and W. E. Hall, Arrow Rock, Mo.; J. H. Nicholson, Perryville, Mo.; G. S. Robinson, Normal, Ill.; C. H. Lee, New Florence, Mo.; and Philip Sutherlin, Marble Hill, Mo.

Most of these have attained and are maintaining honorable positions at the bar. J. Preston Player subsequently became the law partner of Henry Hitchcock, but a few years later died, after a successful though brief career at the bar. Daniel Dillon was elected Judge of the St. Louis Circuit Court in 1884, and still holds that office. M. Dwight Collier is a well-known member of the New York Bar. The school rapidly grew in numbers and prosperity, and in 1871 it had fifty-six students. In the same year, through the gift of $6,000 from an unnamed friend of the institution, six scholarships were provided for poor young men, a prize of $50 was established for the best thesis in the graduating class, and $5,000 was expended in books.

Some changes had occurred in the Faculty. Judge Treat resigned his position as Professor, though remaining President of the Faculty; and Alexander Martin, who had been Assistant Professor, took Judge Treat's place. Lawyers who have examined the later numbers of the Missouri Reports are familiar with the carefully prepared and able decisions of Judge Martin as one of the Supreme Court Commissioners.

In 1870 Henry Hitchcock was compelled by ill-health to resign his position as Professor in Contracts and Mercantile Law, and also his office as Dean; and George M. Stewart became his successor.

About a year later, Mr. Hitchcock, having regained his health in travel abroad, was made Provost of the Law School, and resumed active work in its management and instruction. Subsequently, on a reorganization of the Faculty, Mr. Hitchcock was again chosen Dean, and devoted more of his time and thought to the school than ever before, till the demands of health and the pressure of professional duties compelled his withdrawal.

Judge Samuel Reber, Judge Chester H. Krum, Judge R. E. Rombauer, Judge J. D. S. Dryden, Hon. George W. Cline, and Hon. John W. Noble have, at different times, contributed their learning and experience in the instruction of different branches of Jurisprudence.

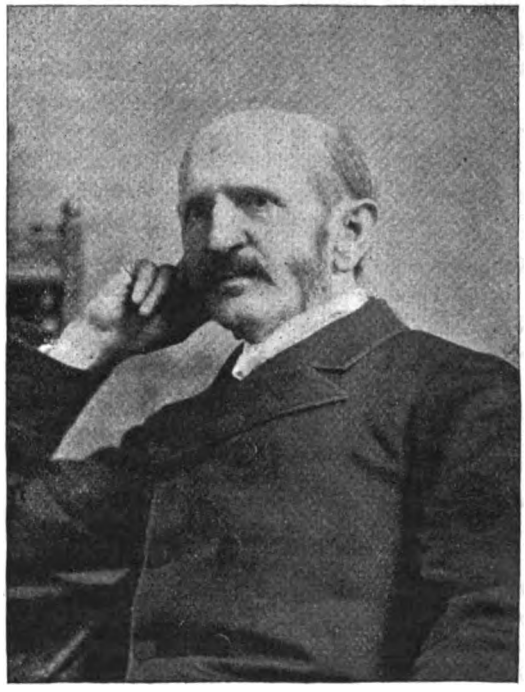
In later years the chair of Contracts and Commercial Law has been filled by G. A. Finkelnburg, a member of the St. Louis Bar since 1859, in which year he graduated at the Cincinnati Law School.

At the opening of the school Albert Todd, Esq., consented to accept the professorship of the Law of Real Property. He was admirably equipped for the duties of this chair. His long and varied experience at the bar, supplemented by ripe scholarship and diligent habits of study, assured the friends of the enterprise that he would prove a most valuable aid in giving to the school at the outset a character for thoroughness in all it might undertake to do. These friends were not disappointed. The same rare power of condensed but lucid statement, of apt and simple illustration, which had commanded for him the admiration of the bench and bar, enabled him to demonstrate to his classes how interesting and simple the Law of Real Property can be made by one who, having mastered it himself, possesses the faculty of imparting what he knows to others. But Mr. Todd's declining health compelled him to give up the more onerous duties of his

chair in 1869, and content himself with a comparatively brief course of lectures, each year, until his death, which occurred in 1885.

Mr. Todd was succeeded in 1869 by George A. Madill, of the St. Louis Bar, who still occupies that chair. Mr. Madill is an earnest friend of the institution, and a thorough believer in the scope and quality of the legal education afforded by a well-conducted law school; and the best evidence of the correctness of his views is found in the relative rank at the bar taken by the graduates of this school.

In 1880, finding the duties incompatible with his professional obligations, Mr. Henry Hitchcock resigned the position of Dean, though remaining a Professor, and William G. Hammond, LL.D., was selected to fill that office, and in 1881 Dr. Hammond took general charge of the Law School.



WILLIAM G. HAMMOND.

Up to that time the entire management as well as instruction had been in charge of active practitioners at the bar. But experience had shown the desirability of having at the head of the school a man who, in addition to his learning in the law and skill as an instructor, would be able to give his entire time and attention to the development of this growing institution. At the time of his election Dr. Hammond was Chancellor of the Law Department of the State University of Iowa, with which he had been connected for thirteen years, and he resigned that position to take charge of the St. Louis Law School.

Dr. Hammond brought to his new position a ripe experience as a student, a lawyer, and a teacher. Having been admitted to the bar in 1851, he had practised law in Brooklyn and New York for several years, and was the first Republican candidate for Judge of King's County. He then travelled abroad extensively, and studied the Civil Law and Comparative Jurisprudence at Heidelberg.

Returning to America, he removed to Iowa, and in 1866 associated himself with Judges George C. Wright and Chester C. Cole, who had established, as a private enterprise, a law school at Des Moines. In 1868 this was removed to Iowa City, and became the Law Department of the State University, of which Dr. Hammond was elected Chancellor.

Dr. Hammond has made many contributions to legal literature. In 1865 and 1866, continuing the work of Hon. John F. Dillon, he prepared a digest of Iowa reports, known as "Dillon and Hammond's Digest." He wrote an introduction to the American edition of "Sandars' Justinian," which was also published separately under the title of "System of Legal Classification of Hale and Blackstone in its Relation to the Civil Law," and which received high praise from Sir Henry Maine in his work on "Early Law and Custom." In 1867 he started the "Western Jurist," and conducted it until 1870. He has written frequently for various legal periodicals and also for leading current magazines. From 1870 to 1873 he was one of the three Commissioners who prepared the

Iowa Code of 1873. Recently he has prepared an edition of Blackstone, which is now in press for publication.

The degree of LL.D. was conferred on him by Iowa College in 1870, and by Amherst College, his *alma mater*, in 1877.

As a law lecturer Dr. Hammond has been eminently successful. He rests his system of instruction on broader grounds than the rule of *stare decisis*. Recognizing that mere "case-law" produces infinite variety and indefinite uncertainty, he grounds the student upon the broad, fundamental principles of the law.

In an able address entitled. "American Law Schools in the Past and in the Future," he has clearly defined the status of the student in these words: —

"The law student of to-day must train himself for processes, the result of which will depend almost entirely upon his own skill. He has simple, not to say rude, tools to work with. His hand and eye and mind must be actively employed in every motion he makes. He must have a clear vision, not only of the result he wishes to produce, but of all the methods by which, under varying circumstances, he may find it possible and expedient to produce it. Above all, he must know the reason of everything he is to do, the principles which underlie all parts of his employment. His future success will depend less upon his knowledge of many forms than upon the mental strength and skill and suppleness with which he uses the simplest ones."

Under Dr. Hammond's energetic administration the Law School has greatly prospered; its curriculum and system of instruction have been enlarged, and its material resources largely increased. Its students now number more than eighty.

Its present corps of instructors is composed of the Dean, Dr. Hammond, Henry Hitchcock, George A. Madill, Gustavus A. Finkelnburg, Charles Nagel, Rochester Ford, Edward C. Eliot, and P. Taylor Bryan Mr Nagel, Mr. Ford, Mr. Eliot, and Mr. Bryan are all graduates of the school, and are peculiarly fitted by aptitude and acquirements for their respective departments.

There are three classes in all. Two years of study are required for graduation.

In the Junior year the course of study is intended for students who are beginning the study of law; and its principal objects are to ground them thoroughly in Elementary Law, and to familiarize them with the methods and habits of thought with which legal questions are resolved in actual practice.

The subjects of the first year include, —

1. Real Property (Estates and Titles, at least).
2. Personal Property in Chattels, with the Law of Sales and Bailments.
3. Personal Property, *Choses in Action* arising from —
   - *a.* Torts.
   - *b.* Contracts; to which may be added, —
   - *c.* Cases of Option between Tort and Contract.
   - *d.* Negotiable Contracts in their simpler forms.

Pleading is taught in its simpler or code form by recitations from Bliss on Code Pleading, Part II., and frequent exercises in connection with the lessons in legal doctrine.

In the Senior Year Pleading is taught in its more elaborate and technical forms of Common Law (Stephen), and Equity Pleading (Tyler's Mitford) and practice in the various kinds of Special Proceedings are added to that in actions of all forms.

The instruction in doctrinal law this year includes, —

1. The Law of Persons in all branches.
   - Corporations.
   - Domestic Relations, especially Married Women and Infants.
   - Master and Servant.
   - Agency, Partnership, { not strictly belonging to the Law of Persons, but analogous to it.
2. Special forms of Contract.
   - Negotiable Paper, concluded.
   - Insurance.
   - Suretyship and Guaranty.
3. Special forms of Tort.
4. Equity and Equitable Estates.
5. Real Property, concluded, and Mortgage.
6. Constitutional Law.

The degree of LL.B. is conferred at the end of the second year upon those who pass the severe examination prescribed; but there is a third year, or Advanced Class, which is specially recommended to all who are able to take it. No specific curriculum is established for the third year, but it is devoted chiefly to reviews, and to the study of special subjects.

Not the least important phase of instruction is found in the Moot Courts. In one sense they might be said to be the most important, since they serve to condense and bring into active use the knowledge acquired in the class-room.

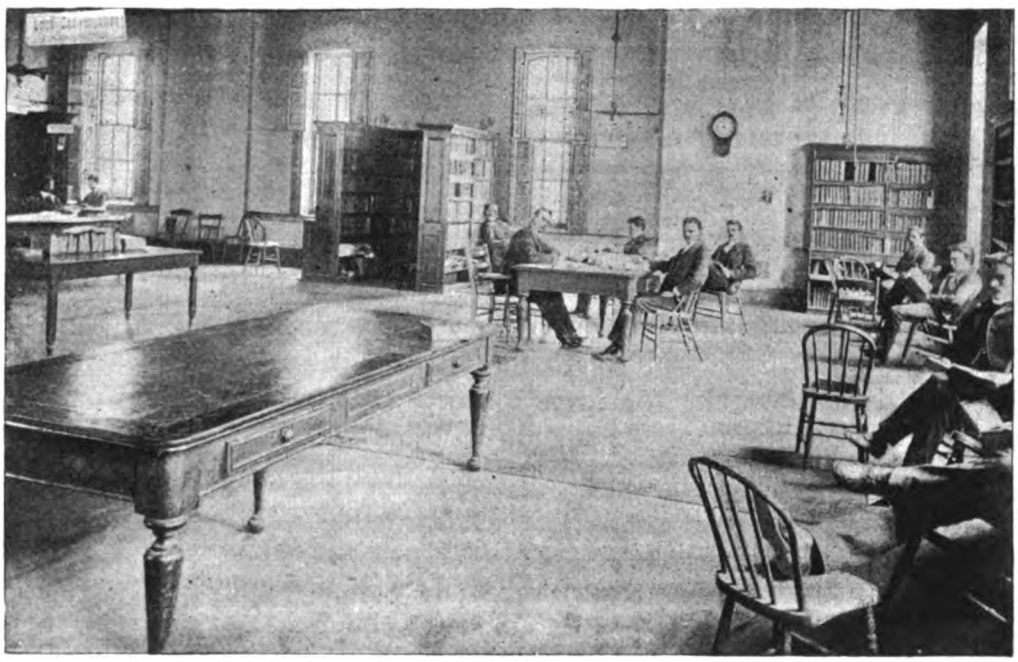
The Moot Courts are held weekly throughout the year by the Dean, with General Terms, from time to time, for the hearing of appealed cases by other members of the Faculty. They are conducted as nearly as possible with the forms of an ordinary court of justice; and the students draw pleadings in the cases assigned to them, and conduct them through all the stages of a legal or equitable suit, before trying the issues in the Moot Court.

Club Courts are also organized by the students, in which some member of the Faculty sits as judge, and from which an appeal lies to the Moot Court. A trial in "The Hammond Court of Causes" would be interesting, perhaps instructive, to an old practitioner. "The Moot Court Record," a paper published weekly, prints the opinions and briefs of counsel.

And so the St. Louis Law School has developed. In its twenty-one years of life it has passed through infancy into a sturdy maturity. Starting without an abiding-place, it has its home, by formal dedication from Washington University, rent-free forever, in a handsome, commodious structure, built for a school, and well equipped for its purposes.

An institution without means, or any guaranty of income except for the most necessary expenses, it has become the possessor, through the liberality of friends, of an endowment of $77,000. A Law School without a law book has acquired a library of nearly six thousand volumes.

Truly it may be said that the energy, the zeal, and the devotion of its founders have produced large results in the past. Who can doubt the promise of the future?



THE LIBRARY.

CLARK v. KELIHER.

(107 Mass. 406.)

By Austin A. Martin.

["*One on whose close hens are trespassing has no right to kill them, although in consequence of former like trespasses, he has asked their owner to shut them up and threatened to kill them if he should not do so.*"]

WHAT dire offence from hens and chickens springs,
What angry quarrels rise from feathered things,
I sing. This theme to Keliher's acts is due.
This case, attorneys, now be pleased to view.
Slight is the subject; but not so the praise,
If Themis aids, and you approve my lays.

In Greenfield, Mass., was honest Keliher's home;
Ne'er through the bustling city did he roam.
A happy swain, each early morn he rose;
By patient labor tidy kept his close.
His neighbor Clark a brood of hens possessed,
And viewed with pride each swelling feathered breast.
Each year full many likely chicks they bore,
And furnished him of wholesome eggs good store.
But hens, like men, will sometimes ill employ
Their time, and neighbors grievously annoy.
In wanton sport they scratched in Keliher's grass;
Indeed at last things came to such a pass,
In his demesne they sought their daily food,
Built nests, and fearless raised their callow brood.
All this aroused the honest Keliher's rage;
In angry parle with Clark he did engage,
Admonished him the fowls to keep away,
Or he with lethal weapon them would slay.
The careless Clark with scorn did treat the plaint,
Allowed his hens to roam without restraint;
They wanton still scratched freely o'er the plain,
And filled their crops with Keliher's shining grain.
The latter's wrath rose to a height sublime;
With his good staff he bided stern his time.

The morn came slowly in, with rosy light,
And fair Aurora chased away the night.
All Nature smiled, awakening to life,
And all unmindful of the coming strife.
Now Chanticleer did sound his clarion horn,
And roused Dame Partlett for the coming morn;
And all the feathered brood straight took their way,
Upon the land of Keliher to stray.
Heedless of danger, they did roam about;
But Keliher was there with truncheon stout,
Smote the fond flock, with fury in his eye; —
With cluck and flutter each good fowl did die.
No funeral obsequies he gave them then,
But sternly grasped each foully murdered hen,
And savagely around his head he whirled,
And into Clark's front door-yard swiftly hurled.

Clark soon unto the breakfast-table came,
To brace with food and coffee his stout frame;
And glancing through the window he espied
Each cherished hen that had untimely died.
Straight to the village lawyer he did go;
Into his ear he poured his tale of woe.
The latter, after hearing his report,
Before a Justice brought a suit in tort.
The learnèd Justice, deeply read in law,
Swift from the facts did his conclusions draw;
And mulcted Keliher five dollars good,
The market value of the murdered brood.
Now, Keliher with this was not content,
But through the various stages patient went,
Until before the Court Supreme he stands,
Seeking redress at their all-powerful hands.
But all in vain! They, with decision firm,
The findings of the Justice did confirm.

So Keliher was straightway forced to pay
The judgment, and the costs of law's delay.
Since then, with wiser and with slower pace,
He pays respect unto the feathered race.

He 's learned he must not, e'en though others break
The laws, into his own hands justice take.
Feræ naturæ, hens some scornful call,
But law's broad *ægis* doth protect them all.
So shall respected be all things alive;
And everywhere let litigation thrive!

THE MORALITY OF ADVOCACY.

THE disregard of lawyers for truth and justice has been for many generations a standing topic for satire. The common view of the subject is expressed by Southey, with his usual neatness, in the address to Bishop Basil, which he puts into the mouth of the devil: —

> "The law thy calling ought to have been,
> With thy wit so ready and tongue so free,
> To prove by reason, in reason's despite,
> That right is wrong, and wrong is right,
> And white is black, and black is white, —
> What a loss I have had in thee!"

Dr. Arnold seems to have looked upon the profession of an advocate as of necessity immoral. In the "History of Rome" he speaks of "the study of law, which is as wholesome to the human mind as the practice of it is often injurious." And in one of his published letters to Sir J. Coleridge, he speaks of his "abhorrence of the profession of advocacy," and asks whether there is no way by which a man can hope to reach the position of a judge without exposing himself to the injurious influences of the bar. It is, perhaps, however, amongst the lighter class of writers that lawyers of all sorts are most hardly dealt with. There is a piquancy in the contrast which is alleged to exist between the solemnity of the function which they claim to discharge — the administration of justice — and the disregard which their conduct is said to display for everything but the interest of their clients, which is irresistibly tempting to those who are bound to make a point of some sort or other, whatever may be the subject on which they write.

On the other hand, those who are guided in forming their opinions by their judgments rather than their sympathies will be slow to condemn any established and recognized profession as immoral; for they will feel that to do so is to condemn the general constitution of society, as it forms a connected whole, the different members of which are closely connected with one another. Advocacy has been a recognized profession in all societies, except the most barbarous and despotic, and it would be absurd to deny that it has rendered splendid services to every nation in which it has existed.

The leading principle by which the whole subject is governed is, that the profession of advocacy is an essential part of the general administration of the law. The principle itself is familiar, perhaps even trite, but its practical application is generally unperceived; for though both the words and the thoughts for which they stand are commonplace enough, few persons set themselves seriously to consider what law is, and what is implied in its administration. A clear view on each of these points is, however, essential to any one who wishes to understand the moral questions connected with advocacy.

First, then, what is law? It is usually supposed that if a contrast can be drawn out

between law and justice, law is, as it were, refuted and exposed; but such contrasts may be true, and may yet prove little or nothing. Law is a collection of rules, or, more properly, of commands, prescribing the application of certain principles to particular classes of circumstances, with inflexible rigidity and precision. Justice may be described, with some approach to correctness, as the sentiment on which law is founded, but, like the curve and the asymptote, they never coincide, however nearly they may approach. Probably no law was ever yet devised which entirely satisfied the sentiment of justice in every case to which it was applied. No laws are more general, and few appear more obvious, than those which punish crimes and enforce contracts. Yet definitions of contracts and of crimes are essential to such laws; and such is the infirmity both of human language and of human thought, that the best definitions ever constructed will always include many cases which never occurred to those who framed them, and which, if they could be settled on their own grounds and without establishing precedents, would unquestionably be determined in a manner totally different from that in which the law determines them; yet this does not condemn the law. Many actions involving the guilt of high treason are almost universally looked upon as virtuous, some even as heroic; yet no sane man would wish to see the law of treason relaxed.

It is, perhaps, not too much to say that there is a natural and inevitable opposition between a definition and the sentiment on which it rests. The sentiment which condemns dishonesty is as clear and strong as any sentiment can be. But how far is it satisfied by the definition of theft? The sentiment condemns the intention even more decisively than the act; but when a definition of theft is required, terms must be chosen which do not describe, and therefore leave unpunished, many acts which are morally indistinguishable from those which are punished. Laws must be general in their terms; and a certain harshness, sternness, and disregard of individual cases of hardship are inseparable from the very existence of law.

The first thing, therefore, to be borne in mind in examining the moral character of the profession of advocacy is that the advocate is administering law, and not attempting to satisfy the sentiment of justice, and is thus engaged in a task which is radically different from that which devolves upon persons placed in positions in private life apparently analogous to his own. The master of a house, in managing the affairs of his family; a person called in to advise upon the conduct which honor and conscience require under difficult circumstances; a man of business consulted as to the course which a tradesman in difficulties ought to pursue with regard to the interests of his creditors,—are all called upon in a sense to administer justice, but they are not called upon to administer law, for no one of them has to deal, as is the case with judges and advocates, with precise rules and inflexible definitions.

Such being the general nature of law, what is the character of its administration? It may probably be asserted with as much confidence as such broad propositions ever deserve, that the degree of liberty which a nation enjoys may be tested by the degree in which the task of setting the law in motion is left to private persons. In our own country this practice prevails, with few exceptions, in all cases civil and criminal. Judges and lawyers are inactive, unless they are set in motion by private litigants who demand the application of the law to particular cases for the sake of obtaining some personal object. A man wishes to have the benefit of a contract, to receive compensation for a wrong, to get a criminal punished, and he applies to the judge appointed for that purpose to put the law in force. It is obviously necessary that the judge should hear what he has to say, and hence comes the necessity for professional advocates.

In considering the general character of the profession of an advocate, the first ques-

tion which is suggested is whether the obligations which it imposes are, in their very nature, of such a character that a conscientious man ought to undertake them? Does the profession of an advocate place any one who acknowledges the obligation to be true and just in all his dealings in the same position in which the profession of a hangman would place a man who believed capital punishment to be sinful, or the military profession would place a Quaker? The common sense and common experience of mankind answer that it does not; but why not? Why is it not wrong and unjust for a man to hold himself in readiness to say what is to be said in favor of any one who wishes to put the law in force against his neighbor? That every one who does so habitually must frequently take part in shocking the sentiment of justice, and in inflicting hardships, often of the most grievous kind, on individuals, follows from the observation already made on the nature of the law. If a lawyer succeeds in his profession, there can be little doubt that he will, in the course of his career, brand honest men with infamy, deprive lawful proprietors of their possessions, and possibly deprive innocent men, not only of character and property, but of liberty and even of life! Why is it right to incur, without compulsion and of free choice, responsibilities (to call them by no heavier name) so tremendous?

To answer such questions by appealing to the common sense and common practice of the world is, for practical purposes, as wise as for other than practical purposes it is unsatisfactory. In order to give not merely a reason for disregarding such difficulties in practice, but an answer which removes them, it is necessary to go deep into the foundations of morality. The true answer is that for purposes of action, and especially for deciding on the morality of professions, we must assume that life is a good thing, or at least that, not being proved to be a bad thing, it is to be treated as good. From this it follows that all callings which are proved by satisfactory evidence to be essential to the transaction of the affairs of life must also be treated as good, and that such defects as are shown by experience to be inseparable from their working prove, not that they are bad, but that life itself is less beneficial than it would have been without them.

Thus the steps by which the profession of advocacy is justified are as follows: We must act on the principle that life is a good thing; therefore, that the administration of the law, which is essential to the transaction of the affairs of life, is good; therefore, that advocacy which is essential to the administration of the law, is good; therefore, that the shocks given by the practice of advocacy to the sentiment of justice, and the hardships inflicted by it on individuals, which are inseparable from advocacy, are drawbacks from its advantages, and not objections to its existence.

If this general theory of the morality of advocacy is accepted, many of the common objections to it fall to the ground at once. It puts an end to all questions about pleading on the wrong side; for to the advocate whose duty it is to administer law, the *wrong* side means the illegal side; and which side is legally right is a question which can be decided only by a competent court; and the mode of arriving at a decision which courts of justice have deliberately adopted in this country is that of hearing all that can be said on both sides of the cases brought before them. No doubt it may be, and often is, morally wrong to exercise a legal right. It may be unmerciful, vindictive, grossly selfish, and abominably cruel to do so, but this is the concern of the litigant, not of the advocate. A legal right is a power put by society at large into the hands of a private person to be used at his discretion. The officers of the law, in their various degrees, enable him to use it; but there is no moral difference at all between the advocate who conducts to a successful termination a prosecution instituted from the vilest motives, and the judge who passes sentence on the

verdict. No one blames the latter, nor ought any to blame the former.

Many persons would admit that this is, in theory, a sufficient justification of the profession of advocacy, but they would add: "Whatever may be the theory, the practice is, in point of fact, unjustifiable. Lawyers do not, as a rule, confine themselves to performing the duty which the law assigns them. They do twist evidence; they do, as far as they can, pervert and obscure the truth, and their standing and success in their profession is determined by the ability with which they contrive to do so."

This impression is as unjust as it is common. Its injustice is displayed most strikingly in the fact that it entirely overlooks the existence of a whole system of professional morality based upon the principles just stated, and rigidly enforced, not only by the authority of the judges, but by both the good and bad qualities of the bar, by professional honor and *esprit de corps* on the one hand, and by personal rivalry and even jealousy on the other. It would be out of place here to enter upon a full description of this system, but it may be stated generally that its object is to maintain rigidly the representative character of the advocate. It forbids every expression and every form, either of statement or of interrogation, which would involve a surrender of that character and make the advocate a partisan, instead of a professional agent. To attack private character without explicit instructions that the imputations made are true; to misstate the effect of evidence; to put to a jury a false view of the law; to attempt to mislead the court by garbling or misquoting cases; to insult or attempt to confuse and bewilder a witness by a brutal manner or insolent questions, — are practices which are looked upon by the legal profession in the light in which tradesmen look upon sanding sugar and wetting tobacco; and they would, as a rule, be resorted to only by a low, disreputable class of lawyers.

The general character of litigation is in itself a proof that it cannot be advantageously conducted by dishonest men. It is one of the foolish errors into which people are led by the wish to appear knowing, to assert that litigation is generally dishonest. In fact, it is an uncommon thing for people to go to law unless, whether right or wrong, they have a substantial reason for doing so. Of the many foolish things that are said about the bar, few are more foolish than the common assertion that moral vices, such as impudence, coarseness, and lying, are useful to a lawyer. In fact, honesty is the best policy in that in precisely the same sense as in other professions. Each of the three vices named is, on the whole, injurious to a man's legal prospects. Impudence is often confounded with the possession of strong nerves, — the advantage of which no one disputes; but it is in reality quite a different thing. It is no more than insensibility to shame, arising from the absence of that internal warning which holds a man back from doing what is wrong, or makes him feel ashamed of himself if he does; but how is this an advantage to any one? It can only be one on the supposition that to do the shameful thing which modesty withholds a man from doing is an advantage. Impudence is very like imperfect bodily senses, — it consists not in an excess of courage, but in want of sensibility, and is a most serious defect both in speaking and in the examination of witnesses. It is impossible to do either of these things well unless the speaker can establish sympathy between himself and those whom he is addressing, and to do this considerable sensibility is indispensable. An impudent man does not feel whether the judge and jury are listening to him or not, nor has he any notion of the impression he is making. He cannot feel for the witness whom he examines, and therefore never examines him well, for he does not see how his questions affect him. The same may be said to a great extent of coarseness, which has, moreover, the additional disadvantage of disgusting those who listen to it.

The notion that disregard for truth is an advantage to a lawyer is, of all the spiteful commonplaces which people take a foolish pleasure in repeating upon the subject, the most absurd. A man suspected of that vice is never trusted, either by the judges or by the bar; and no one who does not know by practical experience how much the despatch of business depends on the existence of such confidence can estimate the loss which the want of it inflicts. Suppose a judge detects a lawyer in misstating the effect of an affidavit, and on all subsequent occasions insists on reading his affidavits straight through, — is that likely to make him a pleasant person to deal with? Suppose that after giving a promise to the counsel on the other side to produce a particular witness, or to make a particular admission, he refuses to do so, — is he likely to be trusted with confidence in return?

The simple truth is that advocacy is neither more nor less moral than other professions. It is a practical expedient devised as the best mode of doing a very difficult thing; namely, administering the law. It shares with all other human pursuits the reproach of doing harm, though on the whole it does good. It possesses a high and strict standard of professional morality, which is, however, evaded by a noisy and conspicuous section of its members; and it gives its prizes to those who have the intellectual and physical strength to win them; but in attaining them the possession of the principal moral virtues are a considerable, though not an indispensable, assistance. — *Cornhill Magazine.*

CAUSES CÉLÈBRES.

VII.

ÉLIÇABIDE.

[1840.]

ON the 17th of March in the year 1840 an immense crowd surrounded the entrance to the morgue in Paris. It was noon, and scarcely two hours before, the dead body of a little child had been borne to this building upon a stretcher. Already, from the city and its suburbs, a great throng had been attracted to the place, drawn thither by a lively curiosity mingled with a feeling of deep compassion. It was said that this child had been murdered under the most mysterious and horrible circumstances.

Early in the morning of the same day two gardeners, walking along a road near the Rue de Flanders, on the border of the village of Villette, saw, in a ditch used for the drainage of the village, the body of a child apparently about ten years of age. The little one's head was almost severed from the body by a deep cut, and the skull was frightfully crushed.

The two men at once hastened to M. Moulion, the Commissary of Police, and reported what they had seen. This official immediately proceeded to the spot, and began an inquest in which he was assisted by M. Croissant, Procureur du Roi. A hasty examination led the magistrates to strange conclusions.

The little victim had a pretty face, somewhat sunburned; his limbs were slender and well formed. He was neatly clothed in garments, almost new, which seemed to indicate that he belonged to the family of some well-to-do person of the middle class. Near the head, in the ditch, was found a cap lined with red. Around the neck, between the jacket and the shirt, was suspended, by a rubber

cord, a little silver medallion of the Virgin. In a small bag, attached to the child's shoulder by a strap, they found a top.

Upon the edge of the ditch, in a little pathway which bordered it, traces of blood were discovered. It was here, then, that the crime had been committed. It was observed that a carriage had passed near this place, and had stopped directly opposite the spot where the body was found. From the tracks of the wheels, from the deep marks of the horses' hoofs, and from the evident signs of the pawing of the horses, it was inferred that the victim had been brought in this carriage to the spot and there killed. The audacity of the murderer was surprising, for the location was an exposed one, open to view on every side and but a short distance from the main road, which was always frequented, even in the night-time.

The body was removed to a room in one of the public buildings in the village, but no one of the inhabitants recognized it. At ten o'clock it was taken to Paris and placed in the morgue, and all the powerful means of the police were set in motion to unveil this mystery.

Information was sent to all officials within a radius of one hundred and twenty kilometres of Paris, with instructions to make inquiries as to any missing child. Physicians were summoned to examine the body and to make an autopsy.

This examination disclosed the fact that the child had been first struck a terrible blow with a blunt and at the same time heavy weapon which had crushed his skull and penetrated the brain. He had then been struck a second blow upon the temple, and finally the murderer had completed his work by drawing a razor or sharp knife across the throat. Death appeared to have occurred seven or eight hours before the discovery of the body.

For two days the curious throng at the morgue did not diminish; but no light was thrown upon the identity of the victim, who was designated as the "*Child of Villette.*" This atrocious crime still remained enveloped in darkness.

The delicate features of the child, this picture of innocence brought to an untimely death, worked deeply upon the feelings of all the spectators. In Paris and out of Paris nothing was talked of but the "Child of Villette." Each person, as he viewed the body, was carefully scrutinized by agents of the police who, in disguise, mingled with the crowd, but no one displayed the slightest surprise or sign of recognition.

On the 19th it was decided to embalm the body, the rules of the morgue permitting it to be exposed for only three days; this time being ordinarily sufficient for identification. M. Garuel, a celebrated embalmer, was called, and, notwithstanding the mutilations caused by the crime and the autopsy, succeeded in preparing the body so that it presented a natural appearance, and thus assured its preservation for such a length of time as might be necessary to discover the murderer. The body was then dressed in the clothes found upon it, removed from its gloomy place of exposure, and placed upon a little bed which stood upon a raised platform. In this state the child appeared as if sleeping.

Public curiosity was still further excited, and that was what the authorities desired. Heretofore visitors had recoiled before the horrible sight; now they gazed without a feeling of repugnance or shrinking.

On the 23d of March it was believed that the mystery was at last solved. A schoolboy on seeing the body cried, "Why, that is Edouard, one of my schoolmates!" On being questioned he persisted in his assertion. The school which he attended was without the city limits, and the master was promptly summoned. He asserted that the boy's statement was entirely incorrect, and, as a matter of fact, he had just left Edouard at the school, alive and well.

The next day there was another identification. A woman about forty years old, neatly dressed, had waited a long time before

being able to penetrate the crowd and reach the glass partition through which the body could be seen. On arriving at the window she had scarcely cast her eyes upon the victim when she grew pale and exclaimed, "Ah, mon Dieu! I think it is my poor child!" She looked again, and sank back half fainting. Recovering herself, she cried: "Yes, it is indeed he! there is the little scar upon his forehead; it is my poor boy! Last July I sent him on an errand to a neighbor's house in the Rue d'Ormesson, where I then lived. Since that time I have not seen him. He was not a child who would have run away. Some one stole him!" One thing, however, surprised the poor mother; her boy had left her wearing garments which were patched and threadbare, while the clothes upon this child were almost new.

This woman was employed in a house in the Rue du Four, and was named Chavaudret. She brought her brother-in-law, who unhesitatingly said, "That is little Philibert." Many of the inhabitants of the Rue d'Ormesson recognized the body, and a schoolmaster, who had known the boy as a pupil, was positive in his identification. He even recognized the little medallion.

Nothing then seemed to be now necessary but to ascertain by what means and for what purpose this child had been stolen from its mother, had been kept concealed for eight months, and then killed at the very gates of Paris. All efforts were being directed to the discovery of these facts, when, certain doubts arising in the minds of the authorities, the mother was again interrogated, and it was made clear that the poor woman and all the other witnesses had been mistaken. The little Philibert had upon his left leg a very noticeable mark which was not to be found upon the "child of Villette." A slight resemblance, exaggerated by their imaginations, had so worked upon the minds of these good people that they had been misled and no doubt had honestly believed the body to be that of Philibert.

More than six weeks passed without any new developments. The investigation came to a standstill, and there was no prospect of any light ever being thrown upon this mysterious affair, when it was learned that another crime, committed under circumstances almost identical with those of the crime at Villette, had horrified the inhabitants of Bordeaux.

On the 10th day of May the mayor of Artigues, a little village a short distance from Bordeaux, was informed that some peasants had found, upon the road to Lantogne, the mutilated body of an unknown woman. Repairing to the spot the mayor viewed the body, which had been drawn from a little brook. The neck was deeply cut; the nose and cheeks were slashed; the upper jaw was broken, and the skull fractured. Her garments were in shreds.

While the mayor was making up his report, he was told that another body had been discovered about a hundred steps from the place where the first was found, in the same stream, near the mill of Lantogne. This last body was that of a little girl about nine years old, and presented a similar appearance to that of the woman, the wounds being almost identical.

A miller stated that just before daybreak he had seen a man bearing a large bundle going in the direction of the mill of Lantogne. This man had a hat upon his head. This was the only description the miller was able to give of him.

An examination showed that both the woman and child had been killed shortly after partaking of a meal. In a little roadway, near the brook, several large pools of blood were discovered. Here then had been the scene of the crime. There had been no struggle, but one of the two victims had been struck at some distance from the other, doubtless while she was attempting to escape. No trace could be found of the weapon which had been used.

The news of this double crime reached Bordeaux in the evening. One Chaban, an innkeeper in the Rue de la Douane, on hear-

ing the report, immediately had his suspicions aroused against a traveller who had arrived at his house that same morning. This man came by the diligence from Bergerac, which passed through Quatre-Pavillons, the next place to Artigues. He carried in his hand a travelling-bag and a lady's work-bag. On arriving, he at once asked for breakfast, which he eagerly ate; then he ordered a fire, for, having travelled by diligence, he said, his clothes were very damp. He was taken into the hall, where a fire was lighted. He sat down before it, and presently fell asleep. On awaking, he repaired to his room and went to bed. During the whole day he remained shut up in his chamber. Supposing that he was fatigued and needed repose, they did not call him either for supper or to ascertain his name, although he had not exhibited his papers to the innkeeper.

The next morning, unable to shake off his suspicions of the evening before, Chaban went up and listened at the door of the stranger's room. He heard the man walking about the chamber. Placing his eye to the keyhole he saw him rubbing and washing some garments which appeared to him to be those of a woman, and which were stained with blood. Chaban no longer hesitated. He rushed to the house of M. Maxime, Commissary of Police, and told him of his suspicions and related what he had just witnessed.

Accompanied by two agents, M. Maxime at once hastened to the Rue de la Douane, and entered the room of the mysterious traveller. There he found a tall thin man with angular features, who was evidently making preparations for an immediate departure. Among the articles in his bag they discovered a woman's undergarments stained with blood and several pieces of jewelry; beside these there were a shawl and a dress which bore marks of having recently been washed; on comparing these with some shreds of clothing found in the road at Artigues they corresponded exactly. Up to this time the traveller, although visibly disturbed at the appearance of the police, had not seemed to comprehend the questions put to him. But when they showed him the garments taken from his bag and the accusing shreds, he clasped his head between his hands and in a choking voice, the accent of which betrayed Bearnaise origin, he cried: "No, no! I will not speak. I wish to write."

Paper was given him, and for two hours he wrote feverishly. He made a full confession, fuller than they had dared to hope for, and more horrible than they dreamed of. This man was not only the assassin of Artigues, but he was also the unpunished murderer of Villette.

He was named Pierre Vincent Éliçabide, and was thirty years of age. Born at Mauléon, he had from his childhood been destined for the Church. After having studied successively in the seminaries of Oloron, of Betharram, and of Bayonne, he left them without completing his course. He assumed an ecclesiastical garb and always spoke of taking holy orders; but his superiors had already judged him, and did not encourage him to enter the sacred profession. Endowed with some superficial talents, eloquent and intelligent, he was filled with an excessive pride and vanity. His learning gleaned from light reading and from new works of philosophy had supplied him words, but no ideas. He considered himself superior to his position, to his station in life, and destined by his genius to a calling more brilliant than that of a humble minister of religion.

Leaving the seminary of Bayonne, he went for a short time to the college of Passage, where a wise master studied attentively this cold overbearing character whose only passion was self-love and vanity. Éliçabide, considering himself unsuited for the ministry, turned his ideas toward a professorship. He secured a position as tutor at Ambarès; but, at the end of two years, his disagreeable disposition and his absurd pretensions caused his dismissal by his pupil's father. He

obtained two other situations, but with no better result, and departed from the place leaving behind him an unsavory reputation. He was remembered as being a man of peculiar disposition, ridiculously vain, and somewhat of a hypocrite.

Éliçabide then sought to obtain a position as principal of some institute. He went to Bordeaux, where he took his degree, passing his examinations with some distinction. His thesis upon duelling, which he delivered, and which was a religious and philosophical discourse in which he showed his peculiar qualities, manifested a sophistical and puritanical spirit.

Toward the end of 1837 Éliçabide took charge of a primary school, founded by the Superior of the Seminary of Betharram, in a little village near Pau. Among his pupils was a charming child whose mother, who lived in Pau, often came to visit him. This lady, whose modest, simple dress showed her station in life, had a most pleasing face; her reputation was beyond reproach, and she was noted for her piety and deeds of charity. Marie Anizat was a widow with two little children, Joseph and Mathilde. To provide them with a home and to give them a proper education, the young mother was dependent upon her own exertions. She accepted the task with maternal courage. All admired her zeal and her skill, and she accomplished such prodigies that she was not long in placing her little family beyond the fear of want. Her tender solicitude for her children and the purity of her life won for her general esteem and affection.

Then it was that the poor widow had the misfortune to meet Éliçabide. Born in the same province as Marie, a man seemingly religious, the instructor of her son Joseph, and one whom she admired for his knowledge and his genius, Éliçabide could hardly fail to produce upon this simple woman a deep impression. The kindnesses which he bestowed upon her son served to win her heart, and erelong the vow of love was spoken. Marie saw in the future depicted by the teacher a life free from care for her and hers, a happy home guarded by a protector of whom she would be proud. Éliçabide often talked to her of Paris, and whispered in her ear words which spoke of glory, fortune, happiness. She believed them all, in the simplicity of her heart.

He, however, began to tire of a life of quiet, regular duties. His modest employment assured him an honorable living; but he became discontented, thinking that a mind like his could win reputation and admiration in a larger, wider field. He had that secret longing which has proved the ruin of so many ambitious peasants, the longing for Paris.

He did not hesitate; and in the month of October, 1839, suddenly announced his intention of seeking his fortune in the city of his dreams. In spite of the wise counsels of his superiors, in spite of the tender solicitude of Marie, whose simple good sense would have preferred the happiness which was assured them in her native place, he departed. He announced before going that he was about to realize his fondest hopes, and quieted the fears of the poor widow by his promises of a speedy union and a life of comfort and ease, which he would easily win by his brilliant talents.

Arrived at Paris with but little baggage, and a few hundred francs in his pocket, Éliçabide went to lodge in a little inn in the Rue du Petit-Pont. One of his compatriots also lived there, a young student by the name of Beslay, who had formerly been at the Seminary of Betharram.

The two young men vied with each other in constructing marvellous castles in the air; but these not being particularly substantial, they soon found their funds exhausted and poverty staring them in the face.

After his departure from Pau, Éliçabide kept up a constant correspondence with Marie Anizat. He had concealed from her all knowledge of his straitened circumstances. His pride would have suffered too much by such a confession. Far from ad-

mitting that he had found at Paris nothing but obscurity and misery, he wrote to her, on the contrary, in the most sanguine terms, that everything was succeeding as he desired, and that he was about to found an important institution for public education. The present outlook was so encouraging that he hoped speedily to realize the long-dreamed-of union; he asked her to send to him her little Joseph, and to follow herself as soon as possible.

To determine Marie Anizat to come and share his lot, he had recourse to all the persuasions which he could bring to bear upon her heart. He wrote to her of his love, of the future of her son, and of the happiness of returning some day to their native home to live in ease and luxury. He wrote on the 16th of January:—

"If Marie loves me, she will come to me in Paris. I desire that you will first send Joseph to me. Until my institution is opened I will send him to an excellent school. I will watch over and advise him. He will sleep and eat with me. I will be a father to him. When Joseph is here, I will find a thousand good reasons for your coming to Paris; we will receive you with open arms, you will be my better half, my aid, and I hope that in our old age we can look back with pleasure upon the bygone times, and bring them to our minds, chatting pleasantly about them before a good open fire in a little white house near Moncayolle and Gettein."

Later, on the 29th of February, after having announced that his project of founding an institution was nearly realized, and that he had established himself in one of the most fashionable quarters of the city, he wrote to her:—

"Oh, how much I need you here! But you tell me to be patient. Well, you be patient yourself, and let Joseph come to me at once. He will be more useful to me than he is to you."

These pressing solicitations at last succeeded, and Marie Anizat consented to be separated from her son. She prepared the necessary clothing for him, and after obtaining money from persons for whom she worked, and having placed one hundred francs in a little box which he carried, she confided him to the care of a lady named Lenoir, who was going to Paris to pass a month, and sent him to Éliçabide, as to the most benevolent protector, the most trustworthy guide, and the most generous friend that her son could find.

Leaving Pau on the 11th of March, Joseph Anizat arrived in Paris on the 14th about three or four o'clock in the afternoon. On the 10th Éliçabide had again written to the mother, fearing that she might hesitate to send the boy, and once more urging his coming.

What did he mean to do, and what designs had already been formed in his mind, that he thus deceived the poor mother, that he so insisted upon the coming of her son, whom he could only make a sharer of his misery?

The results answer only too clearly; but let us listen to Éliçabide himself relating, from his childhood to the day of his crime, his thoughts and impressions, to explain his crimes:—

"I was eleven years old when the first signs of morbid feelings showed themselves. My principles and my self-love struggled violently against the emotions which I felt. Imagination filled, in spite of myself, the void which religion left in my heart. My soul shrank affrighted. Dissatisfied with the manner in which I bore myself in these struggles, I abandoned myself to the most painful thoughts. I persuaded myself at times that I was predestined for hell. I entered the house taciturn and sombre, seeking distraction in my books and my work. To whom could I confide my sufferings? I should only have been mocked, and that I could not endure.

"I was twelve when there took place at Mauléon a revival, during which my mind was entirely given up to religious emotions aroused by the services. The fearful truths of religion made a terrible impression upon me. I could not sleep. There is no need to state the extraordinary things I did, worked upon by a spirit of penitence.

"At thirteen I was confided, to pursue my studies, to the care of the Abbé Vidart, curate of the rural

village of Gettein, where my parents lived on a little place belonging to my mother. I received my first communion with feelings of exaltation, which, however, soon gave place to a doubting and troubled mind. I went back to my solitary life and my gloomy forebodings."

Éliçabide then recounted his student days, his connection with the Seminary at Bayonne, the beginning of his love affairs with the Widow Anizat, his arrival in Paris, the difficulties he encountered while striving to find a position in the capital. The details conformed to those which the reader already knows. He continued thus:—

"A part of my effects found their way to Mont-de-Piété. Discouragement increased, and in spite of myself I showed my morbid feelings. I shut myself in my chamber, and could not summon the resolution to go out. I ate dry bread and drank water from the Seine. My head troubled me, I could not think; ideas seemed to have left me. After aimless walking I found, I do not know why, pleasure in visiting the morgue, even when the sight of the dead bodies made me sick. . . . In the midst of these feelings and the melancholy which accompanied them, the picture of all whom I held dear in the world — my family, Marie and her children — condemned to suffering, to privations and misery, presented itself to my diseased imagination. My soul was tortured. A constant inquietude bore me down with its dreadful weight. I was in this cruel state of mind, when one day, during a conversation upon the disappointments of life, one of those present exclaimed, 'Bah! any sensible person ought to rejoice to see the death of those he loves, if the objects of his affections are destined to misery and unhappiness in this life.'

"I cannot tell you the effect produced upon me by these words. It was the light from an infernal torch. To see die those whom I loved was a thought which from that moment took possession of my mind with all the power of a fixed idea, and from which I could not free myself by work or by mingling in society. The idea pursued me everywhere, and there were always times when I felt a horrible impatience to carry it out. My brain became more and more excited. I looked upon the world with horror. My thoughts were only thoughts of extermination."

Thus clearly Éliçabide pleaded a fixed idea, a fatality. He sought to reduce his crimes to the proportions of an irresistible impulse, to transform them into irresponsible acts. Let us follow him in this psychological study which he undertakes to make of himself:—

"Again and again I struggled to throw off the wretched thought which pressed upon me.

"I carried the cry of my distress from the palace to the dwelling of the actress. I invoked the princess, I supplicated the prelate, I knocked at the banker's door, I wailed before the great sentimental writer, I humiliated myself before the priest. It seemed to me that this was enough, and yet I went hungry.

"Since all my applications are in vain, let us try, I said to myself, a little charlatanism. But my face is too honest, my countenance too open. I conceived a project which must infallibly bring about happy results.

"I published a little prospectus of a school in the form of a circular. I stated that I could count upon some children who had been promised me; that was a lie. I must make the attempt cost what it might. I hired an apartment in the Rue du Richelieu, and hastened the arrival of Joseph.

"The unfortunate Marie wrote that she was much disturbed and troubled; that the mournful disposition of her son made her fearful of his future; that she should die of grief if he were kept from her long; that she passed her nights without sleep and in tears.

"I replied to these simple, tender letters in accordance with the effect they produced upon me. 'Be happy in your illusions and in your hope,' said I to her. 'I will bring you happiness in some manner or other.'

"I was sorrowfully occupied in giving a lesson to a young and interesting child, when the concierge brought me a letter announcing the arrival of Joseph by the diligence the same day. The news upset me, as if I had not been expecting it. My brain whirled. Joseph arrived! Poor child! what will be thy future? I have promised to be your father, your instructor, your guide in the path of life. . . . Life! . . . but at your age everything pointed to a bright and happy life for me. I was intelligent; tender and thoughtful friends watched over me. Later a good education gave me the right to demand of the world that it should not blindly crush my wretched existence. It is true

my head is not right; but this diseased head, — is it not your only support, poor child? Well, you shall die before being stained by contact with a society that will perhaps abandon you after having forced you to dishonor yourself. You shall be the first of the victims that my hands must sacrifice. I — Kill! — Yes; but where can I find the strength?

"A horrible trembling seized my limbs. I could not think connectedly; my head fell upon my breast. I threw myself upon the bed, dressed as I was. In a few moments I was sleeping soundly.

"I awoke, and went to seek the child; I took him tenderly in my arms, and thanked Mademoiselle Lenoir, with all the politeness possible for the care she had taken of him during the journey.

"Joseph, whom I overwhelmed with questions, replied with an air of suffering, and told me that he had eaten some fruit on the journey, and felt unwell. I hastened to open the little box containing his things, and made the child drink a glass of liquor, which relieved him. Thinking a little exercise would do him good, I took a long walk with him, to his great enjoyment. The poor boy was all eyes, and I actually forgot myself, in looking with him at the thousand things which had never attracted my attention before. Suddenly a black cloud seemed to envelop my brain. Joseph is happy; he must die! There was no longer any question; it was a sad but absolute necessity. Nothing should save him. I would have killed him there in the street rather than that he should escape me.

"We turned our steps to the Palais-Royal, and I left him in one of the paths there, telling him to wait for me and not leave the spot. I returned to my room. I placed his little box in my trunk, and I took a hammer. Where should Joseph die? I did not know. We would go from Paris, and leave the rest to chance.

"While the child dined, I wrote a letter to Marie to advise her of Joseph's safe arrival. The child, saying that his mother had wished him to write, added a few words after I had finished."

This horrible letter, of which Éliçabide here speaks, was as follows: —

"I have received Joseph in my arms, after having run from one diligence office to another, not knowing by what route he would come. Why do you not come speedily yourself, you provoking one! I need you more than I can tell; see if you cannot hasten. . . . Joseph is in good health, and you may be sure I will do all in my power to make him enjoy himself in Paris. Adieu, Marie, my well-beloved. I am yours always."

At the bottom of this was a postscript written by the young Anizat, perhaps at the dictation of Éliçabide himself.

My dear Mamma, — I arrived in Paris at four o'clock in the afternoon. M. Éliçabide came to meet me and kissed me, but I did not know him on account of his beard, which is long under his chin. Paris is very beautiful, my dear mamma, and I think I shall enjoy it very much. I have already seen the Palais-Royal and many magnificent streets, walking with M. Éliçabide.

Adieu, my dear mamma! I kiss you tenderly, as also my dear sister Mathilde.

Thy son, Joseph.

Éliçabide continues as follows: —

"Going out from the restaurant, we walked toward the boulevards; I with the idea of taking an omnibus which would carry us out of Paris. The first one we met ran to Pantin. After reaching Petite-Villette, we stopped at the turn of a little road near the last houses in the village. The child wished to get out and play. That gave me, as it were, an electric shock. It shall be here! God wills it!

"We walked down the little road by the houses. A footpath led us into a field. While the child was playing, I struck him a blow with the hammer when he was not looking. He did not give the slightest sign of life. At the sight of the motionless body I believed myself dreaming. I lifted him up. I spoke to him. Dead! dead! Ah, let him not return to life, poor child! I struck him upon the temple, and seeking another instrument of death, to make sure of extinguishing life, I seized my knife with my contracted hand and cut the boy's throat.

"I attempted to fly on seeing the blood which flowed profusely. My strength left me, and I fell a few steps from my victim. Providence did not permit that at the very gates of Paris, at half-past eight in the evening, at ten steps from the highway, in a place open on every side, in a bright moonlight, there should be found a single witness of this frightful scene.

"When I arose, the body was cold. A fearful tremor seized me. I pushed the body into a little ditch near the place of the deed, and walked rapidly into Paris.

"At ten o'clock I was in my bed, stifled by a smell of blood, and all my faculties completely overthrown. The murderous instruments I had mechanically brought home with me, as well as the boy's coat, and I placed them with the other things belonging to the child in a trunk which I rarely used. The knife, which I found in my pocket the first time I went out to walk, I cast into the Seine with a movement of horror.

"All my thoughts now turned to Marie. The mournful feelings which oppressed me in thinking of her, only served to fix me in my one idea. With the same hand with which I had been wont to bestow charity in times of prosperity, I caressed the hammer as an instrument which by a single blow could give a sudden and painless death.

"But Marie! — I had promised to make her happy. Joseph! — I had promised to be his father. Mathilde! — I had adopted her as my child. . . . And then without me my mother would die inconsolable. My poor father, — in a short time he would perhaps be reduced to poverty and indigence. No; I shall have time to kill them all.

"In this way I reasoned; but my acts are called the assassinations of Villette and Artigues.

"Joseph had been dead two days. I must go and settle the expenses of the journey with the person who accompanied him. I called at her house. I was polite, but hastened to take my leave after a short interview. Mademoiselle Lenoir asked me about the boy, and I told her he was very well.

"Frequent letters came from Marie. They did not say much about Joseph, but they expected that the replies would speak of him. The answers did indeed speak of him as though he still lived.

"Dear, poor Marie! happiness exists only in the imagination. Be happy in your ignorance and in your hopes; picture to yourself that all the felicities in the world await you. Every letter of hers received a quiet, apparently truthful response."

Éliçabide continued to write to Marie Anizat in the most tender terms; he pressed her more than ever to abandon the peaceful existence which she found at Pau. At last he succeeded in conquering her hesitation, and persuaded her to depart, telling her he had found for her a place as companion in a family in the Faubourg Saint-Germain. He wrote her he would meet her at Bordeaux on the 6th of May at a hotel kept by one Meunier in the Rue Corbin. In this last letter, which bore the date of April 16, Éliçabide still spoke of her son as though he were alive and well.

"Joseph would have written you a line, but he will soon embrace you, and that will be better. I am well pleased with him; he is studious, and will make a good man. I think he has grown. He knows the city better than I do."

Agreeably to the directions she had received, Marie Anizat arrived at Bordeaux on the day named, accompanied by her daughter Mathilde, and went to the hotel designated by Éliçabide.

On the 3d of May, Éliçabide left Paris and reached Bordeaux on the 7th. He went to another hotel than the one to which he had directed Marie. Entirely out of money, he wrote immediately on his arrival to a sister living at Ivrac, and on the 8th received from her one hundred francs. Having received them, he at once hastened to the hotel where Marie had been anxiously awaiting him for two days.

At the suggestion of Éliçabide, on the 9th, Marie consented to pass that night with his sister at Ivrac, and the next day they were to take the diligence which passed through that town for Paris.

About eight or half-past eight in the evening they took a carriage and left the hotel to go to a place called Quatre-Pavillons.

Just before their departure a man named Justine Casauran, an old friend of Marie Anizat's, who had chanced to see her in the street, came to call upon her. They all dined together. Éliçabide appeared genial and smiling, and enlivened the repast with amusing stories. Marie's face beamed with pleasure.

Near the town of Ivrac there is, upon the left of the highway, about a quarter of an hour's walk from Quatre-Pavillons, a wind-

ing road bordered on each side by high hills. When one has gone a hundred or a hundred and fifty metres, there is upon the left a dense wood of considerable extent. Behind this wood, thirty or forty metres from the road, there is a little stream which runs to the highway which it crosses.

After leaving the carriage at Quatre-Pavillons, Éliçabide made Marie and her daughter follow him along the highway until they came to the road of which we have spoken. There he told them they must take this road to reach his sister's house, and under a dark and rainy sky they followed him.

We will now let the murderer relate his new crimes.

"We walked some minutes before arriving at the branching off of the road we were to take. My knees trembled, I could not breathe, my brain was in confusion. I felt I should give way under the violence of my emotions. When we reached the place I had chosen for the sacrifice, I stopped. . . . I began to be afraid. . . . I advanced toward Marie, armed with the hammer; I struck her. . . . I saw her fall! At the moment the iron dropped from my hands, the cry of the child recalled me to myself. I struck again. I know not what I did. Then the silence of death reigned around me.

"Dazed and bewildered, I withdrew some steps from my victims. Terrors, such as men could never inspire, seized me. It seemed as if all Nature proclaimed aloud my crimes. For the first time in my life I feared God.

"I have only a confused recollection of what followed. I only know that day began to break, and I hastened to Bordeaux. Arriving at the inn I asked gayly for breakfast. I think I ate heartily. I joked with the host and the servant. I asked for a fire to dry my clothes. I went to sleep before the fire. I asked for a bed. There I passed twenty-four hours in a half-unconscious state.

"The next day I felt only a nervous agitation which betrayed itself in the trembling of my limbs. Then I was arrested. I asked for a pen, and I have written this confession which my tongue would have refused to utter.

"I ask no mercy; my death is well-merited. Would that I could save my poor father and my poor mother from the agony my horrible acts will cause them!"

After his arrest Éliçabide recovered all his *sang-froid*. It was feared that he would attempt to commit suicide, and a constant watch was kept over him. He noticed this, and said to his guards: "It is unnecessary; my life no longer belongs to me."

The 9th of September the trial of Éliçabide began. The defence was insanity.

When asked his motive for his crimes, he said he was actuated by pure philanthropy; that, having suffered so much himself, he wished to spare those he loved the same misery.

He was skilfully defended by M. Gorgeres, but the jury found a verdict of guilty without extenuating circumstances.

The 5th of November the condemned expiated his crimes in the Place d'Aquitaine at Bordeaux. His vanity did not desert him in his last moments. He seemed to be impressed only with the desire to die well. His pride found a miserable satisfaction in the great excitement his execution caused.

His confessor spoke to him of the sufferings of Christ. "Christ was good," said he, "and they reviled him. I am wicked, yet they do not revile me." And looking upon the sea of heads which surrounded him, "Are not all these men there more wicked than I?"

"Think of religion," said his confessor.

"In a few moments," replied Éliçabide, "I shall not think of anything."

These were his last words.

POLICE COURTS IN BELGIUM.

BEING desirous of seeing how matters are worked in Belgian criminal courts, I found my opportunity during a recent visit to the ancient city of Bruges. Unfortunately none of the superior courts were sitting, but the judges were disposing of what we should call "night charges," in the Court of Police Correctionelle, and accordingly I sought admission. It struck me, first of all, that the machinery of justice was considerably in excess of the requirements of the case. The matters that came before the bench were all of the very smallest importance, the most grievous offence that was tried being a theft of pears from a fruit stall in the market. To manage this there were three judges, — namely, the president of the court and two other judges. All three were in full legal attire, with long robes, a white band, crimped instead of being ironed out flat like the English bands, and a high black cap instead of a wig. In addition to these was an official, also in robes, attached to the Government, who took notes of the cases, and another gentleman who did nothing at all, except to put an occasional question to the witnesses and to chat with the judges. There was, beyond these, a clerk, whose duty apparently it was to attend to the summonses, and there was a functionary who acted as usher. He called the cases on, administered the oaths, and in the intervals he interpreted the nature of the charges to me. Lastly, there were two soldiers of the Civic Guard. Both were armed to the teeth with a rifle and fixed bayonet, and they both wore huge bearskins and spurs. They seemed to be a kind of mounted infantry. There was a small dock in the centre of the court facing the dais where the judges sat; but, the nature of the charges not being sufficiently heavy, the accused sat on a form just in front of it. A chair was placed upon the dais itself, exactly in front of the president, for the witnesses, who thus sat with their backs to the persons against whom they gave evidence. There was not a single policeman in the court. In the cases to be tried there had been no arrests, and consequently no one was in charge of the defendants. The latter, upon a plaint being laid before the commissary of police, had been "invited" to attend the court and answer the charge, and they had all accepted the invitation. If they had respectfully declined they would have been promptly sent for, but they probably knew better than to give the court so much trouble. The first couple of criminals who seated themselves on the form were two men — one elderly, in working clothes, and the other a private in the artillery, who appeared in uniform. They were charged with an assault, and the trouble seems to have arisen out of family differences. One after another the witnesses went up to the chair and were duly sworn. No Testament was used. The witness had simply to hold up his or her right hand, with the index finger elevated, and repeat the oath after the usher. What its terms were I could not ascertain, but it was extremely short, and my impression is that the first words were *Bei Gott*. Then the interrogation began by the president; and the witness, who was a market dame, wrapped in a voluminous cloak and bonnet, and who possessed no small share of the garrulity of her class, was soon off upon a long history which was untimely cut short by his lordship. Neither of the prisoners had a legal representative, and neither cross-examined the witness. Nor were they asked to do so. The woman was simply told to stand down, and the turn of the next came. When their statements, which lasted altogether about five minutes, were over, the president held a short conversation with the accused themselves, and, having heard a brief explanation of the circumstances,

discharged them then and there. The same course was adopted with the next two, who were sent on their way rejoicing after receiving a lecture from the bench. Then came the pear-stealing case. Stealing pears from market stalls would seem to be a favorite amusement among the juvenile Brugeois at this season of the year. In this instance the culprit was a gamin of about eight years old, and he had been caught red-handed. But in consideration of his youth, and also, I believe, in accordance with a provision of the Belgian law, the judge declined to punish him, and he too was acquitted. Upon this I ventured to express some surprise to the usher at the number of acquittals in the face of uncontradicted evidence. He admitted that they were rather numerous, but he added, in a triumphant tone, "Last week a boy was sentenced to three months' imprisonment for the same offence." I found this to be the case, and much indignation has been caused thereby among the Brugeois, as the lad was only fifteen. Three other cases were tried, making seven in all, and every one of the prisoners was acquitted. There was no one else in the list; so the judges rose, the soldiers presented arms, and the day's work, which had lasted barely three quarters of an hour, was at an end. —*Daily News.*

CURIOSITIES OF JURY TRIALS.

TRIAL by jury may be, as an advocate lately styled it, the most magnificent of institutions; but its magnificence is not a little tarnished at times, when, as may happen by English law, twelve ignorant, stupid, or crotchety men get together in the box. The last are perhaps the most mischievous, since, heedless of their oaths, they will turn things clean the contrary way, rather than run counter to what they dignify as conscientious scruples.

A Worcestershire jury acquitted a man in the face of overwhelming testimony, merely because he happened to be defended by a son of a local magnate; the foreman of the precious twelve, actually believing they had done something meritorious, exultingly saluted the Squire, a day or two afterwards. When a Welsh jury thought it right to acquit a prisoner, despite an emphatically unfavorable summing up, Baron Bramwell told them he hoped they had reconciled their consciences to their verdict, but by what process they had done it, he declared he was utterly unable to guess. What would the Baron have said to the twelve obstinate backwoodsmen who, sitting upon the body of an Indian, undeniably done to death by the random shooting of the guardian of a potato-plot, made things pleasant all round by pronouncing that the unlucky savage had been worried to death by a dog; and, that not satisfying the unreasonable coroner, altered their verdict to, "Killed by falling over a cliff;" and stuck to that version in spite of all remonstrance! It must be allowed, however, that when jurymen ignore evidence in this way, they generally err on the side of mercy.

Once upon a time it was dangerous for the box to differ from the bench; a jury daring to assert an opinion of their own being liable to find themselves thrown upon the tender mercies of the Star-chamber. Instances, indeed, are not wanting of the judge taking upon himself to punish jurymen for not following his direction. Penn the Quaker was instrumental in freeing them from this terror. When he and Mead were brought before the lord mayor and the recorder charged with preaching in Gracechurch Street, the jury were thrice sent back

to reconsider their verdict, and shape it to the desired pattern. The last time, they were locked up for the night, but the morning found them of the same mind; and "Not guilty" was still their award. "I am sorry," said the irate recorder, — 'I am sorry you have followed your own judgments and opinions rather than the good advice that was given you. I pray that *my* life be kept out of your hands! But for this the Court fines you forty marks a man, and commands imprisonment till paid." The four hundred and eighty marks not being forthcoming, the twelve really good men and true were consigned to durance vile in Newgate. A writ of *habeas corpus* soon opened the prison doors; and the case was referred to a full bench of twelve judges, who pronounced the fining and imprisonment to be contrary to law. The jurymen subsequently obtained exemplary damages for false imprisonment, and the freedom of the box was triumphantly established.

Modern jurors are not overpaid for their labor and loss of time; in the seventeenth century they were not paid at all when trying civil suits, but it was customary for the winner to give them a dinner for gratitude's sake. In criminal cases, involving no capital charge, it was the curious, and not very comprehensible rule, to pay them only when they acquitted the accused; but this rule was violated on one special occasion: Sir Thomas Smith recording that, "in the prosecution for the Popish Plot in Charles II.'s reign, the jury had more, and were treated higher, if they convicted a prisoner, than if they acquitted him. John Ince, writing to the Archbishop of Canterbury anent the jurymen locked up until they decided upon the guiltiness or non-guiltiness of the seven bishops, says: "We have watched the jury carefully all night, attending without the door on the stair-head. They have, by order, been kept all night without fire and candle, save only some basins of water and towels this morning about four. The officers and our servants, and others hired by us to watch the officers, have, and shall constantly attend, but must be supplied with fresh men to relieve our guard, if need be. . . . They beg for a candle to light their pipes, but are denied. In case a verdict pass for us, the present consideration will be, How shall the jury be treated? The course is usually, each man so many guineas, and a common dinner for them all. The quantum is at your Grace's and my Lord's desire. But it seems to my poor understanding, that the dinner might be spared, lest our watchful enemies should interpret it against us. It may be ordered thus; to each man —— guineas for his trouble, and each man a guinea over his desire — N. B. There must be 150 or 200 guineas provided." This system of payment by results smacks somewhat of bribery, but was calculated to prevent a jury yielding to temptation, as the twelve Sudbury men did, who, finding they could only agree in being very hungry, broke open the door of their room and quietly went to their homes.

A wise Indian judge made it a rule never to give any reasons for his judgments; consequently, no one ever thought of appealing from them. It is as well that juries do from compulsion what the judge did from choice. A good story is told of how a Devonshire jury came to acquit a doctor who had accidentally killed an old woman by mixing her medicine a trifle too carelessly. As soon as they were comfortably seated in their retiring-room, the foreman told them they must settle as quickly as possible whether or not they would hang the doctor, that they might get home to supper in good time, and that the quickest way of despatching the business would be for him to take the opinion of each in turn, and let the most votes decide the matter. Upon this point, at any rate, the jury were unanimous, and the foreman proceeded to put the question. One said he did not care which way it went, — hanging the doctor would neither harm him nor do him any good. Another said that the doctor had lately saved the lives of two of his children mortal bad with the small-pox, while

he had only killed an old woman who could not have lived much longer anyhow; it was two lives against one; and he would n't hang the man, not he. Others were for a conviction on grounds equally ridiculous. Fortunately for the poor doctor, all at length agreed on a verdict of "Not guilty."

Many a verdict is, we may be sure, only that of a majority, acquiesced in by dissentients anxious to be spared a troublesome discussion, and sensible enough to prevent their foreman announcing, as the foreman of a Limerick jury did, that they were "Unanimous — nine to three," in finding the prisoner not guilty. Of course the "unanimous" party had to retire again, and of course returned the same verdict, and the accused was discharged. Being grateful for his escape, he promised, as he was leaving the court, that it would be his last as well as his first offence, oblivious of the fact that the jury had decided that he had done nothing at all.

Physical arguments have been used by a majority when more legitimate ones failed. A juryman once asked a judge whether his differing in judgment from his eleven brethren justified his being knocked down with a chair. In the case of another jury, one, at dispersal, was heard to say to another, "Only I threatened to kick him, he 'd never agreed." In America they would appear to have a gentler method of insuring unanimity. When Abraham Lincoln had to defend a fellow charged with stealing half-a-dozen prime hogs, the case against his client was so clearly proved that he told him as much. Not at all discomfited, the accused said, "Never mind about that; just abuse the witnesses, and spread yourself on general principles, and it will be all right." Sure enough it was so; to Lincoln's astonishment the jury brought in a verdict of "Not guilty." Congratulating his client on the result, he could not help saying that the affair was past his understanding. The rogue's explanation set his wonder at rest. "Well, Squire," said he, "you see, every one of them 'ere fellows had a piece of them hogs."

In a libel case tried in Louisiana, the losing counsel demanded a new trial, offering to prove, by the evidence of the foreman of the jury, that one of the jurors had received a letter offering a bribe; by the evidence of one of the court officers, that he had delivered such a letter; and by other evidence, that one of the jurors had owned to accepting a bribe, and that the foreman had been in constant communication with outside parties. The application was dismissed, the judge ruling, "that no juror must disclose what happened in the jury-room; that the confession of a juror could not be used to impeach his verdict; and that the person to whom the incriminating note was addressed could not testify to receiving it. The verdict had been rendered and registered, and could not be disturbed.

A counsel trying to make the best of a bad case insisted that there was some evidence in favor of the view he wished the jury to take. When he had done, Mr. Justice Maule said to the jury: "The learned counsel is perfectly right in his law; there is some evidence upon that point: but he 's a lawyer, and you 're not lawyers, and don't know what he means by 'some evidence;' so I 'll tell you. Suppose there was an action on a bill of exchange, and six people swore they saw the defendant accept it, and six others swore they heard him say he should have to pay it, and six others knew him intimately, and swore to his handwriting; and suppose on the other side, they called a poor old man who had been at school with the defendant forty years before, and had not seen him since, and who said he rather thought the acceptance was not in his handwriting; why, there would be some evidence that it was not, — and that 's what the learned counsel means in this case." This apt illustration was too much for the jurymen; they had seen their way clearly enough before, but found it necessary to retire and solve the judge's abstruse conundrum ere they could agree upon their verdict. Another bothered jury we suspect was that Amer-

ican one which was responsible for, "We find the prisoners not guilty, but believe they hooked the pork;" — a verdict matched by a Carlisle jury when they found a watch-stealer guilty, but recommended him to mercy because "it was really very hard to say whether he had taken the watch or not." An Irish jury recommended a man to mercy on the ground that he had no recollection of the transaction; but, of all odd reasons for leniency, commend us to that old Devonshire foreman, who, upon being asked why a convicted person was recommended to mercy, replied, "Because it is an aggravated case, my lord!" A Welsh jury were not content with performing their own functions, but usurped the judge's prerogative. Having to decide as to the guilt or innocence of a man charged with uttering a forged note, the sapient men of Cardigan said, "We find the prisoner guilty of telling stories about the note, and think he ought to pay back the money, and have three months for it." "Death by small-pox accelerated by neglect of vaccination," was not bad for a coroner's jury; but much better was the rider to a verdict in a case of accidental poisoning with carbolic acid: "The jury is of the opinion that the public should be warned of the dangerous nature of this diabolic acid."

When the jury in a famous Irish murder case were locked up for the night, it was discovered there were thirteen of them, the odd man being a sociable fellow, who had volunteered his assistance just to have the pleasure of dining with the real jurymen. At another trial, just as the case was drawing to an end, somebody called attention to the fact that one of the jurors had vanished; he was found sitting unconcernedly in the body of the court, having walked out of the jury-box without any idea that he was doing wrong; quite unaware of the responsibility attached to the part for which he was cast. — *Chambers' Journal.*

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 Law Journal (London) makes the following interesting statement in regard to the green bag of the lawyer. It is called out by our citation of authorities upon the subject in our April number: —

"Our transatlantic contemporary, the 'Green Bag,' is naturally anxious for the propriety of the name he has adopted; but there is consolation for him in the fact that although he has not proved the title of the green bag to be called the badge of a lawyer, he has hit on a receptacle for his literary wares sufficiently appropriate and suggestive. Mr. John Cordy Jeaffreson is no doubt an amusing writer on lawyers and doctors and other things, but, like every other writer, his historical statements must be tested by the authorities he gives. The passage from the 'Plain Dealer' clearly does not support the statement that 'on the stages of the Caroline theatres the lawyer is found with a green bag in his hand,' or that 'in Queen Anne's time green bags were as generally adopted by solicitors or attorneys as by members of the bar.' Neither do the statements that 'until a comparatively recent date green bags were generally carried in Westminster Hall and in provincial Courts by the great body of legal practitioners, and that some years have elapsed since green bags altogether disappeared from our courts of law,' help, as no one suggests that green bags did not appear in courts of law. Five-and-twenty years ago a discussion of the subject of green bags was begun in *Notes and Queries*, and it has not yet ended. On Feb. 23, 1861 (2d S. xi.), appeared the following query; —

"*The 'Green Bag.'* — What were the contents of the article known as *the* green bag? Did it contain the papers of the 'delicate investigation' on the conduct of the Princess of Wales in 1806, or the seditious papers presented by Lord Sidmouth to Parliament in 1817 (see Haydn's 'Dictionary of Dates'), or those on Queen Caroline's trial; or were these severally in green bags, and the term applied equally to each series of papers? (2) Is a green bag the usual cover of documents sent from the offices of Ministers of State to Parliament as distinguished from the blue bag of the law? (3) Or has the term 'green bag' a conventional meaning as applied to investigations of a delicate, or may I say indelicate, nature, such as the Spaniard calls *Poco verde?* VERDANT GREEN.

"Twenty years afterwards Mr. Gibbes Rigaud, writing from Oxford, replied as follows (6th S. iv., July 23, 1881): —

"The green bag did not contain the accusations of 1806. These were published in the *Book* of 1813. The green bags (for there were two) contained all the evidence that had been obtained by the Milan Commission with regard to the Prince's conduct with one Bartholomeo Bergami. The king sent messages to both Houses. Lord Liverpool delivered the one to the Lords, the Lord Castlereagh that to the Commons, and each at the same time laid on the table a green bag containing papers for their consideration. It is not generally known that there were duplicate bags, and that the one in the Commons was never opened. For anything I know to the contrary, the green bag sent to the faithful Commons may still lie sealed and unexamined in the archives of Westminster.

"The statement made on March 9 last that 'attorneys in former times carried green bags, not as part of their professional fitting, but as holding deeds, records, and documents of a more or less official character,' was based on the result of this correspondence from a source to which we look on this side the Atlantic for original research on antiquarian matters."

While authorities thus seem to differ as to whether the green bag is really to be considered as having been a "badge of a lawyer" in times past, the discussion has been one of no little interest. If any of our readers can offer any statements which throw light upon the subject, the Editor would be very glad to receive them.

IN response to numerous requests received from our readers we publish in this number an excellent likeness of that greatest of all American advocates, RUFUS CHOATE. For the sketch of his life which accompanies it, we are largely indebted to the "Reminiscences of Rufus Choate," written by Edward G. Parker.

LEGAL ANTIQUITIES.

In the sixth year of the reign of Edward III. (A. D. 1333), when the lawyers had just established themselves in the convent of the Temple, and had engrafted upon the old stock of Knights Templar their infant society for the study of the practice of the common law, the judges of the Court of Common Pleas were made knights, being the earliest instance on record of the grant of the honor of knighthood for services purely civil; and the professors of the common law, who had the exclusive privilege of practising in that court, assumed the title or degree of Frères Serjens, or Fratres Servientes; so the knight and serving brethren, similar to those of the ancient order of the Temple, were most curiously revived and introduced into the profession of the law.

The *Frères Serjens* of the Temple wore linen coifs, and red caps close over them. (The Serjeants at the present time wear a coif, but instead of a red cap, they wear a powdered wig.) At the ceremony of their admission into the fraternity, the Master of the Temple placed the coif upon their heads, and threw over their shoulders the white mantle of the Temple; he then caused them to sit down on the ground, and gave them a solemn admonition concerning the duties and responsibilities of their profession. They were warned that they must enter upon a new life; that they must keep themselves fair and free from stain, like the white garment that had been thrown around them, which was the emblem of purity and innocence; that they must render perfect obedience to their superiors; that they must protect the weak, succor the needy, reverence old men, and do good to the poor.

The Knights and Serjeants of the Common Law, on the other hand, have ever constituted a privileged fraternity, and always address one another by the endearing term *brother*.

The religious character of the ancient ceremony of admission into this legal brotherhood, which took place in church, and its striking similarity to the ancient mode of reception into the fraternity of the Temple, are curious and remarkable.

"*Capitalis Justitiarius,*" says an ancient MS. account of the creation of Serjeants-at-Law in the reign of Henry VII., "*monstrabat eis plura bona exempla de eorum prædecessoribus, et tunc posuit* les coyfes *super eorum capitibus et induebat eos singulariter, de capitæ de skarletto, et sic creati fuerunt servientes ad legem.*"

In his admonitory exhortation, the Chief-Justice displays to them the moral and religious duties of their profession. "*Ambulate in vocatione in quâ vocati estis. Disce cultum Dei, reverentiam superioris, misercordiam pauperi.*" He tells them the coif is "*sicut vestis candida et immaculata,*" the emblem of purity and virtue; and he commences a portion of his discourse in the Scriptural language used by the Popes in the famous bull conceding to the Templars their vast spiritual and temporal privileges: "*Omne datum optimum et omne donum perfectum decursum est descendens a patre luminum,*" etc.

The *Frères Serjens* of the Temple were strictly enjoined to "eat their bread in silence," and "place a watch upon their mouths;" and the *Frères Serjens* of the law, we are told, after their admission did "dyne together with sober countenance and lytel communycacion." — *Legal Observer.*

There was in England, in ancient times, a Chief Justiciar, and likewise from very remote times a Grand Justiciar in Scotland, with very arbitrary power. In that country, when the judges going on circuit approach a royal burgh, the Lord Provost universally comes out to meet them, with the exception of Aberdeen, of which there is by tradition this explanation. Some centuries ago, the Lord Provost, at the head of the magistrates, going out to meet the Grand Justiciar at the Bridge of Dee, the Grand Justiciar, for some imaginary offence, hanged his lordship at the end of the bridge, since which the Lord Provost of Aberdeen has never trusted himself in the presence of a judge beyond the walls of the city. — *Campbell's Lives of the Chancellors.*

FACETIÆ.

Judge Kirwan was one of the wittiest and most amusing men who ever sat upon the Irish bench. He was known as "the poor man's magistrate," and his judgments were so full of fun that the prisoner often left the dock for the prison in screams of laughter. On one occasion a poor man was summoned for selling apples on a Sunday, and the majority of the bench were for punishing him

under the Statute 3 and 4 William III. Mr. Kirwan being in the chair was obliged, though dissenting, to pronounce the judgment of the court, which was as follows: "My good man, you have been found guilty by the majority, and not by the minority of the bench, under a statute of William III., of the very desperate offence of selling apples on a Sunday. You are not aware, very likely, of who William III. was, because you are only a common appleman; but if you were an orangeman you 'd know it. You must understand that their worships don't like people eating apples on a Sunday, although 't is very likely that some of them, however pious, will have an apple-pie for dinner next Sunday. And now, as you have been summoned under a certain Act, you 'll be punished under that Act; and I sentence you under that Act to be put in the stocks for the next two hours; and" — turning to a brother magistrate — "I don't think there are any stocks in the town; and if there are not, you must be discharged." And discharged he was.

"PRISONER at the bar," said a judge at the Central Criminal Court, "if ever there was a clearer case than this of a man robbing his master, this case is that case." Don't let us talk about *Irish* bulls after this, for this John Bull takes the cake.

NOT quite so good or so bad as this was his sentence on another occasion. "Prisoner at the bar, there are mitigating circumstances in this case that induce me to take a lenient view of it, and I will therefore give you a chance of redeeming a character that you have irretrievably lost."

THE same judge is related by Serjeant Robinson to have addressed a prisoner as follows: "Prisoner at the bar, you have been found guilty on several indictments, and it is in my power to subject you to transportation for a period very considerably beyond the term of your natural life; but the Court, in its mercy, will not go so far as it lawfully might go, and the sentence is that you be transported for two periods of seven years each."

To the same authority we are indebted for the following authenticated story of the late Mr. Justice Maule on a question of costs: "This seems to me quite a novel application," said the learned judge. "I am asked to declare what amounts to this, that in an action by A against B, C, who seems to have less to do with the case than even I have, ought to pay the costs. I do not believe that any such absurd law has ever been laid down, although, it is true, I have not yet seen the last number of the Queen's Bench Reports." — *Pump Court.*

AWAY on a bend of the Upper Missouri twenty-eight lawyers practised the Iowa Code. It so happened that supplies were short at Fort Randall, and a government team came over the prairie for coffee and corn. There were some old scores unsettled in the town, and the creditor resolved to "get secured." The leader of the bar looked it up in the Code, and filled out attachment blanks, in which it was sworn that "he had reason to believe, and did believe, the said *United States* were *about to leave the country* to defraud their creditors."

AN American judge once reprimanded a lawyer for bringing several small suits into court; remarking that it would have been better for the parties in each case had he persuaded them to submit the matter in controversy to the arbitration of some two or three honest men.

"Please your Honor," retorted the lawyer, "we did not choose to trouble honest men with them."

AN advocate, seeing that there was no longer any use in denying certain charges against his client, suddenly changed his plan of battle, in order to arrive at success in another way.

"Well, be it so," he said; "my client is a scoundrel, and the worst liar in the world."

Here he was interrupted by the judge, who remarked, "Brother B——, you are forgetting yourself."

LORD NORBURY, walking to court one morning, saw a crowd on the quay, near the Four Courts. He inquired the cause, and was informed a tailor had just been rescued from attempting suicide by drowning. "What a fool," responded the Chief-Justice, "to leave his *hot goose* for a *cold duck!*"

LAWYER. I have my opinion of you.

CITIZEN. Well, you can keep it. The last opinion I got from you cost me $150.

NOTES.

THE "London News" quotes an American statesman, now abroad, on the deceased wife's sister bill, upon which he makes this droll comment: —

"The desire of the Englishman to marry his deceased wife's sister is one of the most curious phenomena of the times. The deceased wife's sister bill may be said to be his steady occupation. In all his breathing-spells from emergencies he turns to that. When he is not being massacred by the South Africans, or slaying Soudanese, or fighting Afghans, or pacifying the Irish, he is looking after the deceased wife's sister bill. He comes back to it out of all victories and defeats with unwavering pertinacity and courage. Seeing how attractive such an alliance seems in England, I cannot but inquire why the Englishman does not marry the wife's sister in the first place. Why does he go on marrying the wrong one, and then wait for death and the law to help him?"

ONE of the most extraordinary reasons which any lawyer has alleged against effecting law reforms is that assigned by the Chancellor d'Aguesseau. He was once asked by the Duke de Grammont whether he had ever thought of any regulation by which the length of suits and the chicanery practised in the courts could be terminated. "I had gone so far," said the Chancellor, "as to commit a plan for such a regulation to writing; but after I had made some progress, I reflected on the great number of advocates, attorneys, and officers of justice whom it would ruin; compassion for these made the pen fall from my hands. The length and number of lawsuits confer on gentlemen of the long robe their wealth and authority; one must continue, therefore, to permit their infant growth and everlasting endurance."

THE following curious case indicates some of the difficulties India magistrates have to encounter. A Hindu was maliciously charged with the murder of his daughter Kaminee. The *corpus delicti* was not forthcoming. Equal, however, to any emergency, a native policeman produced "some poor fellow's skull" as that of the murdered girl! Another member of the same fraternity, animated by a laudable spirit of rivalry, brought forward a second and smaller skull. It was seriously argued that the girl's skull must be either the one skull or the other. Fortunately for the father, the girl herself arrived in the Magistrate's Court at this critical juncture. On being questioned she told a plaintive tale to the effect that she had been wooed by a Parawala (village policeman). He, finding her father obdurate, had one night secretly sent her up the country by rail, promising to follow. In answer to further questions, the girl declared that neither of the two skulls on the bench was *her* skull. Tableau! The father was, of course, honorably acquitted, and the wicked swain properly punished.

THE "saide Lord God" occurs in the will of the father of English real property law, Sir Thomas Lyttleton: "First I bequeath my soul to Almighty God, Fader, Sonne and Hollye Ghost . . . and to our most blessed Lady and Virgin Saynt Mary, Moder of our Lord and Jesu Christ, the only begotten sonne of our saide Lord God, the Fader of Heven, and to Saint Christopher, the which our saide Lord God did truste to bere on his shoulders," etc.

IT will perhaps startle the multitudinous reporters of the proceedings of our courts at the present time, to learn that there was a time when the act of reporting subjected the reporter to commitment to the Tower. The following is a free translation of a memorandum entered upon the rolls of the Exchequer of Pleas, 3 Edw. III. m. 27: —

"Whilst a plea was pending in this court between Johannes de Bourne and Ricardus de Potesgrave, it was intimated to the Barons by certain bystanders that one Lucas de Thaestead, notary public, by the Pope's authority, had been brought here by the aforesaid *John to hear and explain the judicial words (verba judicialia) of the court about to be* pronounced upon this process, *and to make a public instrument upon the same*, in contempt and disgrace, and dishonour of our lord the King and his Court, and manifest prejudice of his royal dignity.

"And the same Lucas being present, and sworn to speak the truth, says that he came here at the request of the said John *to hear and testify* AND REDUCT IN A PUBLIC FORM *the judgment about to be given in court against* the aforesaid Richard. Judgment is passed that the said *Lucas be committed to the Tower of London.*"

It might be well if our courts had the power to commit some of our modern reporters for the manner in which they report judicial decisions.

THE following is a proposed epitaph on Lord Westbury, called forth by a judgment delivered by him in 1864: —

RICHARD BARON WESTBURY.

Lord High Chancellor of England.
He was a distinguished Judge
And an eminent Christian,
And a still more eminent and distinguished Statesman.
During his tenure of office he abolished the ancient method of conveying land,
The time-honored institution of the Insolvency Court,
And the Eternity of Punishment.
Toward the close of his earthly career, in the Judicial Committee of the House of Lords, he dismissed Hell with costs,
And took away from orthodox members of the Church of England, their last hope of Eternal Damnation.

THE value, as an aid to the administration of justice, of the permission to an accused person to testify on his own behalf, has lately been illustrated with remarkable force in a New York trial. William Krulisch, a lad nearly seventeen years old, was on trial charged with the murder of Gunter Wechsung, a clerk in a drug-store. The circumstantial evidence which the Government had procured might have been considered strong enough to convict the boy; and this seems all the more probable as he had no witnesses to call in his defence whose evidence would have been of much use to him, except to corroborate what he had to say. The Government, as it chanced, lost ground through the apparent perjury of a pair of so-called detectives and of a shopkeeper who had sworn that the accused had bought a hatchet which had been the instrument of the murder. But the boy's case looked very black until he had given his testimony, which not the most searching cross-examination could shake, and that testimony was really the means of his acquittal. The poor boy was without money, family (except a brother and sister), or friends, and according to his story had never known father or mother. But he seems to be a straightforward, honest fellow, with no record against him or report that reflects on his character, so far as was shown in the evidence offered. It may be remembered that the first application of the new principle in Massachusetts (at least in a murder case) secured the discharge of the accused, a poor, lone, old Irish woman, charged with the murder of a grandchild, who was also without friends and who could have called no witnesses to save her from punishment. It is interesting also to recall that many lawyers were opposed to this innovation on long-established practice. Perhaps its French origin made it objectionable to them, tradition and custom having impressed upon them the idea that only after England, whence most of our legal principles and practices had come, could one venture on changes. The French, as is well known, go a step farther and compel an accused to testify. We may yet adopt that method.

NATIONS all over the world are addicted to proverb-making, and the legal profession is of course fathered with a goodly share. In a collection of "Proverbs, Maxims, and Phrases of all Ages," recently published by Robert Christy, an American lawyer, many of these sayings have been chronicled; and though they are somewhat sarcastic, we may say of them, as Mr. Christy truly remarks, that "if the censures are baseless, they are harmless; if well founded, the profession should amend itself." Two German proverbs may be quoted: "The nobleman fleeces the peasant, and the lawyer the nobleman." "'The suit is ended,' said the lawyer; 'neither party has anything left.'" The Danish proverb is certainly biting: "'Virtue is in the middle,' said the Devil when he seated himself between two lawyers;" but the Dutch one is more charitable, "The better lawyer, the worse Christian." There are many younger professions than the law, and it will be interesting to watch what class of proverbs gathers round them; for a proverb has been well said to be "the wit of one man and the wisdom of many." — *Montreal Legal News.*

WE should probably hear less of the law's delays if examples could be made of some of our judges after the manner adopted by Theodoric, King of the Romans. A widow having complained to that monarch that a suit of hers had been in court three years which might have been decided in as many days, the King, being informed who were her judges, gave orders that they should give all ex-

pedition to the poor woman's cause. In two days the case was decided to her satisfaction. Theodoric then summoned the judges before him, and inquired how it was that they had done in two days what they had delayed for three years.

"The recommendation of your Majesty," was the reply.

"How?" said the King; "when I put you in office did I not consign all pleas and proceedings to you? You deserve death for having delayed that justice for three years which two days could accomplish;" and he at once commanded their heads to be struck off.

Sir John Leach, though by no means deficient as a lawyer, had a reckless, slashing way of getting through business, which often wrought great injustice. In this respect the Chancery Court, presided over by Lord Eldon, formed a strange contrast with the Rolls Court, under the direction of Leach. The first the lawyers used to call the Court of *Oyer sans terminer*, and the latter the Court of *Terminer sans oyer*.

The conflicting claims of two towns in Connecticut, Lyme and New London, to certain lands once gave rise to a mode of adjusting the title, of which, we apprehend, no trace can be found in the common law. "The land," says Dr. Dwight, "though now of considerable value, was then regarded as a trifling object. The expense of appointing agents to manage the cause before the Legislature was considerable, and the hazard of the journey not small. In this situation the inhabitants of both townships agreed to settle their respective titles to the lands in controversy, by a combat between two champions, to be chosen by each for that purpose. New London selected two men of the name of Ricker and Latimer. Lyme committed its cause to two others, named Griswold and Ely. On a day mutually appointed, the champions appeared in the field, and fought with their fists, till victory declared itself in favor of each of the Lyme combatants. Lyme then quietly took possession of the controverted tract, and has held it undisputed until the present day."

Recent Deaths.

Samuel Robb died at his residence, No. 1630 Spruce Street, Philadelphia, on the 10th of June. He was an eminent lawyer. Although his practice for a number of years past had been principally that of consulting counsel, he was well known among the older lawyers and business community as an exceptionally able and learned man. Mr. Robb graduated at Princeton College in 1849, and received the second honor of his class. At that early age he gave evidence of a mind of unusual power, achieving his success without apparent effort. His oratorical abilities were of a high order, and he maintained the reputation of being the ablest and readiest debater in college. At his graduation he delivered the valedictory. He was admitted to the bar April 12, 1851, and engaged at once in active practice.

Although well qualified for jury practice, he gradually withdrew himself from the contests of the courts, and became best known as a chamber practitioner. His judicial habit of mind and methodical system of study made him a favorite appointee of the courts, and, by agreement of counsel, as master in equity cases and auditor and referee in complicated matters of litigation. Rarely or never were his conclusions reversed.

Perhaps the most responsible and weighty piece of professional work that Mr. Robb was ever called upon to perform was in connection with the famous case of Asa Packer *v.* Joseph Noble and Barnabas Hammitt. It was a suit in equity brought by the late Judge Packer against the defendants for the settlement of a copartnership account. It was hotly contested, and involved a large amount of money. The expenses of litigation when it reached the Supreme Court were stated to have amounted to over one million of dollars, and the sum in controversy was many millions more. Mr. Robb was appointed master in the case, his duty being to take the testimony and report and decide upon the whole case. This case was before Mr. Robb, as master, for seven or eight years. The suit was protracted for a long time. Twenty-six years elapsed before its final decision, and the paper books in the case occupy twelve printed volumes.

The elaborate report made by Mr. Robb was the result of a vast amount of labor, and in clearness, exhaustiveness, strength, and general ability,

it could scarcely be surpassed. It was attacked by the eminent counsel of the defeated parties, but after the most thorough investigation and scrutiny, it was sustained in the court below; and when it reached the Supreme Court, after an argument extending through an entire week, it was finally affirmed in a masterly opinion of nearly fifty pages in the State Reports, and every position taken by Mr. Robb was completely vindicated by the unanimous judgment of the court.

He took a keen interest in public affairs, although he never held public office, excepting for a term in city councils, where he sat as the representative from the Fifth Ward. During his term of service he showed great zeal and ability in the performance of his duties, and his determination not to accept a re-election was greatly regretted.

Mr. Robb was distinguished not alone for great intellectual ability, — his temperament was peculiarly sensitive. He recoiled from anything ignoble. His tastes were exquisitely refined.

Mr. Robb was married to Miss Sarah Thompson, the daughter of the late Chief-Justice, who survives him.

Hon. John B. D. Cogswell died at Haverhill, Mass., on June 11. He was born at Yarmouth, Mass., June, 1829; fitted for college at Phillips Academy, Andover, graduated at Dartmouth College in the Class of 1850, and read law with Governor Washburn at Worcester. He received the degree of LL.D. from Harvard Law School, and was admitted to Worcester County Bar in 1853. Soon after he opened a law office in Worcester. He was in the Legislature in 1857, and later removed to Milwaukee, Wis. In 1861 he was appointed United States District Attorney for Wisconsin. In 1870 Mr. Cogswell returned to Massachusetts and resided at Yarmouth, which he represented in the Legislature in 1871, 1872, and 1873, being a member of the Judiciary Committee of 1871, and chairman of the same committee the two following years. He was a delegate to the Republican National Convention at Philadelphia which nominated Gen. U. S. Grant for President. He was a member of the Massachusetts Senate in 1877, 1878, and 1879, from the Cape District, and served as president of that body for three years. In 1880 he retired from public life, and removed to Haverhill, and had since followed literary pursuits.

Leonard Swett, the eminent Chicago lawyer, died on June 8, aged sixty-four. Mr. Swett was born at Turner, Me. He was educated at North Yarmouth Academy and at Waterville (now Colby University), but was not graduated. He read law in Portland, enlisted as a soldier in the Mexican War, and at its close in 1848 settled near Bloomington, Ill. He travelled the circuit in fourteen counties, and was an intimate friend of Abraham Lincoln and David Davis. In 1852–1861 he took an active part in politics, canvassing the State several times. In 1858, at the special request of Mr. Lincoln, he was a candidate for the Legislature on the Republican ticket, and was elected by a large majority. This is the only political office he ever held. In 1860 Mr. Swett made the nomination speech for Mr. Lincoln, and in 1888 he performed the same service for Judge Gresham. When Mr. Lincoln became President, Mr. Swett was employed in the trial of government cases, one of the most noted being that for the acquisition of the California quicksilver mines. In 1865 Mr. Swett removed to Chicago, where he was for many years one of the most prominent members of the bar. He rendered much gratuitous service to workingmen, servants, and other poor clients. In 1887 he delivered the oration at the unveiling of the statue of Lincoln in Chicago.

Hon. Charles P. Sanborn, of Concord, N. H., who died on June 3, was the son of James Sanborn, now living in that city, and was born there on Sept. 12, 1834. For three years he was a student at Yale College, but did not graduate. He read law in the office of Hon. Henry A. Bellows in Concord, and entered into practice as the junior member of the firm of which Col. John H. George and Hon. William L. Foster were the other partners. He was early successful in his profession, in which for a long time he held a high rank. From 1871 to 1880 he was city solicitor. In 1862 and 1863 he was a representative in the Legislature, and in 1875 again filled that position, and was Speaker of the House. For many years he had been clerk of the Concord & Claremont Railroad. He was greatly interested in public education, and for a long time was a member of the Union School Board. He was the compiler of the last edition of the "New Hampshire Justice and Sheriff."

REVIEWS.

THE AMERICAN LAW REVIEW, feeling that it cannot do better than follow in the footsteps of the "Green Bag," comes out as an illustrated magazine; its May-June number containing portraits of Stanley Matthews and Francis Wharton. While its picture-gallery is hardly up to the standard of the "Green Bag," still the furnishing of any illustrations shows a praiseworthy desire to meet the wishes of many of its readers. The least the subscribers of that enterprising periodical should do is to send in their subscriptions at once for the "Green Bag," out of gratitude, if nothing more, for its "spurring up" of the REVIEW. The contents of the last number are "Comparative Merits of Written and Prescriptive Constitutions," by Thomas M. Cooley; "A Continental Review of the Cutting Affair," by Alberic Rolin; "Public Officers and Candidates for Office," by George Chase; "Surface Waters," by J. C. Thomson; "A Symposium of Law Publishers," containing articles by Charles C. Soule, John B. West, and James E. Briggs. The "Notes" are, as usual, one of the most interesting features.

No more readable or interesting magazine is to be found among our exchanges than "CURRENT COMMENT AND LEGAL MISCELLANY," published by the D. B. Canfield Co., Philadelphia. Its "Legal Notes" are selected with evident care and good judgment, and contain much that is entertaining as well as instructive. Its other contents are made up of articles of interest to the profession.

THE POLITICAL SCIENCE QUARTERLY for June contains a paper on "Municipal Government in Great Britain," by Albert Shaw. J. Hampden Dougherty continues his discussion on "Constitutions of New York." E. P. Cheney contributes a paper on "Conspiracy and Boycott Cases." The other contents are "Rotation in Office," by Frederick W. Whitridge, and "The Whiskey Trust," by Prof. J. W. Jenks.

JOHNS HOPKINS UNIVERSITY STUDIES, seventh Series, VII.–IX. "The River Towns of Connecticut," by Charles M. Andrews. An interesting historical sketch of the settlement of Wethersfield, Hartford, and Windsor.

THE most interesting paper in the MEDICO-LEGAL JOURNAL for June is entitled "A Clinical and Forensic Study of Trance," by Prof. Edward P. Thwing, M.D., Ph.D. There is always a peculiar fascination connected with the study of psychology, and this article of Professor Thwing's is well worthy of a careful perusal. The other contents are "The Insanity of Childbirth in relation to Infanticide," by Edward M. Heyzer; "Belgium and her Insane Institutions," by Clark Bell; and "The Lebkuchner," by Dr. Matthew D. Field. The frontispiece is a fine portrait of Dr. Charles H. Hughes, of St. Louis, Mo.

BOOK NOTICES.

A BRIEF FOR THE TRIAL OF CRIMINAL CASES. By AUSTIN ABBOTT. Diossy & Co. New York, 1889. $5.50 net.

This work of Mr. Abbott's cannot fail to be of inestimable value to the profession. It is a practical manual for the guide of the practitioner in the preparation for trial of criminal causes. The varying rules in different jurisdictions are given, so that each practitioner will find therein a brief adapted to rulings of his home tribunals. The reputation of the author is a sufficient guaranty that the work has been thoroughly and exhaustively prepared. The volume is exceedingly attractive typographically, being printed upon heavy paper in clear distinct type. It should find a place in every lawyer's library.

A TREATISE ON THE LAW AND PRACTICE OF FORECLOSING MORTGAGES ON REAL PROPERTY. By CHARLES HASTINGS WILTSIE, of the Rochester Bar. Williamson Law Book Co. Rochester, N. Y., 1889. $7.50.

We believe this is the only work which has been published treating distinctively of the foreclosure of mortgages upon real estate. It is what the author claims it to be, *an exhaustive and complete treatise upon the practice of foreclosing mortgages.* It is adapted to the practice of every State in the Union, and the limitations and modifications of general principles and *special* and *peculiar* instances are given fully in the notes. Over eight thousand cases are cited, and an exceptionally thorough and complete index of both text and notes will be appreciated by the practitioner. It will prove a work of great value to the profession, and especially to such as make a specialty of conveyancing. The volume contains over eleven hundred pages, and is printed and bound in the best law-book style.

The Green Bag.

VOL. I. No. 8. BOSTON. AUGUST, 1889.

ROBERT TODD LINCOLN.

BY HULBURD DUNLEVY.

MR. ROBERT T. LINCOLN, the subject of this sketch, was born at Springfield, Ill., August 1, 1843. His father, Abraham Lincoln, afterwards President of the United States, was at that time practising law at Springfield. His mother was "the beautiful Fannie Todd," of Kentucky, whose charms were the subject of more than local admiration.

In appearance Mr. Lincoln is said, by those who knew his parents, to resemble his mother closely in almost all respects. His eyes, however, have the same gentleness and kindness of expression that were characteristic of his father.

After the usual course in the elementary schools at home, Mr. Lincoln entered Phillips Academy, at Exeter, N. H.; and upon finishing the academic course, entered Harvard University in the autumn of 1860. Upon graduating from college he entered the Harvard Law School; but gave up his work there in 1865 in order to accept a commission as captain in the United States Army, and as Assistant-Adjutant General on General Grant's staff. After a short time in the army, however, he resigned, and began the study of law in Chicago. He was admitted to the bar of Illinois in 1867. He entered immediately upon his practice, and continued to practise uninterruptedly until 1876, when the city was in the most hopeless financial tangle, and the affairs of the community were almost in a state of bankruptcy. He was then persuaded to become a candidate for the position of supervisor of the town of South Chicago, and being elected showed, during his first period of service in a public position, how great was his skill and accuracy in business management.

Mr. Lincoln consented to fill this office at a sacrifice to his own interests, and he did so only because he was persuaded by many intelligent men that he was needed in that position. He holds his own interest subservient to the public good, when it appears to him that his services are required. In 1880 he was chosen by President Garfield to fill a position in the Cabinet, and was appointed Secretary of War. His duties in this position will be remembered by those who observed the working of Garfield's administration; and no better proof of his good management is needed than the fact that when the Democratic administration came into power nearly every department of the Government was severely criticised. I believe, however, that not a word of criticism was uttered by the incoming administration as to the management of the War Department. On President Garfield's death Mr. Lincoln was the only member of the Cabinet retained by President Arthur. Upon the accession of Mr. Cleveland to the Presidency, Mr. Lincoln returned to Chicago, and has practised law vigorously since that time. His recent appointment as Minister to England by President Harrison came to him unsolicited, and in fact he had no knowledge of the President's intention or action until a despatch from a member of the Senate informed him that his name had been sent to that body for confirmation.

The characteristics which strike one most

forcibly upon meeting Mr. Lincoln are his perfect frankness and sincerity ; and the longer one is acquainted with him the more prominent these characteristics become. He inspires one immediately with perfect faith in his uprightness and honesty. The result of this is seen in the perfect confidence placed in him by his clients, and also in the great consideration and weight given to his statements by the courts. He is not only scrupulously accurate and just in all his doings and statements, but his whole moral sense is so keen that the slightest irregularity on the part of others meets with the severest condemnation. I remember on one occasion he had concluded a foreclosure suit, and the time for redemption had expired. It transpired that the mortgagor, when about to lose possession of his property, had leased portions of it to various tenants, and by liberal discounts had induced them to pay rent for several months in advance. The poor victims, when notified by the mortgagee that they should pay their rents to him, came with their stories, and by him were referred to Mr. Lincoln. As the third or fourth man came to make his complaint, Mr. Lincoln grew actually livid with rage, and stormed about the office as if he himself were the subject of the outrageous swindle.

These qualities win the respect of every one who knows Mr. Lincoln ; and the cordial and gracious manner with which he meets all who have occasion to address him make him personally popular. Another quality which attaches people to him is his appreciation of all that is humorous. His fund of wit is almost as great as that attributed to President Lincoln by those who lived in the last generation, and his humor is characterized by the same peculiar quickness of thought which showed itself throughout Abraham Lincoln's conversation.

Not very long ago in trying a suit, Mr. Lincoln addressed the defendant, Mr. Windet, — a man who was hopelessly insolvent, but given to great schemes about which he did a great deal of talking. Mr. Lincoln pronounced the defendant's name with the accent on the first syllable. The gentleman corrected him, saying, "Mr. Windét, if you please sir, Mr. Windét," accenting the last syllable. Mr. Lincoln replied very quietly: "I beg your pardon, sir ; but I think that I am to be excused for not knowing whether to associate more of wind or debt with you."

Of the intricate matters which Mr. Lincoln has conducted lately with a degree of success that has caused the admiration of the Chicago Bar, the settlement of the Newberry estate is perhaps of the greatest magnitude. This involved the distribution of about five million dollars among a very large number of heirs, reaching into the third generation, and was complicated by the fact that the wife of the testator had had a life estate in the property, during which the heirs had sold, assigned, and mortgaged their contingent interests in every conceivable method ; and a further complication resulted from the fact that the assets were situated in different States, and consisted of all kinds of property. I heard it said, by one of the most prominent lawyers of Chicago, that Mr. Lincoln's scheme of distribution, which he prepared when closing the suit, was a "marvel of ingenuity."

One cannot know Mr. Lincoln, or even see him for a short time, without being impressed with his intense Americanism. He does not in any sense depreciate what is foreign, but he believes that Americans should be Americans, and that all representatives or officers of the Government should be Americans in heart and soul. This feeling was shown very emphatically shortly after his nomination for Minister to England, when he was beset on all sides by applicants for positions connected with the American legation. Some of the aspirants, in order to show that they were capable of filling the positions, mentioned in their applications offices which they had held under other Governments, which caused Mr. Lincoln to exclaim, "Just think of it ! — a man who has held *that* position applying for a position as representative of the *United States*."

In his political views Mr. Lincoln is, of course, a deep and strong Republican. As to the matter of candidacy, it is clear, from Mr. Lincoln's past action, that he believes the people should seek the man whom they wish to fill an office, and that a man should not look upon a vacant office as a prize for which to strive and to be secured if possible by inducing the public or those in power to bestow it upon him. In this respect he differs from politicians of the present, and reminds one of the time when the Roman Dictator was called from his ordinary occupation, and asked to take charge of the public welfare. Mr. Lincoln is devoted to the practice of the law, and has no desire to leave it for any position however honorable; but all those who know him and know his record cannot but feel that the oftener he is called upon to serve the public the better it will be for the public good.

EXTENUATING CIRCUMSTANCES.

OF the strange and whimsical motives which determine French juries in the discovery of extenuating circumstances (*les circonstances atténuantes*), very curious instances are recorded. From the generally accepted representation of the Gallic character, we might have supposed that sentimental considerations would exercise great influence, and that enthusiasm or even fanaticism for religion, liberty, glory, or ambition, though carried out in deplorable excesses, would find mercy tempered with justice; but on examination a different line of argument appears to be in usage, and the more horrid, unnatural, and extraordinary the crime, the more attenuated is the guilt. Whether the guiding principle is that monstrous crimes are better evidence of mental aberration or irresponsibility than small ones, we cannot pretend to say, but assuredly the history of half-a-dozen cases selected at random from the records of the French tribunals would warrant such an idea.

Some years ago an innkeeper and his wife were tried for having murdered a traveller while lodging in their house, and further, for having made part of his body into sausages, with which they duly regaled succeeding customers. These singularly revolting accusations were clearly proved, and the jury returned a verdict of "guilty, but without premeditation, and under extenuating circumstances!" The landlord (thoughtlessly, without doubt) stabbed his guest; the wife unthinkingly cut the body up into sausages, and in a fit of absence of mind served them up to other visitors. For such an extraordinary verdict no other explanation occurs to us at this moment than that the admiration of the jury must have been unnaturally excited by the economy and thriftiness so largely manifested by the innkeeper's wife.

In 1848 a man killed his mother, and then reduced the body to ashes in the fireplace. He was found guilty, but with "extenuating circumstances." A bare verdict of guilty was doubtless reserved in case any other man should advise himself to burn his mother before she was absolutely murdered.

In 1843 a servant-girl committed several robberies on her master and mistress, who, unwilling to prosecute her, contented themselves with giving her notice to leave. The girl profited by her short stay to poison them both. The jury found her guilty; but considering how much she must have been irritated at the prospect of being discharged, added that it was under extenuating circumstances.

About the same period a young woman, aged eighteen, who had not been married many months, happening to have had some lit-

tle disagreement with her husband, was guilty of the horrible cruelty of pouring molten lead into his ear as he lay asleep. He did not die, but his sufferings were intense and prolonged. The girl was tried for the offence; her counsel did not venture to affirm that his client had not committed the deed imputed to her, but suggested that it might have been the unhappy result of a mental aberration. The jury found this conceit so excellent that it extenuated the circumstances up to the point of depriving them of the semblance of guilt. They returned a verdict recording the innocence of this interesting criminal.

Another time two women being tired of their respective husbands agreed to poison them both at the same moment. This they effected, but not without discovery. It is not to the police, however, but to the juries, that criminals must in France look for escape. They were tried and found guilty, but with extenuating circumstances. One would imagine, from the rareness of an acquittal and the frequency of *les circonstances atténuantes*, that the juries were in the habit of reducing to a mean the entire guilt and innocence brought before them; the result being an average of extenuating circumstances. A witty writer observed that, under such a state of things, it was a matter of wisdom to kill your wife rather than let her be bored by you. "If you assassinate her," he says, "you are let off with the galleys; but if you bore her, she assassinates you."

A poor woman named Rosalie, unable to support her child, and not having the courage to take it herself to the hospice for *les enfans trouvés*, agreed with a neighbor that he should convey it thither for a certain monetary consideration, to procure which the poor woman gave her last sou, and sold the remnant of her scanty wardrobe. When the day came, the man expended the money in drink, and then coolly threw the child on the ground, crushed its head with the heel of his wooden *sabot*, and digging a hole in the ground buried it out of sight. It will hardly be believed that any jury could find extenuating circumstances in this ruffianly case; but, nevertheless, so it was. Guilty with the invariable addition of *les circonstances atténuantes*.

A woman, married to a bricklayer, and who, it is to be presumed, had at least some sentiment of hostility towards her husband, took the opportunity, when he was working at the bottom of a well, to kill him by literally stoning him to death with her own hands. In this case the jury promptly found a verdict of guilty with extenuating circumstances.

Another case of *les circonstances atténuantes* was that of a girl who stole a watch, not, as it was clearly proved, through the pressure of poverty. A periodical remarking on the verdict observed that "no doubt the jury had reflected that if every person in want were to steal, robberies would become deplorably common, whereas for the caprices of the well-conditioned allowances had to be made."

At Isère a man set fire to the loft where his father (a paralytic man upwards of eighty years of age) slept, and fairly roasted him to death. It was remembered by witnesses that the accused had threatened his father in these words: "I would like to see thee roasted like a toad on a shovel" ("Ah, gredin, je voudrais te voir rôtir comme un crapaud sur une pelle"). And he had to the best of his ability redeemed his promise. The jury, struck with admiration at the scrupulous fidelity with which the prisoner had kept his word, returned a verdict of guilty, but with extenuating circumstances.

The above are only a few instances, selected at random as we have said, with which the records of the French tribunals abound. For the eccentricity of the conclusions at which these French jurymen arrived, we do not attempt to account; our own impression being that from the annals of crime it would be impossible to collect circumstances which could more justly be considered as aggravating rather than extenuating in their character. — *Cornhill Magazine.*

ENIGMAS OF JUSTICE.

II.

By George Makepeace Towle.

WE need not emphasize the many examples in which the identity of an accused person has been mistaken by positive and honest witnesses. Those who are old enough to remember the trial of Webster for the murder of Dr. Parkman will recall that several witnesses of the most perfect good faith swore very positively that they saw Dr. Parkman on Washington Street, in Boston, at three o'clock or thereabouts, on Saturday afternoon, when it was proved, and appeared afterward by Webster's confession, that Dr. Parkman had ceased to live before noon of that day.

A singular case of mistaken identity occurred not very long ago at the Old Bailey Court in London. A young man was arraigned for a serious crime. It was alleged that the crime was committed on a certain day, which we will say was the 10th of March. A number of persons swore positively that the prisoner was the criminal, and a very strong web of evidence closed around him. The identity at least seemed fully proved. The prisoner, who defended his own case, did not cross-examine the prosecution witnesses; and when the case against him was closed, he announced that he had no witnesses to call. He simply requested the judge to order the records of the court for the 10th of March (the day on which the crime was committed) to be produced. It then appeared that on that very day he was being tried at the Old Bailey for another offence, of which, by the way, he had been acquitted. This indisputable proof of a perfect *alibi*, of course, put an end to the case against him, and he was at once discharged.

The illustrations of the various phases of circumstantial evidence are, of course, almost numberless; and we can only select here and there one worthy of study for some peculiarity of incident or character, remarkable either for rarity or mystery. Two cases entirely dissimilar, yet both putting into bold relief the bearing of indirect evidence, merit brief narration. Motive to commit a crime, as has often been said, is difficult of measurement, since crimes have frequently been committed from what appear to the ordinary mind very inadequate motives. The murder of Madame Pauw in France, some twenty years ago, shows, on the other hand, how a conspicuous and powerful motive, in the absence of other conclusive evidence, sometimes puts justice successfully upon the track of a criminal. Madame Pauw was a widow with three children, who had an intimate friend in the Comte de la Pommerais. This titled personage was in need of money, and had a head for scheming. He planned a fraud upon eight insurance companies, and persuaded the poor widow to become his instrument in it. Her life was to be insured; she was then to feign a dangerous illness; and while lying apparently in a serious strait, the insurance companies were to be persuaded to change the life-policies into annuities. The Count advanced the premiums; the policies were made out, *transferable by indorsement*. Madame Pauw was then induced to indorse them to him, and also to make a will in his favor. The next thing was for the widow to pretend to fall ill, which she did; but instead of the policies being transformed into annuities, the poor lady died! It was a grave blunder of the count to tell the doctor when he came in, that Madame Pauw had fallen downstairs; for not only was this denied by abundant testimony, but the *post-mortem* examination betrayed the presence of poison as the cause of her death. At once thereafter the Comte

de la Pommerais came into the possession of the half-million francs which accrued under the policies and the will. Here occurred a singular incident in the trial. It is clear that if the Count had intended the fraud in earnest when he proposed it to Madame Pauw, and really designed to obtain for her an annuity by its means, thus securing to himself a life-income, he could have had no serious motive for killing her. And this was actually his defence against the charge of murder. He declared, and tried to prove, that he really meant to carry out the fraud, and that Madame Pauw's death was a catastrophe and an accident. Thus, in trying to clear himself of the grave crime, he coolly confessed the lesser. But the proof contradictory of his case was too clear; he was convicted and duly executed.

It has been said that a very important link in the chain of circumstantial evidence is that of opportunity. To show want of opportunity, that is, an alibi, is an absolute answer to the strongest indictment, and produces a fatal flaw in the chain. Opportunity to commit the crime must be either proved outright or inferred from the most conclusive presumption. There never was a more striking case illustrative of this than that of the young Scottish girl, Madeleine Smith, whose trial at Glasgow may easily be remembered by many of our readers. It may be said that the trial was one of the most interesting in British judicial annals. Madeleine Smith had engaged herself to a young Frenchman named L'Angelier. It was clearly proved that she had tired of him, and was anxious to disentangle herself from the connection. But L'Angelier clung to her, and refused to be rebuffed. There is no doubt that on several occasions, just previous to his visits, she had purchased poison; or that, always after these visits, he was seized with severe illness. On the 17th of March Madeleine returned to her house in Glasgow, after a brief visit to some friends. The next day she purchased some arsenic, "to kill rats with," as she said. The arsenic bought, the next thing she did was to write to L'Angelier inviting him to tea on the evening of the 19th. He happened to be out of town, and did not, therefore, get the note until it was too late to accept the invitation. She wrote again on the 21st, urging him to come the next evening and saying: "I waited and waited for you, but you came not. I shall wait again to-morrow night, same time and arrangement." This note L'Angelier received. So far the proof was clear. It was also in evidence that he started from his lodgings in excellent health on the Sunday evening, and that he sauntered in the direction of Madeleine's house: this was at nine o'clock. Twenty minutes later, he called on a friend who lived but a short distance from her residence. Here the evidence utterly failed, and left a blank for four hours and a half. At two in the morning, L'Angelier was found at his own door, writhing and speechless; and in a few hours he was dead. The autopsy betrayed a large quantity of arsenic in his body. But, between twenty minutes past nine and two, no human being could depose to having laid eyes on him. Madeleine herself denied that she saw him at all that night; nor was the slightest proof forthcoming that she did. She was put on trial for the murder of L'Angelier; and although her desire to get rid of him, — that is, a motive; her purchase of arsenic, — that is, possession of an instrument similar to that which was found to have been fatal; and her notes of invitation, — that is, a fact from which a strong probability of a meeting between them that night was established — were fully proved, the absence of all proof of actual opportunity to commit the deed availed to save the prisoner's life. She said, in effect: "I was at my house, and can prove it; he was not there, for I defy you to prove it; therefore I have an *alibi*." The Scottish verdict of "not proven" set her free, but did not clear her of the stain of deep suspicion.

The story of the Danish pastor, Sören Quist, is one of the most touchingly tragic in judicial records, and once more exempli-

fies Paul Féval's complaint that justice is sometimes too quick to seize upon appearances, and neglect the supposition of fabricated evidence. Sören was a clergyman of middle age, settled over a small primitive parish in Jutland. Pure and irreproachable in character, genial, generous, and devout, he was cursed with a fiery and ungovernable temper; yet he was universally revered, and varied his pastoral cares, as is not infrequent in Scandinavian countries, by cultivating a modest farm. He had a daughter, gentle and comely. A farmer in a neighboring village, one Morten Bruns, well off but of bad reputation, sought this daughter in marriage, but was rejected both by her and by the pastor. Soon after a brother of his, Niels Bruns, entered the pastor's service as a farm-hand. Niels was lazy, imprudent, and quarrelsome, and frequent altercations occurred between him and his master. One day Sören found the man idling in the garden. A quarrel ensued, when the pastor, his hot temper getting the better of him, struck Niels several times with a spade, saying, "I will beat thee, dog, until thou liest dead at my feet!" The man then jumped up and ran off into the woods and was not seen again. The rejected suitor, Morten, after his brother had thus mysteriously disappeared, boldly charged the pastor with the crime, and offered to produce convincing proofs of the fact. Sören was therefore arraigned, when the following evidence was arrayed against him. A man testified that, on the night after the quarrel, he saw the parson, in his green dressing-gown and a white nightcap, digging hard in the garden. It was also proved that, a search having been made in the garden, a body had been unearthed, undoubtedly that of Niels, with his clothes and ear-rings upon it. A servant-girl testified not only to having heard Sören repeatedly threaten to kill Niels, but to having seen the parson go out into the garden on that fatal night in his green dressing-gown and nightcap. Still stronger evidence was produced to the effect that the parson had been seen, in his green dressing-gown and night-cap, carrying a heavy sack from the wood near by into the garden. The chain of evidence was apparently complete against Sören; and the poor pastor now sealed his own fate by declaring that he believed that he had killed Niels, though unconsciously. He stated that he was wont to walk in his sleep. He had found texts, written sermons, and visited his church while in a state of somnambulism. He must, therefore, have found the man dead in the wood while thus unconscious, and buried him while in this condition. To be brief, Sören was found guilty and executed.

Twenty years after Niels Bruns turned up again, alive and well, grown now old and gray. He recounted how his brother Morten (now dead) had concocted a plot to fasten the crime of murder on the pastor, in revenge for the rejection of his suit. A body had been disinterred and dressed in Niels' clothes; the dressing-gown and nightcap had been abstracted and used as we have seen, and replaced; Morten, dressed in them, had brought the body in the sack, and buried it in the garden; and then, his plot carried out, he had given Niels a purse and bid him begone, and not to return, or his life should answer for it. Niels had kept out of the way till Morten's death, and now had returned with this terrible tale.

THE SIGN OF THE RAM.

OAKES *v.* SPAULDING. (40 Vermont, 347.)

By Irving Browne.

[*The owner of a ram, knowing its propensity to butt persons, is bound to keep it under safe restraint.*]

I DO not sing of Jason's golden fleece,
Nor of the celebrated Darby ram;
My quadruped is humbler far than these,
And for his curious history I am
Indebted to a volume bound in sheep, —
Appropriate such ram's-horn lore to keep.
One Mrs. Oakes, a humble farmer's wife —
(He had but one) — lived in the fair Green State,
And helped her husband in his toilsome life
By dairy work from early morn till late;
She brought the cows from pasture every night,
And milked them all, and thought her labor light.
One Spaulding, owning an abutting field,
Harbored therein a ram of temper high,
Which never would to soft persuasion yield,
But causelessly at any one would fly,
Demolish him with capital Ionic,
And stand above him with a grin sardonic.
One evening unsuspecting Mrs. Oakes
Had gathered in her moollies from the field,
When Spaulding's ram comes rambling by, and chokes
With rage, and threateningly his horns doth wield,
Then dashes 'gainst the busy woman, — slam! —
This terrible assault-and-battering-ram!
From what direction came this fierce attack
Is not recorded in the law report;
But I infer it must have been the back,
Because, if from the front, she had a fort
Of strong defence in gingham apron light
With which she could have "shoo'd" him into flight; —
Weapon provided by kind Providence
Against attacks of venomous wild beast,
Of which by pristine disobedience
The woman's danger is so much increased;

Ampler provision for such crying want
Than Mother Eve's traditional fig-leaf scant.
And so I cannot surely tell which way
The lady lay upon the grassy ground;
Like Knickerbocker's hero, I can't say
She there a providential cushion found;
Yet so much I may confidently tell, —
"Butter-side up" undoubtedly she fell.
Now had she been a city lady fine,
And worn a "dress-improver," *i. e.*, "bustle,"
Which gives to scrawny torsos Hogarth's line
Of beauty, she might well have stood the tussle;
But there was naught to break the cruel blow,
So she went down like wall of Jericho.
This ram had often tried to butt before —
Perhaps behind — the reporter does not state;
And witnesses their testimony bore
His owner had a knowledge intimate
Of this sad vice, yet did not tether him,
But left him loose to imperil life and limb.
Her injuries the report does not disclose,
Whether in chief of body or of mind,
But twelve good men unanimously rose,
And fifteen hundred dollars did they find;
And this means much, for in Vermont a dollar
Looks big as cart-wheel or a horse's collar.
But few ram-cases scattered up and down
Lie in the books; I know there 's one in Maine,
About a ram on poor-farm of the town,
For which the liability was plain;
But there is far less interest in these
Than in this case of Oakes and Aries.

LAW INSTITUTE.

UNION COLLEGE OF LAW, CHICAGO.

By James E. Babb.

THROUGH the liberality of citizens of Chicago, and more especially of the Hon. Stephen A. Douglas, the University of Chicago was opened for instruction in the fall of 1858. The Union College of Law, conceived and liberally patronized by the Hon. Thomas Hoyne, was founded in 1859, as the Law Department of the University of Chicago. At Metropolitan Hall, on Sept. 21, 1859, the Hon. Thomas Drummond presided at the dedicatory exercises of this Law School, and the now venerable David Dudley Field delivered an address which, indeed, dignifies the school's origin. The prophecy then made by the speaker, that "whatever light is here kindled will shine through township and village, from the Alleghany to the Rocky Mountains," is already reality.

There were but three Law Schools west of the Alleghany Mountains before this one, so far as the writer knows; namely, one at Cincinnati, Ohio, founded in 1833, one at Louisville, Ky., founded in October, 1846, and one at Lebanon, Tenn., founded in 1847. The Law Department of the University at Ann

Arbor, Mich., was established in the same year as the Law Department of Chicago University.

Oct. 6, 1873, the Law Department of the University of Chicago passed under the joint management and patronage of the University of Chicago and the Northwestern University, and assumed for the first time its present name, — Union College of Law. This Law School continued under such joint management until the suspension of the University of Chicago at the end of the school year 1885–1886. Since then it has continued in connection with the Northwestern University, — probably the largest University in the West, — of which the Rev. Joseph Cummings, D.D., LL.D., is President.

The Presidents of the different Boards of Trustees of the Union College of Law have been Judge Thomas Drummond, a graduate of Bowdoin College in 1826, and for thirty years a Judge of the United States Courts in Illinois; the late Hon. Thomas Hoyne, LL.D., a truly great citizen, a philanthropist, a publicist, a public servant, and an able lawyer; and Judge Oliver H. Horton, a worthy successor to his distinguished predecessors, having long been the law partner of Thomas Hoyne, and being now a Judge of the Circuit Court of Cook County, Ill., sitting as a Chancellor.

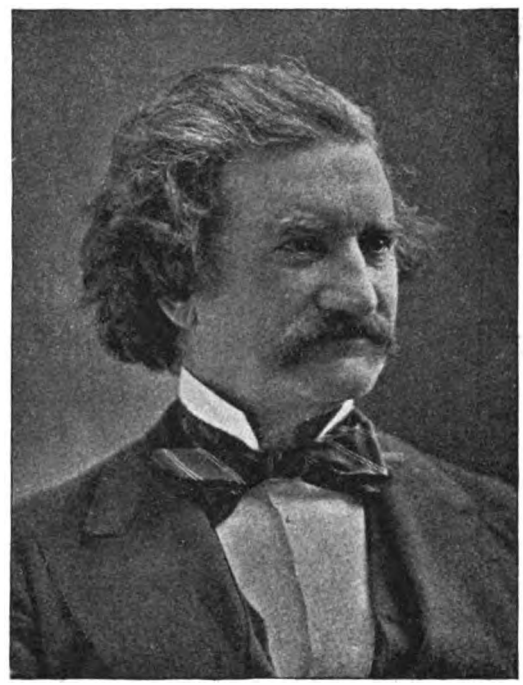
During its whole history the school has had but one Dean, — Judge Henry Booth, LL.D. He was born at Roxbury, Litchfield County, Conn., in 1818, and was graduated at Yale College in 1840, ranking among the first in a class of ninety-nine. In 1844 he was graduated at the Law School at New Haven, Conn. Thence, until 1856, he was occupied chiefly in the practice of law at Towanda, Bradford County, in Pennsylvania, where he held the office of Prosecuting Attorney. From 1856 till 1859 Henry Booth was a Professor in the State and National Law School at Poughkeepsie, N. Y., and in 1859 took charge of the Law Department of Chicago University. Since then, except while upon the bench, he has practised law continuously, so far as his duties as instructor would allow. For a long time he gave instruction in Public and International Law in the Collegiate Department of the University of Chicago. In 1870 he was elected Judge of the Circuit Court of Cook County, to which office he was re-elected in 1873 for a term of six years. During his whole life in Chicago he has been a laborer in various ways for social and educational improvement, having rendered services, in the founding and patronage of the Chicago Athenæum, which alone entitle him to the truly graceful crown of a social benefactor. In the performance of his various duties, he has ever been prompt, industrious, faithful, and efficient. No man has a higher sense of honor than has Judge Booth. During his nine years of service as a Judge, he would not accept compensation for the performance of his duties as an instructor. The writer cannot more fitly characterize him as an instructor than was done by the graduating class of 1861 in a resolution adopted by them, which reads as follows: —

"*Resolved*, That Professor Booth will always be held in grateful remembrance by us for his high moral teachings, his thorough and systematic instructions, his widely expanded views, and his learned and lucid exposition of the law, as well as for the untiring constancy and cheerful patience with which he has labored in our behalf."

Next in length of service among the instructors of this school is the Hon. Harvey B. Hurd, whose connection therewith began in 1863. He has long been known as an able member of the Chicago Bar. His preparation and trial of causes has been characterized by a thoroughness which has given him a reputation for great strength in legal combat. He has been identified with many improvements in legislation. He revised the Statute Laws of the State after the adoption of the Constitution of 1870. His chief characteristic as an instructor is his searching questioning of the students. He treats the pupil as he would a witness upon cross-ex-

amination. He states practical cases which reveal every possible distinction concerning the subject matter in question, and asks the learner to apply the law and give the reasons. He enjoys his duties as an instructor, and to retain his connection with the school has made what most men of his wealth and professional and business duties would consider great sacrifices.

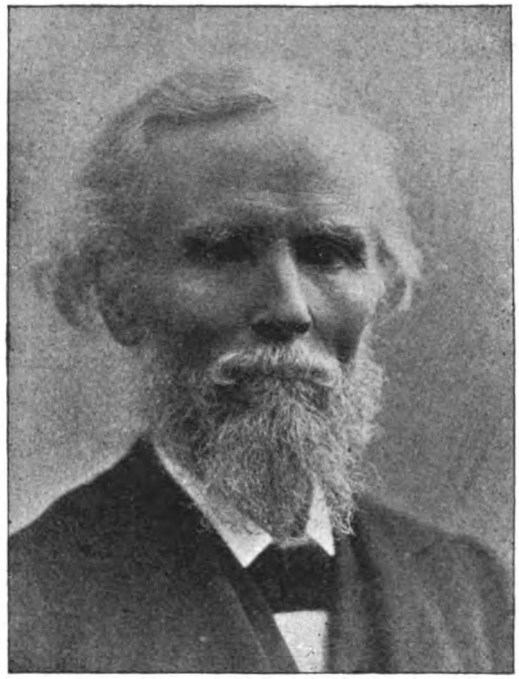
Nathan S. Davis, M.D., LL.D., has lectured in the school upon Medical Jurisprudence since 1873. He received the degree of M.D. when twenty years of age, and has contributed to medical journals all his life, having edited "The Annalist: A Surgical Journal;" "The Chicago Medical Examiner," and until recently was the editor of the "Journal of the American Medical Association." He has written a "History of the American Medical Association" and works entitled "Clinical Medicine" and "Davis's Practice of Medicine." Most of the time since 1849 he has held a Professorship, and is now Dean of the Chicago Medical College. Dr. Davis was the founder and has been President of the American Medical Association, and is the only man in the United States who has had the honor of presiding at a meeting of the International Medical Congress. His gratuitous services to the health and morality of Chicago have been large. During all this time he has had a very extensive medical practice. Few lives have been more useful than his.



THOMAS HOYNE.

The next of the instructors in length of service in this school is Marshall Davis Ewell, M.D., LL.D. who was born at Oxford, in Oakland County, Mich., on August 18, 1844. He was educated in the public schools of Michigan and at the Michigan State Normal School, from which institution he was graduated in 1864. In 1868 he received the degree of LL.B. from the Law Department of the University of Michigan, and in the same year was admitted to the bar by the Supreme Court of Michigan at Detroit. He practised law in Memphis, Tenn., in 1868–1869, and at Ludington, Mich., from 1870 to 1875. In 1874 he was elected Judge of the Probate Court of Mason County, Mich., and in the following year removed to Chicago, where he has since been principally occupied in legal authorship and as an instructor in Union College of Law. He is now, in addition to his duties in this Law School, engaged in the general practice of law. In 1879 the University of Michigan conferred upon him the degree of LL.D., and in 1884 he received from the Chicago Medical College the degree of M.D. During the last few years Professor Ewell has given considerable attention to metrology and microscopy, and now gives instruction upon those subjects in the Northwestern University. He has been elected a Fellow of the Royal Microscopical Society, and is one of the distinguished corps of non-resident lecturers in the Law Department of Cornell University. He has written much for different law peri-

odicals. His work on "Fixtures" is the standard treatise upon that subject. His "Leading and Select Cases on the Disabilities incident to Infancy, Coverture, Idiocy, etc., with Notes," is the chief repository of the learning upon that branch of the law. He has edited "Evans on Principal and Agent" and "Lindley on Partnership." He re-reported and edited a number of the Illinois Reports, and co-operated in the preparation of a "Digested Index to the Minnesota Reports." He has edited "Blackwell on Tax Titles" and "Washburn on Criminal Law," and prepared a series of three volumes, entitled "Ewell's Essentials of the Law." Vol. I. contains the essentials of Blackstone, Vol. II. the essentials of Pleading, Contracts, and Equity; Vol. III. the essentials of Evidence, Torts, and Real Property. His most recent work is "Ewell's Medical Jurisprudence."



HENRY BOOTH.

Professor Ewell became connected with the school in 1877, and instructs almost wholly in the Junior Class. So far as the writer is able to judge, he does not believe that Professor Ewell has a superior in his sphere. He is persistent, exeeedingly energetic, and absolutely relentless in his determination to impart to his students the capacity to define with entire accuracy the fundamental principles of the law. The writer cannot conceive that any one could accomplish such a task more nearly than does Professor Ewell. He is yet young, and the record of his deeds, though ample for a whole life, argues well for his future.

Hon. William W. Farwell, a graduate of Hamilton College in 1837, an ex-Chancellor in Cook County, Ill., has taught Equity Jurisprudence, Equity Pleading and Practice, since 1880. For many years before he became a Chancellor, he had been engaged in an extensive practice at the Chicago Bar. His professional and judicial life qualified him in a very high degree for the discharge of his duties in the Law School. His general reading has been wide. Judge Farwell has secured from every class of students that respect which is due to one of large experience, high moral character, and ripe learning.

Van Buren Denslow, LL.D., was an instructor in this school from 1870 to 1877. He is a finished scholar, with philosophic tendencies. The New York "Nation," vol. xlvii. p. 236, reviewing his recent work entitled "Principles of the Economic Philosophy of Society, Government, and Industry," says that "upon the whole we can sincerely commend this volume to our readers as containing the very best exposition of protectionism, its theory and its facts, its animus and its methods, that is now in existence or that is likely to be hereafter produced."

This school for some time had the services of the Hon. John A. Jameson, LL.D., who was born in 1824 in Vermont, and was graduated at Vermont University in 1846. He sat upon the bench of the Superior

Court of Cook County about twenty years, and edited for some time the "Law Register." He is a master of several languages, possesses literary ability of a high order, and has written an enduring work, now in its fourth edition, entitled "The Constitutional Convention: Its History, Powers, and Modes of Proceeding."

From 1876 to 1879 this school had for one of its instructors James L. High, the author of the works on Receivers, Injunctions, Extraordinary Legal Remedies, all in their second edition, and the editor of the Speeches of Erskine in four volumes. He possesses the very highest elements of character. He has a finished style of English composition, and as a practitioner, as well as an author, he stands in the front rank of his profession.

Hon. Lyman Trumbull, LL.D., taught in this school from 1873 to 1876. All know his career as a member of the Legislature, Secretary of State, and Judge of the Supreme Court of Illinois, and afterwards as a member of the House of Representatives, a United States Senator for eighteen years, and a great constitutional lawyer.

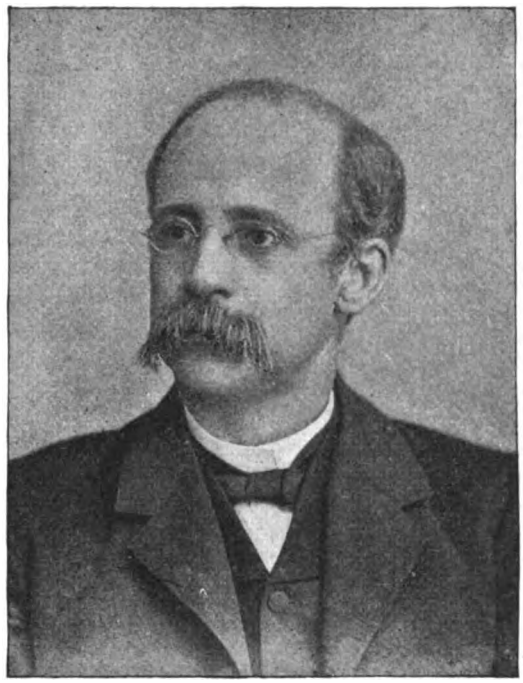
During the years 1873 to 1876 Hon. James R. Doolittle, LL.D., was an instructor. He was graduated with first honors at Geneva College in 1835, won a reputation for judicial ability in Wisconsin before 1857, thereafter represented that State in the United States Senate with distinction for twelve years, since which time he has been a noted constitutional lawyer.

The names of the others who have instructed in this school are Judges John M. Wilson and Grant Goodrich, James B. Bradwell and Gen. R. Biddle Roberts, and John Alexander Hunter and Philip A. Myers.

During the whole history of the Union College of Law, its students have from time to time been favored with the learning and eloquence of the Chicago Bar, in lectures by Emory Storrs, Leonard Swett, the present Chief-Justice (Melville W. Fuller), and many others.

The law schools of this country, during their century of existence, have won for themselves precedence, as a means of legal education. This, though previously settled in fact, was in 1879 finally, formally, permanently determined by the recorded authorized voice of the American bar, — the American Bar Association, speaking through its Committee on Legal Education. Other questions, however, now confront law schools, which are being discussed with zeal: How is instruction to be imparted? Shall it be by lecture or by recitation? Shall the students be taught from the basis of text-books or decided cases? These are questions which will certainly be settled by the second centennial of law schools in this country, and the writer thinks before then. By lecture or by recitation? Has it or has it not been pretty well settled by the course of instruction in schools other than professional, that it is well for a student to learn from text and by recitation the terminology and elementary principles of a science before attempting to learn from lectures? Does or does not the experience of every man who has completed a collegiate and professional course teach him that such is the proper mode of instruction? Leading cases or text-books? What is to be taught? The law, undoubtedly. Where is it to be found? What are its sources and evidences? While decided cases are the chief sources and evidences of the Common Law, they are by no means exclusively so. No one thing is more fully interwoven among or established by the decided cases, ancient and modern, than that text-books are both sources and evidences of the Common Law. (Ram's Legal Judgment, Townshend's ed., pp. 150–173.) The authority of text-writers has actually overturned that of decided cases. (Ibid. p. 169.) The Common Law having been thus established, we cannot afford to disregard any of its declared sources of authority. To the extent we do so, we become one-sided. While decided cases clearly have precedence as authority,

it does not necessarily follow that they are, alone, the best means of instruction. The supporters of that method say that "no man ever learned chemistry, except by retort and crucible." (American Law Review, vol. xxii. p. 673.) This expression of a learned author is a fair touchstone of the question. All admit that the results of retort and crucible, properly used, are higher evidences of chemical laws than the statement of any text-book. Yet have the teachers of chemistry cast away the text-books, and confronted their beginners with retorts and crucibles? When the writer studied chemistry, they had not, nor have they yet, so far as he knows. True, along with the text-books pupils are taught to make experiments to test and elucidate the statements of the author.



MARSHALL D. EWELL.

It is submitted that if the analogy above quoted is a proper one, — and it probably is, — it argues in favor of the use of text-books as a basis in legal education, with sufficient attention to cases to explain the text and teach students the science or theory of the system of precedent to such an extent that they may be able to analyze accurately a decision and judge of its authority according to Common Law criteria.

The writer, however, prefers to support the same conclusion by the universal experience of the practising bar. When the practitioner desires to investigate the law upon a subject with the general principles of which he is not familiar, he goes first, not to the cases, but to an approved author to learn what reasonings and principles have been suggested as applicable. Then he searches digests and reports. Why should not other students do likewise? Or is the bar in the wrong, and a few instructors right?

Upon all these differences as to methods of instruction, it is believed that the Union College of Law has occupied wisely conservative ground. It makes daily recitation from approved text-books the basis, supplemented by lectures from time to time as the students become sufficiently acquainted with the elementary principles to profit by an exposition of their relations and interdependence. All the while the students are accustomed to the exposition of particular cases, and are taught how to study, analyze, and judge them, also how to draught the papers used in the practice of law. No doubt, if the school could be sustained by the bar and the public in its desire to extend its course of instruction to three years, the third year would, to a very largely increasing extent, be taken up with lectures and original work in decided cases.

The author of the article upon the Boston University Law School in the February number of this publication is decidedly in error in his statement that that Law School was the leader in establishing the systems, in 1872 and 1877 respectively, of examinations for promotion and graduation, and of recitations from text-books. The catalogues of the Union College of Law and the news-

paper files in Chicago show conclusively that both those systems have been in vogue in the Union College of Law, as fully as they are at the Boston School, ever since the school was established, in 1859.

The catalogues of the Union College of Law have from the beginning announced the course of study as two years of nine months each, though, in fact, it is believed that for a while students were graduated in one year. On completion of the course the degree of LL.B. has been conferred, and the diploma of the school has admitted to the bar in Illinois since May 12, 1863.

Until the commencement of the school year 1873–1874, no definite course of study was announced. With a disclaimer of a fixed adherence thereto, many text-books were mentioned under the several heads or subjects of "Commentaries," "Law of Real Property," "Equity," "Personal Property, Personal Rights, and Contracts," "Commercial and Maritime Law," "Evidence, Pleadings, and Practice," "Criminal Law," "Constitutional Law and Law of Nations." Beginning with the school year 1873–1874, a fixed course of study was adopted, which in its general features is still in force. The course of study at present is as follows:—

JUNIOR YEAR.

FIRST TERM, — Five Days in a Week.

1st hour, 9 *to* 10 A. M. — Kent's Commentaries. Professor HURD.

2d hour, 4 *to* 5 P. M. — Blackstone's Commentaries and Washburn's Criminal Law. Professor EWELL.

SECOND TERM.

1st hour, 9 *to* 10 A. M. — Kent's Commentaries and Gould on Pleading. Professor HURD.

2d hour, 4 *to* 5 P. M. — Cooley on Torts, and Anson on Contracts. Professor EWELL.

THIRD TERM.

1st hour, 9 *to* 10 A. M. — Greenleaf on Evidence. Professor HURD.

2d hour, 4 *to* 5 P. M. — Anson on Contracts, with the study of Leading Cases. Professor EWELL.

SENIOR YEAR.

FIRST TERM, — Five Days in a Week.

1st hour, 8 *to* 9 A. M. — Chitty on Pleading. Judge BOOTH.

2d hour, 5 *to* 6 P. M. — [Except Fridays] Bispham's Equity. Judge FARWELL.

2d hour, 5 *to* 6 P. M. — [Every Friday] Lecture on Medical Jurisprudence. Dr. DAVIS.

SECOND TERM.

1st hour, 8 *to* 9 A. M. — Washburn on Real Property. Judge BOOTH.

2d hour, 5 *to* 6 P. M. — [Except Fridays] Story's Equity Pleadings. Judge FARWELL.

2d hour, 5 *to* 6 P. M. — [Every Friday] Lecture on Medical Jurisprudence. Dr. DAVIS.

THIRD TERM.

1st hour, 8 *to* 9 A. M. — Washburn on Real Property. Judge BOOTH.

2d hour, 5 *to* 6 P. M. — Cooley's Constitutional Limitations. Judge FARWELL.

BOTH YEARS.

Saturdays, 8 *to* 10 A. M. — Senior Moot Court. Judge BOOTH.

Fridays, 2 *to* 4 P. M. — Junior Moot Court. Judge EWELL.

Besides these text-books the students are advised from time to time in regard to a parallel course of reading in other standard legal works.

From time to time, and more especially during the Senior Year, lectures are delivered by members of the Faculty and the Chicago Bar. The writer knows that appreciative students acquire from their Moot Court practice a complete mastery of all the means of thorough and exhaustive search for, and analysis of authorities.

Nor is the study of leading cases omitted. The student who receives what is taught him will be able to expound from memory many more of the leading cases of the law than are contained in Smith's volumes of leading cases. Practice is also given in drawing various legal papers.

From various statements in the different papers that have hitherto appeared in this

periodical upon different law schools, it seems to be considered in some cases that no examinations were required at all, and in others that none worthy the name were required as a condition to graduation in law in this country a quarter of a century ago. While that may have been true in their own history, it has not been true at the Union College of Law. The Chicago "Daily Tribune" of Monday, July 1, 1861, announced the following: —

"The commencement exercises in the Law School this week will be as follows: —

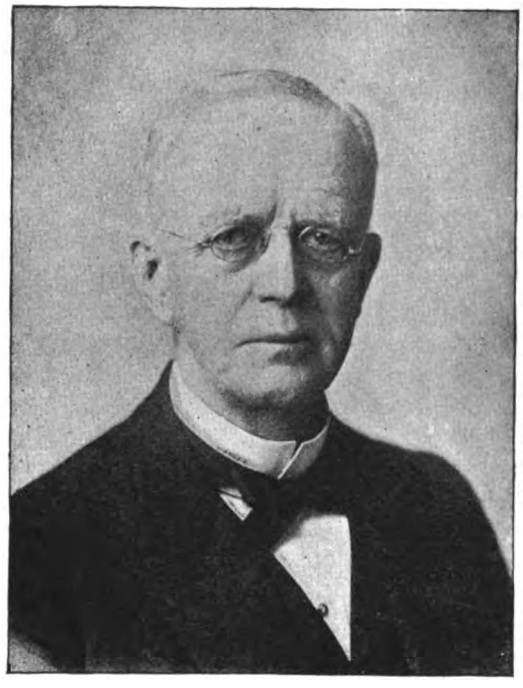
"An examination of students on Constitutional Law, the Law of Nations and Real Estate, Monday, 9 o'clock A. M.

"Oratorical exercises, Monday, 3 o'clock P. M.

"Examination in Pleadings and Evidence, Tuesday, 9 o'clock A. M.

"Extemporaneous debate on the Constitution of the United States, Tuesday, 3 o'clock P. M.

"Examination in Contracts, Commercial Law, Equity, Criminal Law, Personal Rights, and Domestic Relations, Wednesday, 9 o'clock A. M."



LYMAN TRUMBULL.

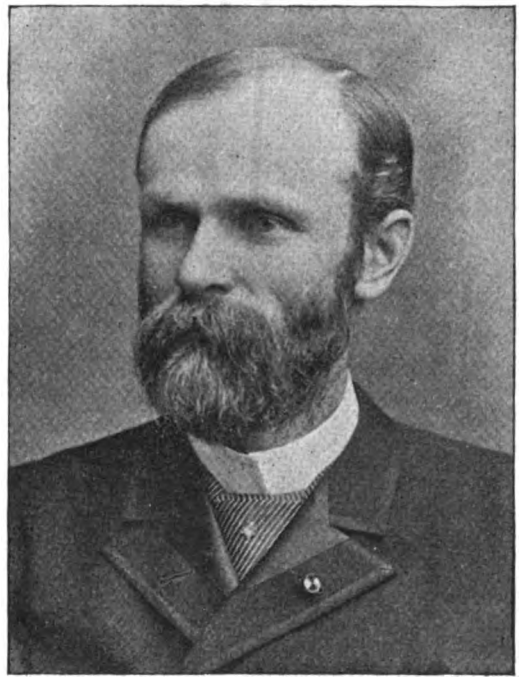
Such a list of subjects and the times assigned to each would assure an examination which would be a very good test of competency. How rigid those examinations were, appears in the same paper, of date July 1, 1862, where it is said, —

"The questions submitted to the students during the morning session were only upon National and International Law and Real Estate. . . . The intricate questions as to real estate were extremely well handled. In connection therewith, the various modes of holding property, from feudal days down to our own times, were closely examined and contrasted, and the peculiar relations of lessors, lessees, tenants for life, tenants at will, and the various modes of conveyancing, fully considered. The multitudinous questions arising out of wills, divorces, and the rights of husbands in the property of wives were next entered into. The subjects of dower and jointure were treated. . . . The afternoon session of the school was devoted to examination of the students on pleadings. Actions of assumpsit, replevin, covenant, trespass on the case, detinue, and tort were explained. In reference to trespass on the case, especially, there was a very lengthy questioning which resulted very satisfactorily, all the students seeming to be well posted in these matters. Actions of trover were then elucidated. Mortgages then came in for their share of attention. Their nature was explained, and the relative positions of mortgagor and mortgagee clearly defined. Redemption to be made and how effected by equity after the property had become irredeemable at Common Law. . . . Foreclosure, its nature and effects, and how sales of property were made under it, . . . were explained. . . . The exercises were exceedingly interesting, and manifested an unusual degree of proficiency."

Examinations upon other subjects were described with the same minuteness. From the quotations above, it appears that this school at that early day conducted examinations as a condition of graduation as thoroughly as is usual at the present time.

The students have access to the Law Library of the Law Institute, by permission of its managers. They have no need of any more library than they find there. Although

this Library was completely destroyed in the great fire in Chicago in 1871, it has since then grown to the number of about twenty-two thousand bound volumes,—doubtless one of the largest Law Libraries in this country. It increases by its ordinary purchases at the rate of about one thousand volumes annually. Through Julius Rosenthal of the Chicago Bar, the librarian of the Law Institute, we received the picture which appears at the beginning of this article.



JAMES L. HIGH.

Five prizes are offered to students at this school as rewards of merit. The Horton annual prize of fifty dollars is awarded to the member of the graduating class, who is adjudged to have prepared the best thesis or brief on some legal question. For the thesis second in excellence produced by a member of the graduating class, the Faculty offer a prize of twenty-five dollars. For the best general proficiency in the Senior Class, the Faculty offer a prize of fifty dollars. Also for the best general proficiency in the Junior Class the Faculty offer a prize of twenty-five dollars. The Faculty also offer a prize of fifty dollars for the best oration delivered at Commencement, to be awarded by a committee sitting in the audience.

April 14, 1888, an Alumni Association was formed, which has since issued a catalogue of the Alumni, Officers, and Instructors of Union College of Law.

About eight hundred and seventy-six students had been graduated at this school up to and inclusive of the graduating class of 1888. The class of 1889 will bring the number of graduates almost up to one thousand. Three hundred and ninety-five of those graduates are here in Chicago. Four of those in Chicago are now upon the bench, one of them, Gwynn Garnett, being Chief-Justice of the Appellate Court. Several of them are Masters in Chancery, and one is the City Attorney. Others stand in the front rank of the Chicago Bar, and others still are among Chicago's representative business men.

As in Chicago, so throughout the Central, Southern, Western, and Northwestern States, the graduates of this school have laid its foundations deep in the social fabric. The Law School already feels the strong pulse of this great power.

Chicago is pre-eminently a fit place for a Law School. There are here twenty Judges sitting in State Courts of record (not including Justices of the Peace), and two and sometimes three Judges holding Federal Courts; and even with this great judicial force all cases cannot be tried in a year from the time they are begun.

As certainly as Chicago shall become the heart of the commerce of this continent, so surely will it be the place of great litigations, great lawyers, great judges, great law-writers, great law-libraries, and, in consequence, the place of a great law school,—the Union College of Law.

LAWYERS AND THEIR TRAITS.

OUTSIDE of the profession, at least, the law, as was of old the Gospel, is everywhere spoken against, and still more the lawyers. The denunciations, sarcasms, jokes, and lampoons that have bombarded the profession from the time of Christ's "Woe unto you, lawyers!" down to the very latest newspaper squib, would have demolished any institution not built upon very strong foundations. There is, however, a quite sufficient explanation, both of the persistent vitality of the lawyer's guild and of the incessant attacks upon it. It is attacked, and open to attack, because it is a human attempt at a remedy for human defects, and partakes therefore of the very weakness that it seeks to aid; and it lives and prospers because those weaknesses must have some aid.

It is curious to trace the unfailing series of flings and jeers at the votaries of Themis. The very prevalent present notion that there is a radical opposition between law and equity — that the real effort of a lawyer is to make money for himself at the expense both of client and of justice — is older than the Christian Era; and if it prevails about Christian lawyers, what fearful beings must the heathen ones have been! Not to quote any older matter, however, a mediæval dog-Latin rhyme embodied this doctrine very tersely. It said, —

"Bonus jurista
Malus Christa;"

that is, "A good lawyer, a bad Christian."

The story of Saint Evona of Brittany is to the same point. This saint, it seems, was a lawyer, and a just and devout one, too, or how could he have become a saint? Perhaps it was because he was not much of a lawyer! He went to Rome, the legend says, and besought his Holiness the Pope to appoint a patron saint for the lawyers, who had none. The Holy Father replied that he would be glad to accommodate, but unluckily none of the saints had been in the law business, nor any of the lawyers in the saint business, so that there was no proper person. The good Breton was much troubled at this; but after a long consultation it was agreed that he should select a patron saint by chance, by walking blindfold thrice around the church of St. John Lateran, and by then laying hold upon the first statue he could reach, whose original should be the desired patron. This was done, and having clutched a figure the good Saint Evona cried out in triumph, before he took off his bandage, "This is our saint; let him be our patron." The witnesses now laughed, on which Saint Evona, opening his eyes, discovered that he was holding fast the image of the devil, prostrate beneath the feet of Saint Michael the Archangel. The proceedings to select a patron saint appear to have been stayed here.

Foote, the comedian, appears to have believed in a continuance of this connection, however, if the following story attributed to him is true.

A friend in the country apologized to Foote for not keeping an appointment, by explaining that he had been at the funeral of a deceased attorney of his acquaintance. "What," says Foote, "do you *bury* attorneys down here?" "Why, certainly," said his friend; "what do you do with them in London?" "When an attorney is dead," replied Foote, with great solemnity, "we lay him out and leave the body all alone by itself in a room, with the door locked and the window wide open; and when we go in in the morning he is always gone." "But what becomes of him? Who carries him away?" "Don't know; but there is invariably a strong smell of brimstone left in the room!"

The opposition above alluded to between law and equity does not exist, at least in the legal sense of the terms. Any lawyer will explain that the principal difference is that "equity" is slower, more costly, and less

certain than "law." But doubtless some of the lawyers themselves have said things to justify the popular objections to law and equity. Lord Kenyon once said that a client of Erskine's must go into chancery for a remedy; on which the great lawyer, with a voice and manner full of ridiculous pretence of pathos, said, "Would your lordship send a dog that you loved there?"

This distaste for what may be called feeding out of their own dish has been often otherwise shown by lawyers. When Dunning found that his gardener had been threatening with a prosecution some one who had been tramping over the grounds, "You shall prosecute him yourself, John," he said; "he may walk there until the judgment day before I go to law with him." And the famous old Serjeant Maynard said that if a man should come and demand his coat on pain of a lawsuit if it was refused, he would give him the coat at once. And yet in order to have the picking for themselves of whatever bones there are, the shrewd Themists have set afloat for a scarecrow the proverb, "He that is his own lawyer has a fool for a client;" and in some cases avowedly they have hidden their learning and their proceedings in a mysterious veil of "strange jargoning." Old Hargrave, the conveyancer, for instance, bluntly said, "Any lawyer who writes so clearly as to be intelligible is an enemy to his profession." As if on this principle, the hideous "law French" of the Norman days was kept up in the English courts until human nature could endure it no longer. This law French was a diabolical mixture of English, French, and Latin, jumbled together into a mess awful beyond description. Here is an extract from a charge to a grand jury by Sir George Croke in the seventeenth century. In this the knight uses no Latin, but makes a very good piece of lingo with French and English only. He observed, "Car jeo dye pur leur amendment, ils seant semblable als vipers laboring pur eat out the bowels del terre which brings them forth."

The instinct for fighting and quarrelling which the phrenologists call combativeness, and which is one of the most powerful and universal instincts of men, and beasts too, has been the great ally of the legal profession. It has withstood alike the ceaseless drain of the lawyer's bill, and the slow tortures of the delays of justice, sometimes for many generations. An English chancery suit about some land, between the heirs of Viscount Lisle and those of Lord Berkeley, was begun under Edward IV., and remained in court one hundred and ninety years. It was never decided, after all, but was taken out of court by a compromise. Two free and independent Britons, named Narty and Duncan, some time ago spent over ten thousand dollars in a chancery suit to decide which should paint a certain board and whitewash a certain sign. In New York State, not many years since, there was a suit on a note for $25, which was in court three years. The maker had eventually to pay the note and interest and *eight hundred dollars' costs* beside.

Law modifies lawyers. Many handicrafts distort or exaggerate some part of the body; the like happens even in the fine arts. There is undoubtedly a strong tendency in the profession of the law *by itself* to render its too exclusive votary dry-minded, ignorant, narrow, pert, and sophistical; a word-catcher, a quibbler, and incapable of considering both sides of any question so as to form a *judicial* decision upon it. This is so true that it has come to be a saying that the best lawyers do not necessarily make the best judges. It must be so. It is impossible for a man to spend his whole life in arguing one side of a question and slighting the other, and yet retain the full faculty of weighing justly both sides. Sir William Jones said, "Law requires the whole man, and admits of no concurrent pursuits." But Chitty, on the other hand, recommends enough "concurrent pursuits" to make up for this exclusion. Chitty remarks that the young lawyer had better "fill up his leisure" with studying "anatomy, physiology, pathology, surgery, chemistry, medical jurisprudence, and police."

Whichever of these recommendations is right, certainly some great and successful lawyers have been startlingly ignorant men. The English lawyers have, perhaps, had the best talent for not knowing anything outside of their own dry arena. As long ago as when Erasmus visited England, in the days of Henry VIII. and Sir Thomas More, he described the English lawyers as "a most learned species of profoundly ignorant men." And in later times the famous Lord Kenyon had not only an ignorance that would have astounded Erasmus, but a genius for showing it in public altogether without parallel.

But whatever the importance of knowing much or of knowing little, there is no doubt or dispute as to the necessity of talking a good deal. An old fellow once said that the way to be a good lawyer is to read all the morning and talk all the afternoon. Old Serjeant Maynard, before quoted, thought so highly of gab in law that he defined the latter by the former, calling it, in the dog-Latin of his craft, *Ars Bablativa*, the art babblative. "Soap the judge and butter the jury," was the advice of another lawyer to a new beginner. By thus lubricating his fellow-Englishmen, it is said that Serjeant Bond used to get a verdict in the words, "We finds *for Serjeant Bond*, and costs." Another old *babblatavist* said, "Keep talking, and say anything that comes uppermost." The talk should be entertaining too. When a young lawyer asked Lord Eldon what was the best book to carry with him on circuit the giant of jurisprudence answered, "Joe Miller."

Perhaps the two things most characteristic of the lawyer are his wit and his fee. The wit, which is much of it satirical, is the natural spark struck out by incessant collision of hard, edgy minds, and the fee is that for which (in one sense at least) the whole of his work is done. It was a fling as old as the seventeenth century, — a pun based upon the coinage of that period, — that "a lawyer is like Balaam's ass; he cannot speak until he sees the *angel*." And the same thought in a modern form is to-day circuiting about the United States in a newspaper pun, to the effect that "a lawyer is strongest when he is *fee-blest*." There are many stories about the extortions of lawyers; one of the keenest of them is that of Serjeant Davenport, who was reproached by his brethren for "disgracing the profession" by receiving a fee so small as to be paid in silver. But he answered with weighty and conclusive terseness: "I took silver because I could not get gold; but I took every farthing the fellow had in the world, and I hope you don't call that disgracing the profession!" — *The Galaxy*.

E MACHINA JUS.

By Leguleius Quidam Acutus, LL.B.

IN the good old days the writing of Latin verses was regarded as the best proof of a genteel education and the highest accomplishment of a public man. It was reasonably thought to require some moderate knowledge of the Latin language and of the laws of prosody, to say nothing of the stock of general knowledge, taste, and fancy that usually if not always went to the task. The graduates of Oxford and Cambridge felt themselves secure here, as in a citadel, against the vulgar herd who pushed their presumptuous way into public life and the House of Commons on no better ground than their party services, or wealth, or perhaps on some vulgar familiarity with commerce or finance, or the upstart science of political economy.

What must have been the feelings of this privileged circle when they learned that some lawless genius had invented a method of making Latin verses that was open to everybody who knew the alphabet, and could count up to ten on his fingers, — by which the rich cockney who had bought a country-house and a seat in Parliament, or the smart attorney who set up for a statesman, or even their own valets and footmen could turn out unlimited hexameters and pentameters of the most correct and the genteelest form, with no other equipment than just half-a-dozen small tables on which the letters of the alphabet were arranged apparently at random! Strange and portentous as the invention seemed, it *worked.* The verses were genuine Latin, grammatically correct, scanning perfectly, and moreover making good sense,— a requirement which, it must be owned, even the universities could not always guarantee in the hand-made verses of their graduates. Moreover, the supply was unlimited; the inventor himself said that his tables were capable of producing more than three hundred thousand different verses, or the equivalent of about fifty Æneids.

This remarkable device has long ago sunk into such profound oblivion that many of my readers may suppose it but a creation of my own fancy, if I do not describe it a little more fully. Besides it is very needful that they should all comprehend its working; for it was this, as I very candidly own, that first suggested to me the invention which the present article is chiefly meant to describe, and which will undoubtedly work a complete revolution in the practice of law and the entire administration of justice.

The "tables" mentioned above were very simple affairs, and less complicated in their operation than the "multiplication table" of our childhood. Six of them answered for a hexameter line, each table producing a word which was also a perfect "foot," — dactyl or spondee as its place on the line required. Five others supplied pentameters in the same way. Each was composed of ten vertical columns and from six to twelve horizontal lines, forming thus sixty to one hundred and twenty squares, in each of which was a letter of the alphabet or a blank. The *modus operandi* was simple in the extreme; like a modern code of procedure, it was adapted to the meanest capacity. You had only to write down the first six digits in any order you chose; thus 3, 5, 1, 4, 6, 2, or 4, 1, 3, 2, 6, 5. The arrangement being absolutely indifferent, and the six digits representing the six tables, it is evident that an almost unlimited number of combinations may be formed. To this, indeed, the poet is indebted for the pleasing variety which constitutes the charm of his poem. Having fixed his digits, he then proceeds to construct the first word of the line from the first table. The proper digit being 3 (in first row above), he counts the first letter in that table (at the upper left-hand corner) as 4, the next as 5, and so on up to 9. The ninth letter will be *m*, which will therefore constitute the first letter of the poem. (The inventor is careful to tell the poet to write it with a capital, evidently foreseeing that his tables may be used by many to whom little conventionalities of that sort are yet unfamiliar.)

To find the second letter, he counts nine again from his *m*, and finds an *a*; then nine more to an *r*; and so on till he has made out the word *martia.* If he had chosen the second rank of digits and begun with 4, his word formed from the same table in the same way would have been *aspera.* In both cases the last count of nine would land him in a blank compartment, and thus warn him that the word was already complete, — a very necessary precaution, since the poets who use these tables are not supposed to know the first rudiments of Latin, of grammar, or of prosody.

I will not bore the reader by going through the six tables to construct the entire line. The order of digits first given above (and

selected quite at random, *currente calamo*) produces from these tables by the above method, —

Martia damna palam producunt prœlia dira, —

a line quite unexceptionable either to parse or to scan, and conveying quite as much meaning as the average of modern verse; though the only mental operation employed in forming it was the slightly monotonous one of counting from one up to nine.[1]

I doubt not that any legal reader whose patience has followed me through this description of an ingenious though long-forgotten device, has already perceived the possibilities with which it is pregnant, and anticipated the invention I am about to announce. In that case, while I feel all the generous glow of an author's soul in anticipating his sympathetic response, I must at the same time remark that the invention itself is already copyright. I have filed a caveat in the Patent Office at Washington to secure to myself the benefits that will undoubtedly accrue from "Tables for the construction of briefs on all questions of law, adapted to the use of either plaintiff or defendant, and brought down to the latest published reports." Perhaps the publication of this article may also be constructive notice of my rights; all of which, I beg to say, are "reserved," — though I acknowledge I have never quite comprehended the legal force of that phrase so dear to English publishers. But it is not in the mere expectation of vulgar profit that I now commit it to the "Green Bag."

My soul expands as I contemplate the future uses of my invention, and the rapidity with which it will enable my professional brethren to advance in the direction toward which they have already been moving for some time past. At once simple and complete, it will revolutionize the argument of cases in all courts, and raise the law from a mere handicraft to the dignity and certainty of mechanical science. If an unknown inventor of the eighteenth century could in eleven small tables of *a*, *b*, *c*, etc., condense all the learning and genius of Latin poetry, and enable a mere child to write hexameters, why cannot the genius of the nineteenth by a like device enable his countrymen, "without distinction of age, sex, or previous condition" to argue questions of law, or advise clients thereon, saving the tedious waste of time and labor that has hitherto been a condition precedent, or the expenditure of precious time in turning the leaves of text-books and digests that has been indispensable to its execution? May not even treatises be written by its aid? It will not indeed be possible to reduce all the questions of law contained in the thirty odd volumes of the United States Digest to a mere dozen of tables. I appreciate the vast extent and infinite complexity of legal science too well to entertain vague dreams of bringing it within the six feet of a hexameter verse. But the principle is the same; and principle, as Lord Mansfield justly remarked (Cowp. 39), is the life of the law, or words to that effect. The principle of my invention, as of that which suggested it, is to reduce the formation of a brief to a purely scientific process, free from all necessity of thought or learning in the attorney preparing it; and in this I humbly submit that I am carrying out to perfection the aim at which our text-writers, digest-makers, and editors of (useful) law magazines have been diligently and more or less consciously striving for a generation past.

Indeed, it is the advance already made in this direction that insures the success of the new method; since it is only the carrying out, and, so to speak, the culmination, of present ones. Who now sits down painfully to think out an argument on a legal question from the principles slowly ripened in his

[1] Even this might have been saved if it had not been the writer's first attempt at actual use of the tables. From their construction, as above described, it will be seen that when the position of the first letter in a desired word is fixed in the upper line of the table, one has only to cast his eye diagonally down and to the left to read the whole word off-hand. The tables themselves may be found, if any one has a curiosity to see them, in any old copy of Bailey's Dictionary, vol. ii. That before me has the imprint of "Third edition, Lond., 1737," and the tables are found under the words *Hexameter* and *Pentameter* respectively.

own mind through laborious years? Who is hampered in accepting clients' cases by the felt necessity of understanding them beforehand? Such scruples are as obsolete as the *lucubrationes viginti annorum* that produced them, and the books of Fortescue and Littleton that were the fruits of such slow processes. Do not the Annual Digests reproduce the entire body of the law with the regularity, though not quite the sameness, of the Almanac, so that a fresh authority may be found for *actio personalis moritur cum persona*, or *nudum pactum non gignit actionem*, without recalling the hundreds of previous authorities to the same point, and even without the necessity of knowing Latin? The young lawyer has only to insert his thumb in the convenient cavity which forms the last great advance in legal science (prior to my own), and he will pull out a juridical plum with the celerity and ease of the celebrated J. Horner, and can say, like him, "What a great [lawyer] am I!" Or if, with that modesty which has always been characteristic of genius, he shrinks from trusting to his own "rule o' thumb," he has only to send his question to a legal intelligence office, with a very moderate fee, and he will receive by return of mail his ready-made brief. Nay, some of our legal contemporaries have even opened such an office on the mutual plan, and by the modest expenditure of a postage stamp he may find in the next issue a selection of briefs to choose from. All these recent improvements show the direction in which American jurisprudence is moving, as they show the immeasurable distance that separates us already from the laborious methods of Kent and Story. It requires only the genius of a — name which the writer is altogether too modest to mention to point out the happy goal to which all these various paths lead.

Briefly, then, I propose very soon to publish, for the benefit of my professional brethren, a series of "Tables" (*ut supra*), modelled as nearly as possible on those for the construction of Latin verses, in which a young lawyer may find, in the left-hand column, arranged under convenient rubrics, every legal term on which a brief will be required in the ordinary course of practice. These are easily ascertained from the Digests aforesaid, or by study of the full-faced type in the Reports of the last improved pattern. To save space, I had thought of combining the minor points under more general ones, or what are known as "principles." But, on reflection, this appears to be a departure from the unity and scientific precision of the plan. There may be differences of opinion upon principles, since they are only ascertained by mental exercises, but each point is determined by its page and number in the Digest. Moreover, it is a worthy object to make access to the bar as easy to all aspirants as possible; and while I would not presume to fix the limit beyond which admission cannot go, I think it may safely be assumed that at least for a generation to come all lawyers will be familiar with the alphabet, and a strictly alphabetic arrangement is therefore preferable.

In the second and third columns of each table will be placed the points and authorities for plaintiff and defendant, respectively. I think this will sufficiently distinguish them. I had thought of printing them in different colors, — such as green for the former, and blue for the latter, — in order to guard against even the possibility of mistake in the rapid transcription of arguments, which I trust will be possible when the profession have learned to use the tables. It is well, too, to consider that under this plan the preparation of briefs may often be left to the young lady who manipulates the typewriter, or, in the hurry of a large practice, to the office-boy, to whom such external marks will be as useful as the skull and bones placed on morphine, etc., is to the druggist's errand-boy. But I am not quite satisfied whether the use of colors would be consistent with that professional etiquette which is one of our proudest inheritances from the mother country.

In one respect only it must be confessed that this great improvement falls short of the theoretical perfection which may even now be foreseen. To make it complete, there should be added columns in which the judges who have to decide cases should find the materials of an opinion as readily and infallibly as counsel can find briefs. To make a separate set of tables for their use would needlessly complicate matters, even if no difficulty were found in uniting the work of the *nisi prius* and the appellate judge, who have occasion sometimes for the same authorities and sometimes for different ones. But the fundamental difficulty is to combine in parallel columns arguments and cases that depend on a different principle of selection. The attorney's task is simple. All that he needs is to know which side of the question he is on. But the judge has a more complicated problem to solve in deciding the case, and still more so in writing his opinion. I am afraid that the number of columns necessary to be added for his use would seriously complicate the tables.

It is melancholy to reflect how selfish motives of this kind, growing out of the interests of men in different positions, may prevent the perfection of great improvements!

CAUSES CÉLÈBRES.

VIII.

VICTOIRE SALMON.

[1781.]

EARLY in the forenoon of the 1st of August, 1781, the well-known wagon of the courier Flambert entered the courtyard of the Panier Fleuri, at Caen. At the sound of the crack of Flambert's whip, the innkeeper, Le Bouteiller, left his work and hastened to assist his countryman in unloading the packages which for ten years he had brought regularly from Bayeux.

On this particular morning Flambert, for a wonder, was not alone. A young girl sprang lightly from the wagon as the innkeeper approached, without stopping to avail herself of the hand which Le Bouteiller gallantly offered. She could not have been more than eighteen years old, and was both modest and very pretty. On her left arm she carried a small bag upon which was embroidered, in red and blue letters, the name "Victoire Salmon."

Thanking Le Bouteiller in a sweet, musical voice for his proffered assistance, the young girl drew from her pocket a half-crown, which she handed to Flambert, and then, perceiving the innkeeper's wife standing in the doorway, she approached her and said:

"Madame, I have come from Bayeux to seek a situation here; I shall be very grateful if you can recommend a place to me."

The kindly, motherly woman felt strongly drawn toward this fresh, innocent girl, and after questioning her in regard to the service she had already been in, advised her to seek employment with one Mademoiselle Cotin, a schoolmistress in the town. She gave her minute directions how to find the house, and Victoire departed upon her errand. Well would it have been for her had she carried out her intention! It is strange what a little thing will sometimes change the current of our lives.

As she was proceeding on her way she passed the door of a carpenter's house. The carpenter was at work, singing gayly; his wife was rocking a cradle, smiling as she bent over her last born. The couple had

such pleasant faces that Victoire stopped and spoke to them. In the course of the conversation the fact that she was seeking for a situation was mentioned.

"Ah!" exclaimed the woman, "I know just the place for you, my dear. The Huet-Duparcs were just asking me if I knew of any one. Go to their house and say I sent you."

"Those Duparcs," interrupted her husband, "are always changing. Do you know, they have had five servants within two weeks."

"Bah!" replied his wife, "they are excellent people, and you will have a good place, *ma mie*. There will be hard work enough, it is true, and plenty of masters, but you will get your living."

Victoire was not afraid of work. She obtained the place and entered upon her duties at once.

The Duclos had not exaggerated when they told Victoire that she would find no lack of masters in the Duparcs' house. There were seven. First, an old man named Beaulieu, the father of Madame Duparc, aged eighty-nine; he was in his second childhood, and more difficult to take care of than an infant. Then there was his wife, who was also very old; the two Huet-Duparcs, husband and wife, aged the one fifty-three and the other forty-six years; their children, the oldest, Jacques Huet, a bad subject of twenty-one years, a daughter of sixteen, and the youngest child aged eleven. To this list should be added three other children absent at different schools, who only put in an appearance during their vacation.

In this family they employed only one servant, who, in addition to the household duties, was also expected to take care of a horse.

It was to this hard task that Victoire Salmon engaged herself, and for which she was to receive the sum of fifty livres a year.

Installed in the house of her new masters, Madame Duparc enumerated to her her daily duties. The first thing in the morning she was to go out for the day's provisions, and among other things was to procure two liards' worth of milk to make gruel for the old Beaulieu, a gruel *without salt*. Madame Duparc insisted upon this point, and it must be ready at precisely seven o'clock. The gruel being prepared, she must accompany the old wife of Beaulieu to Mass at seven o'clock. On her return all the various household duties were to be attended to. She must be sure to feed the horse the first thing in the morning.

"We will lend you a hand, my daughter and I," added Madame Duparc, fearing that the young girl might be frightened by this formidable array of duties.

The next day, the 2d of August, was Thursday. Madame Duparc showed Victoire how to prepare the gruel without salt. Friday and Saturday all went on well.

Saturday, while going for the milk, she bought of a shopkeeper named Lefèvre enough calico to make a petticoat, and a piece of orange-colored cloth for an apron. This small purchase amounted to 21 livres 7 sous, which she paid except a small balance of 2 sous 6 deniers.

Sunday, the 5th, Victoire put on her best clothes; she laid aside her old pair of dark blue pockets, trimmed with white and yellow, and put on a fresher pair of cotton, trimmed with blue and white. She hung the pair she did not wear over the back of a chair in the little room where she slept, on the ground floor near the dining-room.

Monday morning, the 6th, Victoire went out as usual about six o'clock to get the milk for Beaulieu's gruel; but the milkman had not yet arrived, so she returned to the house. She was about to go out again and seek for him when Madame Duparc said to her that she would go and get it herself. In fact, she went out and returned with it. Victoire scoured the saucepan, and received from the hand of Madame Duparc the earthen jar which contained the farina. She added water to the farina, and cooked it under the eyes of her mistress.

The saucepan was already upon the fire when Madame Duparc said to Victoire, "Have you put in any salt?"

"No, Madame," replied she; "you know you told me not to put any in."

Upon this response, Madame Duparc took the saucepan from her hands, went to the sideboard, took some salt from one of the salt-cellars, and sprinkled it in the gruel. When the breakfast of the old man was prepared, Victoire turned it out into a bowl which Madame Duparc held in her hand, and carried it to Beaulieu, who was already seated at the table.

Madame Duparc, her daughter, and her son remained with the old man, and Victoire carried the saucepan to the sink, after having scraped off some of the burned part, which she ate. She was about to clean it, when she was called by Madame Beaulieu to conduct her to Mass, and by Madame Duparc, who wished her to go to market. Victoire left the saucepan without having even time to fill it with water. She accompanied Madame Beaulieu to church. It was then seven o'clock in the morning.

Victoire received, as she departed for Mass, several commissions which occupied her the greater part of the forenoon; she did not return until nearly mid-day. When she entered they told her that Beaulieu had been attacked with colic and vomiting about nine o'clock. They had made him go to bed. Madame Duparc asked her if she could nurse him, or if she should send for a nurse. Victoire replied that she could take care of him without assistance. Thereupon Madame Duparc had the bed of Victoire taken from the little room where she slept and placed in the chamber of old Beaulieu.

The condition of Beaulieu grew rapidly worse. Madame Duparc sent for an apothecary, who applied blisters. All was in vain. The poor old man expired about half-past five in the evening, after frightful sufferings, and without receiving the Viaticum.

As soon as her father was dead, Madame Duparc sent for a nurse to prepare the body for the grave. Victoire was kneeling by the dead man's bedside, praying earnestly.

"The poor man must have died very suddenly," said the nurse.

"It was indeed very sudden," replied Victoire. "Only this very morning he was in his usual health."

The supper-hour came. Victoire prepared the repast. Madame Beaulieu, deeply affected by her husband's death, could not eat. As for the Duparcs, they supped as usual. M. Huet-Duparc, who had been absent since the preceding day, was still ignorant of the misfortune which had befallen his family.

The nurse and Victoire took their places beside the body; the rest of the household slept.

The next morning, Victoire in spite of her fatigue, attended to her usual duties. Madame Duparc approached her, and said sharply: "You are a poor housekeeper, *ma mie;* since Sunday you have worn your new pockets when you have others good enough for every day."

Victoire thought this a strange remark, especially at such a moment; however, without replying, she went to her little room, left her new pockets there, and put on the others, which she found hanging over the back of the chair, where she had left them.

Several hours passed, during which Victoire went on with her work; but so worn out was she from fatigue and want of sleep, that Madame Duparc and her daughter were obliged to make most of the preparations for the dinner.

At half-past eleven, some time before they sat down to dine, M. Huet-Duparc arrived from the country. Victoire had to lead the horse to the stable, unharness him, and feed him. She also had to unpack her master's valise. These duties attended to, she prepared the dining-table. At one o'clock dinner was served.

Seven persons were reunited around the table. The widow Beaulieu, Duparc and his wife, a sister of Madame Duparc, Madame Beaugillot, her young son, and the son and

daughter of Duparc. The latter assisted Victoire in attending upon the table.

While eating the soup, the little Duparc complained of there being something hard in it which cracked between his teeth. Madame Duparc said: "The child is right. I also perceived something which gritted like sand."

The company remained at the table quietly until half-past two. At this time one Fergaut arrived, a shoemaker and a relative of Madame Duparc; this brought the number up to eight persons.

Victoire returned to the kitchen, and ate her dinner. She then prepared to wash the dishes.

Suddenly the young Duparc came into the kitchen, complaining of nausea. Successively six others of the company came and complained of similar feelings. "Ah!" cried Madame Duparc, "we are all poisoned. I perceive here the odor of burnt arsenic."

"That is true," said the shoemaker Fergaut; "it is very noticeable. I can smell burnt arsenic."

Young Beaugillot at once ran to seek M. Thierry the apothecary. On arriving, Thierry found all the family complaining of pains in the stomach and nausea. He inquired what they had eaten. "Some soup," replied Madame Duparc. The apothecary examined the dishes in which the soup had been prepared and served.

"What is the meaning of all this?" said he to Victoire.

She, greatly surprised, replied, "I truly know nothing about it."

Thierry approached the hearth and raked over the cinders. He saw nothing, and perceived no odor.

However, the report was not slow in spreading through the town that the whole Duparc family had been poisoned by their domestic. The sudden death of old Beaulieu was recalled; undoubtedly this servant had poisoned him as well as the others. A crowd gathered before the house; all the friends and all the acquaintances of the Duparcs, drawn by curiosity, entered the house and overwhelmed Victoire with questions, threats, and menaces.

The poor girl, utterly bewildered and worn out by fatigue, sank into a chair in such a state of weakness and terror that she excited the pity of some good souls. They advised her to take a little repose. She yielded to their advice, and let them place her upon a bed which had been prepared for the young Beaugillot. A neighbor's servant brought her a glass of milk and water, which she made her drink.

Poisoned as she was, Madame Duparc related to all the neighbors, friends, and relatives the terrible danger which had been incurred by her family. The *gritty* soup, the odor of burnt arsenic, — she gave all the details with the greatest animation; she conducted her hearers through all the different rooms on the ground floor, going from the kitchen to the dining-room and from the dining-room to the chamber where Victoire was lying in a state of utter prostration.

Reproaches and menaces were showered anew upon the unhappy girl. Tongues cursed and fists threatened Victoire, who, stretched upon the bed, turned toward her assailants her haggard eyes. A friend of the family, a surgeon named Herbert, declared that it was important that the pockets of the servant should be examined. Victoire unfastened the string of her pockets and handed them to Herbert. He found in one of them some money and a thimble; in the other some small pieces of bread, which he took out and carried away without saying a word.

Herbert returned to the salon with these pieces, and showed them to the persons there, pointing out to them some white shining grains of different sizes mingled with the bread. A physician named Dubreuil wrapped these pieces of bread in a paper and took them away with him.

The day passed in this terrible manner. Victoire, allowed no peace even in her bed, decided to return to the kitchen. There, her

head buried in her hands, her elbows resting upon the table, she heard the comings and goings of the curious, who were anxious to gaze upon her. After them, surgeons, physicians, and officers of the law invaded the dwelling. Madame Duparc, who did not appear to suffer from the effects of the poison as the others did, related for the hundredth time the circumstances of the crime.

At this recital Friley, an advocate of Caen, cried: "There cannot be a doubt; this wretched girl has poisoned the whole family. The viper must be punished." Friley claimed the honor of arresting Victoire. He knew the procureur du roi and the lieutenant-criminel, and would go to them and denounce her forthwith.

Upon the denunciation of Friley, the procureur du roi sent to the house of Duparc a commissary of police, Bertot by name, with instructions to take the girl Salmon to prison, and place her in solitary confinement. Bertot went in citizen's dress, and concealing his real character, presented himself to Victoire. He requested her to show him the plates which were still unwashed and piled up as she had left them; in one there was still a little of the soup remaining. He shut them all up in a little closet in the kitchen, locked it, and took the key. Then, without making known to her the order of which he was the bearer, he proposed to her to go with him to the house of the procureur du roi, who wished to speak to her.

Victoire agreed to go with joy. At last she should be able to explain. She went out, accompanied by Bertot and one Vassol. Instead of conducting her to the house of the procureur, they led her directly to the prison. Arriving there, Bertot made known to her the order for her arrest, and caused her to be searched by the turnkey, Brunet. In the folds of her petticoat they found a little cloth bag in which was sewed up a small piece of consecrated bread. In the pockets attached to the petticoat, the same already examined by the surgeon Herbert, Brunet found still more of the white powder mingled with crumbs of bread. Bertot carefully wrapped it in a paper, which he sealed and deposited with the clerk of the court. The wife of the turnkey made a still further search, and found under the corsets of Victoire a key which she said was that of her wardrobe.

Victoire Salmon was then placed in solitary confinement.

On the 8th of August the lieutenant-criminel, accompanied by the procureur du roi, the greffier, two physicians, and two surgeons, repaired to the house of Duparc, and made an autopsy on the body of Beaulieu. The medical men declared that they found unmistakable signs of the presence of arsenic in the body, and that death had resulted from the action of that poison.

An examination of the inmates of the house was then had.

M. Huet-Duparc knew nothing, personally, regarding the death of his father-in-law. He had been absent at the time, and did not return until the 7th of August. When he reached home, he was met by the new servant, who took his valise, saying: "Ah! my poor master is dead! If I had known that he would live only so short a time, I would not have entered his service."

Huet-Duparc then added numerous details as to the poisoning of the seven persons at the dinner.

The deposition of the old dame Beaulieu was a short recital of facts already known, but colored by the impression produced by the accusations made against the servant.

These accusations Madame Duparc repeated with increasing warmth, and with the most minute details, especially regarding the poisoning of those at dinner. She passed rapidly over the death of Beaulieu; but whether through involuntary error or through an attempt to conceal the truth, she altered very essentially some facts relative to the old man. She said, for example, — which was false, — that the girl Salmon herself brought the milk which had been used in the gruel. She said — which also was not true, — that the old man felt the first symp-

toms of illness four or five minutes after eating this gruel. She did not say that she herself handed Victoire the jar of farina, and that she with her own hands sprinkled salt in the gruel, — a thing which had never been done before.

Thursday, the 9th, the procureur du roi again visited the house, but nothing new was developed.

The following days twenty-nine witnesses were heard by the magistrate, not one of whom had the slightest personal knowledge of the facts. Three among them testified as to the searches made upon Victoire.

Friley, the advocate, said that he found upon the bed where the young girl was lying seven or eight shining grains, of the same character as those found in the pockets of the servant. The next day he found four or five similar grains under the bed, and showed them to Duparc and to a soldier named Cavin. He was asked what he had done with these pieces of evidence. He said that the first day he gathered the seven or eight grains in a piece of paper and intrusted them to the young Beaugillot, who could not tell what he had done with them. As to the four or five grains found the second day, he gave them to the surgeons who came to examine the body, and the experts burned them.

The surgeon Herbert, who, as we have seen, carried away, without saying a word, the bread found in the pockets of Victoire, declared that these pieces of bread, examined by the apothecary Thierry, had been found to contain several grains of arsenic. He handed to the procureur du roi a package which he affirmed to be the same that Thierry had examined.

The commissary Bertot, alone of all the witnesses, was able to furnish evidence legally acceptable, — the little package of powder which he had found on turning the pockets of Victoire on her arrival at the prison.

The examination had proceeded thus far, when on the 24th of August the procureur du roi was informed, by reports coming from the house of the Duparcs, that if he would search a cupboard in a room occupied by a lady named Précorbin, a lodger with the Duparcs, he would find some property which might throw some light on the matter. The key found upon Victoire, they said, would open the door of this cupboard.

Victoire, interrogated upon this subject, said that the key was that of a wardrobe which she used at the house of one of her former masters. Then, recognizing her mistake, she said that the key opened a sideboard at the Duparcs'.

The cupboard designated to the magistrate was built into the wall in a little recess forming a part of the room occupied by Madame Précorbin. It was proved that the girl Salmon had never known of its existence; that Madame Duparc alone had the key; that she had reserved it for her own use, and was in the habit of keeping her things in it.

So strange was the assertion of the Duparcs, that the magistrate determined to visit this cupboard. The key taken from Victoire was found to open it, and in it were found many articles belonging to the Duparcs, and also several belonging to Victoire Salmon.

At the sight of these articles Madame Duparc exclaimed that Victoire had locked up this property belonging to her master, and that she had undoubtedly intended to carry it away.

Victoire was not present at this discovery, and was not interrogated regarding it until two days later. She replied to the questions of the magistrate, —

"How is it possible that they could find any of my things in the cupboard of which you speak? I never had at the house of the Duparcs either a wardrobe or a cupboard in which to place my clothes: I had so small an amount that I did not need one. Everything I had was hung in the little room where I slept."

They showed her the articles found in the

cupboard. She declared that the greater part of them she had never seen; but she identified some of them as belonging to herself.

"Only," said she, "I cannot conceive how they could be found in a cupboard in the room of Madame Précorbin. If they were indeed found there, I certainly did not place them there. I cannot understand it."

Upon this discovery a general investigation was made into the past life of this girl. They examined all the parties with whom she had lived, but nothing was elicited beyond the fact that in one family she had for a short time been suspected of having appropriated some valueless articles.

Finally, the woman Lefèvre, the shopkeeper of whom Victoire on the 4th of August bought the piece of orange-colored cloth, being asked by a friend of Madame Duparc if she had not missed anything, deposed, but not under oath, that a piece of orange-colored cloth had disappeared from her store. She was told that she would find it at the house of Madame Duparc among the effects of the girl Salmon.

The examination ended, M. de Bretteville the procureur rendered an opinion that Victoire Salmon was guilty of having poisoned Beaulieu, *and strongly suspected* of having mingled arsenic in the food eaten by the family of Duparc at dinner on the 7th of August; also *strongly suspected* of having stolen divers articles belonging to the Duparcs and a piece of orange-colored cloth belonging to the woman Lefèvre.

For punishment for these crimes she should be condemned to make the *amende honorable* and be burned alive.

On the 18th of April, 1782, a judgment was rendered conforming to these conclusions of the procureur-général, and sentence was accordingly pronounced.

Victoire was crushed by this accusation and by this sentence. There remained to her only a last resource, — an appeal to the Parliament of Rouen, an appeal which justice itself interposed in the name of the condemned. She was transferred to the prison at Rouen to await a second judgment.

The 17th of May the Parliament of Rouen confirmed the sentence of Caen, and ordered that the condemned should be taken back to Caen for execution.

Victoire, however, was ignorant of the supreme peril which menaced her life. Deprived of counsel, of a defender, judged in secret, she relied upon her innocence. Whether through a refinement of cruelty or an illegal and weak compassion, one of the jailers was ordered to tell the poor girl that the sentence of the judges of Caen was set aside, and that a new trial would be had, and that for this purpose she was to be taken back to Caen.

"Ah!" cried she, in a transport of joy, "I was sure the judgment would be set aside."

Light-hearted, she returned to her cell, where she made herself some cabbage soup; she had not been able to eat before, that day.

After her repast she went out into the prison yard. A prisoner approached her: "Well, I hear that your case has been decided."

"Yes, the judgment is set aside. I am to have a new trial; that will end differently. I am going back to Caen."

"My girl, they are deceiving you. You are condemned to be burned alive; you are sent back to Caen to be executed. I tell you the truth."

At this brutal revelation Victoire staggered, her face grew deathly pale, she clasped her hands convulsively and cried, "Ah, great God, how horrible!" Then she fell unconscious. They took her up and carried her into a room opening upon the prison yard.

There, by chance, were three priests who had come to visit a prisoner. When Victoire recovered, the sight of these three men at once suggested to her that they had come to announce her sentence, and in despair she cried: "Alas, my God! Gentlemen, I am innocent, and I am lost. Must I die in such a manner? Is there no longer any justice?"

She fell back, fainting. The priests approached the unhappy girl. When she again opened her eyes, one of them, the Abbé Godé, told her in a gentle voice that all hope was not yet gone; that if she was truly innocent she must rely upon the justice of God, which never failed, as did the justice of man.

At these kind words Victoire gazed more attentively at the good men who surrounded her. "Alas, gentlemen," said she, "I am innocent. God is my witness."

"Keep up your courage," said the Abbé Godé; "all is not lost. Say nothing regarding this matter. Monseigneur the keeper of the seals is here. I will give him a petition to a person who is well known at court, and who will protect you if you are innocent."

A little comforted by these words of hope, poor Victoire thanked those around her. The three priests withdrew, recommending her to the concierge, and deeply moved by what they had seen and heard.

One of them at once went to an advocate of the Parliament of Rouen, M. Lecauchois, a very able and learned man. He was very energetic, and had no fear of any magistrate, however powerful; just the advocate for such a case.

The priest told M. Lecauchois in a few words what he had heard at the prison. He had hurriedly written down the responses of the prisoner.

"All that," said M. Lecauchois, with brusqueness, — "all that amounts to nothing. Two tribunals have found this girl guilty. What can be done? Let justice take its course."

"But I am told that one of the judges, M. Hotot, did not believe her guilty."

"That may be, but all the others agreed in condemning her. We had better not meddle with this affair. Besides, we must have positive information, and it is not easy to obtain it."

"But if we succeed in obtaining it? I have written for it, and in two weeks, please God, you shall have all that is necessary to inform yourself as to this trial."

M. Lecauchois finally promised to undertake this good work, but on the condition that if he found the girl guilty he should abandon her to her fate.

To gain time they advised Victoire to declare herself *enceinte*. She was so prostrated by terror and despair that it was impossible to remove her to Caen until the 29th of May, 1782, twelve days after her condemnation.

The return of this criminal domestic was impatiently awaited. The people, always brutal and greedy for dramatic spectacles, hoped to enjoy on the next day the pleasures of an execution. In fact, the next morning early, the assistants of the executioner carried the wood to the public place and prepared the instruments of torture. The military were put under arms.

All these preparations were brought to naught by Victoire declaring herself *enceinte*. Article 23, Chap. XXV., of the Criminal Ordinance did not allow the authorities to proceed further. Two women appointed to examine as to the physical condition of Victoire could not affirm that she was imposing upon justice. The execution was suspended until the 29th of July, and the condemned was placed in confinement so solitary and barbarous that they even stopped up the windows of her cell.

Five weeks before the expiration of this short delay, M. Lecauchois received the promised information.

At the first glance he thought he perceived, in the disorder of this trial, numerous irregularities, contradictions, and even prevarications, and evidences of bad faith. It was easy to see that the magistrate had acted with great precipitation. He began to believe in the innocence of Victoire, and hastened to write her the following letter:

"Young Girl Salmon, — I do not know you, I have never seen you. Some persons of quality, believing you innocent and moved by your misfortunes, have requested me to aid you. I have agreed to do so, but upon the express condition that if I find you guilty I shall abandon you to your fate.

After an examination which I have made of the information furnished me, a stay of your execution has been obtained. Now, this is what I have to say to you, and what I ask of you : —

"Although your judges have condemned you, you ought to respect them even in their error, if, perchance, they have erred in your trial; for even supposing you are innocent, this condemnation is not on account of their bad hearts, but because a mass of circumstances and presumptions have rendered you guilty in their eyes; therefore, your first duty is to pray earnestly to that all-wise Judge, whom nothing can deceive, that He will make the truth appear to all who are or have been interested in your case.

"If I succeed in obtaining a revision of your trial, I shall be able to see you and question you. Prepare yourself to tell me the whole truth; for I warn you that if I perceive the slightest attempt on your part to deceive me, I shall instantly abandon you. I trust with all my heart that you are innocent."

There was no time to be lost; the fatal day drew near. The order staying the execution did not reach Rouen until Friday the 26th of July, and was not received by the procureur du roi at Caen until Sunday the 28th. The execution was to take place on the 29th, and all the preparations had been made for the mournful spectacle.

On Sunday at noon Victoire was informed of this unhoped-for order which saved her from a horrible death. Up to this moment she had suffered unspeakable agonies.

M. Lecauchois was now able to proceed carefully and without undue haste. Finally, on the 24th of May, 1784, he obtained an order from the Council of State directing the Parliament of Rouen to reopen the case and proceed if necessary to a new trial. This order was not received by the Parliament of Rouen until the 14th day of August.

M. Lecauchois was at length able to confer with Victoire, who was transferred to the prison at Rouen. The unhappy girl had remained in solitary confinement at Caen *twenty-eight months*.

The detestable influence of the procureur du roi pursued her even at Rouen. She had scarcely arrived at the palace prison when an officer cried to the jailer, "Put her in a cell! put her in a cell!" An order emanating from an invisible authority caused her to be confined in a cell the windows of which were carefully stopped up. It was forbidden to allow any one to approach her, no matter who he might be.

Indignant at the manœuvres which threatened to render ineffective the humane intentions of the Council of State, M. Lecauchois actively occupied himself in endeavoring to obtain access to this new prison. He finally succeeded in enlisting in the case M. Tiercelin, procureur of Parliament, and the two were admitted to confer with their client. They made them give her a little air and a little light; that is to say, the window in the cell was opened when her counsel came to visit her. It was decided, however, that the conferences between Victoire and her defenders must take place in the presence of the jailer or one of his assistants.

This new solitary confinement lasted *eighteen months*.

During this time menacing rumors came from an unknown source, predicting a check to this process of revision which was so slow in commencing. It was said in the city that the deadly fire would soon be lighted at Caen, and that this time nothing could save the girl from the flames. It was necessary, it was believed, to reassure the partisans of Victoire and to intimidate her enemies, that an order should be issued in advance, directing that the girl Salmon should be allowed fully and peaceably the benefit of any new judgment which she might obtain. It was still further necessary for the king, Louis XVI., to issue a special order to the Procureur-général of Rouen to watch over the safety of Victoire.

Fortified by these new guarantees, freely accorded by the sovereign power, M. Lecauchois was able to confer with his client, interrogate her regarding the trial, and assure himself, by her naïve responses, of the de-

plorable errors in which the examination abounded. He found Victoire could not be shaken in her statements; she was always faithful to her first account.

The 3d of December, 1784, Victoire through her advocate presented a *mémoire* to the procureur-général du roi, who referred the matter to M. Simon de Montigny, the oldest of the deputies. This magistrate bestowed upon the matter all the care and attention which this extraordinary case demanded, and made a report which was at that time considered a *chef-d'œuvre* of logic.

The 12th of March, 1785, a decree was issued ordering a more thorough examination into the case, during which Victoire Salmon was to remain in prison. A curious decree which commuted to an indefinite imprisonment the penalty of death formerly pronounced against her! However it was something gained to have finally disposed of the judgment of 1782.

Finally, in 1785, M. Lecauchois succeeded in having the matter brought before the Council of State, which referred the case to the Parliament of Paris. On the 23d of May, 1786, this tribunal rendered a decree acquitting Victoire Salmon and reserving to her the right to prosecute her denunciators.

The decree which discharged Victoire was received with great enthusiasm. All Paris was interested in this poor servant, who became the heroine of the day. Every one believed in her innocence, and felt that she had been simply a victim to Madame Duparc. The people thronged around her; whenever she was to appear at any place of public entertainment, her presence was announced by posters. She was all the rage.

She received from many charitable persons contributions which would have insured her a comfortable living if her defender, M. Lecauchois, had not made her pay liberally for the services which he had rendered.

After her acquittal Victoire established herself in Paris. She married there, and engaged in a small business from which she managed to make a decent living. It was a happy ending to all her sufferings. All the victims of judicial error have not escaped so fortunately.

ON CIRCUIT IN THE OLDEN TIME.

NEARLY six hundred years have passed away since those high functionaries, the justices of either bench and the barons of the Exchequer, went their first circuits. Times have strangely altered since then; many a good old custom has become obsolete, and many a long-standing iniquity has been plucked up; the judges have been increased in number, yet the circuits, although shorn of much of their original grandeur and ancient importance, still remain, and are likely so to do until, by electric telegraph or some such method, prisoners may be tried and punished without giving any one the trouble of journeying throughout England to try them.

A fine sight must it have been in years gone by to witness the judicial cavalcade starting on the long and tedious circuit. Steam, coaches, and even carriages were alike unknown in those days; and the equestrian performances of those who wore the judicial ermine would put to shame those of the youngest of their degenerate successors.

First rode the circuit porter, clad in leather jerkin, with huge jack-boots, bearing in his hand a goodly ebony wand capped with silver, and whose duty it was to cause all men of what estate soever, whom they met or overtook, to draw up and do lowly reverence as the sovereign's representative

passed by. Then came the clerks of the judge, gentlemen in holy orders, well skilled in the wondrous penmanship and still more curious Norman-French and law-Latin of the day; next, with well-secured saddle-bags, the grave, long-bearded clerk of assize, saving the judge, the most important man upon the circuit. Could we but peep into those saddle-bags, gentle reader, what curious documents should we discover! There, carefully folded, lies the royal commission, with the broad seal of England attached, giving power to those within it named to try all treasons, misprisions of treason, insurrections, rebellions, counterfeitings, clippings, washings, false-coinings, murders, felonies, manslaughters, killings, burglaries, unlawful meetings and conventicles, false allegations, trespasses, riots, escapes, contempts, negligences, oppressions, deceits, and a great deal more, all drawn out in much the same form as at the present day; there lie indictments, carefully worded by far-seeing men in their quiet rooms in London, and to escape from which those politically obnoxious beings for whose use and benefit they are designed, will have to be clever indeed; and if it be a spring circuit, there is the bishop's consent for the judge to try prisoners and causes in the holy time of Lent, and a license signed by all the prelates of the realm for him to administer oaths in that same holy season; and there also, doubtless, lie many other curious documents, the very names of which have departed from the memory of our degenerate age.

Close to the clerk of assize ride his officers, and then two or three learned serjeants of the law in their red robes and hoods, followed by the hero of the procession, — the judge. Picture to yourselves an old man of reverend aspect riding upon an ancient mule, and clothed in a long red coat of the finest broadcloth faced with velvet, the sleeves and collar being thickly embroidered with gold; on his head the solemn square cloth cap, now the awful forerunner of death, from beneath which peeps forth the border of a white satin coif; and you will have some idea of the external appearance of "my lord, the king's justice." Doubtless that stern countenance is the index of a deeply engaged mind, pondering on the weighty instructions received from its lord and master, when last they met in the Star-chamber to confer upon the circuit, and to settle the fate of many discontented beings shortly to be placed upon their trial; and very likely those instructions clash unpleasantly with the oath taken to administer justice "equally as well to rich as to poor." How difficult the task! Especially to one who, unlike his happy successors, independent of ministers or crown, could be removed from office for the slightest cause or for no cause at all, if his sovereign should so will it.

Behind the judge ride the sheriffs of London and Middlesex, who courteously conduct him out of their bailiwick; and a long line of serving-men, together with three or four sumpter-horses, wind up the procession. Thus, mile after mile, do the administrators of justice proceed. The boundary of each county witnesses the departure of one set of officers and the arrival of another. At every humble door the cottager appears, and with doffed hat and bended knee witnesses the majesty of the law pass by; at every mansion the anxious owner, with loyalty to his sovereign and a due respect for his own security, reverentially offers the hospitality of his carefully prepared refreshment. Nor is the journey so ill managed but that lordly dwellings are each evening found, where the judge is feasted and lodged right royally, and upon the morrow sent upon his way rejoicing.

A proud man, indeed, is the judge by the time he reaches the first assize-town where his commission is to be executed; the inhabitants flock out by hundreds and by thousands to witness his arrival; the high sheriff with a long train of javelin-men and others sounding trumpets, together with

all the gentlemen of the county on horseback, are waiting to receive him; but still prouder is he when, in the thronged court, with cap on head deferentially raised at each mention of his name, he causes to be read the royal commission; and proudest of all when, seated in awful state, with the sheriff alone by his side — for the Statute 20 Richard II., forbidding "any lord or other of the county, little or great, to sit upon the bench with the justices," is yet in full force — he hears, and often directs, the pleas of the trembling prisoners, charges, and not unfrequently bullies and terrifies, the obsequious jury.

Such, reader, were the judges and such their circuits a few hundred years ago; but, alas! "Ichabod" is written upon all these matters now; the judges and the circuits both survive, but their grandeur and dignity have almost departed. — *Chambers' Journal.*

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.

THIS is the vacation month, when the weary lawyer shakes off the dust of the court-room and the office, and hies him to the seashore or the mountains. With what a feeling of relief he drinks in the pure life-giving air, and plunges, not into the turbid waters of litigation, but into the cool embrace of old Ocean! No "declarations" to be made for these few weeks, except, perhaps (if he be a bachelor), a tender declaration to some fair young dame, to which an "answer" in some form will be duly filed. No "writs," except, it may be, a writ of attachment. No "demurrers," except to the fact that time flies all too rapidly. No "bills in equity," except perchance a "bill of discovery" of some new beauty in the face of Nature. No "judgments," except those which he may be called upon to pass on the loveliness of the scene before him. Oh, a rare experience is the lawyer's vacation! But even in these golden days come cheerless hours when Nature veils her face, and recreation must be sought within the limits of four gloomy walls. Then our legal friend turns to his "Green Bag," which he has taken good care to carry with him, and in its pages finds entertainment and amusement till the storm has passed. With his August "Outing" and the "Green Bag," the lawyer's "lot" is indeed "a happy one."

THE men who join recreation with work are the happiest. Sir Charles Romilly took care that his mind should play every day. He used to travel on the circuit in his own carriage, and carry with him the best books of the day. A friend once riding with him expressed his pleasure at seeing that the busy lawyer found time for such reading. "So soon as I found," he answered, "that I was to be a busy lawyer for life, I strenuously resolved to keep up my habit of reading books outside the law. I had seen so much misery, in the last years of many great lawyers, from their loss of all taste for books, that I made their fate my warning."

A CORRESPONDENT in Iowa writes: —

"The fact that the title of 'The Green Bag, a Useless but Entertaining Magazine for Lawyers,' has led to so much discussion, is pretty good evidence that the humorous side of the lawyer's character is, on the average, sadly lacking in development; and that the 'Green Bag' has a mission before it, the magnitude and need of which were never so apparent as since you began your excellent magazine."

THE Editor of the ALBANY LAW JOURNAL having commented on the Randolph anecdote which appeared in our June number, a correspondent of that periodical gives an interesting account of the facts which gave rise to the story. He writes as follows: —

Editor of the "Albany Law Journal:"

In the last number of the "Journal", July 6, you remark on the "Green Bag" for June: "Mr. Fuller has turned the Randolph anecdote wrong side to. It was Randolph who said, 'I never turn out for a fool;' and the other man who said, 'I do.' This was much more characteristic of Randolph, who was better at attack than repartee."

If Mr. Fuller thinks it of interest, after nearly sixty years, to revive that anecdote, it should be done authentically, to make the illustration and the inferences useful. The story, as it was current in Richmond at the time, is as follows: Mr. Randolph, in a speech in Congress, had spoken of John Hampden Pleasants, editor of the "Richmond Whig," as "a degenerate son of a most respectable governor of Virginia." Mr. Pleasants soon stationed himself at the exit from the Capitol, to meet Mr. Randolph, with a concealed rawhide, intending to bring on a collision, and then flog him. He met Mr. Randolph as he expected, brushed hardly against him in entering the door, saying, "I don't get out of the way for

puppies." Mr. Randolph, stepping widely to one side, and passing out, said with a bow, "I do, sir."

This closed the interview; there was no flogging, no hero; and Pleasants returned to Richmond with his feathers much ruffled and drooping.

He was afterward killed in a duel by Ritchie, an editor of opposite politics.

H.

LEGAL ANTIQUITIES.

ORIGIN OF SOLICITORS. — This branch of the legal practice seems to have arisen, in great part, out of the suits in the Star-chamber. In its origin the calling appears to have been of doubtful legality, and the character of solicitors not over-good. Time has, at any event, established their right to practise, whatever may have been its effect upon their characters. "In our age," says Hudson (a barrister of Gray's Inn, in the reign of Charles I.), "there are stepped up a new sort of people called solicitors, unknown to the records of the law, who, like the grasshoppers in Egypt, devour the whole land; and these, I dare say (being authorized by the opinion of the most reverend and learned Lord Chancellor that ever was before him), were express maintainers, and could not justify their maintenance upon any action brought; I mean not where a lord or gentleman employed his servant to solicit his cause, for he may justify his doing thereof; but I mean those which are common solicitors of causes, and set up a new profession, not being allowed in any court, or at least not in this court, where they follow causes; and these are the retainers of causes, and devourers of men's estates by contention and prolonging suits to make them without end." — *Treatise upon the Star-chamber.*

"MANY years ago," says Mr. Timbs, "men could easily be found to give any evidence upon oath that might be required; and some of these persons walked openly in Westminster Hall with a straw in one of their shoes, to signify that they wanted employment as witnesses; hence originated the expression 'He is a man of straw.' But the custom has high antiquity. A writer in the 'Quarterly Review,' on Greek courts, says: 'We have all heard of a race of men who used, in former days, to ply about our own courts of law, and who, from their manner of making known their occupation, were recognized by the name of *Straw-shoes*. An advocate or lawyer, who wanted a *convenient* witness, knew by these signs where to find one, and the colloquy between the parties was brief: 'Don't you remember?' said the advocate. The party looked at the fee, and gave no sign; but the fee increased, and the powers of memory increased with it. 'To be sure I do.' 'Then come into court and swear it.' And the straw-shoes went into court and swore it. Athens abounded in straw-shoes." — *Irish Law Times.*

IN the ancient Welsh laws cats appear to have been the object of legal solicitude. In the Dimetian Code (283) it is declared that if a man parts from his wife, he is to take away only one (cat), and leave the rest. And it is also declared that "whoever shall sell a cat shall 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 being a good mouser."

FACETIÆ.

AT the conclusion of a nuisance case the judge summed up, enlarging at portentous length on a definition of the offence and the various elements that were required in proof of it, until the jury became thoroughly tired of listening to him. When he had concluded, he said, —

"I will retire while you are deliberating on your verdict, which requires much consideration; but I hope you understand the various points I have submitted to you."

"Oh, yes, my lord," said the foreman; "we are all agreed that we never knew before what a nuisance was, until we heard your lordship's summing up."

A STUDENT said to a distinguished lawyer one day, "I cannot understand how circumstantial evidence can be stronger than positive testimony."

"I will illustrate it," said the lawyer. "My milkman brings me a can of milk, and says, 'Sir, I know that is pure milk, for I drew it from the cow, washed the can thoroughly, strained it into the can, and nobody else has handled it.' Now, when I take the cover from the can, out leaps a bull-frog. Surely, the frog is stronger evidence than the man!"

A PHYSICIAN, a friend of Serjeant Murphy, once came to consult him about calling out some one who had insulted him.

"Take my advice," said Murphy, "and instead of calling him out, get him to call you in, and have your revenge that way; it will be much more secure and certain."

A WITNESS who had given his evidence in such a way as satisfied everybody in court that he was committing perjury, being cautioned by the judge, said at last, —

"My lord, you may believe me or not, but I have not stated a word that is false, for I have been wedded to truth from my infancy."

"Yes, sir," said Sir William Maule; "but the question is how long you have been a widower!"

SOME years ago Hon. Henry W. Paine defended a man in a capital case which was tried in the State of Maine. The defence was insanity, which was clearly proved to the satisfaction of the court and of every one else except the jury, who, to the astonishment of all, brought in a verdict of "guilty."

After receiving the verdict, the presiding judge asked Mr. Paine if he had any motion to make.

"Not at present, your Honor," he replied; "my client has had his constitutional rights: *he has been tried by a jury of his peers.*"

The verdict was afterward set aside.

ANOTHER good story is told of the same distinguished lawyer. In the Law Library in Boston a number of wooden blocks, cut in the form of a book, are used to keep volumes in position when the shelves are only partially filled. Being in the library one day, a pile of these blocks caught Mr. Paine's eye, and turning to a brother member of the bar he said: "Ah, now I see *where the Supreme Court gets its law!*"

A LADY, in speaking of a gathering of lawyers to dedicate a new court-house, said she supposed they had gone "to view the place where they would shortly lie."

A FUGITIVE from justice boasted that he was so well liked by all who knew him that he never left any place without a reward being offered for his return.

WE commend to conveyancers the following specimen of legal acumen copied from the records in the office of the Auditor of Clarke County, Washington Territory. In a conveyance of land is embodied a bill of sale of some live-stock, and the description of the two kinds of property is rather droll. The following is copied verbatim from the records: —

"Also that certain lot of land on the Columbia bottom, bounded by land owned by Alexander and *others*. Also a white bull and twelve hogs *west of the meridian line.*"

A CELEBRATED judge, in reprimanding a criminal, among other hard names called him a scoundrel.

The prisoner replied, "Sir, I am not so great a scoundrel as your Honor — takes me to be."

"Prisoner," responded the judge, "you should put your words closer together when you address the Court."

A GENTLEMAN who had for several years been in the enviable situation of a party to a suit in Chancery, finally asked his solicitor how long he would have to wait for the decision of the Chancellor.

"Wait!" exclaimed the solicitor, sarcastically; "till *the day of judgment*, to be sure!"

A YOUNG law student, worn out by over-work, being advised by his physician to procure some good book on gymnastics and follow the rules therein laid down, went out and purchased a copy of "Beecher's Morning Exercises."

"SUPPOSE," said the examiner, "a man sold a horse warranted sound and free from vice, and directly after it was taken home it showed itself both vicious and unsound, what form of action would you bring against the seller?"

"I would sue him," answered a student, "for breach of promise."

AT a term of the Greene County court, held at Catskill in the year 1854, when cholera was prevalent, the presiding judge received the following from one of an empanelled jury: —

ONERABLE JUDGE B——Y.

SIR, — Oure lot is caste in A Dismel plase seronded By danger ande Colery. we want our Super.

A JUORMAN.

Two Irishmen were walking under the gibbet of Newgate. Looking up at it, one of them remarked, —

"Ah, Pat, where would you be if the gibbet had done its duty?"

"Faix, Flannagan," said Pat, "an' I 'd be walking London — all alone."

"I WISH you would pay a little attention to what I am saying, sir," roared a lawyer to an exasperating witness.

"I am paying as little attention as I can," was the calm reply.

MAGISTRATE (to prisoner). Were you born in Pennsylvany?

PRISONER. Yes, sir.

MAGISTRATE. Brought up in this State?

PRISONER. Yes; I have been brought up in Pennsylvany, and every other State in the Union too. — *Life.*

A JUDGE in Iowa refused to fine a man for kissing a girl against her will, because the complainant was so temptingly pretty that nothing but an overwhelming sense of its dignity prevented the court kissing her itself.

MAGISTRATE (to elderly witness). Your age, madam?

WITNESS. Thirty.

MAGISTRATE. Thirty what?

WITNESS. Years.

MAGISTRATE. Thanks. I thought it might be months. —*Harper's Bazar.*

JUDGE G——, when presiding in one of the county courts of Connecticut, had brought before him one Felix McGowan, indicted for assault and battery. At the instigation of his counsel, Mrs. McGowan appeared at the trial with her five children, all about the same size, the eldest not being four years of age. Mrs. McGowan, with true Irish zeal, began to plead the cause of her husband, when the judge stopped her, and pointing to her children inquired if they were all *witnesses* in the case.

"No, yer Honor," replied Mrs. McGowan; "they are *mainly twins!*"

Mr. McGowan was discharged with a reprimand.

AN old lady, knowing only the popular meaning of the term "execution," and who had a lawsuit pending, once sent in a hurry for her clergyman.

"I have but a few weeks to live," said she.

"My dear madam, I never saw you look better."

"Read that."

It was a letter from her attorney.

"DEAR MADAM, — A line to save post. The verdict is against us, and execution next term.

Yours, &c."

THEY have a curious way of deciding lawsuits in Siam; both parties are put under cold water, and the one staying the longest wins the suit. In this country both parties are got into hot water, and then kept there as long as possible. The result is the same.

JUDGE. Have you anything to say before the court passes sentence upon you?

PRISONER. Well, all I got to say is, I hope your Honor 'll consider the extreme youth of my lawyer, and let me off easy.

A PRISONER pleaded guilty of larceny, and then withdrew the plea and declared himself to be innocent. The case was tried, and the jury acquitted him. Then said Sir Henry Hawkins: "Prisoner, a few moments ago you said you were a thief. Now the jury says you are a liar. Consequently you are discharged."

"Now, sir," cried Mr. Bagwig, ferociously, "attend to me! Were you not in difficulties a few months ago?"

"No."

"What, sir? Attend to my question. I ask you again, and pray be careful in answering, for you are upon your oath, I need hardly remind you. Were you not in difficulties some months ago?"

"No; not that I know of."

"Sir, do you pretend to tell this court that you did not make a composition with your creditors a few months ago?"

A bright smile of intelligence spread over the ingenuous face of the witness, as he answered, —

"Oh! ah! that's what you mean, is it? But you see it was my creditors who were in difficulties then, and not me."

NOTES.

A CURIOUS point of law, bearing upon the responsibility of insurance companies, has just been decided in the Paris law courts (Fifth Chamber of the Civil Tribunal of the Seine), at the suit of the Countess Fitz-James *v.* The Union Fire Insurance Company, of Paris, by which it is ruled that insurance companies must indemnify all losses sustained by an assured caused by fire, even in cases where no destruction of premises has been caused by conflagration. The Countess Fitz-James insured against fire, in the above company, all her furniture and effects for 558,000 francs; and in her policy, under Art. 7, were mentioned her jewels, among which figured specially a pair of earrings, composed of fine pearls, valued at 18,000 francs. On April 17, 1887, one of these earrings, which had been placed on the mantelpiece, was accidentally knocked down by the countess and fell into the fire, where it was consumed, notwithstanding every effort made to save the jewel. Expert jewellers were called in by both parties to estimate the intrinsic value of the property destroyed, and 9,000 francs was stated to be the amount, less sixty francs for molten gold rescued from the ashes. The insurance company refused to pay for the burnt pearl on the ground that there was no conflagration, that the fire which consumed the object was an ordinary fire; in other words, that there was no fire, and that the company was not responsible where combustion had only occurred by the ordinary use of a grate for heating purposes. The court, however, rejected this, and ruled that "the word 'fire,' in matters of assurance, applied to every accident, however unimportant such accident may be, so long as it is caused by the action of fire." It was therefore ordered that the Union Company should pay to the Countess Fitz-James the value of the jewel, less that of the gold recovered; namely, 8,940 francs and costs. — *Irish Law Times*

"No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other." The above words, taken from a law book which we fear is but rarely referred to by American lawyers, were written long before the time when a certain member of the St. Louis Bar arrived at a practical solution of the difficulty by taking a fee from both parties to a suit. We learn from an English scientific publication that the same solution has recently been re-discovered, so to speak, by three of the most eminent English barristers, — Sir Richard Webster, Attorney-General, Mr. Ashton, and Mr. Moulton, — though under circumstances which absolve them from all suspicion of a guilty purpose. All three of them had accepted retainers from the Brush Electric Light Company, the exploiters in England of the patents of the American inventor whose name they bear, in a threatened suit by the Edison-Swan Electric Company. The latter company, however, had the sagacity to bring suit, not against the Brush company, but against one of their customers, and tendered retainers to the same eminent barristers, which were accepted, no doubt, in ignorance of the real nature of the controversy. The Brush company, naturally, hastened to the aid of their customer, and assumed the defence of the suit in which the validity of their patents was directly involved, and found to their consternation that the services of these leaders of the bar had been cunningly filched from them by the adversary. The learned gentlemen were hardly less disturbed at finding themselves called upon to plead both sides of the case, like the Lord Chancellor in the opera of "Iolanthe." The final outcome was their appearance for the Edison-Swan Company, and their wisdom seems to have been vindicated by the establishment of the priority of the Edison-Swan patents. This will furnish the basis for a suit for damages for infringement against the Brush people, and the interesting question arises as to which side of this suit will be argued by the successful counsel. Will they hate (of course in a strictly legal way) the Brush people, and love the Edison-Swan people; or will they hold to Brush and despise Edison?

THE University of Michigan has conferred the degree of LL.D. upon Hon. Albert H. Horton, Chief-Justice of the Supreme Court of Kansas. Judge Horton is a graduate of the university, which has honored him as well as itself by this recognition of his eminent ability.

THE liberty of the press in this country was not always what it is now. The General Court of the Colony of Massachusetts Bay not only maintained a censorship by "overseers" appointed for the

purpose, but themselves kept a vigilant lookout for books of a dangerous or improper tendency, as may be seen by the record of their vote in May, 1669 (4 Mass. Col. Rec. 635): —

"The Court being informed that there is now in the press, reprinting, a book, title Imitations (*sic*) of Christ, or to that purpose, written by Thomas à Kempis, a Popish minister, wherein is contained some things that are less safe to be infused among the people of this place, do commend it to the licensers of the press [for] the more full revisal thereof, and that in the mean time there be no further progress in that work."

LAND-STEALING has been reduced to a fine art in the Western States. One of the habitual methods of this class of criminals is to get a deed from somebody, conveying something, duly acknowledged, and then to make a fraudulent alteration of the deed, and then have the deed recorded, and then conveniently lose the original. On proof of the loss of the original, the instrument as recorded is admissible in evidence; and thus a great many people have lost their titles to their lands. The only preventive which we have heard suggested for this species of fraud is to require the recorders of deeds to scan carefully the written portions of every deed which is offered for record; and where there is a suspicion of an alteration, to impound the original. Indeed, it does not appear why, under a proper recording system, the originals of deeds admitted to record should not be impounded in all cases. The vaults in which original deeds are kept should, of course, be in a different building from those in which the record books are kept, so as to diminish the risk of both being involved in the calamity of a single conflagration. A further consideration of our system of conveyancing and recording instruments of transfer of title may serve to convince us that some system like that in vogue in France, by which a conveyance is executed in the presence and through the agency of an officer of the government, and by which the government becomes the repository of the instrument itself, is necessary to secure property rights and uproot frauds of the character of which we are speaking.

THE "Pall Mall Gazette" gives the following amendment as having actually been proposed in Parliament by an eminent Queen's counsel: "Dogs trespassing on enclosed land — Every dog found trespassing on enclosed land unaccompanied by the registered owner of such dog, or other person, who shall, on being asked, give his true name and address, may be then and there destroyed by such occupier or by his order." And this definition from the Darlington Improvement Act (1872) is about as bad: "'The term 'new building' means any building pulled or burnt down to or within ten feet from the surface of the adjoining ground."

AN early Nebraska statute, regulating the sale of intoxicating liquors, contained the following important provision: "For the violation of the third section of an act to license and regulate the sale of malt, spirituous, and vinous liquors, $25; and on proof of the violation of said section, or any part thereof, the justice shall render judgment for the whole amount of fine and costs, *and be committed to the common jail until the sum is paid.*"

Recent Deaths.

JUDGE WILLIAM JOHNSON BACON died at his home in Utica, N. Y., on July 3. He was born in Williamstown, Mass., Feb. 18, 1803, and was graduated from Yale in 1822. His college bestowed upon him the degree of LL.D. in 1854, and for over thirty years he had been one of the trustees of that institution.

S. L. M. BARLOW, a noted railroad lawyer, died suddenly at Glen Cove, L. I., July 10, at the age of sixty. Mr. Barlow was born at Granville, Mass., in 1829, and had been prominent in New York political and legal circles for nearly forty years, being especially noted as a railroad lawyer. The firm of Bowdoin, Larocque & Barlow was formed in 1852. After the death of the two seniors, in 1868 and 1870, Joseph Larocque was taken into the firm, and in 1873 Judge Shipman joined it. Judge Choate was added in 1881, forming the present firm. Mr. Barlow was particularly active during the litigation over the Erie Road, in behalf of the Corporation, and it was said that his conduct of the case cost Jay Gould upward of $9,000,000. His own fees in the case aggregated $250,000. He was a member of the Union and Manhattan clubs. His library of early American history is one of the most extensive in existence. In connection with Henry Harrison, he edited "Notes

on Columbus," regarded as an invaluable work. He was also author of the article on "Whist" in Appleton's Encyclopædia.

EX-CONGRESSMAN EDMUND RICE died at White Bear, Minn., July 11, at the age of seventy. He was a native of Waitsfield, Vt., and removed to Kalamazoo, Mich., read law, became register and master in chancery, and finally clerk of the Supreme Court of the third circuit. After the Mexican war, in which he served as a common soldier and in the commissary department, he practised law at St. Paul, Minn. Mr. Rice served in the Territorial Legislature, and in both branches of the State Legislature of Minnesota, and was twice Mayor of St. Paul. He was elected a representative to the Fiftieth Congress.

HON. A. G. LEBROKE, of Foxcroft, Me., for many years prominent as a lawyer, died July 19. Mr. Lebroke had always taken a deep interest in all public affairs, and served his State and district in the Maine Senate for two terms. He was considered one of the ablest lawyers in Eastern Maine.

JOHN C. ELMENDORF, of New Brunswick, N. J., whose death occurred on July 19, was a brother-in-law of Frederick T. Frelinghuysen, Secretary of State under President Arthur, and was for years one of the leading lawyers of the New Jersey Bar. He was born near Somerville, N. J., in 1814. For fifteen years he was prosecutor of the Pleas of Middlesex County, trying many important cases. He was for years treasurer of Rutgers College, occupying that position at his death.

CHARLES A. HEATH, a prominent lawyer of Vermont, died in Barre on July 22. He was an ex-President of the Vermont Bar Association, ex-Senator for Washington County, and an influential citizen of Montpelier.

REVIEWS.

THE LAW QUARTERLY REVIEW for July is filled with interesting matter. The leading article is a paper on "Specific Performance and Laesio Fidei," by Lord Justice Fry, in which the author traces the history of his subject from the days of Saint Paul, and attributes its origin to the Courts Christian. The other contents are articles on "Une École des Sciences Politiques," by Max Leclerc; "Possession for Year and Day," by F. W. Maitland; "On the Rejection of Hearsay," by Lewis Edmunds; "The Land Transfer Bill," by Hugh M. Humphry; "The New Italian Criminal Code," by T. Boston Bruce; and "A Reply on the Factor's Acts," by John R. Adams.

THE JOURNAL OF JURISPRUDENCE (Edinburgh) for July, commenting on the action of the Supreme Court of the United States in the "Oregonian Case," says: "The whole story suggests a reflection which must often be present to the minds of those on this side of the Atlantic who have business relations with America. Why is it that such a sense of insecurity prevails in regard to all American investments? Why is it, for example, that it is easier to get 6 per cent over real property in America, than 4 per cent in this country? It is not that America is distant, for the electric wires and the ocean racers have brought America very near to our doors. It is not that America is a back-going country, for her expansiveness is tenfold greater than our own. It is not that the American Government is unstable, for her constitution has stood the test of a century. But it is because of the insurmountable dread that the negotiations will be vitiated by a swindle, and that the swindle will be one for which the law will give no remedy. This dread is born of experience. The history of British investments in America is strewn with memories of swindles for which the American courts have been powerless to find redress."

There is more truth than poetry in the foregoing remarks, to our shame be it said. But unfortunately, our British brethren have not been the only victims of wily schemers. The hard-earned savings of many an industrious American laboring man have been swallowed up by the same law-evading swindlers.

"The Jurisdictions and Duality of Sheriffs" and "The Stamping Regulations" are the leading articles of the July number of the SCOTTISH LAW REVIEW. In the "Notes from London" the writer, commenting upon judges seizing every oppor-

tunity for avoiding cases which promise to be more than usually troublesome, says: "Apart from disorganization and particular faults in our administration of justice, there is a want of honest spirited devotion to duty amongst the judges which is detrimental to the public interest. If some of the platitudes about the high-mindedness and courage and the other virtues of bench and bar were dropped, and a little plain thinking, finding expression in plain words, were to take their place, the better it would be for the public and the profession."

THE CHICAGO LAW TIMES for July contains an interesting portrait of Sir Edward Coke, with a biographical sketch. Its other contents are "Joseph Story," by Elizabeth P. Gould; "Springer Amendment to the Federal Constitution," by Charles B. Waite; "The Woman Lawyer," by Dr. Louis Frank; "The Royal Courts of Justice," by Hon. Elliott Anthony, and "A Century of Republicanism," by Austin Bierbower. The LAW TIMES is certainly one of the most readable of our exchanges, and we should be glad to welcome it oftener than four times a year.

THE leading article in the CRIMINAL LAW MAGAZINE for July is a paper on "Public Indecency," by Solon D. Wilson. M. W. Hopkins contributes an article on "Withdrawal of Plea of Guilty." The "General Notes" and "Humors of Criminal Law" are unusually full and interesting, and we are pleased to see that the editor of our esteemed contemporary has drawn largely on the columns of the "Green Bag," which shows that he appreciates good things when he sees them.

WE have received an interesting paper on "The Citizen in Relation to the State," which was read before the American Bar Association by the author, Alexander Porter Morse, Esq., of Washington.

BOOK NOTICES.

A TEXT-BOOK OF THE PATENT LAWS OF THE UNITED STATES OF AMERICA. By ALBERT H. WALKER, of the Hartford Bar. (Second Edition.) L. K. Strouse & Co., New York, 1889. $6.50 net.

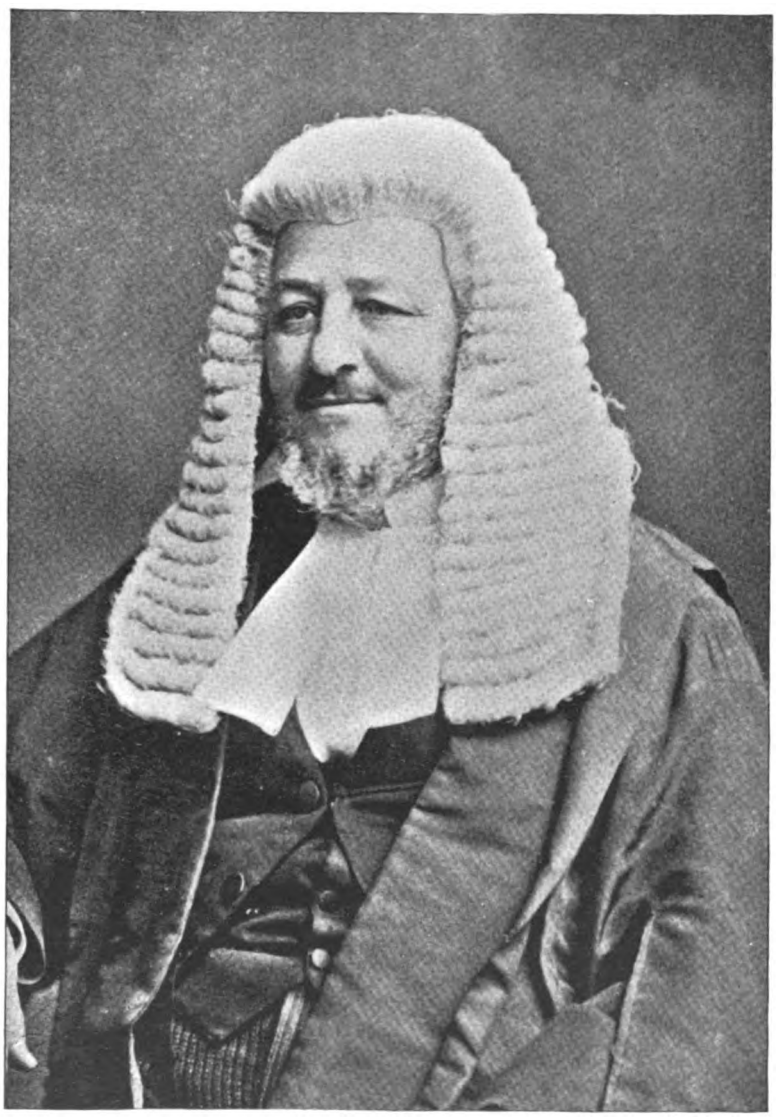
This admirable work has long been considered a standard by the profession, and this new edition will be gladly welcomed. Mr. Walker has made many additions and omissions in the present volume, leaving out many sections which have become obsolete since 1883, and incorporating more than six hundred new decisions. In its present form the work leaves nothing to be desired, and is invaluable to every patent lawyer.

EQUITY PRACTICE IN THE UNITED STATES COURTS. By OLIVER P. SHIRAS. Callaghan & Co., Chicago, 1889. $2.00 net.

This little work is not intended to be a treatise upon Equity practice at large, but it brings together in a compact form the provisions found in the rules in Equity prescribed by the Supreme Court, in sections of the Statutes of the United States, and in the decisions of the Supreme Court, which recognize, prescribe, or explain the steps ordinarily required to be taken in carrying through suits in Equity in the Circuit Courts of the United States. It furnishes a manual for ready reference for the busy practitioner, and a guide to the novice.

THE LIFE OF THE LAW; OR, UNIVERSAL PRINCIPLES OF LAW. By OVERTON HOWARD. J. W. Randolph & English, Richmond, Va., 1889. Paper, 50 cents. Cloth, 75 cents.

This little book is well worth buying and reading Mr. Howard is evidently a deep thinker, and possessed of reasoning powers of more than ordinary capacity. In the 114 pages composing the work the reader will find much calling for the exercise of his own mental faculties, and which will provoke serious reflection on his part. The author has certainly carried out his design, which he declares to be "to write a practical book for use in the affairs of men."



JUDAH P. BENJAMIN.

The Green Bag.

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JUDAH P. BENJAMIN.

FEW lives have been more full of romance and incident than that of the distinguished lawyer and statesman, Judah P. Benjamin.

He was born at St. Croix, W. I., Aug. 11, 1811, of Jewish parents, who had sailed from England to settle in New Orleans. The mouth of the Mississippi being blockaded by the British fleet, they landed at St. Croix, where young Judah was born. When he was four years of age his parents emigrated to Wilmington, N. C. Of his boyhood we have but little record; but in 1825 young Benjamin entered Yale College. He did not, however, complete the college course; and in 1831 he settled in New Orleans and began the study of the law. While pursuing his studies, he supported himself by teaching school.

In 1833 he was admitted to the Louisiana Bar. After a life of steady struggle upwards, he became a lawyer of world-wide reputation, whom clients went far to seek, and paid any fee to retain. It is said that on one occasion the enormous amount of fifty thousand dollars was paid him to go to California.

In politics he was originally a Whig. In 1852 he was elected to the Senate of the United States, where he was immediately recognized as one of the keenest debaters and the most finished orator in that body. While in the Senate, he allied himself with the Democratic party, by whom he was re-elected in 1858. On the 31st of December, 1860, he announced his adhesion to the South, and withdrew from the Senate, of which he had been for eight years a member.

He then joined the Cabinet of Jefferson Davis as Attorney-General, and was afterward appointed Secretary of War. In this position his career was brilliant, until the disaster which befell the Confederate Cause at Roanoke Island, which was attributed to incompetency, and he was censured by a Congressional Committee of Inquiry. He resigned the position of Secretary of War in February, 1862. His services were, however, too valuable to be lost, and he was appointed by Mr. Davis to fill the place of Mr. Hunter, Secretary of State, which position he held until the fall of the Confederacy.

After the overthrow of the Confederacy he fortunately succeeded in escaping the pursuit of the Northern troops, and made his way to Key West, where he embarked for Nassau in a small sail-boat. After much suffering, he, and two men who were in the boat with him, landed on one of the Bahama Islands; from there he found his way to England. He immediately entered Lincoln's Inn, and applied himself vigorously to the study of English law. Through the instrumentality and good offices of Lord Cairns, he was called to the English Bar in 1866, after one year's probation,—a concession most generously, though exceptionally, accorded to one who had gone through so many interesting and romantic vicissitudes of fortune.

It is difficult to imagine a position more apparently hopeless than his. At the comparatively advanced age of fifty-five, he had to adapt himself to an entirely new state of things. He had a great deal to learn, and, what was almost as trying, a great deal to

unlearn; for although the law in the United States is founded on the English law, time has caused a considerable divergence between them, and the technicalities of practice vary still more. He had to contend against the *élite* of the English Bar, — men who had established a long-standing reputation, and were not easily to be displaced by a new-comer of whom little was generally known. At first his earnings at the bar were so small that he had to write for newspapers and periodicals to make a living.

In 1868 he published a treatise on "Sales of Personal Property," which was a great success, and brought him reputation and practice. His talents became known, and he speedily rose to the front rank of the profession. In the short space of six years he attained the rank of Queen's Counsel, the highest in the practising profession. His income is said to have been, during the last few years before his retirement, as high as $200,000 a year.

Mr. Benjamin's appearance was far from prepossessing; he was short and stout, — in fact, what the irreverent might call stumpy, — and his voice had about it the genuine American twang, particularly offensive to our English brethren. There was nothing of dignity in his gait or bearing. How powerful, then, must have been the energy and intellect that could defy and surmount all these defects!

He was singularly amiable and sympathetic in his association with others, and showed an amount of retiring diffidence and modesty that would scarcely be expected in one who had been an actor in so many exciting scenes of conflict and turmoil.

Among the many cases that made this famous man still more famous, not the least was the *Franconia* Case, and he succeeded in convincing the judges that the hitherto accepted authorities on International Law were, to say the least, sometimes mistaken. His strong point was in argument before trained judges, and they always listened to him with the greatest attention and respect.

In spite of his great talents (so speedily recognized), no feelings of jealousy were ever manifested by those who would be most likely to suffer by his advance. The right hand of fellowship was extended to him from the first by the English Bar, and he was regarded with esteem and affection.

Owing to failing health, he retired from the bar in 1883, so that all his successes were gained within a period of seventeen years, much of the early time having been employed in learning to achieve them. A dinner was given to him on his retirement, by the judges and the bar, in the hall of the Inner Temple.

He came from Paris, his favorite dwelling-place, to receive this tribute of regard. He had become very much enfeebled, and looked weak and ill. In feeling and tender words he poured forth his thanks for the generosity and uniform kindness with which the bar had received a destitute fugitive from another land, one who had nothing but his misfortunes to recommend him to their sympathy. It was a touching scene, rendered all the more so by the feeling that the days of this leader among leaders were already numbered.

He died at Paris on the 8th of May, 1884.

TIME'S SPONGE.

THERE are a few curiosities of our existing law that wait to be, as Sir Matthew Hale would say, laid flat. A good many have been laid flat since his time; for that famous judge and historian of the Pleas of the Crown lived in the Stuart days, and died in the year 1676. A great many, he tells us, had been laid flat when he lived; for instance, it had ceased to be felony and death to sell a horse to a Scotchman.

Jack Cade, if Shakspeare knew his mind, meant that when he was king it should be felony to drink small beer; and that, we might say, looking at some actual cases, would have been no great sharpening of the law. We have now not more executions in the country every year than used to be provided often in a single morning only. A hundred years ago, there were never less than a dozen culprits hung in a row after every Old Bailey Sessions; and Townsend, the Bow Street runner, said he remembered a sessions, held at that seat of justice in 1783, when Serjeant Adair was Recorder, after which forty were hanged at two executions.

In earlier times the lightest heed was taken of the punishment of death. It was no rare and solemn sentence, but staple judicial routine, that might be enlivened with a joke, when possible, to color its monotony. Thus Lord Bacon tells of his father, Sir Nicholas, that when appointed a judge on the northern circuit, "He was by one of the malefactors mightily importuned for to save his life; which, when nothing he had said did avail, he at length desired his mercy on account of kindred. 'Prithee,' said my Lord Judge, 'how came that in?' 'Why, if it please you, my lord, your name is Bacon, and mine is Hog; and in all ages Hog and Bacon have been so near kindred, that they are not to be separated.' 'Ay, but,' replied Judge Bacon, 'you and I cannot be kindred except you be hanged; for Hog is not Bacon until it be well hanged.'"

Of course crime was not lessened by extreme severity. As for the punishment of death, Mr. Harmer, a great jail solicitor, said in his evidence before the Criminal Law Commission, "In the course of my experience, I have found that the punishment of death has no terror for a common thief. I have very often heard thieves express their great dislike of being sent to the House of Correction, or the hulks, but I never heard one say he was afraid of being hanged."

The result of ordering men to do what they will not, or cannot do, is, when action of some kind is enforced, commonly absurd. The law used to compel jurymen, if they acquitted any accused man of murder, not merely to acquit him, but to name the guilty person. Whenever they could not do this to the satisfaction of their consciences, the juries declared that the real murderer was John-a-Noakes. That person of whom we speak so often as Jack Noakes in friendly tones, has been declared guilty by jury after jury of a series of horrible atrocities. Away with him then! Let him be laid flat! When larcenies were grand and petty, and a few shillings more or less in the value of a stolen article made the question one of life or death to the thief, juries used, in the most open way, to deal in what were called by Blackstone pious perjuries. It was a common thing for them to find that five-pound notes, or ten-pound notes of the Bank of England, were articles of the value of twelve pence, four shillings, and sixpence, or twenty-nine shillings, as the humanity of the case required. In fact, the result of the too great stringency of the law was a great laxity of practice.

Numerous, then, as the executions used to be, they did not represent a tithe or hundredth part of the amount of what was pronounced capital crime; nor the number of persons who were sentenced to death without the smallest intention of hanging them.

We were never so savage as our laws have sometimes been. A short time before the abolition of capital punishment for stealing to the amount of forty shillings in a dwelling-house, Lord Kenyon sentenced a young woman to death for that offence; whereupon she fainted, and the judge in great agitation, exclaimed, "I don't mean to hang you! Will nobody tell her, I don't mean to hang her?" Of the pious perjuries, who does not feel that the chief crime was in the law, not in the administrator, and that the law must bear the heaviest weight of Sir Samuel Romilly's objection to the "looking upon the evasion of our criminal laws with so much favor, as to regard the profanation of the name of God in the very act of administering justice to men, as that which is in some degree acceptable to the Almighty, and as partaking of the nature of a religious duty!"

In an amusing law sketch, written by Professor Amos, we come across some of the former subtleties of homicide. Accidental homicide, if it arose out of the doing of a lawful act, was held excusable; if it arose out of a trespass, not a larceny, was manslaughter; but if it arose out of a larceny, was murder. Hobbs, the philosopher, living in Hale's time, expressed the law in this form: "If a boy be robbing an apple-tree, and by some chance fall therefrom, and break the neck of a man standing underneath, the crime consists in a trespass, to the damage, perhaps, of sixpence. Trespass is an offence, but the falling is none, and it was not by the trespass, but by the falling that the man was slain; yet Coke would have him hanged for it, as if he had fallen of malice prepense."

The idle subtleties that have been spent by criminal lawyers upon the subject of theft, could scarcely be seen to more advantage than in the consideration of that element in thieving, which consists in carrying the stolen thing away; or as the books call it, asportavit. Thus it was held that if a prisoner removed a package from the head to the tail of a wagon, the asportavit was complete; but if he moved it only by lifting it up where it lay, and standing it on end, for the purpose of ripping it open, the asportavit was not complete, because every part of the package was not shown to have been moved. The central point of it might be exactly where it was before.

There are one or two legal terms, the meaning of which may not be generally known. We need remind no one that lunacy is derived from an idea that madness is connected with the moon; but many may not be aware that felony is derived from an idea that felons are prompted by an excess of gall. Felonies were crimes committed *felleo animo*, with a mind affected by the gall. Lunatics and idiots, it was said, could not be criminals for want of gall.

We have an arbitrary way of fixing fourteen years as the age in relation to responsibility for certain capital offences. We take that age from the East, where puberty comes early, and it is not the sole trace of an origin from Constantinople in many of our statutes. The Code Napoléon is wiser, fixing the age at sixteen. Our old laws took little thought at all of any such distinction. In 1629, a child between eight and nine years of age was hanged for arson at the Abingdon Assizes. As late as the year 1780, a boy of fourteen was hanged for participating in a riot. It might be said, however, that a London street-boy is mature at ten. Account was given to a parliamentary committee of one of these unhappy creatures who, during a career of five years, had robbed to the amount of three thousand pounds. Besides numerous minor punishments he had been sentenced to death; but, from compassion, sent to the Philanthropic Asylum instead of the gallows. Thence he escaped, and was for another offence transported for life, — all before the age of thirteen.

There were some niceties connected with the judicial treatment of the law of Escheat, or Confiscation, which led even to a necessity for bringing torture into common use. If prisoners liable to confiscation of their goods were mutes, that is to say, refused to plead,

there could be no attainder, and consequently no escheat. For this reason, in Sir Matthew Hale's time, it was the constant practice at Newgate to tie together with whipcord the two thumbs of any refractory person, and the whipcord with the aid of a parson soon produced the desired effect. If more were required, recourse was had to the "peine forte et dure," the more horrible form of torture.

But we cannot linger over these memen-toes of an age long since gone by. Surely it is no matter of regret for us that in the course of time there are so many changes, so many ruins, so many monuments of social or judicial wisdom, "that as things wiped out with a sponge do perish." Time, we are happy to know, still brandishes his sponge, and there still exist judicial curiosities, doomed to, we hope, prompt effacement. — *Household Words.*

THE CHRONICLE OF THE GREEN BAG.

By Samuel R. Ireland.

[*Read before the Graduating Class of* '89 *of the Law School of the University of Michigan.*]

HERE comes to-day, all laurel crowned,
A train of hope-inspired youth,
To bear away the fruitful meed
Of earnest precept, born of truth;
To have upon their shoulders laid
A hand, whose lingering pressure tells
The love that breathes the tenderness
Of Alma Mater's fond farewells.

These lights of law, — like youthful knights
Who won their spurs in tourney frays,
Where rose-strewn sward of velvet turf
Reflected back the day-god's rays, —
Stand now, the mimic battle o'er,
The wreathed chaplet thrown aside,
Armed *cap-a-pie* for bold crusade,
The flower of all their country's pride.

They go from hence where they have learned
The art of battle for the right;
There glistens on the breast of each
The talismanic star of light.
Well have they learned and won the right
Their high profession's robes to don;
And later on in graver years
Will meetly put the ermine on.

Now, in these nineteenth-century times,
The orders, guilds, and crafts are known
By symbolism scarce at all,
And fewer still, by wig or gown.
The layman and professor are
Mixed in the crowds that jostle on,
And none can tell by outward sign
The savant from the artisan.

But in the good old earlier days,
The preachers, lawyers, doctors, went
Enrobed, or carrying some odd thing;
And laymen bowed acknowledgement.
In ancient times, so far agone
'T is dim in legendary air,
The gentry of *our* order 'gan
To carry green bags everywhere.

Arising from necessity,
The custom grew to widespread use,
In years before Will Shakspeare sung
Or Spenser wooed the lyric muse.
From town to town where courts were sate,
The lawyers rode like knights and squires,
On horse-back through the green-hedged lanes
Of Merrie England's fertile shires.

And in this gray old Gothic age--
As told in storied tapestry—
A green bag hung to saddle bows
Of all this valiant errantry.

From those old days to this, appears
  This symbol of the vernal hue,
In verse and romance we may trace
  Its presence all the ages through.

Kit Marlowe knew it, Cibber too,
  And Dickens oft has well portrayed
The barrister with his green bag
  And robe and wig for court arrayed.
We see him now, as through the gloom
  And fog of London town he goes;
To Lincoln's Inn he trudges on,
  His stern, knit brows his wisdom shows.

And in his hand he 's clasping close
  A bag of green, the texture thin,
'T is made of baize, its size about
  The same they now put fiddles in.
A fitting satire on the times,
  And these degenerated days,
When lawyers use the bag no more
  And fiddlers ape their ancient ways.

We look adown the path of time
  The gray old world has slowly crept,
Where many a dear old custom lies
  By the wayside where it long has slept;
What 's left us of the old green bag —
  That sterling friend in days of yore?
Naught but its wraith, to symbolize
  The law and lawyers evermore!

Though faded with the active scenes
  Which saw its worth in ages past,
Like dead heroes whose histories
  Their grandeur tells while time doth last,
The old green bag is with us now,
  In reverent mem'ry strong outlined,
A symbol of the precious freight
  That lawyers carry for mankind.

The bag is full of wondrous things,
  All, creatures of the fertile brains
Of those who twist a nation's laws
  To bind or loose the felon's chains.
There are the papers to the suits,
  The writs, and pleas, and arguments;
Drawn ill or done with learned skill,
  Of void or potent consequence.

Pandora never felt the pulse
  Of expectation's anxious thrill,
Like him who looks into his bag
  To find his fate for good or ill.
No treasure-box of pirate bold,
  Nor iron-bound coffers of a king,
Holds half the precious freightage that
  Is hidden in this eerie thing.

How oft the destinies of men
  Are shapen to their final ends,
Perverted to a sorrier lot
  Than nature otherwise intends!
Accused of crimes they wot not of,
  By circumstances seeming plain,
Their foreheads bear the felon's brand,
  Their good names hidden 'neath stain.

There are the written documents,
  The pleas for justice and relief,
The brittle or the trenchant blades
  Which win the fight or bring to grief.
These scrawled sheets, in diction grave,
  For many a life they win a lease;
They flutter in and out of court,
  White-winged messengers of peace.

And nestling in the bag we find
  The widow's and the orphan's cause
Set forth with righteous earnestness,
  To win protection from our laws.
The oppressed and helpless are alike
  Saved from the avarice of men;
The miser's canting tyranny
  Slinks whining to its rayless den.

The poor and struggling yeomanry
  Who wrench a pittance from the soil,
Are snatched from jaws of two grim wolves
  Which rend the fruits of all their toil;
One wolf is "Gnawing Hunger" and
  The other has a milder name,
A "Landlord's Mortgage" it is called,
  But both have fangs which crush the same.

Like those who watch for ships at sea,
  Which come not while the slow years lag,
So these sad ones with lustrous eyes,
  Gaze, wistful, for the old green bag.

To all these sufferers of the race,
  This bag brings freedom, peace, and hope,
And lawyers wring full recompense
  From those whose souls in meanness
    grope.

And thus it is and ever was,
  Of all the powers in the world,
Justice has thundered from this bag
  In tones as from Olympus hurled.
The weal or woe of all mankind
  Has hung upon its grave mandate;
Nor Sphinx, nor Delphian oracle
  E'er whispered so the voice of Fate.

And lawyers are the genii and
  The guardian spirits of the bag,
Who tear the mask from flaunting vice
  And show the world a painted hag.
Yet mean aspersions oft are laid
  By those of canting, craven hearts,
Who charge that bag and lawyers too
  Are full of naught but lying arts.

But even we — who have but passed
  And in the outer chambers wait,
In this grand temple of the Law
  Where, throned, she sits in sovereign
    state —
Know all full well the glories of
  The triumphs of her majesty,
And know that her hand-maidens are
  The virgins, Truth and Equity.

But in this day of light, the law
  Needs not a vindication here;
Her sacred mission, Heaven-sent,
  Hallows the world each cycling year.
Her peerless triumphs and her grace,
  No humble, human e'er could sing;
His voice would falter in dismay,
  His harp would fall a tuneless thing.

But while we bow in reverence
  To law, "the State's collected will,"
A passing tribute we should lay
  Upon a mem'ry verdant still.
The old green bag I came to sing,
  That faithful, humble friend and stay,
Our proud profession's symbol still
  While law maintains her regal sway.

When carried by our forefathers
  It held the rights and hopes of men;
And may our hearts as truly hold
  And keep them safely, now as then.
A nobler, prouder heritage
  Than Norman castle, feudal lands,
Is this old bag that 's come to us
  Blessed by those ancient sages' hands.

And, brothers, guard it sacredly,
  And let it ever be for you,
A thing to shield and safely hold
  Justice for men when e'er 't is due;
Broad as that "law which moulds a tear
  And bids it trickle from its source,
That law preserves the earth a sphere
  And guides the planets in their course."

A KAFIR LAWSUIT.

From the Cape Law Journal.

A KAFIR in the witness-box is often a surprise to those who know little or nothing of the traditions of the Kafir race. The ease with which the ordinary native parries the most dexterous cross-examination, the skill with which he extricates himself from the consequences of an unfortunate answer, and above all, the ready and staggering plausibility of his explanations, have often struck those who came in contact with him in the law Courts. He is far superior, as a rule, to the ordinary European in the witness-box. Keen-witted and ready, he is yet too cautious ever to answer a question the drift of which he does not clearly foresee, and which when he understands he at once proceeds, if necessary, to forestall by his reply. As a result, the truth of his evidence can only be sifted by very careful proceeding on the part of the cross-examiner, and by keeping him in the dark as much as possible as to the bearing of his answers upon the subject-matter of the suit. Whether this dialectic skill is innate in the Kafir, or whether it is the result of long cultivation, it is difficult to say, but as some proof of the former, we subjoin a very interesting extract from a book now unhappily becoming rare, *viz.* Colonel Maclean's "Handbook of Kafir Laws and Customs, compiled from Notes by Mr. Brownlee, Rev. Dugmore, and Mr. Ayliff," which will, we venture to think, throw a great deal of light upon the present abilities of the descendants of those whose judicial customs fifty years ago are so graphically described in the following words: —

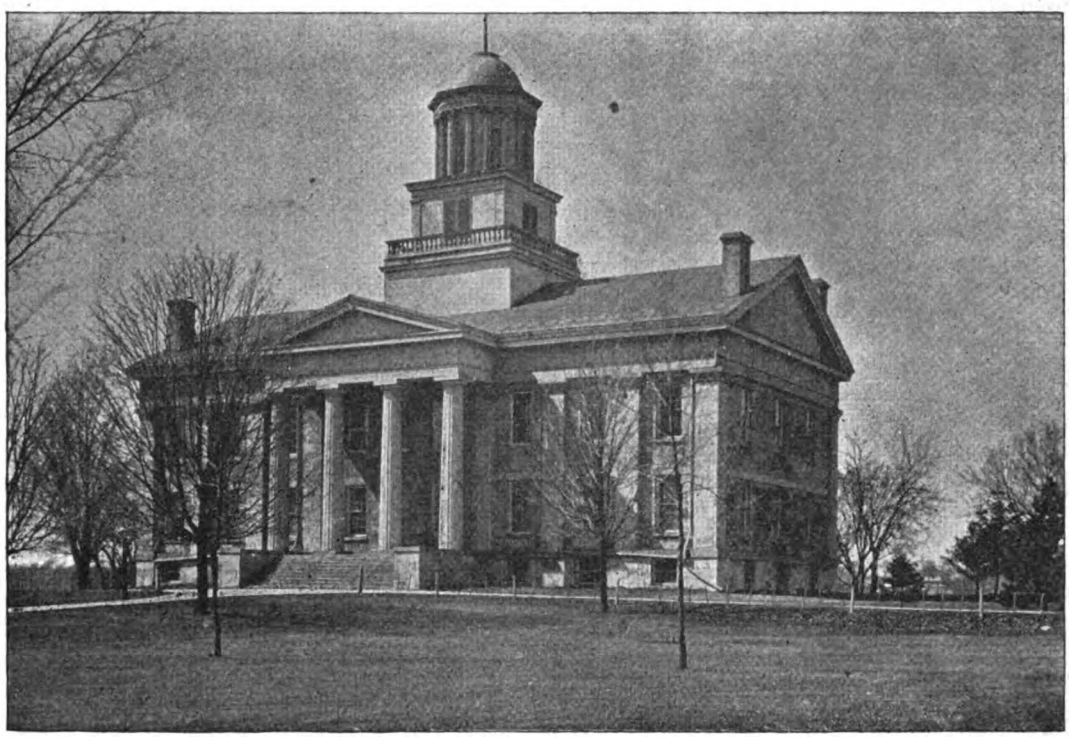
"When a Kafir has ascertained that he has sufficient grounds to enter on an action against another, his first step is to proceed, with a party of his friends or adherents armed, to the residence of the person against whom his action lies. On their arrival they sit down together in some conspicuous position and await quietly the result of their presence. As a law party is readily known by the aspect and deportment of its constituents, its appearance at any kraal is the signal for the mustering of all the adult male residents that are forthcoming. These accordingly assemble and also sit down together within conversing distance of their generally unwelcome visitors. The two parties perhaps survey each other in silence for some time. 'Tell us the news,' at length exclaims one of the adherents of the defendant, should their patience fail first. Another pause sometimes ensues, during which the party of the plaintiff discuss in an undertone which of their party shall be 'opening counsel.' This decided, the learned gentleman commences a minute statement of the case, the rest of the party confining themselves to occasional suggestions, which he adopts or rejects at pleasure. Sometimes he is allowed to proceed almost uninterrupted to the close of the statement, the friends of the defendant listening with silent attention, and treasuring up in their memories all the points of importance for a future stage of the proceedings. Generally, however, it receives a thorough sifting from the beginning; every assertion of consequence being made the occasion of a most searching series of cross questions. The case thus fairly opened, which occupies several hours, it probably proceeds no further the first day. The plaintiff and his party are told that the 'men' of the place are from home, that there are none but 'children' present, who are not competent to discuss such important matters. They accordingly retire with the tacit understanding that the case is to be resumed next day. During the interval the defendant formally makes known to the men of the neighboring kraals that an action has been entered against him, and they are expected to be present on his behalf at the resumption of the case. In the meantime the first day's proceedings having indicated the line of argument adopted by the plaintiff, the plan of defence is arranged accordingly. Information is collected, arguments are suggested, precedents sought for, able debaters called in, and every possible preparation made for the battle of intellects that is to be fought on the following day. The plaintiff's party, usually rein-

forced both in mental and material strength, arm the next morning, and take up their ground again. The opponents, now mustered in force, confront them, seated on the ground, each man with his arms at his side. The case is resumed by some advocate for the defendant requiring a restatement of the plaintiff's grounds of action. This is commenced perhaps by one who was not even present at the previous day's proceedings, but who has been selected for this more difficult stage on account of his debating abilities. Then comes the tug of war; the ground is disputed inch by inch; every assertion is contested, every proof attempted to be invalidated, objection meets objection, and question is opposed by counter-question, each disputant endeavoring with surprising adroitness to throw the burden of answering on his opponent. The Socratic method of debate appears in all its perfection, both parties being equally versed in it. The rival advocates warm as they proceed, sharpening each other's ardor, till from the passions that seem enlisted in the contest, a stranger might suppose the interests of the nation at stake and dependent upon the decision. When these combatants have spent their strength, or one or other of them is overcome in argument, others step to the rescue. The battle is fought over again on different ground, some point either of law or evidence that had been purposely kept in abeyance being now brought forward and perhaps the entire aspect of the case changed. The whole of the second day is frequently taken up with this intellectual gladiatorship, and it closes without any other result than an exhibition of the relative strength of the opposing parties. The plaintiff's company retire again, and the defendant and his friends review their own position. Should they feel that they have been worsted, and that the case is one that cannot be successfully defended, they prepare to attempt to bring the matter to a conclusion by an offer of the smallest satisfaction the law allows. This is usually refused, in expectation of an advance in the offer, which takes place generally in proportion to the defendant's anxiety to prevent an appeal (to the Chief). Should the plaintiff at length accede to the proposed terms they are fulfilled, and the case is ended by a formal declaration of acquiescence."

ADVICE TO A YOUNG LAWYER.

BE brief, be pointed; let your matter stand
Lucid in order, solid, and at hand;
Spend not your words on trifles, but condense;
Strike with the mass of thought, not drops of sense;
Press to the close with vigor, once begun,
And leave (how hard the task!) — leave off when done.
Who draws a labored length of reasoning out,
Puts straws in line for winds to whirl about;
Who drawls a tedious tale of learning o'er
Counts but the sands on ocean's boundless shore.
Victory in law is gained, as battles fought,
Not by the numbers, but the forces brought.

Lyrics of the Law.



CENTRAL BUILDING.— OLD CAPITOL.

LAW DEPARTMENT OF THE STATE UNIVERSITY OF IOWA.

By Emlin McClain, *Vice-Chancellor of the Department.*

IN March, 1865, the Trustees of the State University of Iowa, located at Iowa City in accordance with the provision of the State Constitution of 1857, by which the State Capital was removed from that city to Des Moines, requested from the Judges of the Supreme Court a report as to the expediency of organizing a Law Department. In June of that year such a report was made, strongly recommending the creation of such a Department. The reasons for such a recommendation are cogently set forth as follows:

"The creation and organization of such a Department are, as we think, demanded by the highest interests of the University. It would add not only to its usefulness, but to its reputation. The idea and purpose of a University are not realized by an institution which does not teach all the branches of useful knowledge. . . . The creation of such a Department is also required by the highest interests of the State. The idea is not for a moment to be entertained that our State is to be forever obliged to see its young men go to complete their education in any of the branches or departments of learning to the institutions of other States. State pride and a just self-respect forbid that this should permanently be so. The State wants the credit of the distinction which her sons may achieve in scientific, literary, and professional pursuits, and cannot without reproach be willing to see this reflected upon foreign institutions of learning."

In another report on the same subject the following considerations are also submitted:

"Some knowledge of the ordinary and elementary principles of law ought to be had by every

citizen who expects to take any part in the discharge of his public duties. The University of the State ought to provide a place and teachers where this knowledge can be obtained. . . . A plan of general instruction upon all branches of national and municipal law should be devised and carried into execution as soon as the number of pupils should justify, which would require such a number of teachers and such a period of study as to fit the young lawyer for the whole duties of his profession. This should all be done by the State. A faithful discharge of one's lawful obligations is the highest duty of the citizen; and if man is educated for any purpose, it should be for this."

A plan of organization for such a Department was presented by a Committee of the Board to the Legislature at its next session, but it was not until the biennial session following (1868), that an appropriation for that purpose was made to the University.

In the fall of 1865, Judge George G. Wright, of the Supreme Court of Iowa, on removing to Des Moines, the State Capital, had associated with him Judge Chester C. Cole, of the same court, in the organization of the Iowa Law School, the first Law School west of the Mississippi River. Judge Wright had had a number of students in his office during the two or three years preceding; and several applications for a like privilege for the next year suggested the formation of the school, in which, during the first year, twelve students pursued the study of law under the auspices of these two gentlemen, they being the only instructors.

At the opening of the second year William G. Hammond became connected with the school, giving it a constant personal attention which the judicial duties of the other Professors did not permit them to render; and the three carried the enterprise through the two succeeding years with but slight increase in the number of students.

The plan of adding a Law Department to the University was carried out in 1868, by the removal of the Iowa Law School to Iowa City, its instructors becoming Professors in the Department, and the graduates being made Alumni of the University. Dr. Hammond became a resident of Iowa City, and was placed at the head of the school, being for several years the only resident Professor, while Judges Wright and Cole continued to give a portion of their time to its service.

The course of study in the Iowa Law School had been only one year; and although the Trustees of the University in the first provision for a Law Department had specified a course of two years, it was found not feasible to require so long an attendance, and the one-year course was retained.

The sentiment in favor of a two-years course led, however, in 1874, to the experiment of offering an optional post-graduate year; but after a trial of eight years so few had availed themselves of its privileges that it was abandoned.

The condition of the law as to admission to the bar was at this time most deplorable. There were two *nisi prius* courts in each county which had authority to admit to practise in all the Courts of the State. No term of reading was required, and the examinations, conducted usually by a committee of lawyers appointed for the particular case, were generally little more than a farce. The smallest imaginable amount of reading, with some little experience in an office, was sufficient in most courts to secure the license to practise. The last admission by one of these courts, before its power to admit terminated, was that of the janitor of the Court House, whose knowledge of law was what he had acquired by listening to the Court's proceedings.

It is not surprising, in view of the ease with which a student might be admitted, that few remained for the advanced studies. In the eight years of the existence of the post-graduate course only sixteen students completed the work required therein.

The leading members of the bar in the State, as well as the Professors in the Law Department, hoped for the adoption, through legislative enactment, of a higher standard of preparation for the profession, and con-

sequent greater efficiency in its members; and one of the meritorious undertakings of the State Bar Association, during a brief but laudable existence, was to secure the passage of such a law. The measure was introduced into the Legislature in 1880, and was passed in 1884. By this statute a two-years course of reading was made requisite, and the power of admission was vested entirely in the Supreme Court, examinations being provided for at each term. In accordance with these provisions the Court made rules as to examinations, which have caused them to be looked forward to with some apprehension. Applicants are frequently rejected for insufficient knowledge, and a more thorough preparation is thereby induced.

In view of this legislation the Board of Trustees of the University and the Faculty of the Law Department could not longer hesitate to extend its course, and a full schedule of studies for two years of nine months each (excluding vacations) was introduced. In consequence the attendance, which had varied from one hundred to one hundred and fifty during the four preceding years, fell to fifty-seven; but after this plunge it slowly rallied, the enrolment for the year just closed numbering one hundred and twelve.

A high standard of professional ability is fostered, not only by excluding those poorly prepared, but also by furnishing the profession with those well equipped for its duties. The Law Department had already done much in this direction by sending out classes of young men far better qualified for practice than those whose preparation had been made in offices. Especially were the graduates of the school found to excel, even among lawyers of long experience, by virtue of familiarity with fundamental principles and ability to frame proper pleadings.

The high standing which the graduates of the school have taken, as well as the necessity for a more thorough preparation for admission, has drawn to the school a large proportion of those pursuing the study of law in the State. Of the three hundred and fifty-one admissions during the five years since the matter has been in the control of the Supreme Court, one hundred and ninety-eight have been through the Law School, and of the others a considerable number have made a portion of their preparation in the school without becoming entitled to graduation.

The Faculty of the school are in hearty sympathy with every movement looking toward the more thorough preparation of lawyers for practice, and a higher standard of learning in the profession; but they realize that it is not in the power of the Law Schools to force advancement in this direction beyond the slow progress of public sentiment. They may help form public opinion on this question, but cannot ignore it.

The advantages of a Law School training, and its superiority over any other method of preparation for the practice of law will be made apparent to the public by attracting as many as possible of those who are looking forward to admission, rather than by driving them into other channels of preparation; and especially necessary it is for a school dependent upon the State for financial aid to account by definite returns for the money expended.

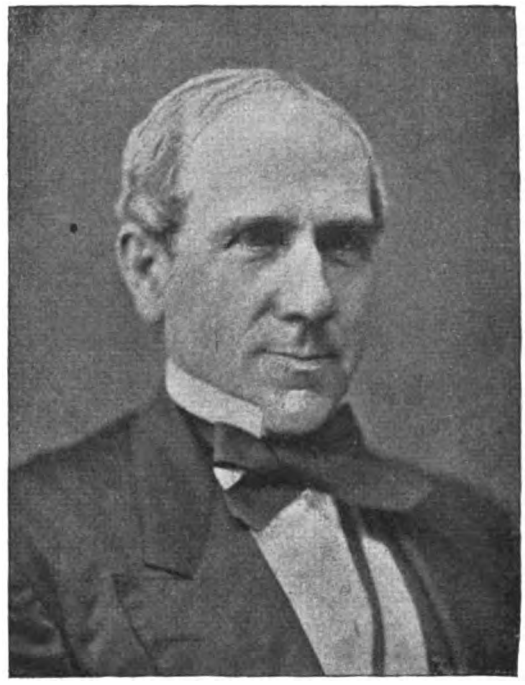
In this view it was thought expedient to admit to the senior course those who could show a year's previous reading under the direction of an attorney and pass preliminary examinations upon the principal subjects of the junior course. At the same time the Faculty have urged strongly the advantages of a full course in the school, and have made the junior course the fullest and most fundamentally important of the two. They also urge that a student, who can spend but one year in the school, shall commence his studies there and complete his reading in an office after having become familiar with the methods of study.

The number of those who study but one year in the school has been thus decreased proportionally, until it will be possible in

another year to limit degrees to those who have attended two years, unless, indeed, as seems likely, the number of applicants for senior standing on office reading shall become so small that a strict rule may not be necessary.

As the school year is longer in this institution than in perhaps any other, it will not be necessary to consider a longer course for the present.

The question as to what preparation shall be required for admission to the Law School involves the same difficulties as that with regard to length of course. It is highly desirable to have men with a good education; if they have had the discipline of a full college course, so much the better. But the school should not make requirements which cannot be met by those upon whom it is dependent for support. Indeed the question is not merely one of support, but, aside from that, it is whether the school would be doing the most possible toward forwarding the object of its creation, if it should limit its advantages to a few, by requiring conditions which the body of those desiring to study law cannot comply with. A strict entrance examination will keep away men who would make good lawyers, indeed who will make good lawyers by other modes of preparation.



GEORGE G. WRIGHT.

The suggestion is sometimes made that eventually a college course should be made a necessary qualification for admission to a professional school. Of course it cannot be too strongly insisted upon that the learned professions demand the best preparation to be had, and that the neglect of the advantages of a college education, where it is attainable, is an indication of indifference not promising well for future success. But to say to a young man to whom a college education is an impossibility, that he cannot therefore be a successful lawyer, is to fly in the face of experience. A considerable amount of mental training is essential to the effective study of law, but this may be acquired otherwise than in college. What is needed is not so much learning as discipline, and this may have resulted from other forms of mental activity. But with the increased facilities for a college education it is becoming true that the best equipped men are usually college graduates, and, without any requirement on the part of the schools, it will doubtless soon be a fact, in the West, as it already is in the East, that the great body of those who apply to them for admission will come with a college degree.

It is not to be understood that the advantages of the Law Department are limited to men. The University of Iowa from the first has admitted to all its Departments women on equal footing with men, obeying in this the growing sentiment for equality which has abolished distinctions between the sexes as to property rights, and has admitted women to practise at the bar. No objection whatever has appeared to the admission of women to the Department; they have made excellent students. But there seem to be

obstacles to the practice of the profession by women, inherent in the nature of the occupation, which have discouraged the study of law by them, so that few have availed themselves of the advantages of the Department.

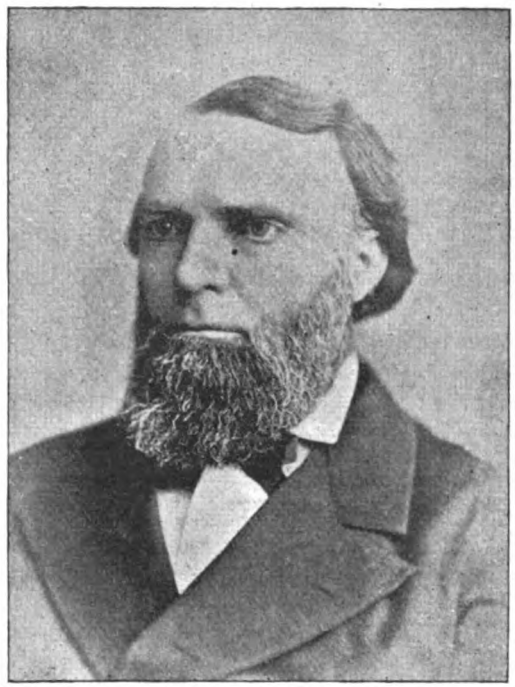
The advanced efficiency of Law Schools is not marked in the increased length of the course more than in the increased number of hours of instruction per day. The Iowa Law School, as first organized, offered instruction to its students on three evenings of each week; afterward instruction was given daily. When removed to Iowa City, two hours of instruction per day were furnished, the two hours being occupied usually by one instructor on a single subject. Later a Professor of Pleading and Practice was added, who had a third hour each day throughout the year. When the course was extended to two years, provision was made for two hours instruction on distinct topics to each class. Lately it has been found expedient to give the juniors, during about half the year, a third hour of quiz on one of the topics of the other two hours. The seniors are urged and expected to review, with the juniors, one of the subjects of the junior course as a third hour's work. In addition to these hours each class has a General Term of Moot Court at least once each week, with Special Terms as often as required to try cases.

A comparison of the methods of teaching in the various Law Schools furnishes a topic of most interesting study, and the progressive spirit of the schools is shown by the fact that the question of methods is everywhere receiving attention, and causing animated discussion. Each teacher has something individual in his plan of work and each school claims some characteristics of its own, embodying to greater or less degree, diverse methods, but it would seem possible to class all in three groups, in which instruction is respectively by lectures, by study of text-books, or by study of cases.

Of these three the first, or lecture system, is undoubtedly the oldest. The instruction at the Inns of Court in England, so far as any systematic instruction was given, was imparted in this way. The instructors at the Law School in Litchfield, Conn., which was by many years the oldest in America, were lecturers, and all the early attempts to introduce instruction in law into the University curriculums were by establishing courses of lectures. This method is still justly held in high favor. Its manifest advantages consist in the interest which an enthusiastic and skilful speaker may awaken in his hearers, and in the vividness of the outline which may thus be given by a few masterly strokes. For instance, in presenting to a popular audience or to beginners in the study of law its nature, main features, and mode of development, lectures are unquestionably most effective. But for a technical presentation of the principles of a particular branch of law, where the lecturer, in order to attain completeness and accuracy of detail, is compelled to reduce his propositions to a definite form of language, this method is not suitable. The necessity of adhering to words previously selected deprives the lecture of the interest which spontaneous utterance would awaken. The student feels compelled to take full notes, — for statements which the teacher has elaborated with great pains in order to secure accuracy are not to be trusted to the uncertainty of memory. In order that notes may be fully taken, the lecturer must proceed slowly; and on the other hand the student, fully engrossed in the mechanical labor of writing as fast as possible, has but little attention to bestow upon the thought and is in danger of losing important points in the lecture. His comprehension is dependent upon the re-reading of the notes he has taken, rather than his recollection of what has been said.

To obviate the disadvantages of the lecture system the use of text-books was introduced into the schools. Indeed, text-books themselves were often the result of the labor of a teacher in elaborating and completing

his course of instruction. The list of books having such an origin would be a long one and would include such leading treatises among the older books; as, Blackstone's Commentaries, Kent's Commentaries, Reeves' Domestic Relations, Gould's Pleading, Parsons on Contracts, Washburn on Real Property, and Greenleaf on Evidence. The lecturers who have thus reduced their work to printed form, have done so primarily to make it accessible to those who could not avail themselves of the oral lecture; but there seems to be no good reason why a teacher, who has carefully elaborated the doctrines of law on a particular subject, should not give such statement to his students in print. If the form of statement is valuable, and the information important enough to warrant laborious copying of the lecturer's words into a note-book, it is worth while to furnish them to him in accurate form.



JOHN F. DILLON.

The advantage of this plan of instruction is obvious, as enabling the student to more thoroughly charge his memory with the propositions stated, and to employ for that purpose the time when other instruction is not attainable. If instruction in print could thus be substituted for lectures, it would not be necessary to attend Law Schools. Its disadvantages, on the other hand, are, first, that it does not give perspective. An important principle is stated in as few words and in the same style as one which is, for purposes of systematic instruction, unimportant and collateral. There is a uniformity and monotony in the printed page which lulls the mind into oblivion of salient points and fundamental principles. Again, the method of instruction by text-book induces a considerable reliance on the memory. It is very difficult, with beginners at least, to prevent the mere learning by rote of the language of the text-book, as though that were itself the unquestionable enunciation in oracular form of the rules of law. For it is not in law alone that it is found necessary to discourage reliance upon memory. In every science the student must be trained to substitute comprehension of the reason for memory of the form. But, especially in law, it is necessary, from the very first to insist that the rule is found only in the reason of the case, — a reason guided by precedent, leading to a judgment which is not that of an individual but of the abstract legal mind.

It must be said, however, in behalf of instruction by text-books, that while it has serious disadvantages when the book furnishes the sole guide, yet these can be largely overcome in the class-room by a skilful teacher. By oral explanation and illustration the want of perspective can be supplied and the fundamental doctrines may be made to stand out in bold relief. The student may be compelled to rely upon his understanding rather than his memory. The interest of an oral exposition may be made to supplement the details of the printed statement, while the accuracy of the text supplements the analysis and arrangement of the

lecture. In this way the advantages of the lecture system may be preserved, while to them are added the aids derived from the use of the text-books.

It must be admitted that a serious drawback to instruction by means of text-books, is the nature of the books themselves. As usually prepared for practitioners they give slight, if any, attention to elementary principles, and elaborate with painful minuteness the various questions of fact which have been the subject of reference or adjudication in particular cases. The writer was told some years ago by an eminent law teacher, who had, in response to a question, made careful investigation, that nowhere in Kent's Commentaries is the distinction between Real Property and Personalty, — that in the absence of will the one descends to heirs while the other passes to an administrator, — clearly pointed out. As the text-book aims mainly to present the result of cases, it may easily happen that principles which are among the fundamentals of the law shall be but slightly noticed because too elementary to be elaborated in judicial opinions.

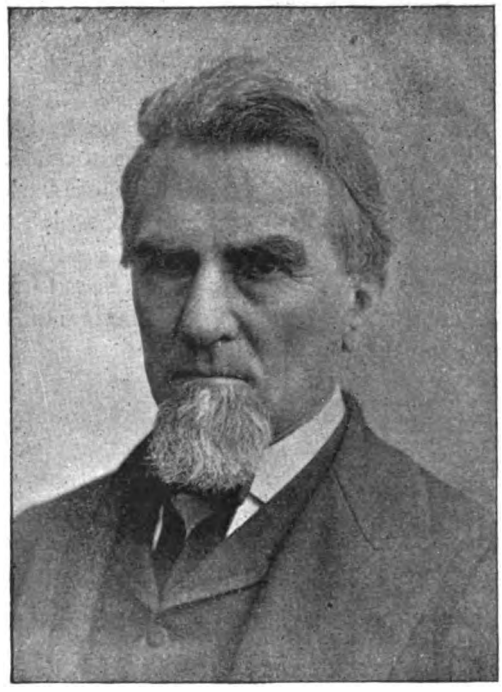
But it would be ungracious to find fault with the modern text-book. Considering the task before him, the writer of a reputable treatise does wonders and confers a blessing, the extent of which can hardly be appreciated, upon those for whom he labors ; and even though he does not furnish an adequate guide to students in mastering the science of law, yet in the hands of a teacher who will make it an assistance and not a guide, such a book can be of great advantage. One of the things important for the student to learn is, how to use such treatises and how not to be misled by them. A familiarity acquired in school with a book, which will afterwards be kept on the office table as the best and most exhaustive modern work on the subject, will be found of great practical value.

The study of cases as a method of acquiring knowledge of law is not new, nor is it peculiar to any system. It is the theory of the common law that in this method, and this method only, are its principles to be ascertained. And this theory is recognized fully in all plans of instruction. The lecturer gives references to leading cases ; the text-writer supports almost every sentence by citations of authorities. The teacher would be deemed remiss, according to either method, if he did not encourage the reading of some of the cases thus referred to. But the peculiarity of what may perhaps be called the new method of teaching law by the study of cases, consists in making the cases themselves, the vehicle of instruction. In other words, the student reads the cases without having previous information as to the doctrine or rule to which they relate, and deduces for himself such doctrine or rule, and thus makes an original investigation, following theoretically the methods pursued by early students of the common law before there were lecturers or commentators, and which lecturers, text-writers, lawyers, and judges are still presumed to pursue in ascertaining what is the law.

In this method the student not only needs access to the authorities, but facilities must be provided by which all the students pursuing a particular topic may study within a very short period the same cases. The work of the instructor is, first, to prepare this list of cases, so selected and arranged that the student may draw from them the desired information ; and secondly, to so conduct a discussion of them by the students as to leave a correct impression on the mind as a result of this reading and discussion. It is to be noticed that it is essential to the system that the student shall read the cases before he is told in any way what the principle is which is to be derived from them, and that the principle is to be derived by himself, with the aid of the discussion in the class. If the principle is formulated by the teacher beforehand, or even afterward as his own authoritative statement, the system has nothing peculiar or distinctive to entitle it to separate consideration.

That there are advantages in this method

of case study is unquestionable. Chief among them is the drill and discipline which the student acquires in the fundamental methods of the common law. It can reasonably be insisted that a learner knows better how a thing is done after doing it than by simply being told. Moreover this is akin to the experimental method in science which has produced such marvellous advances in knowledge. The student's interest is kept awakened by the pleasurable excitement of discovery, and a sense of originality in his labors. Nothing in the study or practice of law is so exciting as "running down" the authorities on a particular point, going from case to case bearing upon the question, and thus coming at it from all sides until every difficulty is removed, or until a well marked conflict of views is reached, which may be settled by weighing the considerations urged on one side and the other, and determining the relative importance to be attached to them. This is an exercise, however, in which the student is to be indulged with moderation. There is great danger that he be misled into wasting much time upon side issues, as to which he will get erroneous impressions; and the investigations which he makes for himself are to be looked upon as valuable exercise, rather than the acquisition of reliable knowledge.



JAMES M. LOVE.

But over against these somewhat dazzling recommendations of the merits of the peculiar system of case study, must be set certain considerations of a different character. The object of the study of law in Law Schools is different from that proposed in the study of the subjects of a collegiate course. Languages, history, philosophy, mathematics, even the sciences (except in scientific schools), are pursued for the discipline to be acquired. The advantages of particular studies, in the profitable information to be obtained, may be urged, but no one will claim that information for practical purposes is the sole object to be borne in mind in selecting or presenting these subjects. The study of law unquestionably affords an excellent mental discipline. In that respect it is inferior to none of the social sciences. It has also a collateral practical value as a preparation for business and for the duties of citizenship, and in a popular government such preparation is exceedingly important. In these two aspects legal studies might well be given a place in the college curriculum, as they are in some colleges and especially in England.

But Law Schools are not maintained primarily for giving this mental discipline, or this preparation for citizenship and general management of business. They are organized and maintained to prepare the students for the practice of law. It will probably not be questioned that nine tenths of those who enroll themselves in such schools expect to practise law as a profession. In the same way the study of medicine is undoubtedly interesting in itself, a source of mental discipline and of a valuable knowledge of things which one may advantageously know, but

the business of medical colleges is to prepare their students to become physicians. This practical idea is necessarily incident to professional schools of every class.

The question as to methods of study, then, is simply this; which one affords the best preparation for the practice of law; and admitting all that may be said of the danger of giving the word "practical" too narrow a meaning and overlooking, in the haste of preparation to try cases, the elements necessary to the highest ultimate success, yet it may justly be required that in a fair and broad sense the methods of study shall be practical. To this end the student needs information as well as discipline. Law consists not merely in methods, but in results. As to whole fields of its domain, it has become certain and definite, and capable of concise statement. As to many questions the period of reasoning has been passed, so that it is not for any tyro to open up the discussion again on his individual judgment as to the weight of the arguments on either side. These fields are to become familiar to the lawyer as matter of knowledge, and where else can this knowledge be more easily acquired than in the Law School? Much must be left for subsequent acquisition; but the student ought to have quite definite information as to those fundamental doctrines which have been reasoned out once for all, and have become current coin in the profession. There are certainly enough questions yet in dispute to furnish, in their investigation, the discipline required without throwing doubt and distrust over every doctrine, by presenting to the student's mind all the controversies which have arisen in the course of its history.

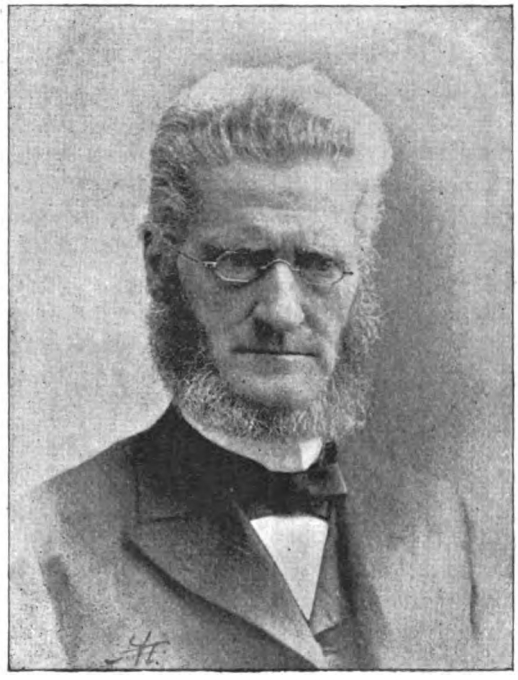
To limit a student's knowledge of law to what he can carve for himself out of the study of cases, in which the points have been decided, is no more reasonable than to refuse to tell the student of astronomy the distance of the sun and planets, compelling him to acquire the knowledge only by observation and calculation. He might reasonably be required to make one such calculation to become familiar with the method, but after that he can well be given definite and approved results as a basis for the solution of other questions. In every branch of knowledge the investigator is able to make progress beyond his predecessors by accepting the results they have attained, and pursuing their methods in solving new questions. The mathematician does not construct an entire table of logarithms before using logarithms in his calculation. The student of chemistry is not required to actually prove the chemical composition of water before making the knowledge thereof a basis for reasoning in reaching some result.

From these various considerations, so full a recital of which is perhaps justified by the importance and interest of the subject, the writer is led to think that study of cases should be one of the methods, but not the only method, of legal education. When the mind has once been trained into the proper way of reasoning according to the theory of the common law, there is no danger that definite information given by lecture, or reading of text-books, will be misconceived in its scope and application. Study of cases will still constitute a valuable method of acquiring knowledge as to the rule of law in particular cases, and an interesting and profitable method of fixing in the mind, by apt illustrations, the abstract rules which may be laid down by the teacher or text-writer.

It is evident that it cannot be said of any system of instruction that it is the only proper one, or the best. More, probably, is dependent upon the instructor than the method. Accordingly in this school many methods are resorted to, each instructor being at liberty to use a large discretion as to his plan of work. On elementary subjects, such as Contracts, Evidence, Bills and Notes, there are regular courses of lectures, but in each case followed by a course of recitations in a regular text-book. In Torts, Real Property, and Equity, the instruction is from text-books,

accompanied from day to day with explanations and more or less formal lectures.

This school claims the distinction, however, of originating, and still preserving, a plan of instruction not in general use. In 1875, Dr. Hammond, while at the head of the school, prepared and had printed in pamphlets of about a hundred pages each, synopses of his courses of lectures on Real Property and Equity, intending that the students should use these in connection with the lectures, to give them more definite statements of principles and citations of authorities for consultation than they would be likely to get in notes. The plan was found to work well, and was extended by Dr. Hammond to Torts, and perhaps other subjects; and while these topics are not now taught here in this manner, it being thought advisable in a more extended course of study to substitute text-books on such important subjects, yet the plan has been retained and used to advantage in connection with lectures on Criminal Law and Procedure, an outline of which subject, covering brief statements of the principles and references to cases and portions of text-books which can be profitably read in illustration of them, is put into the hands of the student. Less extended synopses of Elementary Law, and the Law of Corporations, and of Carriers, are used in the same way. The plan involves an oral exposition of the subject by the instructor, accompanied each day by a quiz on the matter of the previous lecture, for which the student has made preparation by a study of the points relating to that matter found in the synopsis, and extended reading of cases there referred to. These cases are quite numerous and it is not expected that each student shall read them all, but the more important of them are briefly stated in the class by students who have read them and prepared to make such statement. In this way the student gets the vivid first impressions which the lecture system is so well suited to impart, and has also the advantage of printed statements of the important rules, reduced to definite and concise form. He reads the cases cited, not merely to verify statements of the lecture or synopsis, but to give additional information as to details and the application of principles to particular classes of facts.



AUSTIN ADAMS.

In the exercises of the school quizzing is given systematic attention. It is fully recognized that ability to answer questions is not a conclusive test of legal knowledge, especially if the questions are such that they call largely for an exercise of memory; but by so framing the questions that they demand a use of the reasoning powers and test the ability to apply principles to facts, the exercise may be made valuable as a means of instruction and not merely a test of the thoroughness of the student's work.

For the further cultivation of the student's faculty of explanation and expression, he is required to undergo written examination on each subject of the course, at the time of

its completion. There are at least three of these examinations, during each of the three terms of the school year in each course; and the writing of each examination involves from one and a half to three hours. The aim is to ask questions which shall call for the exercise of judgment and the reasoning powers in their answer, and not merely the power of memory. With even the best students the fact that they are to be subjected to such a test of the thoroughness of their work serves as a legitimate stimulus, while the nature of the examination is so varied as to avoid, so far as possible, the temptation to cram.

In the matter of giving marks upon examinations, the practice of the school has varied. At present the plan is to mark each examination and require seventy-five per cent for passing. These marks are given out at once, so that those who stand low may be stimulated to better work or induced to take fewer studies. It is required that a candidate for graduation shall have an average of not less than eighty per cent on all his examinations, but beyond this there is no ranking or honor on account of marks, and the per cents are not made public except as they are given out to each student after the examination. The object is to use marks only for the purpose of weeding out those who manifestly should not go on or should not graduate, and not to make them a stimulus to cramming or "digging." Very high marks are no certain indication of legal ability or available knowledge.

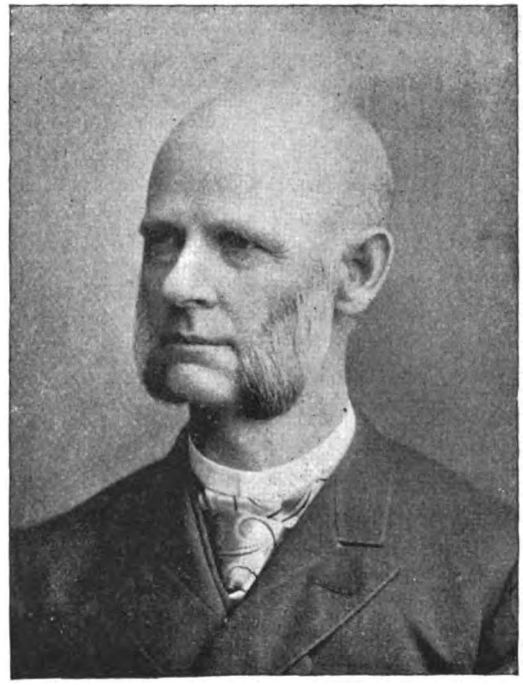
Final examinations for graduation are held by a committee of lawyers appointed by the Supreme Court of the State. They are both oral and written, and the candidate who successfully passes them is given the degree of Bachelor of Law, and admitted to the bar of the State and Federal Courts.

Moot Courts are becoming an important factor in the instruction in law schools. In professional schools of every kind some method of giving practical exercise in the application of knowledge is found necessary to the best results. There is field work in engineering courses, and there are clinics in medicine. For the Law Schools the Moot Court furnishes the field work and the clinics. Some schools make a point of allowing their students to attend actual trials in court, but it is evident that this can be of little practical value. The student is a mere looker on; he does not participate in the case nor prepare himself for it. The investigation of the law and drafting of the pleadings are critical features of which he knows nothing. He is apt to overlook what is vital, and be particularly struck by the smartness of lawyers who delight in display rather than by the more effective skill of those who seek only results. Actual practice by a student in well-conducted Moot Courts under the direction of a competent instructor will furnish him better training for actual practice than he can get by attendance upon courts, and indeed better training than he is likely to get in a law office.

The usual method of assigning a statement of facts to students as attorneys who prepare the case and try it to the court on the issues of law or fact which may arise, the statement of facts being regarded as the evidence in the case if the issue is one of fact, furnishes excellent exercise in studying the points of law involved in preparing the pleadings, making briefs of authorities, and arguing law questions. Lately, however, a plan has been adopted in this school which gives the Moot Court a broader scope. During the latter part of the junior course, after the class has had instruction in Evidence, the attorneys are required to prove by competent evidence the facts set out briefly in the statement. This gives an opportunity for applying the rules of evidence which would arise in an actual trial. The witnesses are instructed beforehand by the attorneys, and testify as to the imaginary transaction so as to prove what is desired, while it is open to the opposing attorney to object to the evidence if improper. The

attorneys are prevented from going outside of the statement of facts by the simple rule that the court in determining the case will not regard as proved any facts not within the written statement, while on the other hand facts which are there found, will not be considered unless established by proper evidence.

In the senior course the scope of the Moot Court is still further enlarged for a part of the year by carrying on regular jury trials, the evidence being presented as before, while the jury pass upon questions of fact under instructions prepared by the attorneys and given by the court.



LEWIS W. ROSS.

It is found best to have separate courts for juniors and seniors, and to have not more than two attorneys on each side. Indeed, in cases involving only a presentation of law questions, it is usual to have but one attorney for each party, so that the whole responsibility for the preparation of pleadings, and the presentation of his side of the case, rests upon a single student. By diligently carrying on the courts, it is found practicable to have each student engage as attorney in from five to eight cases during his course, while he writes opinions as associate judge in from three to five cases. Club Courts were formerly held by the students, conducted by judges elected from their own number; but the opportunity for work in the regular Moot Court under the charge of members of the Faculty is now so great that the students' courts have been abandoned.

The library of the School embraces about four thousand volumes, including the complete reports of the United States Supreme Court and the Courts of Last Resort of twenty-two States; also the series of American Decisions, American Reports, American State Reports, Myer's Federal Decisions, and the complete series of Reporters; also nearly all the English Reports down to and including a part of the series of Law Reports; also a good collection of standard treatises in which are included all the recent American works of any note. These books are in a commodious library-room and are accessible to the students and freely used.

The rooms of the department have been, from the first, on the second floor of the substantial stone building represented at the beginning of this article, and which was erected as a capitol building when the capital of the State was at Iowa City. Flanked by the other University buildings, it stands in the centre of a beautiful campus in the heart of the city. At present the whole second floor, formerly occupied as legislative halls, is occupied by the department; the representative chamber being used as general lecture room (as shown by the cut at the end of this article) in which all junior exercises are held, while the old senate chamber is divided into two rooms, one seated in the same way as the general lecture room and used for senior exercises, while the other contains the library.

In arranging a course of study three

matters are to be considered, — first, the subjects to be included; second, the order of subjects; and third, the relative time to be given to each. On the first point there can be little chance for difference; for while topics may be mentioned in one course and not in another, yet it will usually be found that those which seem to be omitted are included under some more general head.

The course in this department differs from some others in giving place at the very beginning to a short series of lectures on legal ethics, and a more extended one (thirty lectures or more) on elementary law, during which the attention is called to the nature of law, its sources and development, the difference between the unwritten and the written law, the method of determining what the law is by the use of reports, statutes, treatises, digests, etc., and finally the different branches into which the law is usually divided and the nature of each, with its relations to the others. During this course, pains is taken to point out the best methods of study, and the student is required to read cases and is given practice in stating them.

As to the proper order of subjects there will be differences of opinion. Indeed the various subjects cannot be arranged in a progressive series like different branches of mathematics, — each depending upon the preceding and leading to those which follow, — for one cannot be fully understood without some knowledge of the others. It seems proper, however, that Torts, Criminal Law, and Simple Contracts, shall come very early in the course. The Law of Property also demands early attention, and therefore Bailments and sales of Personal Property can properly come in the junior year. Real Property involves many intricate questions; and while the nature of legal estates should be early understood, yet it is thought practicable, after a quite full outline of this part of the subject under elementary law, to postpone the full study of Real Property until the senior year, where also Equity is placed. It might seem natural to leave adjective law until the latter part of the course, but the student must have instruction in Pleading, Evidence, and the ordinary procedure before he can do any satisfactory work in Moot Court; moreover, many questions of substantive law are unintelligible until the prominent features of adjective law are understood. Therefore these subjects are placed in the junior course, some special forms of procedure and practice being reserved for the senior year.

The plan is to put in the senior year also special developments of Contract and Property Law, such as the Law of Insurance, of Carriers, of Chattel Mortgages, of Partnership and Agency, of Corporations, of Patents, etc., among which are included especially those subjects in which equity is peculiarly involved.

The following schedule of the two courses of study, substantially as it will be presented to the two classes for the coming school year, will give an idea of the arrangement of topics and to some extent of the method of teaching each.

JUNIOR YEAR.

Fall Term.

Legal Study and Ethics. A course of lectures for one week as to methods of study, and as to demeanor and duties in the school and in the profession. Wright.

Elementary Law. A course of lectures for six weeks introductory to the study of law, accompanied with recitations from a printed synopsis. McClain.

Torts. Recitations in Cooley on Torts for eight weeks with oral explanations and references to leading cases. Gilman.

Pleading. A course of instruction for seven weeks mainly by lecture, on the general principles of pleading and upon code pleading as developed therefrom. McClain and Gilman.

Contracts. A course of lectures for four weeks upon the elementary principles of the law of contracts, to be followed during the winter term by recitations as shown below. Love.

WINTER TERM.

Contracts. Recitations on selected portions of Parsons on Contracts, for eight weeks. WAMBAUGH.

Domestic Relations. A course of lectures for three weeks on the subjects of marriage and divorce, the property rights of married women, parent and child, guardian and ward, the rights and liability of infants, and kindred topics. ADAMS.

Evidence. A course of lectures for four weeks upon the principles of the law of evidence, to be followed during the next term with recitations as shown below. LOVE.

Criminal Law. A course of lectures for four weeks upon criminal law, accompanied with recitations in McClain's Outlines of Criminal Law and Procedure, with references also to statutory provisions. MCCLAIN.

Trial and Judgment. A course of lectures for three weeks upon the course of procedure in common law courts of record from the beginning of the trial until the entry of judgment, with references to statutory provisions. GILMAN.

SPRING TERM.

Evidence. Recitations in the first volume of Greenleaf on Evidence, for four weeks. WAMBAUGH.

Bailments and Pledges. A course of lectures for four weeks with printed synopsis, covering the various topics of the law of bailments, including liability of inn-keepers and the law of pledges and collateral securities. MCCLAIN.

Sales. A course of lectures for one week on the law of sales. LOVE.

Negotiable Instruments. A course of lectures for three weeks on the law of bills, notes, checks, and other negotiable and *quasi* negotiable instruments, followed by recitations for four weeks in Daniel on Negotiable Instruments. LOVE and WAMBAUGH.

Probate Law. A course of lectures for three weeks on the execution and probate of wills and the law of executors and administrators, including the settlement and distribution of decedents' estates, with references to statutory provisions. GILMAN.

International Law. A course of lectures for four weeks upon public international law and the conflict of laws. MCCLAIN.

SENIOR YEAR.

FALL TERM.

Real Property. Recitations for four weeks in Tiedeman on Real Property, through common law estates, accompanied with oral explanations and references to leading cases. GILMAN.

Equity. Recitations in Bispham on Equity, for ten weeks, accompanied with oral explanations and references to leading cases. WAMBAUGH.

Carriers. A course of lectures for three weeks, accompanied with printed synopsis, covering the subjects of carriers of goods and carriers of passengers. MCCLAIN.

Insurance. A course of lectures for three weeks on the law of insurance in its several branches. WAMBAUGH.

Chattel Mortgages. Recitations for three weeks in Jones on Chattel Mortgages. WAMBAUGH.

Patents. A course of lectures for four weeks on the law of patents. LOVE.

WINTER TERM.

Real Property. Recitations in Tiedeman on Real Property continued, followed by lectures on actions to recover real property, occupying in all six weeks of the term. GILMAN.

Criminal Procedure. A course of lectures for four weeks, accompanied with recitations in McClain's Outlines of Criminal Law and Procedure. MCCLAIN.

Corporations. A course of lectures for three weeks, accompanied with printed synopsis, upon the general doctrines of the law of corporations both private and municipal. ADAMS.

Federal Courts and Procedure. A course of lectures for three weeks on the jurisdiction of the Federal Courts and the procedure therein. LOVE.

Admiralty. A course of lectures for one week on admiralty jurisdiction and practice. LOVE.

Appellate Practice. A course of lectures for two weeks on the practice in appellate courts. MCCLAIN.

Medical Jurisprudence. A course of lectures for three weeks on medico-legal topics. SCHÆFFER and GILMAN.

Taxation and Tax Titles. A course of lectures by Judge KERINE.

SPRING TERM.

Partnership and Agency. A course of lectures for four weeks upon the topics of partnership and

agency, followed by recitations in the portions of Parsons on Contracts relating to those subjects. LOVE.

Estoppel. A course of lectures for one week on the subject of estoppel, both of record and *in pais*. GILMAN.

Attachment and Garnishment. A course of lectures on these subjects, with references to statutory provisions and leading cases. GILMAN.

Justice Practice. A course of lectures for one week on practice in Justices' Courts. GILMAN.

Constitutional Law. A course of lectures for four weeks upon the history of constitutional government in the United States, followed by lectures on constitutional law for five weeks, accompanied with recitations in Cooley's Principles of Constitutional Law. MCCLAIN.

Constitutional Limitations. Lectures on the rights of person and property as protected by constitutional limitations. WRIGHT.

It should be said in explanation of the foregoing schedule, that each subject is continuously pursued during one hour per day, five days in the week for the number of weeks provided; while in several of the junior studies, especially Pleading, Criminial Law and Probate Law, a second hour of instruction per day is given by way of quiz.

Some explanation is due, also, as to the instruction in Pleading and the various branches of practice. Common Law Pleading, strictly speaking, is not now practised anywhere, and it seems useless to teach it as a distinct subject. Most of its principles and rules are preserved to greater or less extent in present forms, and should be understood. The method pursued is to give instruction on the general principles of pleading as a system, in which explanation is given of the nature of an issue, the kind of issues, the methods of raising and of trying them, etc. During this course of instruction what is valuable, either historically or practically, of the common law system is fully explained, — such as the forms of actions, the steps in pleading, and the more important rules. In this connection, the essential differences between the common law and the code system are pointed out. It is insisted, in accordance with the views of Dr. Pomeroy as elaborated in his work entitled 'Remedies and Remedial Rights," that code pleading is a system as distinct and perfect as that of the common law ever was, and far more in harmony with reason and the practical requirements of modern times. As, however, the code system differs in details in the different States, it is thought better to give definite instruction with reference to the forms of one State than to compare and generalize, the students being warned that as to such details they must study for themselves the code of the State in which they practise. It has been found that code pleading as thus taught according to the code of Iowa, is a better introduction to practice in any of the code States than could be given in any other way than by specific instruction in the codes of such States. Indeed, the numerous graduates of the School who practise in Illinois have found no difficulty in adapting themselves to its modified system of common law pleading.

In teaching Practice, the code of Iowa is followed in the same manner. As to many questions which may arise under any of the codes, authorities from other States are presented, and a general rule is stated if possible; but where the solution depends upon the language of a particular code, that of Iowa is resorted to. In teaching other branches, the Iowa statutes and decisions are not made prominent, the principles of the common law according to the weight of American authorities being presented, and the fact of statutory modification being briefly referred to. The fact that students are drawn from many States, and are preparing to practise in many States, precludes exclusive study of Iowa law, even if so narrow a course were possible.

If it is urged that too much time, relatively, is given to Practice, the answer simply is that the student needs such information in his profession, and so far as is practicable to give it in the Law School, it should be given. It will not be to the disadvantage of the beginner in practice that he is familiar with the

questions of this kind, which he will be called upon to meet in managing cases.

Students frequently desire to take a few collegiate studies in connection with their law course, and though this is practicable to but a limited extent on account of time, yet it may, in some cases, be reasonably permitted. Students of the law department are allowed to take, without extra charge, any studies in the collegiate department which the Faculty think will not seriously interfere with their legitimate work. On the other hand, collegiate seniors are allowed to take one study for one term in the law department as an elective in their collegiate course, but the time of such study cannot be afterward counted in a law course. These reciprocal arrangements foster the feeling, which is beneficial in many ways, — that they are all members of a university of learning, and that the fields of knowledge are wide and their riches inexhaustible, — and serve perhaps to some extent to keep alive in a too practical age a love of learning, which in a less enlightened era drew students in thousands to famous universities in Europe. But aside from any question, of sentiment, the law student who pursues his studies in a university, has many advantages growing out of his surroundings, one of the most evident of which is the access to a general library.

EMLIN MCCLAIN.

In providing instruction in a law school, the question may arise whether it is better to have resident professors whose business shall be teaching, or to have specialists in each subject, who give to the school only the time necessary to present their particular topics. There is an interest to students in seeing and hearing a man eminent in the profession, — bringing with him from the outside the aroma of high achievements in real life, — which a man whose sole business is to deal with students, can hardly awaken. But in the end it is success in teaching which will establish a teacher's standing with his scholars, and the tendency here has been to concentrate the greater part of the work of instruction in men who make that their business. Three resident professors give their entire time to the School, and apportion among themselves the greater part of the work, especially that requiring continuous attention.

The difficulty in all professional schools seems to be that there is no body of men having any special training in teaching from which instructors can be drawn. The schools themselves prepare for practice, not for teaching, and it is only by chance that any special fitness for instruction is developed. Moreover, it would probably not be wise to have the instruction, to any considerable extent, in the hands of men without practical experience. While there is much more prejudice than truth in the criticism of the work of men who devote their sole time to teaching as being merely theoretical, yet it is doubtless a fact that a man who has never himself actually practised law, does not always fully realize and meet the difficulties which will arise in practice.

In the following brief accounts of men who have been prominently connected with this Law School, no effort is made to enter into details further than to show something of their character and qualifications, and the nature of their work.

George G. Wright came to Iowa from Indiana almost immediately after the completion of his college course, and about the time Iowa was admitted as a State. Entering upon the practice of law, he achieved success in his profession, and was, in 1855, elected one of the judges of the Supreme Court, which position he held almost continuously until 1870, when he was sent to the Senate, where he was a member of the Judiciary Committee, and was made chairman of the Committee on Claims. In 1877, he returned to the active practice of law, and was president of the American Bar Association at its last annual session. Judge Wright was a professor in the Law School from its organization, until he entered the Senate. Since retiring from public life, he has been again connected with the School, delivering a course of lectures upon Professional Ethics, to which has since been added a course on Constitutional Limitations. As a lecturer, he is practical, active, and enthusiastic. From a wide experience, he gives counsel and warnings, which are so apt in themselves and so sympathetically conveyed, as to make a deep impression.

Chester C. Cole came to Iowa about 1859 from Kentucky. He was a member of the bar until 1864, when he became a judge of the Supreme Court, holding that position until 1876, when he resumed active practice, in which he is still engaged. He was professor in the School from its organization until 1875. As an instructor, he was alert and affable, guiding the students through the questions arising in the recitation, with ingenuity and skill.

William G. Hammond studied law in New York and there practised his profession for some years. Afterwards he studied abroad, and then came West and resumed practice in Eastern Iowa. In 1866, he published a digest of Iowa Reports, and immediately afterward removed to Des Moines, and became connected with the Law School there in the fall of that year. The success of the School during the fifteen years of Dr. Hammond's connection with it, must be largely attributed to his profound knowledge of law, and his skill as a teacher. The breadth and exactness of his learning was hardly to be appreciated by the novice, but the students could not but feel deep respect for his attainments; and the genuine sympathy and interest which he showed in them and their achievements, and his enthusiasm for the study of law, strongly attracted them. Many of them cheerfully attribute the love which they have for that which is noblest in their profession, and their success in it, to the inspiration of his labors. The most prominent feature of his method of instruction was the attention given to fundamental doctrines and the historical development of his subject. He seemed able to point out the lines of growth which would lead to the solution of new questions, as well as explain the results reached on questions already decided. The interesting and profound course of lectures which he has delivered several times during the past two or three years in different institutions, on the "History of the Common Law," was commenced and to a considerable extent elaborated, while he was connected with this School.

John F. Dillon studied law in Iowa, after having prepared for the practice of medicine. He had not been long at the bar before he became judge of one of the District Courts of the State, and while holding that position, prepared and published, in 1860, the first digest of Iowa Reports. In 1864, he became a judge of the Supreme Court, and was associated for several years on the bench of that Court with Judges Wright and Cole. During this period the Court attained a deservedly high reputation for ability, and its opinions pronounced during that period are frequently referred to with the greatest re-

spect. In 1869, Judge Dillon became connected with the State University, as lecturer on Medical Jurisprudence in the law and medical departments, his education in both professions especially fitting him for the treatment of that subject. He was afterward made a professor in the law department, but the exacting duties of his position as Judge of the United States Circuit Court, to which he had in the meantime been appointed, prevented him giving much time to the School, or perfecting his course of instruction on the subject of the jurisdiction and practice of the Federal Courts, which had been assigned to him. His connection with the School, however, continued until 1879, when he resigned his judgeship and removed to New York City to re-enter upon the practice of law.

FRED GILMAN.

William E. Miller, one of the Judges of the Supreme Court, was elected professor in 1871 upon Judge Wright's resignation, and continued in the position for four years. Upon retiring from the bench he resigned his professorship and has since been engaged in practice and legal authorship.

When the Regents sought to increase the efficiency of the course by creating a chair of Pleading and Practice, the professorship was conferred upon Frederick Mott, who was soon afterward succeeded by Orlando C. Howe. Each of these men had held judicial positions and came with practical experience in the profession ; but the plan of having a special professor for such subjects was found not to be satisfactory, and the chair was discontinued in 1880, the subjects embraced being apportioned among other professors.

James M. Love became first connected with the School in 1875. He is a native of Virginia, and as a young man was engaged in the engineering force employed in the construction of the canals in that State, in which Senator John Sherman was one of his comrades. Their zeal in espousing the cause of a superior who was deposed, led to their dismissal, and each turned to the study of the law, — Love going back for that purpose to Virginia, while Sherman entered the office of his brother in Ohio. After admission to the bar, Love returned to Ohio to practise, but a few years afterward (about 1857) came to Iowa. By President Pierce he was appointed to the position of United States District Judge, which he still holds. He is now entitled to retire, but being still a vigorous, active man he has not yet determined to take advantage of that opportunity. In 1875, Judge Love was made a professor in the law department and has been connected with the School ever since, giving to it what time his judicial duties permit, — much more indeed than would be possible under such circumstances for one less active and capable. In 1887, he was chosen Chancellor of the Department, but without the requirement that he reside at Iowa City, other provision being made for the details of management of the School. Judge

Love is noted, in the trial of cases, for the directness with which he reaches the merits and solves, on principle, the legal questions involved. He is a patient listener, but those who most effectually reach him in argument rely upon well-grounded reasoning rather than mere accumulation of authorities. The same zeal in searching for the reason of the law characterizes his teaching, which is mainly by lecture in the form of an oral exposition of fundamental doctrines. This course of instruction in such important subjects as Contracts, Bills and Notes, Sales, Evidence, etc., is found to be an excellent preparation for the details of a full text-book on the topic. To the students, Judge Love is greatly endeared by reason of his simplicity of manner, integrity of character, and kindness of heart.

John N. Rogers was in 1875 appointed to the lectureship on Constitutional Limitations. Coming from New York with a good collegiate and legal education, he had taken rank among the ablest lawyers in the State, having perhaps as wide a reputation, and being called into as many intricate and important cases as any lawyer who has ever practised at its bar. The clearness of analysis and conciseness of statement which made his legal arguments in court models of their kind gave great value to the short course of lectures which he annually delivered. He was too much absorbed in his profession to be prominently in the public mind for any office, even a judicial one; but, in 1886, a change was made in the method of electing judges, in pursuance of which three were to be elected in his district; and by a combination among those who believed in a non-partisan judiciary, he was elected one of the three, though in politics opposed to the dominant party in the district in which he was elected. He lived but a short time to perform the functions of his office. With the exception of Judge Rogers, all those who have ever been connected with the School in any way as instructors, during the quarter century of its existence, are still in active life.

Austin Adams came from Vermont to Iowa as a young man, after having received a New England collegiate education (at Amherst), and a partial course in law at Harvard, under the instruction of Parker, Parsons, and Washburn. Having achieved an eminent position at the bar, he became, in 1876, a judge of the Supreme Court. About the same time he accepted a lectureship in the law department, which he still holds. In 1888, he retired from the bench to active practice. Judge Adams' method as a lecturer is to make prominent by pertinent illustrations, often homely or humorous, the most salient points of his subject, confining himself to what is elementary, leaving details to be filled in by subsequent reading. While not considering this the best method for all subjects, he thinks it the best for those topics which he can treat in a short course; and the interest with which the students listen to him, and the satisfaction they find in his instruction, indicate the correctness of his judgment.

Lewis W. Ross came, a young man, from Ohio, after the completion of his college course and entered upon the practice of law in Western Iowa, at a time when that part of the State was still new. As one of the trustees of the University at the time the law department was organized, and a member of the committee by whom the plan for the removal of the Iowa Law School to Iowa City, was matured and carried out, he had from the first a deep interest in the School and an intimate acquaintance with its workings. In 1879, he was made lecturer on the Law of Real Property and, in 1880, accepted a full professorship, removing to Iowa City in order to give his entire time to the work. When Dr. Hammond severed his connection with the Department in 1881, Professor Ross was selected to succeed in the Chancellorship which he held until 1887, when he returned to active practice. Few men have given to the School such painstaking and laborious services or had a larger part, during their connection with the School,

in the instruction given. The method of instruction preferred by Chancellor Ross was by means of text-books with very full synopses, or lists of questions for reviews, either written on the black-board for copying, or printed and placed in the student's hands.

Emlin McClain is a graduate of both the collegiate and law departments of the State University, completing his law course in 1873. For the following eight years he was engaged in practice, during that time editing and publishing a compilation of the statutes of the State, with annotations from the decisions relating thereto. In 1881, he was elected professor to succeed Professor Ross, when the latter became Chancellor. He removed to Iowa City and has since been constantly engaged in the discharge of the duties of that position. In 1887, upon the accession of Judge Love to the Chancellorship, Professor McClain was given the title of Vice-Chancellor, with a view to his having, in the absence of the Chancellor, the executive management of the Department, in addition to his duties as professor. During his connection with the Department, Professor McClain has prepared and published, in two volumes, a complete digest of the reports of the State Supreme Court from its organization, and also a new and enlarged edition of his compilation of the statutes, under the name of the "Annotated Code of Iowa." Although by these works he has acquired a familiarity with the Iowa law, he has preferred in his instruction to treat subjects of general law not depending to any considerable extent upon statutes or peculiar rules of State decision. Most of his subjects are presented by lecture — not formal but explanatory — accompanied by the study of cases, and guided by a printed outline or synopsis prepared by himself.

Fred Gilman was prepared for the bar in the office of a strict, thorough, and able common-law practitioner in Vermont. Coming then to Iowa, he practised his profession for eighteen years, when he was chosen professor in the Department (in 1887), and removed to Iowa City to give his entire time to the School. His method of teaching involves the use of text-books, when available, but he presents some of his subjects by lecture. Being perfectly familiar with questions of Iowa practice, he is specially qualified for instructing in the various branches of Pleading and Practice.

Charles A. Schæffer, who was in 1887 chosen president of the University, last year became one of the lecturers of the law department, joining with Professor Gilman in a course on Medical Jurisprudence.

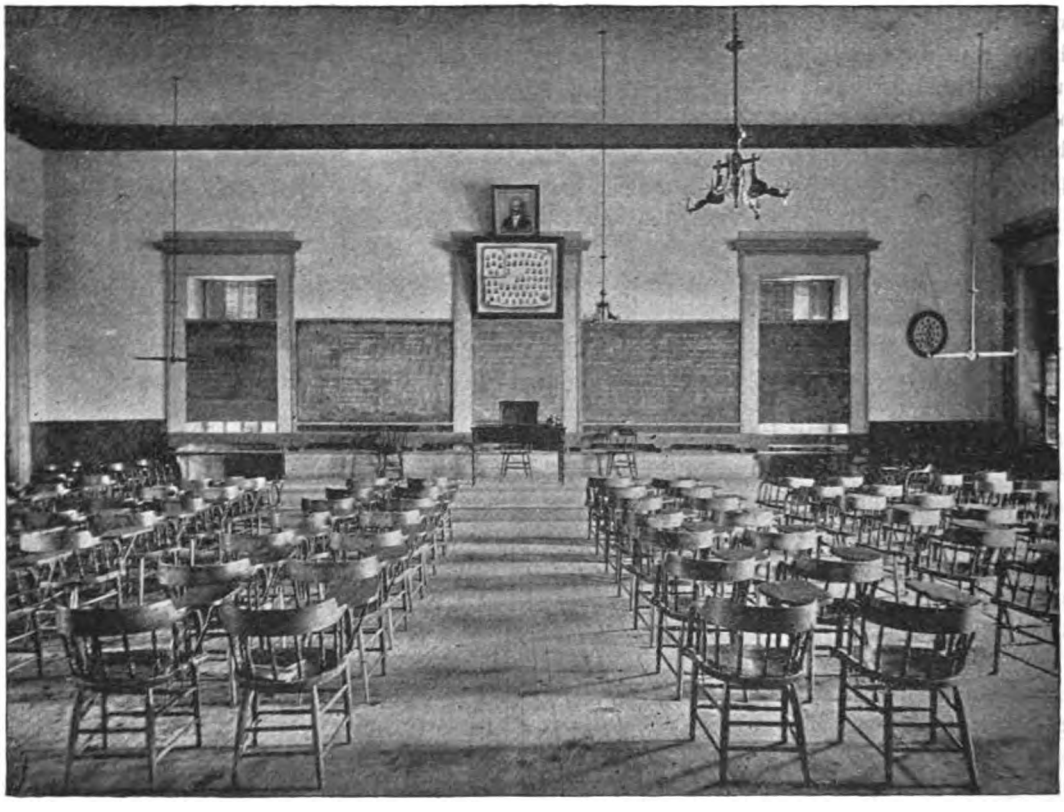
Walter C. Dunton was called to a professorship last year. He had been for many years a prominent practitioner in Vermont, and later a judge of the Supreme Court of that State. His plan of teaching involved the use of text-books, with a view to familiarizing the student with the law as it is thus concisely stated by able writers. He thought that in this way the student would be able to accomplish more, and be better fitted for actual practice, than by listening to lectures.

Eugene Wambaugh has been recently elected to a professorship in the Department. He took collegiate and post-graduate degrees at Harvard, and graduated from the Harvard Law School after a full three-years course. He pursued the study of the law with a view of becoming a law teacher, but finding no opportunity at once to engage in that work, he entered upon active practice in Cincinnati, and has been very successful in the profession during the past nine years. He now engages in the work for which he had prepared himself with the advantage of practical experience in practice added to his theoretical studies. He will reside in Iowa City and give his entire time to the School.

It has been necessary to omit full accounts of several prominent lawyers of the State who have been connected with the School, for short periods, as instructors or lecturers. Among these may be mentioned James B. Edmonds, who later removed to

Washington City, and held for several years an important and responsible position as one of the commissioners of that city; John F. Duncombe, who has been for many years a member of the Board of Regents; and Joe A. Edwards and George W. Ball, both graduates of the Department. L. G. Kinne, LL. B., a graduate of the Law Department of the University of Michigan, and late district judge in this State, has been secured to deliver a course of lectures on "Taxation and Tax Titles." Judge Kinne is favorably known to the legal profession in Iowa, not only by his work on the bench, but also as the author of a treatise on "Pleading and Practice in Law and Equity, with Forms."

The success of the School has been due, not only to the conscientious labors of this body of instructors, but also in large measure to the indorsement which it has received by reason of the success of its graduates and their cordial support. Over thirteen hundred alumni of this department are scattered through the West, more than two thirds of them at present engaged in the practice of law. They fill many judicial positions, — one being chief-justice of a western State, nine of them district judges in this State, and many of them county attorneys, county judges, State officers, legislators and members of constitutional conventions in this and other States. With the support of this large and influential body of men, and the growing favor of the State Bar, which is becoming more fully alive to the advantages of law-school study, and provided with a Faculty of earnest men, most of whom are entirely devoted to the work of the School, this department has fair and encouraging prospects of steady and satisfactory growth and extended usefulness.



JUNIOR ROOM. — OLD REPRESENTATIVE CHAMBER.

LAW AND MEDICINE IN THE SIXTEENTH CENTURY.

By Russell Gray.

SOME statutes have been passed, and more have been proposed, in various State legislatures recently, for regulating the practice of medicine and excluding unqualified persons from it, with the intention of protecting the public from quacks. The policy of such legislation has been much discussed privately and publicly, but few, if any, references have been made to the history of the earliest parliamentary attempts in this line, — a history which has an amusing as well as an instructive side.

The first attempt to lay any restraint on medical or surgical practice was the Stat. 3 Hen. VIII. c. 11 (1511–12), the preamble of which depicts the evils of the existing state of things in the lively manner which lends to the ancient statutes a charm wholly wanting to the modern. "Forasmuch as the science and cunning of physic and surgery, to the perfect knowledge whereof be requisite both great learning and ripe experience, is daily within this realm exercised by a great multitude of ignorant persons, of whom the great part have no manner of insight in the same, nor in any other kind of learning; some also can no letters on the book, so far forth that common artificers, as smiths, weavers, and women, boldly and customably take upon them great cures and things of great difficulty, in the which they partly use sorcery and witchcraft, partly apply such medicines unto the disease as be very noxious and nothing meet therefor, to the high displeasure of God, great infamy to the faculties, and the grievous hurt, damage, and destruction of many of the King's liege people, most specially of them that cannot discern the uncunning from the cunning." It was "therefore, to the surety and comfort of all manner people by the authority of this present parliament enacted" that no one should practise physic or surgery without being first examined and admitted by the bishop of the diocese, who was to be assisted by experts. The Act contained a saving of the privileges of the Universities.

Unlicensed practitioners were liable to forfeit £5 a month, half to the King and half to the informer; a heavy penalty, in view of the fact that the value of money was then no less than twelve times as great as at present (Froude, Hist. Eng. c. 1). It would seem that the women-doctors and the mental healers of the day (using sorcery and witchcraft) ought to have been somewhat discouraged.

But the regular physicians had as yet no organization for waging war on these and other enemies. This they first acquired, some seven years later, by royal charter incorporating the College of Physicians (Sept. 23, 1518). In this charter the King recited his sense of the necessity "to restrain the boldness of wicked men, who profess physic more for avarice than out of confidence of a good conscience," and his hope that the ignorant and malicious might be punished by the laws late made, and by constitutions to be made by the College. Accordingly the College was given large powers to regulate the practice of physic within a circuit of seven miles from London, and no person might practise within that limit without their license under penalty of £5 per month, one half to be paid to the King and one half to the College. By the Stat. 14 & 15 Hen. VIII. c. 5 (1523), the charter was confirmed, and no persons (except graduates of the Universities) were allowed to practice physic anywhere in England without license from the College; it being expedient that no person "be suffered to exercise and practise physic but only those persons that be profound, sad, and discreet, groundedly learned

and deeply studied in physic." On which Lord Coke observes that it was well ordained that the professors of physic should be "profound, sad, discreet," etc., and not youths, who have no gravity and experience; for as one saith: *In juveni theologo conscientiæ detrimentum, in juveni legista bursæ detrimentum, in juveni medico cœmeterii incrementum.* (Bonham's Case, 8 Rep. 107 a, 117 a).

Some time more passed before any legal recognition was accorded to the inferior branch (as it was then considered) of the medical profession. The surgeons of London had an unincorporated society of their own, which, by Stat. 32 Hen. VIII. c. 42 (1540), was promoted to the dignity of a union with that ancient and worshipful company, the Masters or Governors of the mystery and commonalty of Barbers in London, the two organizations being incorporated as the company of Barbers and Surgeons of London, with the search, oversight, punishment, and correction, as well of freemen as of foreigners, for such offences as they or any of them shall commit or do against the good order of barbery or surgery, and with power to make and enforce by-laws for this purpose. The statute granted to the company the bodies of four malefactors annually, as subjects for dissection; not a very liberal allowance, if there were then, as has been estimated for a somewhat later period, eight hundred executions a year in the kingdom (1 Stephen Hist. Crim. Law, 468).

The barbers and surgeons, though united in one company, were not allowed to interfere with each other; barbers were forbidden to exercise surgery, "drawing of teeth only except," and surgeons were not to "occupy or exercise the feat or craft of barbery or shaving." It was nearly two centuries later that the surgeons were constituted a separate company (18 Geo. II. c 15).

The regular practitioners, thus recognized and supported by law, seem to have been very busy in asserting their privileges; so busy indeed as shortly to evoke the interference of Parliament in a remarkable Act, Stat. 34 & 35 Hen. VIII. c. 8 (1542–3), the preamble of which is perhaps the most astonishing on record, even in that age of preambles. The women, the mind-cures, and the botanic doctors must have felt much aggrieved at the way they were described and treated by the previous law, if we may judge by the language in which they now took their revenge on the "regulars." The Statute, after reciting the earlier Act of 3 Hen. VIII. proceeds thus: "Since the making of which said Act the Company and Fellowship of Surgeons of London, minding only their own lucres, and nothing the profit or cure of the diseased or patient, have sued, troubled, and vexed divers honest persons — as well men as women — whom God hath endued with the knowledge of the nature, kind, and operation, of certain herbs, roots, and waters, and the using and ministering of them to such as be pained with customable diseases, — as women's breasts being sore, a pin and the web in the eye, uncoomes of hands, scaldings, burnings, sore mouths, the stone, strangury, saucelin and morfew, and such other like diseases, — and yet the said persons have not taken anything for their pains and cunning, but have ministered the same to the poor people only for neighbourhood and God's sake and of pity and charity; and it is now well known that the surgeons admitted will do no cure to any person but where they shall know to be rewarded with a greater sum or reward than the cure extendeth unto; for in case they would minister their cunning to poor people unrewarded, there should not so many rot and perish to death for lack of help of surgery as daily do; but the greatest part of surgeons admitted be much more to blame than those persons that they trouble, for although the most part of the persons of the said craft of surgeons have small cunning, yet they will take great sums of money and do little therefor, and by reason thereof they do oftentimes impair and hurt their patients rather than do them

good." In consideration of this sad state of things, it was enacted that any subject having knowledge and experience of the nature of herbs, roots, and waters, and of the operation of the same by speculation or practice, might apply to outward sores and wounds, "herbs, ointments, baths, pults, or emplasters," or might give drinks for stone, strangury, or the ague, without penalty, notwithstanding anything in the former Act contained.

The law thus modified, satisfied alike the profession and the public; at least it has remained unaltered more than three centuries, for these Statutes have never been repealed and seem at the present moment to be the law of England and the latest legislative expression of opinion on the merits both of licensed and unlicensed practitioners.

Any law-abiding subject of her Majesty, however, who is minded to obey the will of Parliament, as expressed in the latest of these Acts, is likely to have trouble in identifying by modern names, or descriptions, the diseases mentioned in it. Some of them, not defined in any medical or other dictionary of recent date, are explained in an interesting letter from Dr. Robert Fletcher, U. S. A., of the Surgeon-General's Office, an extract from which, communicated by the kindness of Dr. R. M. Hodges, of Boston, may fitly conclude this chapter of medico-legal history.

1. A "pyn" and the "web in the eye." Both expressions are used separately but much oftener together, as, "a pin and web" or "a web and pin." Sometimes it is "a nail and web." You will find in Richard Banister's Treatise of One Hundred and Thirteene Diseases of the Eye (Guillemeau, the real author), 1622, p. 135: Of the naile of the eye, commonly called "the webbe," in Greeke *pterugion*, in Latine *ungula* or *angulus*. See, also, Shakspeare, Winter's Tale, i. 2. King Lear, iii. 4. Cabell in a note says that "pin" is *pterygium*, and "web" is *pannus*. There are a great many allusions to it in the older writers, of which I will only inflict two upon you.

"His eyes, good queene, be great, so are they cleare and graye;
He never yet had pinne or webbe, his sight for to decay." [1]

The second quotation illustrates the personal hygiene of the day.

"For a pin or web in the eye. Take two or three lice out of one's head, and put them alive into the eye that is grieved, and so close it up, and most assuredly the lice will suck out the web in the eye, and will cure it, and come forth without any hurt." Countess of Kent's Choice Manual. Ed. 1676.

There is no doubt in my mind that the proper modern term for pin and web is *pterygium*.

2. Uncoomes of hands. The term "oncome" or "uncome" is still used in the north of England and in Scotland. It means any swelling that comes on somewhat suddenly, ending in ulceration. "A sair oncome in the breast," is a mammary abscess. It has nearly the same meaning as the English word "gathering," and I should think that "uncoomes of hand" meant chilblains. In Baret's Alvearie, 1586, uncome is defined as "an ulcerous swelling."

3. Saucelin. I am sorry to say, I can throw no light on. It may be a corruption of the Anglo-Saxon Sarcren, pronounced "sarseren," soreness, which is to be found in Cockoyne's Anglo-Saxon Leechdoms.

[1] George Gascoyne, "Princely Pleasures of Kenelworth," 1587.

CAUSES CÉLÈBRES.

IX.

MADAME LAFARGE.

[1840.]

MARIE FORTUNÉE CAPPELLE, the heroine of the following tragedy, was born at Villers-Hellon, in Picardy, in the year 1816. Her father was a colonel of artillery, and an old officer of the Imperial Guard. The Cappelle family was one of the most honorable and distinguished in France.

While Marie was yet quite young, she had the misfortune to lose both her parents. She was thus left alone in the world with a moderate fortune, amounting to about ninety thousand francs. An uncle, M. de Garat, took her into his family and brought her up. She thus had access to good society, and when about twenty years of age she formed an intimate acquaintance with Mademoiselle Nicolai, a young person brought up in a dangerous independence from restraint, who speedily made Marie the confidante of many romantic love adventures, in which she had played an important part. Mademoiselle Nicolai shortly afterward married the Vicomte de Léautaud, and Marie Cappelle some time later paid the wedded pair a visit at their country-seat.

It happened that a female relative of M. de Léautaud was then upon the point of being married, and the wedding trousseau was in the house, and of course was the theme of discussion and admiration among the fair guests who were there assembled. One day Madame de Léautaud brought down her diamonds, that they might be compared with the jewels of the bride, and she afterward replaced them in her bedroom. Suddenly they disappeared; and although the most rigid search was made for them, no trace of the lost property could be discovered.

Marie Cappelle returned to her uncle's house, and remained there until she married M. Lafarge.

M. Charles-Joseph Pouch Lafarge was a man about twenty-eight years of age, and was descended from an honorable family. He was introduced to Marie through the medium of a matrimonial agent, whose avowed business it was to find partners for those who applied to him. M. Lafarge announced that he was the proprietor of some iron-works at Glandier, from which he derived an income of thirty-five thousand francs, and he had, beside, two hundred thousand francs safely invested. He was plain even to ugliness, it is true, but it was a good match from a pecuniary point of view.

The marriage was at once decided upon, and took place in five days, and the ill-assorted pair set out for Glandier. While on the road they had a quarrel, and Madame Lafarge seems then to have conceived a strong aversion for her husband. When she arrived at Glandier her chagrin was increased by the discovery that the *joli château* upon which her imagination had dwelt was an old dilapidated mansion, situated in a lonely valley amidst dark and sullen woods.

When she saw herself installed in this gloomy house, in a vast chamber, with an alcove, adorned with five chairs and decorated with a dirty yellow paper, she believed herself the most miserable of women. The man and the house appeared odious to her; she could not live there. She shut herself up in her room, and wrote a foolish letter which she hoped would result in separating her at once from this house and this man.

The letter, which bore the date August 15, 1839, began as follows: —

CHARLES, — I ask your forgiveness on my knees. I have unworthily deceived you; I do not love you, and I love another! *Mon Dieu!* I have

suffered so much! Let me die, you whom I esteem with my whole heart; say to me, "Die, and I will pardon you," and I will not exist to-morrow. . . .

She then added, that if her husband compelled her to live with him as his wife, she would destroy herself; saying that she had already tried the effects of poison, which had failed, and that all that she asked was permission from him to fly from France and seek an asylum at Smyrna.

After this explosion of passionate feeling, however, she seemed to become more reconciled to her lot, and lived with her husband on terms of amicable if not affectionate intercourse. The other inmates of the house at Glandier were the mother and sister of M. Lafarge.

At the end of a few months Lafarge was called to Paris by business, and during his absence Madame Lafarge purchased a quantity of arsenic. She wrote on the 12th of December, 1839, to M. Eyssartier, an apothecary, as follows: —

"I am devoured by rats. I have tried plaster and nux vomica to rid myself of them, but they do no good. Will you and can you let me have a little arsenic? You can rely upon my prudence; it is to put in a closet where I keep my linen."

One day she proposed to her mother-in-law that as she was about to send her miniature to her husband, the latter should make a few cakes and send them to her son in the same parcel. This was done; and the cakes, when ready, were given to Madame Lafarge to put into the box. It arrived at its destination; but, according to the evidence, instead of several small cakes, such as his mother had made, there was one large one, and it was accompanied by a letter from Madame Lafarge, in which she begged him to eat it at a particular hour, saying that she would at the same time be similarly employed.

Upon receiving the box, M. Lafarge broke off a small piece of the cake and ate it. During the night and the following day he was a prey to the most violent pains and vomitings.

On the 5th of January, 1840, he returned to Glandier, greatly fatigued, and still suffering intensely. M. Bardou, a physician, was summoned, who attributed the symptoms to an inflammation of the stomach.

On the day of her husband's return Madame Lafarge bought a second quantity of arsenic of the same apothecary, together with some powdered gum-arabic.

Instead of improving, as the physician had assured his wife that he would, M. Lafarge grew worse. Madame Lafarge cared for him tenderly, although she herself was far from well. Finally the malady assumed a more serious character, and it was thought best, at the request of M. Bardou, to call in another physician, M. Massenat. The latter agreed with M. Bardou that inflammation of the stomach was the cause of all M. Lafarge's sufferings.

The suspicions of Madame Lafarge, the mother, were, however, aroused by her finding some white powder upon an omelette which had been prepared for her son. She had also seen, so she said, her daughter-in-law putting a white powder into a potion she was preparing for the sick man. And when she asked Marie what the substance was, she had replied that it was gum-arabic, and at the same time she had hastily wiped the glass and replaced it upon the mantelpiece.

On the 13th of January the mother secretly despatched a servant to M. Lespinasse, a physician at Lubersac, to advise him of the suspicions which she had formed, and requesting his immediate attendance at Glandier. M. Lespinasse at once started for the house. On the way the servant told him of the frequent purchases of arsenic, made at the instance of Marie Lafarge. M. Lespinasse, on reaching the bedside of the sick man, felt sure that the symptoms were those of poison, and immediately administered peroxide of iron; but M. Lafarge rapidly became worse, and on the morning of the 14th he died.

No sooner was he dead than it was loudly proclaimed in the house that he had been poisoned by his wife. In the death-chamber a strange scene then took place. Beside the still warm body Madame Lafarge, the mother, after having, with the concurrence of her daughter, driven the weeping wife out of the room, sent for a locksmith and had him force a secretary which contained the papers of Marie Lafarge, and these papers she took possession of.

The sinister rumors were not slow in reaching the ears of justice. On the 15th of January, twenty-four hours after the death of M. Lafarge, the procureur du roi repaired to Glandier, and preparations were made for an autopsy. On the 16th the autopsy was performed, and the organs were sent to four experts for examination. They were placed in jars, which were not sealed, and none of the precautions usual in such cases were observed. On the 19th the experts made their report, stating that the death of M. Lafarge was caused by arsenic.

What was Marie Lafarge doing while justice was seeking in her husband's remains for traces of a crime? Ill, overwhelmed by grief, she protested her innocence. She demanded of a servant, Clémentine Servat, the arsenic which she had confided to her to use for the destruction of the rats. This girl confessed that being frightened at having such a substance in her possession, she had deposited it in an old hat in M. Lafarge's chamber. The package was found later, and was discovered to contain only an inoffensive substance, bicarbonate of soda.

During the week which followed her husband's death, Madame Lafarge, although knowing that she was gravely suspected, had no thought of trying to escape an imminent accusation. M. Charles Lalande, an advocate at Brives, urged her to fly, but she refused.

Marie Lafarge was arrested; and while the officers of justice were searching the house at Glandier, the long-missing diamonds of Madame de Léautaud were discovered in one of the rooms. The prisoner was interrogated. Her friends and defenders awaited anxiously her response. Her reply was as follows:—

"These diamonds were sent to me by a friend *whose name I do not know*, who lives at Toulouse, I believe, *but I do not know. I do not know how they came to me.*"

Being pressed by the juge d'instruction, she added,—

"But the person from whom I received the diamonds will not remain silent long, but will come and justify me."

On reading this incredible response her friends and defenders were astounded. They hastened to the prison, and found Marie happy and triumphant, as she said, at having by this foolish lie avoided the truth which she could not and would not tell.

This truth she was forced to confess, however, when her defenders, MM. Bac and Lachaud, explained to her the disastrous prejudices this affair of the diamonds would give rise to, upon the eve of the criminal trial. She had made this strange response, she said, because she expected, from day to day, that Madame de Léautaud would make a confession, which would, it is true, cost her her reputation, but which became necessary in view of the terrible consequences which would follow her silence.

According to Madame Lafarge, during her sojourn at Busagny Madame de Léautaud, oppressed with fear that certain former compromising relations with one M. Felix Clavé might be made known, resolved to buy the silence of that man by procuring a sum of money by the sale of some old family diamonds, and had begged Marie Cappelle to act as an intermediary in this secret transaction. Her plan was arranged in such a manner as to make it appear that these diamonds had been stolen. Marie Cappelle took them away with her, but not without having insisted, more than once, on returning them. Not being able to effect a sale of them before her marriage, Madame Lafarge took them with her to Glandier.

Upon this confession of the facts M. Bac

at once hastened to Paris, bearing with him a touching appeal from Marie Lafarge to Madame de Léautaud. The letter containing it ended as follows: —

"There is but one thing to be done now; you must acknowledge by a note signed by your hand that you confided your diamonds to me, with the authority to sell them if I judged best. That will end the affair. . . .

"Adieu! Marie, for your sake I have been a martyr two months. You have forgotten me. I might give you my life; but my reputation, the respect of my friends, the honor of my sisters, — never!"

The mission of M. Bac proved fruitless. Madame de Léautaud refused to concern herself in the matter.

Two indictments were preferred against the prisoner, — one charging her with the theft of the jewels, and the other with the murder of her husband. The first was tried at Brives, and her counsel made vigorous but ineffectual efforts to get the case postponed until the more serious charge of murder had been disposed of. When they found they could not succeed in this, they advised their client to make no defence, and she was found guilty and sentenced to two years' imprisonment. This judgment was however afterward, on the 3d of September, set aside by the Court of Tulle, on the ground that the proceedings were irregular.

On the 3d of September the trial of Madame Lafarge for the murder of her husband was commenced at Tulle. Intense interest was manifested in the case, and the court-room was filled to overflowing.

The unfortunate affair of the diamonds, although utterly foreign to the case, was at the very opening of the trial made use of to prejudice the minds of the jury against the accused. The attorney-general opened the case in a speech which seemed to denote far too anxious a desire for a conviction.

What shall we think of the following passionate apostrophe to the prisoner, when she was standing at the bar to answer a charge of murder? "Those diamonds," he exclaimed, — "those diamonds, Marie Cappelle; you have stolen them, I assert it! You have defamed Madame de Léautaud. Thus calumny stands by the side of theft. Calumny is also a kind of poisoning; although it kills not the body, yet it poisons the soul."

Can anything more unfair than this be imagined? The only object must have been to prejudice the minds of the jury against the prisoner, and induce them to believe that a woman who could pilfer trinkets would be likely to poison her husband.

A conflict of opinion arising among the medical men as to the presence of arsenic in the body of the deceased, by order of the court the body was exhumed, and such portions as were deemed necessary were taken away for analysis.

While the chemists were employed upon their loathsome task, several witnesses were examined, one of whom proved that rats infested the house at Glandier, and another that she saw Madame Lafarge put four small cakes into the box which she sent to her husband. This was an important piece of evidence in favor of the accused, for it went directly to contradict the assertion that she had substituted one large cake for those which had been prepared by her mother-in-law.

When the chemists returned into court a breathless silence prevailed, and M. Dupuytren read the report which they had prepared. And when he came to the words, "We introduced these precipitates into Marsh's apparatus, and, after making several experiments, *we have not obtained a single atom of arsenic*," a burst of applause followed the announcement. M. Dupuytren continued, "However, some of the *experts* believed that while we were using Marsh's apparatus, they detected, for a moment or two, a slight odor of garlic. . . . We *unanimously* conclude that *there is no arsenic* in any of the animal substances submitted to our examination."

This surely should have been sufficient. Here was a plain proof that there was no *corpus delicti*, and the prisoner was entitled to

an immediate acquittal. But the advocate-general called upon the court to require the attendance of some eminent Parisian experts in order that there might be still another investigation; this request was complied with, and MM. Orfila, Bussy, and Olivier were ordered to come at once to Tulle.

M. Orfila and his two colleagues arrived on the 13th. The same evening they commenced their analysis, and completed it on the afternoon of the 14th. The result was that on their return to court M. Orfila said: "I will demonstrate that *there exists arsenic in the body of Lafarge;* that the arsenic does not proceed from the reactives which we have used, nor from the earth which surrounded the coffin; that the arsenic extracted by us is no part of that quantity of arsenic which exists naturally in the human body; and, in the last place, I will show that it is not impossible to explain the discrepancy of the results and opinions of the different operators." He declared, therefore, in the name of himself and his colleagues, that there was arsenic in the body of the deceased, *though in the minutest quantity.*

By the testimony of M. Orfila the whole aspect of the case was changed. This woman, whom science had almost absolved, science now condemned. The innocence of yesterday, proclaimed by the spectators at Tulle and by all Europe, which was following with an intense interest the progress of the trial, became the guilt of to-day. The science of yesterday was one thing, the science of to-day another, — a frightful turning about, which threw all hearts into consternation, and shocked all intelligent minds by the thought that life and honor could hang upon so slight a thing as a *no* yesterday, a *yes* to-day.

The day on which M. Orfila made his report, the hair of Madame Lafarge turned white as snow. From that day her health and strength were completely shattered, and it was necessary to carry her to the court-room in an arm-chair during the remainder of the trial.

Madame Lafarge was most ably and eloquently defended by M. Paillet. Before the jury retired, the President asked the prisoner if she had anything to add.

Rising painfully from her chair, Marie Lafarge replied, in a feeble voice, "Monsieur President, *I am innocent, I swear it!*"

The jury deliberated for an hour, and on their return rendered a verdict of "Guilty, with extenuating circumstances;" and Marie Lafarge was sentenced to penal servitude for life, and to be exposed upon the public square of Tulle.

Thus ended this famous trial, which at the time excited a degree of interest almost unparalleled. The question may still be asked, "Guilty or not guilty?" There is but little doubt that, upon the evidence, the verdict in England or America would have been NOT GUILTY.

ROMAN LAWYERS.

MOST of the profession are familiar with Roman law, and are well aware that on it is based the foundation of the laws of the civilized world at the present day. It is not necessary, then, to discuss its importance here, but we will content ourselves with pointing out how lawyers then considered their profession; and though much must be taken *cum grano salis*, yet we cannot but be amused at the tricks of the trade. The bar then, as now, was evidently the way chosen by many ambitious plebeians, bent upon raising themselves from the class to which they belonged, and by becoming Senators to ascend into the patrician class, and found families who thus became a part of the proud Roman aristocracy.

The defence of Suilius, who during the reign of Claudius was accused of having infringed the Cincian law by extorting heavy fees, may here be mentioned as an authority given us by Tacitus. This advocate, after quoting the many careers left open to the families of the nobility, insisted upon the fact that the plebeian order could rise to eminence only by the "toga;" if these rewards were abolished, then the pursuit itself must inevitably fall into decay. It may be here noticed that, however fine the sentiments uttered by this lawyer may sound, the reason of his trial would in itself be a cause for the indignation felt against him. Samius, a Roman knight of good family, having discovered that Suilius, to whom he had paid a fee of four hundred thousand sesterces, was playing into the hands of his adversary and accepting double payment, fell upon his own sword.

Tacitus mentions the names of Eprius, Marcellus, and Vibius Crispus as examples of men born in the plebeian class who had attained through the bar the utmost eminence, — "they direct affairs, and are almost venerated by the emperor." Other lawyers are mentioned by him as celebrated for their eloquence; and his "Dialogues on Oratory" will repay a perusal, as being an excellent criticism on the oratory of his day as compared with that which had gone before.

From the ranks of the Equestrian order many sought the bar. Seneca, Suetonius, and the two Plinys may be named as examples known to all. How long Suetonius practised we know not for certain, but from the Eighteenth Epistle (Book I.) of Pliny's letters, it may be surmised that he was a man much affected by superstitious fears. In this letter the Younger Pliny bids him not fear a dream, as dreams are capable of various interpretations, and says that he himself had carried on successfully the case of Julius Pastor, though he had been warned in a dream not to undertake it; concluding, however, by assuring Suetonius that he himself would conduct the case, should his friend consider it prudent to follow out the maxim "Quod dubitas ne feceris."

The letters of the Younger Pliny abound with allusions to lawyers, for many of whom he seems to have a profound contempt, as he describes their various endeavors to obtain notoriety. In the Twentieth Epistle (Book I.), in a letter addressed to his colleague Tacitus, we find expressed his ideas as to the style of oratory which he considers ought to be adopted, giving it as his opinion that it is ever better to write out a speech than to speak it on the spur of the moment. Moreover, he does not believe in brevity, unless the nature of the case should allow it, quoting as an example Marcus Tullius Cicero, whose longest orations he considers to be the best. Moderation, he says, is certainly ever the best; but you must be careful that moderation is used in such a manner as not to injure your case by being carried to too great an extent, by being restricted, and thus causing as much harm as would too effusive a discourse.

In the Third Epistle (Book II.) he, however, describes the orator Isæus as a man of the greatest flow of language, able to bring into play the choicest aids of rhetoric, doing this in a manner which would be an honor to any author; his memory is so wonderful that he is able to repeat what he has previously extemporized without omitting a single word.

The best description of what would now be considered as a contemptible means of procuring an audience, and exciting the sympathies of the judges, is to be found described in the Fourteenth Epistle (Book II.), in which he notices the hired applause known now in France by the word *claque*. In this letter he regrets that the young men who have lately been called to practise, do not look upon the profession with that reverence which it deserved, and spout their cases before the court of the Centumviri as they would Homer at school. These would-be orators, anxious for applause, hire their audience, and for three *denarii* a head, crowd the courts with *laudiceni*, who burst into violent raptures at a given sign from the *mesochorus*. Juvenal alludes to this custom in the Thirteenth Satire, where he says that heaven and earth are called upon to witness, with a clamor as loud as salutes Fæsidius when pleading, uttered by those who have received the *sportula*, or reward given to the class known as clients.

The Seventh Satire describes the "dodges" of a lawyer anxious by every means in his power to advertise himself and his practice. He wears a purple robe, and has slaves to follow him, bearing on their shoulders his sedan-chair; around him are numerous, admiring friends. When he pleads, he wears upon his finger a large ring, perhaps hired for the occasion, this being considered such an important item in the dress, that Cicero himself would not have received two hundred sesterces had no ring sparkled on his finger when pleading; "a man in a 'seedy coat' could seldom be eloquent." The lawyer must ever be seen bearing in his hands a roll of papers; his manners must be curt, and he must refer the client to his "clerk," who will be able to say whether the great man can undertake the case. Though it is added that the great man's manner soon changes when he sees a client likely to disappear from his grasp, and he willingly remembers at once his numerous engagements.

Quintilian points out how unworthy it is for some lawyers only to undertake a case on the morning of the trial, to rush into court reading over the brief as if to give the impression that they can solve in an instant any legal difficulty. And when in court how puerile, how affected, their style, which only needed, according to Pliny, the accompaniment of musical instruments to resemble some theatrical performance. How different this was to the advice given by Tacitus, in his description of a true orator: "But no man, I affirm, ever did, or ever can, maintain that exalted character, unless, like the soldier marching to battle, armed at all points, he enters the forum equipped with the whole panoply of knowledge. So much, however, is this principle neglected by our modern professors of oratory, that their pleadings are debased by the vilest colloquial barbarisms; they are ignorant of the laws, unacquainted with the arts of the Senate; the common law of Rome they professedly ridicule, and philosophy they seem to regard as something that ought to be shunned and dreaded. Thus Eloquence, like a dethroned potentate, is banished her rightful dominions, and confined to barren points and low conceits; and she, who was once the mistress of the whole circle of sciences, and charmed every beholder with the goodly appearance of her glorious train, is now shorn and curtailed, stripped of all honors, of all her attendants (I had almost said of all her genius), and is taken up as one of the meanest of the mechanical arts. This, therefore, I consider as the first and the principal reason of our having so greatly declined from the spirit of the ancients."

Such is the description of that real eloquence which, according to Tacitus, prevailed in Rome at the time when Cicero delivered his most celebrated orations, differing greatly from those tricks which the historian then saw being freely adopted by the leading lawyers of his day, — tricks which are mentioned by the Younger Pliny when speaking of his opponent, Regulus. Epistle Sixth (Book I.) describes this lawyer as a man of unbounded impudence, some learning, great superstition, and no little charlatanism. "He had a queer custom of painting round his right eye if he was counsel for the plaintiff, his left if he was for the defendant; of wearing a white patch round his forehead, of asking the soothsayers what the issue of the action would be, and so forth."

That such lawyers found themselves much run after may be affirmed by the many hints which frequently occcur in the writings of Juvenal and Martial. The *atria* of their houses were, according to Vitruvius, daily filled by visitors anxious to see the prominent men of their day; and foreigners came from the other municipalities and districts to make the acquaintance of men whose repute had travelled far.

Addressing a schoolmaster, "invisum pueris virginibusque caput," Martial rails at him for disturbing his slumbers by roaring out the lessons at the top of his lungs, making as much noise as does the hammer of the workman, who fixes with repeated blows the statue of the lawyer upon the back of the brazen horse. We may suppose, therefore, that some grateful client had ordered an equestrian statue of his favorite legal adviser, more especially as we find Juvenal alluding to the same subject in his Seventh Satire, when describing the lawyer Œmilius; who is not content with being represented in a quadriga, but in his courtyard is to be seen a brazen equestrian statue balancing in its hand the poised javelin; and the statue seems about to engage in combat, though blind of one eye. This expression, which is rather curious, may, however, be taken not to mean that the learned lawyer is blind, or even closing the eye to take better aim, but more probably a satirical allusion to his seeing but one side of the question.

Other gifts were presented to successful lawyers by grateful clients, some paying in "kind" as Martial points to the rows of presents by Sabellius at the Saturnalia, which though poor in themselves are sufficient to cause Sabellius to swell out with pride, and imagine himself one of the best lawyers of the day.

Many of the remarks made must, however, only be taken as the expression of, perhaps, mere personal spite.

Seneca, for instance, calls lawyers a "venal race;" Fronto says that "their love of money is so great that their wives must be women of a very large appetite;" the "Canine Study" is mentioned by Columella; and Martial advises a friend rather to pay up than go to law, as Sextus, the defendant, will find that both the judge and the *patronus* will require to be paid.

> "Et judex petit et petit patronus
> Solvas censes, Sexte, creditori."

The position of jurists who assisted the non-professional tribunes and prefects who sat in judgment with their professional advice, though not so lucrative a career as was that of the advocates, was, nevertheless, also eagerly sought after by the members of the plebeian order. In that indignant pouring-out of the vials of republican wrath to be found in Juvenal's Eighth Satire, we find him sneering at Rubellius puffed up with pride at his descent from so noble an ancestry as the Drusi. In this Satire he causes Rubellius to say, addressing those whom he considers inferior by birth: "You, most lowly, are the very dregs of our population; not one of you could point out the birthplace of his father; but I am of the Cecropides." "Long may you live to enjoy such honors," answers the poet; "but it is out of the plebeian order that an eloquent Roman

is to be found, and one who can plead the cause of the ignorant nobility; it is from among the plebeians that are to be found those capable of solving the enigmas of the laws or unravelling the knotty points. The 'ignorant nobleman' may sit on the bench and receive all the honors of the position, but it is the 'togated plebeian' at his side, or sitting as 'town-clerk' beneath, who unravels for the 'county magistrate' the weighty problems or knotty questions of the law. But," adds our poet, in a line which has caused much dispute, "common-sense is very rare in the class blessed with Fortune's goods," —

> "Rarus enim ferme sensus communis in illa Fortuna."

Cataline and Cethegus, though among the noblest, were yet prepared to lay Rome waste with sword and fire, but were restrained by Cicero, "hic novus Arpinas," who, though only a municipal knight, placed his guards so as to defend the city. The toga was the cause of his attaining to honors as great as were those gained by Octavius at Lencas or on the plains of Thessaly. Therefore Rome, being free, hailed Cicero father of his country.

But these sentiments were not always felt for those who were so well versed in law. The Romans experienced that the law cut both ways, and that often by the skilled quibbling of the clever lawyer a case was carried on, or perhaps given against the innocent party; and thus, according to Orelli, we find that inscriptions bore the engraved wish that "deceit and law might be far from this grave." The dying man felt that if his will was disputed little but the shells would be left; the lawyer would swallow the oyster.

The powerful invectives of Cicero against the judicial corruptions of his time display a condition of affairs which has found a parallel in more modern times. He says: "I will demonstrate by positive proofs the guilty intrigues, the infamies which have sullied the judicial powers for the years that they have been intrusted to the Senate. The Roman people shall learn from me how the equestrian order administered justice for nearly fifty consecutive years, without the faintest suspicion of having received money for a judgment delivered; how since Senators alone have composed our tribunals, since the people have been despoiled of the right which they had over each of us, Q. Claudius has been able to say, after his condemnation, that they could not honestly require less than three hundred thousaud sestertii to condemn a prætor; how when the Senator P. Septimius was found guilty of embezzlement before the prætor Hortensius, the money he had received as a judge was included in the fine; how C. Herennius and C. Popilius, both Senators, having been convicted of the crime of peculation, and M. Atilius of high treason, it was proved that they had received money as the price of one of their sentences; how it was found that certain Senators, when their names were taken from the urn by C. Verres, then *prætor urbanus*, instantly went to vote against the accused without having heard the suit; how, finally, we have seen a senator-judge in this same suit receive money from the accused to distribute to the other judges, and money from the accuser to condemn the accused. Can I then sufficiently deplore this blot, this shame, this calamity which weighs on the whole order?"

Many causes could be pointed to, — luxury, sensuality, intemperance, great ignorance, — which combined to lower the standard of Roman morality; and it is, perhaps, looking back to those days that we tremble the more for our own. The history of a country once so great as to govern the then known world must ever be scanned with interest, the more so as we see our own short-comings as in a glass before us. Only by avoiding these crimes which have dragged down great empires, can other empires hope to leave behind them, when they have fulfilled the rôle expected from them, an example worthy of being followed in ages to come? — (*Dublin University Magazine.*)

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 have received from Philadelphia the following anonymous communication, which may prove of interest to our readers: —

Editor "Green Bag," —

In replying in your June number to a friendly hint from the "Canadian Law Times," intimating that, from the ability displayed in the columns of your magazine, the motto might be very appropriately changed from that of "a useless" to "a useful but entertaining magazine for lawyers," you stated by way of upholding its correctness that "the sole aim and object of the 'Green Bag' was to entertain lawyers;" that you proposed to do "the entertaining with *useless* (so far as being of any *practical* value is concerned) material;" and further, that "if by eschewing everything in the shape of *digests* or *reports* of cases, throwing aside in fact all that would be *useful* to the lawyer in his practice, and presenting to our readers only light legal miscellany, we give an hour's pleasure to the profession, our mission is accomplished, and we have justified our claim to being, as our title asserts, a 'useless but entertaining magazine for lawyers.'" This reply, though modest and unassuming, is yet a very pleasing one. It explains your ideas, which it must be said are original, and were well conceived in the first instance; but it does not set out what is known to all your readers and subscribers, — *viz.*, that the "Green Bag" is eminently deserving of liberal patronage and support, and of being classed not only as a useful, but a decidedly entertaining magazine for both lawyers and others. Pleased with its tone and contents, it has occurred to your correspondent to write you upon a matter which is, or which ought to be, of moment to the members of the legal profession — whether his "material" may be adjudged as neither useful or entertaining but the reverse, rests with you to decide. Could he, however, by means of his letter bring about any result of "practical" value, his object will have been accomplished. In your correspondent's manner of stating things, his real opinions with regard to the necessity of having at the bar only such as have been thoroughly trained and educated can readily be discerned.

Were you, Mr. Editor, to be connected with a large law-book publishing-house, and to be daily subjected to the visits of lawyers, and to answering numberless questions with regard to reported cases; it is more than likely you would be led to the conclusion, either that the education of these lawyers had been sadly neglected, or that the "digests and reports of cases" as at present published, are not so "useful" to the lawyer as you have been hitherto led to believe. While it may be agreeable to your sense of duty and of right, while it may be more in unison with your own ideas (induced through a thorough course of legal training) to publish such statements as this, *viz.*, that a law student and a lawyer "must have a clear vision, not only of the result he wishes to produce, but of all the methods by which, under varying circumstances, he may find it possible and expedient to produce it. Above all, he must know the reason of everything he is to do, the *principles which underlie all parts* of his employment;" yet the facts, at least from your correspondents' standpoint, all go to show that the study of methods by means of which to produce results enters but little into the calculations or thoughts of the lawyer, — he cares not so much for the principles of law, as he does for the decisions made. As to how the latter came to be made, — by what train of reasoning, or upon what principle of law, — he troubles not his brain. His sole idea is to apply the decisions to some similar case he has on hand, or to one which has the semblance of being similar. It may be all well enough to quote from John Davies, when he stated that ofttimes truth would be concealed and suppressed, fraud be hid and undiscovered, wrong escape and go unpunished, were it not for the wisdom and diligence of the professors of the law; it may be well enough to ask with him, "doth not this profession every day comfort such as are grieved, counsel such as are perplexed, relieve such as are circumvented, prevent the ruin of the improvident, take the prey out of the mouth of the oppressor, protect the orphan, the widow, and the stranger; in short, as Job speaketh, is she not 'legs to the lame, and eyes to the blind?'" But Sir John had an exalted idea of the profession. To the lawyers of the present day, he is regarded as having been old-fogyish.

The present age is one of reform, — it is progressive. The whole fabric of jurisprudence must be torn down and built up anew, — the codes of practice must be altered, special pleading must be done away with, the forms of action must be simplified and reduced in number, — so that lawyers of a collegiate or liberal education shall not be able to possess any advantages over others less favored. All legal proceedings must be made as intelligible to the layman as the lawyer and so as to place the practice of the law within "the comprehension and capacity" of every one both in and out of the profession. The digests and reports of cases must be improved upon. The system of indexing must be altered so that a lawyer, who perchance may happen to have a dog case on hand, may at once be enabled when searching for a dog case decision to find what he is after by looking under the heading of dog cases; so with a cow case, a horse case, etc. An abstract of the history of the different cases should be given in the index, instead of the abstracts of rulings and decisions. The experience gained by your correspondent in his publishing-house has induced the suggestion made, and he feels sure that were it carried out, the digests and reports would prove to many lawyers as "eyes to the blind." It has, however, been a matter of surprise to him to find lawyers frequently undetermined as to the kind of action to be brought, — actually hesitating and being undecided as between larceny and trover and conversion; and between assumpsit and covenant. To them, the finding of a case reported, the facts surrounding which have a semblance to their own, seems to be the only guide as to procedure; while at the same time it is very evident that they are unable to grasp the real legal points at issue in the case decided, or to distinguish the difference between them and those bearing upon their own case. Your correspondent does not exaggerate, but speaks forth facts. In order to save valuable time, and to preclude the asking of numberless questions, as well as for the purpose of teaching lawyers who have not had the advantages of a student's curriculum, to think for themselves, and to become experts in finding out precedents for their cases without the assistance of law-book publishers or editors, he has prepared the following rules which he has had pasted up in his establishment, and which have already proved serviceable, — in fact, working like a charm, *viz.*: —

If you have a dog case, look for the owner of the dog.

If you have a cow case, look in the high grass.

If you have a dye case, look in the dye-sink, or in a barber-shop.

If you have a portrait case, look in a bar-room.

If a mule is stolen, the proper writ to issue is a *habeas corpus*.

A man in Chicago had his watch driven down his throat by Parson Davis; in an action of a similar nature, always look for the watch-case.

Your correspondent feels that these rules might be improved upon. but he fears at the same time that you, Mr. Editor, may pronounce them not only "useless" but unentertaining. In his doubt and uncertainty, he appeals to you for some remedy which may not only prove useful, but of a practical value. How can the desired knowledge be conveyed to the class of lawyers referred to?

APROPOS of the portrait of Rufus Choate, published in our July number, we are reminded of a story of that great lawyer.

A certain portrait of himself having been submitted to Mr. Choate for his approval, he gazed at it attentively for a few moments, and then exclaimed: "It looks like the Devil, but it is like, very like."

LEGAL ANTIQUITIES.

THE term "common law" is thus accounted for. When the Saxons had conquered a great part of the island of Great Britain, and had set up several kingdoms in it, they had their several laws whereby those kingdoms were governed, as the West Saxon Law, the Mercian Law, the Northumbrian Law; and afterwards the Danes, prevailing, set up their laws, called by them the Danish Law. These several kingdoms coming to be united, and the name of England given to the new kingdom, and afterwards Edward (called the Confessor), being sole king thereof, caused new laws to be compiled out of those several laws, and did ordain that those laws (of his) should be common to all his subjects; and in those laws of King Edward the Confessor the term of common law first began being used, in respect of those several people that before lived under several laws, to whom those laws were now common; though in respect of the author they were called King Edward the Confessor's Laws.

THE Gothic nations in Europe were famous of old for the quantities of food and drink which they consumed. The ancient Germans and their Saxon descendants in England were remarkable for their hearty meals. Gluttony and drunkenness

were so very common that those vices were not thought disgraceful. Intemperance was so general and habitual that no one was thought to be fit for any serious business after dinner; and, under this persuasion, it was enacted in the laws that judges should hear and determine causes *fasting and not after dinner.* An Italian author, in his "Antiquities," plainly affirms that this regulation was framed for the purpose of avoiding the unsound decrees consequent upon intoxication; and Dr. Gilbert Stuart very ingeniously observes, in his "Historical Dissertation concerning the Antiquity of the British Constitution," that from the propensity of the older Britons to indulge excessively in eating and drinking has proceeded the restrictions upon jurors and jurymen, to refrain from meat and drink, and to be even held in custody, until they had agreed upon their verdict.

THERE is a curious legal distinction recorded in "Sixth Henry, Chapter III.," of English law, in which "per margin," is the following: —

"All persons born in Ireland shall depart out of the realm; Irish persons excepted which remain in England."

FACETIÆ.

SIR MORDAUNT WELLS was gifted with a lung power which, when he got a little excited, he was in the habit of putting forth with great zeal and energy. He was one day defending a prisoner in the Criminal Court which was closely adjacent to the Civil one. A judge was trying a case in the latter, and found that the business was very much disturbed by the noisy clamorous tones that emanated from the rival establishment. At length he could submit to it no longer, and he despatched a message to his learned brother, with his compliments, and he would be much obliged to him if he would content himself with addressing one jury at a time. — *Bench and Bar.*

A TIRESOME friend met Parsons, the Irish barrister, one day and said to him: "Mr. Parsons, have you heard of my son's robbery?" "No," replied Parsons; "good gracious! Whom has he robbed?"

"PRISONER, luckily for you, you have been found not guilty by the jury, but you know perfectly well you stole that horse. You may as well tell the truth, as no harm can happen to you now by a confession, for you cannot be tried again. Now tell me, did you not steal that horse?"

"Well, my Lord," replied the man, "I always thought I did, until I heard the speech of my counsel, but now I begin to think that I did n't."

A SON of the Emerald Isle, who had been badly injured in a railway accident, called to consult an attorney as to what action he could take against the company.

"Sue them, my dear sir," said the lawyer, "sue them for heavy damages."

"Sue them for *damages!*" exclaimed Pat, "shure and I have had *damages* enough already. Faith, and I think I had better sue them for *repairs!*"

TOM JONES was arguing a case before Chief-Justice Cockburn, and advanced some maxim of law which he treated as incontrovertible. The Chief-Justice said to him: "What authority have you, Mr. Jones, for that proposition?"

"Oh, my Lord," said Tom, "I should not have thought any authority was required for so well-established a principle. Here, usher, just get 'Blackstone' or 'Chitty,' or any other *elementary* book, and hand it up to his lordship."

THE same Tom Jones was once arguing before the full court, consisting of four judges, and had been dwelling with considerable unction on a point which he considered the mainstay of his case, when one of the judges interrupted him and said, "You have dwelt fully with that matter, Mr. Jones, — four times already."

"No, my Lord," was the response, "I think only three; it is a point very difficult to understand, and, as there are four of your lordships, I thought I ought in justice to my client to dwell upon it once again." — MR. SERJEANT ROBINSON, *in Bench and Bar.*

LAWYERS not unfrequently come to ride in their own carriages from the clever way in which they have managed the conveyances of their clients.

NOTES.

A RECENT Connecticut case is attracting attention and exciting considerable interest in that staid old commonwealth. It is nothing more nor less than a suit by a householder against a neighbor for damages alleged to have resulted from said neighbor placing fly screens in his windows, and thereby causing a greater number of flies to enter and invade plaintiff's house. The claim made seems to be that, under the common law, every family is bound to provide for its quota of flies, and that defendant, by the use of screens, fails to make provision for his proper allowance, and, by driving them elsewhere, raises the *pro rata* of the community and especially of plaintiff, whose house adjoins that of defendant. It is, we conceive, something new in jurisprudence, and its outcome will, no doubt, interest the members of the legal profession. The plan of defence which will be made by defendant has not yet been outlined. It is stated that under the wise provisions of the Connecticut law, the defendant will not be allowed to deny that it is his duty to provide for his share of the village flies; but it is understood that he will attempt to throw the burden of proof on the plaintiff by alleging that no members of his apportionment of flies can be found in plaintiff's house, they having, when barred out from their rightful buzzing place, adjourned in a body to a beer garden in close proximity. This defence, and the unavoidable rebuttal, will, of course, render necessary the identification of the flies in open court, both those found in the plaintiff's house, as well as those at the beer garden. Should the proprietor of the latter refuse to produce his flies, or should he secure their release by writ of *habeas corpus*, it will greatly complicate matters and add interesting features. — *Central Law Journal.*

THE spirit of litigation was, perhaps, never carried to a greater extent than in a cause between two eminent potters of Handley Green, Staffordshire, for the sum of *two pounds nine shillings and one penny*. After being in Chancery eleven years, from 1749 to 1760, it was put an end to by John Morton and Randle Wilbraham, Esquires, to whom it was referred. They determined that the complainant filed his bill without any cause, and that he was indebted to the defendant, at the same time, for the sum for which he had brought this action. This they ordered him to pay, with *a thousand guineas of costs*.

THE above case is, however, nearly equalled by an action brought a great many years ago in the County of Worcester, Mass., for the value of *one turkey* (Draper *v.* Rice). The facts were that a large wild turkey roosted on a tree near the land of Draper, and would at times eat with his turkeys. Draper, no doubt, expected to make sure of the turkey; but Rice, being out hunting, saw the turkey and shot it; and while returning home, the turkey was noticed by others to have *two* very large spurs. Rice sold the turkey to a merchant. Soon after Draper called on the merchant and wished to examine the turkey he had bought of Rice. Draper took the turkey and claimed it as one he had owned for some years, and which he knew to be his on account of its having but *one* spur. The case was closely contested and of course expensive. It was tried a number of times in court, and always went in favor of Rice. It was at last tried by arbitrators in the meeting-house at Brookfield, and occupied three days. Rice having proved that the turkey he killed and sold had *two* spurs, the cause was decided in his favor. The cost to Draper was *one thousand dollars*, and to Rice *five hundred dollars*.

THE Emperor of Morocco's Ambassador, in the reign of Charles II. visiting, among other places, Westminster Hall, asked his interpreter, "What was the profession of the gentlemen walking up and down in it?" The interpreter replied "the law." The ambassador seemed alarmed at the reply, and shaking his head at the vast number of professors, said, — "that in his master's dominions, although infinitely more extensive, there were but two of that profession allowed, one of whom the Emperor had been obliged lately to hang, to preserve peace and good humor among his subjects, and the other he always kept chained up to prevent his doing mischief."

THE stock phrase used by the opponents of law reform is "the wisdom of our ancestors." This celebrated phrase was first used by Sir W. Grant and Mr. Canning, in order to stop Sir Samuel Romilly's menaced innovation of subject-

ing men's real property to the payment of all their debts. Lord Brougham says: "Strange force of early prejudice — of prejudice suffered to warp the intellect while yet feeble and uninformed; and which owed its origin to the very error that it embodied in its conclusions; that of making the errors of mankind in their ignorant and inexperienced state, the guide of their conduct at their mature age, and appealing to those errors as the wisdom of past times, when they were the unripe fruit of imperfect intellectual culture."

Recent Deaths.

THE HON. WILLIAM H. WHITMAN, clerk of the Plymouth county courts for over thirty years, died at Plymouth, Mass., August 13. He was born in Pembroke, Jan. 26, 1817. After studying law in the office of Thomas Prince, of Kingston, Mr. William Whitman began practice at Bath, Me., where he lived several years. During this time he served as adjutant in the Maine militia. Afterwards going to Boston he formed a partnership with the Hon. Charles G. Davis. In 1851, he was appointed clerk of the Plymouth county courts, succeeding John B. Thomas, and under the law of 1855, making the position elective, he had held the office ever since by successive elections once in five years. He was a man of genial nature, and greatly beloved by all who knew him.

HENRY WELD FULLER, formerly a prominent lawyer of Boston, died at his residence in that city on August 14th. Mr. Fuller was born in Augusta, Me., on the 16th day of January, 1810, and was the son of the late Henry W. Fuller of that city. His mother was Esther Gould, a daughter of Captain Benjamin Gould of Newburyport, and a sister of the well-known poetess, Hannah Flagg Gould. At the age of eighteen he graduated from Bowdoin College with the class of 1828, delivering the Latin salutatory at the commencement exercises. He studied law at the Harvard Law School, and in his father's office. After a short sojourn in Florida he returned to Augusta in 1832, and entered upon the active practice of his profession. Being a young man of exceptional talents, a fluent and brilliant speaker, he speedily attained an enviable position at the bar. In 1841, he removed to Boston and formed a copartnership for legal practice with E. Haskett Derby. Subsequently he was appointed clerk of the Circuit Court of the United States for the district of Massachusetts, a position which he held for many years. In 1835, he married Mary Storer Goddard, daughter of the late Nathaniel Goddard of Boston. Mr. Fuller was an uncle of the present Chief-Justice of the United States, and of the eminent astronomer, Dr. Benjamin A. Gould. He was a gentleman of the old school, dignified and courteous in manner, but with a kindly genial nature which won at once the love and respect of all who were brought into contact with him.

JAMES R. DOOLITTLE., JR., for many years a prominent member of the Chicago Bar, died at his home in Chicago, Aug. 8th.

Mr. Doolittle was born April 2, 1845, in Warsaw, N. Y., and graduated from Rochester University in 1865. He graduated from the Cambridge Law School in 1869, and practised law in Chicago with his father, ex-Senator Doolittle, practically from that time until his death. At the time of his death, he had been for five years a member of the City Board of Education, having been appointed by Mayor Harrison, and re-appointed by Mayor Cregier. At one time he was president of the Board. In this position he is credited with having done a great deal of useful work, especially in connection with the sanitary condition of the schools. He married the widowed daughter of ex-Governor Matteson, of Illinois, who, with three children, survives him.

THE death of ex-Judge WILLIAM F. BULLOCK at Shelbyville, Ky., removes one of the oldest and best known lawyers in that State. Judge Bullock had attained the ripe old age of eighty-two. He was born near Lexington, Ky., and educated at Transylvania University. He was one of the founders of public schools in Kentucky, having presented the first bill for their establishment. He also drew up, in 1858, the bill for the establishment of the first school for the blind, south of the Ohio, and secured the establishment in Louisville of the printing-house for the blind. He was president of the board of control of this institution from that time till his death. He recently secured the establishment of a school for blind colored children.

ISAAC PHILLIPS, a well-known New York lawyer, died at New York, Aug. 5th, aged seventy-eight. He was an examiner in the Appraiser's Department under President Tyler's Administration, and was appointed by President Pierce, Appraiser of that port, a position which he held till 1869. In 1839 he entered journalism, editing in succession the "Union," and the "Courier and Enquirer." In 1870, when fifty-eight years of age, Mr. Phillips was admitted to the bar. He immediately formed a partnership with Charles Hunt, who had been associated in the law with that clever son of President Van Buren, who was known as "Prince John." Mr. Hunt's death took place in 1874, and from that time Mr. Phillips conducted his law business alone.

REVIEWS.

THE AMERICAN LAW REVIEW, July–August, has for its leading article an address delivered by Hon. George Hoadly of New York, before the American Bar Association, on the "Codification of the Common Law." Chauncey M. Depew contributes his admirable address on "The Dignity of the Law," which was delivered to the Yale law students. Papers on "The Liability of an Undisclosed Principal for Goods purchased by his Agent," by John W. Beaumont; "The Charging Part of an Indictment," by Stewart Rapalje; "Libel of the Dead," by H. Campbell Black, and "The Independence of the Departments of Government," by Wm. M. Meigs, make up the remaining contents.

We regret to see that our esteemed contemporary has so soon abandoned its "picture gallery." It could not have done better than to have continued to have followed in the footsteps of "The Green Bag" in that respect.

BOOK NOTICES.

COMMENTARIES ON AMERICAN LAW, VOL. I., by James Kent. Edited by William M. Lacey, Esq., of the Philadelphia Bar. The Blackstone Publishing Company, Philadelphia, 1889.

In adding this new edition of Kent's Commentaries to their "Text-Book Series," the Blackstone Publishing Company have made a wise selection, and one that will be appreciated by the profession. Judging from an examination of this first volume, Mr. Lacey has done his work conscientiously and faithfully, and, if the succeeding volumes are prepared with the same care, this edition will prove to be by far the best that has ever been issued of this standard work. The type and paper are satisfactory in every respect. Monthly numbers are issued in the "Text-Book Series," and the subscription price is only $15.00 a year, or $1.25 per volume.

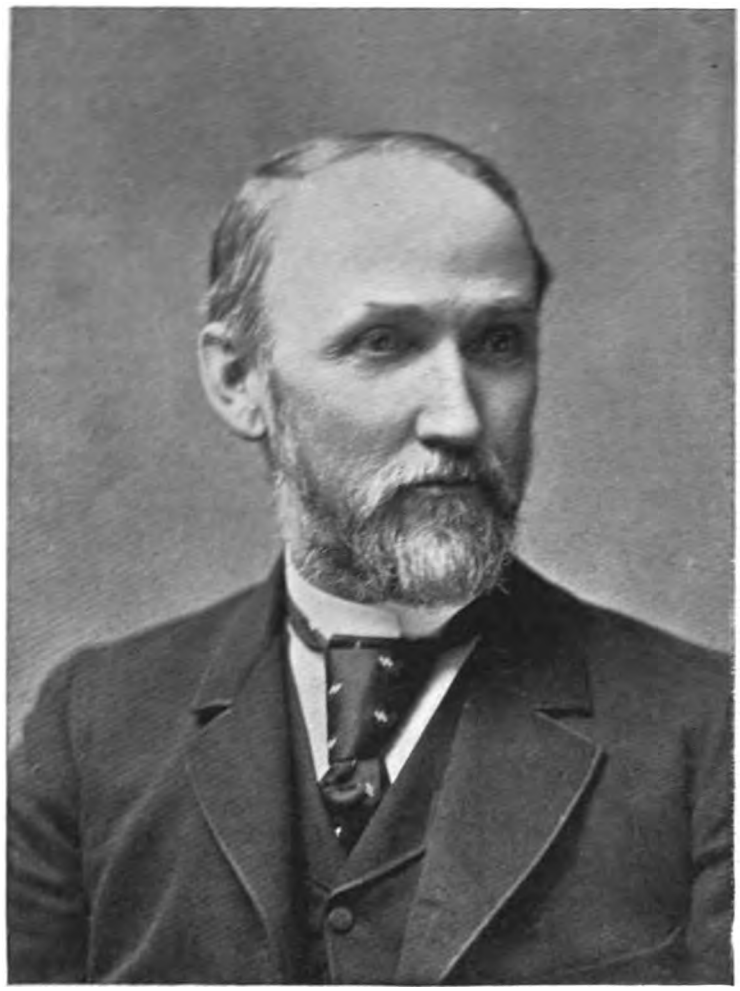
THE REVISION AND THE REVISERS, by William Allen Butler. Banks & Brothers, New York and Albany, 1889.

In January last, Mr. Butler delivered an address before the Association of the Bar of New York City, on the "Revision of the Statutes of the State of New York," which is now published in an attractive volume which contains excellent portraits of the revisers, John Duer, Benjamin F. Butler, and John C. Spencer. Mr. Butler is well-known as a brilliant and accomplished writer, and, while the present work will prove of peculiar interest to the New York Bar, it cannot fail to interest the profession at large. The biographical sketches of these three distinguished lawyers contain a fund of most entertaining and instructive reading. It is just the book for the lawyer to take with him on his vacation trip.

THE LAW OF CHARITABLE BEQUESTS, by Amherst D. Tyssen, D.C.L. William Clowes & Sons, London, England, 1888. $5.00 *net.*

This admirable work of Mr. Tyssen's is confined to charitable testamentary dispositions, and while written with special reference to English statutes and decisions upon the subject, it will prove of great value to the profession in America as well as in England.

We regret to see that the author in citing, in his preface, the principal works on the subject of charities which have been issued in the past, makes no reference to that treasure house upon the subject, "Dwight's Charity Cases," published in 1863. In that work, Professor Theodore W. Dwight, of New York, made a most valuable collection of old and rare cases from the Reports of the Commissioners of Charities in England, and from the Calendars in Chancery, the earliest dating back to the year 1515, all bearing upon the subject of charities and charitable bequests. This collection is so well known to the profession in this country, that it is a matter of surprise that Mr. Tyssen should have omitted to mention it, and it is also singular that but few if any of the cases cited by Professor Dwight are referred to in this new work.



The Green Bag.

VOL. I. NO. 10. BOSTON. OCTOBER, 1889.

ATTORNEY-GENERAL MILLER.

THE office of Attorney-General of the United States is one of the most important and responsible to which a lawyer can be called. He it is who represents the Government both as prosecutor and defender in all suits in which it may become involved, and it is he, as well, who is called upon for opinions upon all questions involving points of law which may arise in any of the Departments. He is also the President's legal adviser. The office, therefore, it will be seen, is no sinecure, but is one demanding unremitting personal application and requiring the very highest legal attainments for the successful performance of its duties.

We take pleasure in presenting to our readers an excellent portrait and a brief sketch of the present incumbent of this important office.

William Henry Harrison Miller, the present Attorney-General of the United States, was born at Augusta, Oneida County, in the State of New York, Sept. 6, 1840. His father was a farmer, and, like most farmers at that time was possessed of very moderate means. Young Miller's youth was spent upon his father's farm, and his early education was obtained at the district school, which he attended during the winter months when his services were not required by his father.

Notwithstanding the disadvantages under which he labored, he developed a love for study which enabled him to surmount all these difficulties, and before he had reached the age of seventeen, he had fitted himself for, and entered, Hamilton College. During his college course he still continued to work on his father's farm, and it was not until after his graduation that he gave up this agricultural pursuit.

Upon leaving college he went to Maumee City, Ohio, where he became the principal of the school in that place, and taught there until May, 1862, when he entered the army as a lieutenant in the Eighty-fourth Ohio Regiment. After serving in Western Virginia and Maryland, he left the service, and in October, 1862, went to Toledo, where he entered the law office of the late Chief-Justice Waite, as a student.

Having been offered the position of Superintendent of Schools in Peru, Indiana, Mr. Miller left Toledo and went to Peru, where he remained until 1865. During this time he devoted all the spare moments allowed by his official duties to the study of the law. In the spring of 1866 he commenced the practice of his profession in Fort Wayne, Indiana, where he remained for eight years, building up, by his untiring devotion and industry, an excellent practice. In 1874 he removed to Indianapolis, and became a partner of General, now President, Benjamin Harrison and Judge C. C. Hines. After that time he continued to reside in Indianapolis until last spring, when he was appointed by President Harrison Attorney-General of the United States.

Up to the time of his appointment Mr. Miller had held but one office, — that of Superintendent of Schools in Peru, Indiana.

AN ENGLISH VIEW OF THE AMERICAN BAR.

FIFTY years ago, De Tocqueville, writing upon the phenomena of American democracy, delivered the following opinion of American lawyers, — an opinion which sounds almost startling even to an English reader, who knows how great is the social eminence of the bar in his own country. "If I were asked," says the French philosopher, "where I place the American aristocracy, I should reply, without hesitation, that it is not composed of the rich, who are united together by no common tie, but that it occupies the judicial bench and bar." This appears even more strange when we recollect the comical anecdotes which from time to time crop up in English journals (more especially in the "silly" season), and which are evidently derived from American papers, of advocates, in spite of the remonstrances of the judge, fighting in court and rolling over each other and their briefs for a short while, when order is restored and the case proceeds; or of judges sitting and "whittling" sticks while they listen to the speeches of the opposing advocates.

But the truth is that not only have times changed since De Tocqueville wrote, but that stories of this description are easily explicable when the extraordinary power of "romancing" which the Yankee reporter possesses is considered, and when, also, we recollect what an utter absence of respect there is in the United States for forms and ceremonies apart from common-sense and justice. It must be remembered, too, that there are thirty-eight States (1883) of the Union, some of which display a civilization which is in advance of our own, while others are barely freed from the control of Judge Lynch. It is our aim in the present paper to try to present a consistent and concise account of the character, acquirement, and social position of the legal profession in the United States of America.

Our readers are doubtless aware that each State of the Union has its own independent courts of justice. Over them all is the Supreme Court of the United States, of which there are seven judges, which sits at Washington, and decides all questions which concern the intercourse of the Union with other nations, and all disputes between one State and another or between an individual and a State. All questions about its own jurisdiction are decided by this court without any appeal. Some idea of the importance of this tribunal can, perhaps, be gathered from the fact that a casual spectator may hear called the case of "The State of New York *v.* The State of Pennsylvania," especially when it is recollected that either of these States is about as big a place as the whole of England. To the judges of this court, also, a most tremendous power is given. They have the right to decree that any bill which has passed the two national chambers of Congress and the Senate is void, as being contrary to the letter and spirit of the Articles of Union and the Constitution. The importance, therefore, of the judges of the Supreme Court is something before which that of Lord Selborne on the woolsack, or of Lord Coleridge in "all his glory," sinks into the merest insignificance. It need scarcely be remarked that the extra-judicial utterances of judges who are armed with this power, possess the utmost political importance, and create a far greater stir than that recently made by the judgment of the Lord Chief-Justice upon the recent case of Maintenance. Perhaps we may venture to remark that the vexed Bradlaugh question would have speedily been decided in America, without the necessity for the rummaging up of forgotten statutes and for unseemly litigation between Mr. Bradlaugh, the Speaker, Mr. Newdegate, and the Sergeant-at-Arms, and the rest of the parties to the squabble.

But it is with the lawyers who practise in the different States of the Union that we have chiefly to deal. An American lawyer, whom we catechized some years ago upon the character of the profession of his country, sapiently and sententiously remarked, "Wal, in America we have lawyers *and* lawyers." This oracular remark needs some explanation. There is, of course, only one branch of the profession there. Every lawyer, or "counsellor-at-law," to give him his full title, can do any work which is allotted to a solicitor-here, and can appear in any court of his own State and in the Supreme Court. In fact, if we class the two legal professions of England together, and compare them with the one legal profession in the United States, we shall hardly be able to refrain from the trite conclusion that "Pompey and Cæsar are very much alike, — especially Pompey." An American lawyer may be a Mr. Benjamin, or he may be a Yankee, Mr. Fogg. But, nevertheless, there *are* certain marked differences between the two countries which cannot fail to strike the observation, and they are the natural results of the manners and customs of the country in which they arise.

First, then, we can notice how a process of "natural selection" decides which branch of the profession, that of advocacy or administration, a young lawyer adopts. Most men, when at first admitted, naturally take work of any description. The more influential firms, which are composed of older men, usually arrange that some of the partners shall devote themselves to advocacy and some to the routine work. But it must not be supposed in the least that briefs never go out of the firm. In all the chief cities there are many counsellors-at-law who are barristers pure and simple; they receive briefs from all firms and belong to no firm themselves; nor is it unusual for the advocate-member of one firm to be briefed by another, although, of course, the advocate in question considers that his own firm has the "first call" upon his services.

In the next place, a visitor to a court of justice cannot fail to be struck with the utter absence of the ceremonial element. Neither judges nor counsel wear robes of any description. The latter are to be seen arrayed in light suits, sitting down with one leg thrown over a handy chair while they address the judge (who is "Sir," and not "his Lordship"). We were present once in the High Court of New York City on "Motion Day." On a dais at the end of a large plain room, sat an elderly gentleman in a short jacket and a white waistcoat. Round the dais was a semicircular barrier, about three feet high, over which the lawyers leant, with their straw hats dangling in their hands, while they made their applications to the judge. There was much noise of counsel talking together, but the utmost decorum prevailed. This, however, was in the "Empire City," and it must not be forgotten that in many provincial districts the proceedings are of a very primitive nature. The judges who go on circuit in some of the Western States, we hear (but these things, as Herodotus says, when he introduces one of his cock-and-bull stories, we relate only from hearsay), hold their court in the open air, under a big tree, while two rival "colonels" (that is, late volunteers) argue for the respective parties.

With the remarkable genius for advertisement which the nation displays, it is not astonishing that the lower class of lawyers should advertise themselves and their acquirements. We believe that an advertisement like the following is not at all uncommon: —

"COLONEL JEDEDIAH LEE,

COUNSELLOR-AT-LAW,

83 West 42d Street, Cincinnati.

Debts collected with economy and despatch.
Conveyancing executed upon the cheapest terms.
Criminals defended successfully.
(The Colonel secured twenty-three acquittals during the preceding year.)
The Colonel is always in attendance.
N. B. 5th Floor right. Go up by the elevator.
Knock and ring."

We have seen in the daily papers scores of lawyers' advertisements which are not altogether unlike the above. The better class of lawyers, however, as may be well understood, generally refrain from advertisement.

But to return to our original text. The chief thing which prevents the lawyers in America, at the present day, from representing the aristocracy of the country, is their close connection with the disreputable wire-pullers and professional politicians. There is a large class of men in the United States who are politicians by profession; that is to say, they are vote-mongers, manipulators of majorities, and dispensers of patronage. And when it is recollected that at the present day in America all the appointments, judicial and otherwise, of every description and in every State are distributed amongst the members of the victorious party, it becomes evident that, as most of these "politicians" are lawyers, and as they are often rewarded by judicial appointments, some kind of degradation of the bench and the profession must necessarily follow. It speaks volumes for the integrity and capability of the American lawyers of to-day that they still occupy any social position at all. There are other reasons, too, which have tended to the corruption of the profession in America. The excessive worship of wealth, which taints the American character, must have induced the lawyers, like the traders and stock-jobbers, to make money by any means, fair or unfair, since money will whitewash the most spotted reputation; but it is to their connection with the trade of politics that the lawyers, in America, owe any loss of social reputation which they have experienced. — *Pump Court.*

STRANGE TENURES.

A CURIOUS collection of tenures and services, selected with a special view to their singularity, has fallen into our hands, from which we may contrive to pick out much interesting matter. Its author is one "Thos. Blouse of the Inner Temple, Esquire," and the book is entitled "Antient Tenures of Land and Jocular Customs of Some Mannours, made publick for the diversion of some and the instruction of others." The book was printed in 1679, "for Abel Roper at the Sun; Thos. Basset at the George; and Christopher Wilkinson at the Black Boy; all in Fleet Street;" and it bears, moreover, the imprimatur of the celebrated Francis North, who, "well knowing the learning and industry of the author, doth allow the printing of this book." But to our extracts.

War, naturally enough in those days — and we are engaged almost exclusively with the first Plantagenet kings — formed the chief object of anxiety and service. The obligation to serve, either personally or by deputy, in the royal army, with horse and arms for forty days, whenever the sovereign chose to go to war, formed the customary tenure on which a knight's fee was held. The conditions were, however, often varied. Some tenants undertook to supply one or more foot-soldiers, armed with pikes, bills, or bows; or else furnished weapons, — two hundred arrows; so many bows without strings; sometimes, but more rarely, cross-bows; and once or twice we find the condition laid down of providing the larger description of dart and stone-throwing engine, called a catapulta. In some cases, also, the military services were to be rendered wherever it pleased the king to carry on hostilities; in others, the tenant was bound to follow his Majesty only in his wars with Scotland or Wales. The barony of Burgh, on the Sands of Cumberland, and

some other estates in the same county, were granted to occupiers on the condition of their blowing horns to give alarm whenever an invasion of the Scots was perceived. Wrenoe, son of Meuric, held lands in Shropshire upon the serjeantcy of officiating as *latimer*, or interpreter, between the English and Welsh on diplomatic occasions. The prices of certain weapons are shown by the terms on which these articles might be commuted for money: thus, a pole-axe was redeemable for 12*d.*, and a sword for 3*s* 4*d.*

Sports came next to war. Innumerable estates were granted to holders on condition of keeping or training hawks and hounds for the king's use; of providing spurs, hunting-horns, cross-bows, arrows, for the chase; or of keeping a royal forest clear of destructive vermin. William the Conqueror granted to Robert Umframville, the lordship, valley, and forest of Riddesdale, in Cumberland, under condition of his defending that part of the country "forever from wolves and enemies," giving him, moreover, the sword worn by his Majesty when he first entered the country. Johannes Engaym held an estate in Huntingdonshire from Henry III., subject to his chasing wolves, foxes, and cats ("currendi ad lupum, vulpem et cattum") and exterminating all manner of vermin in that part of the country. A manor in Kent was held under Edward I., by Bertram de Criol on condition of providing a *vauterer*, or dog-leader, to take charge of the hounds trained to hunt the wild-boar, whenever the king visited Gascony. Vauterer, Latinized into *velterarius*, seems to be derived from the old French word *vaultre*, meaning "a mongrel hound." The vauterer in the instance we have cited was engaged to accompany the royal train "as long as a pair of shoes worth four pence would last." This period of service is prescribed in many other instances. The high value attached to animals trained for the chase is curiously exemplified in the dues paid annually by the county of Wilts, and which comprise "a hawk worth xx pounds and a horn worth xx shillings."

The Plantagenet kings were great travellers, — rivalling in their locomotive propensities her present Majesty, although they enjoyed no facilities of steam-yachts or special trains. For travelling, accordingly, they took care that their tenants should make fitting provision. Many manors were held on the tenure of furnishing bridles, housings, and other horse-gear for the king's use; of shoeing his Majesty's horses, or carrying hay to his stables. An estate at Cuckney, in Notts, was held by a tenant who was bound to shoe the king's palfrey on all four feet, using, however, royal nails and materials. If, by his unskilfulness, the animal was lamed, the tenant was bound to provide another, of not less than four marks' value, or £2 3*s* 4*d.* Edward I., consequently, paid at least forty-three shillings for his riding-horses. By way of provision for royal voyages by sea, several towns on the coast were under obligation to find ships, rigging, or sailors. Some lands were held by individuals on the tenure of pulling an oar or hauling a rope in the royal galley. Among others Solomon Attefeld enjoyed a manor in Kent, on the serjeantcy of holding the king's head whenever he journeyed by sea.

Many services now performed by the functionaries of the law were at this period attached to the tenures of landed estates. The duty of serving writs, acting as thief or debtor catcher, — "cachepolli," as they were called in the mongrel Latin of the time, — of escorting money on its way to the royal Exchequer, and of aiding in various shapes the administration of law or security of the subject, were imposed on many tenants under the crown in every country. The most disagreeable function of this kind, however, which we find recorded, devolved upon the occupiers of certain messuages and lands at Stanley, in Warwickshire, who held the property upon the service "of erecting the gallows and hanging the thieves."

We catch, in some of these tenures, curious glimpses of the homely and simple way

in which even monarchs lived five or six centuries ago. Thus, Willielmus filius Willielmi de Alesburg, for a manor in Bucks, provided straw for the king's bed, and rushes to strew his chamber; paying, besides, three eels in winter, and two green geese thrice a year, for his Majesty's use. Richard Stanford paid a pair of tongs yearly into the royal exchequer. Bartholomew Peyteryn brought every Christmas a sextary — about a pint and a half — of gillyflower wine. The Lord Stafford held a manor in Warwickshire from Edward I. upon paying annually a pair of scarlet hose, to which we find the extravagant value of 3*s.* was attached. Eustache de Corson paid to the king for his lands in Norfolk twenty-four herring-pies upon their first coming in. Walter Truvell held a Cornish acre — equivalent to about sixty statute acres — on condition of finding a boat and tackle to fish for the king so long as he resided in Cornwall. One Robert, the son of Alexander, was tenant of the manor of Wrencholm, from King John, for keeping the royal hogs during certain months of the year. The nature of the service and the absence of surname in this instance, prove that the tenant did not belong to the gentle races. Walter le Rus and his wife enjoyed twelve acres in Eggefield, for repairing the ironwork of the king's ploughs. William I. gave to Simon St. Liz, a noble Norman, the town of Northampton and whole hundred of Fatheley, then together valued at £40 per annum, to provide shoes for his horses. As singular characteristics of the times, we notice that several estates were held upon the service of maintaining a certain number of "meretrices," which the interpreters translate into "laundresses," at the royal court or camp in London or elsewhere. Finally, we may remark that Henry I. gave a manor in Salop to Sir Ralph de Pickford, to hold by the service of providing dry wood for the great chamber in the royal castle of Bridgenorth "against the coming thither of his sovereign lord the king."

Religious, ceremonial, and comical services were tolerably frequent. T. Winchord, for lands in Leicestershire, was bound to repeat daily five Paternosters, and as many Ave Marias, for the souls of the king's predecessors. Johannes Russell, for two hides of land at Papsworth, in Cambridgeshire, was required to feed two poor persons, and pray for the souls of the royal progenitors. The market price of "Paternosters" is shown by another tenure, in which the five daily repetitions are conditioned as rent for land valued at only 5*s.* a year. Among the ceremonial observances, or what would now be termed peppercorn rents, were a silver needle, an arrow-head, a wicker basket, a curry-comb, a white dove, a red rose, a maple-wood drinking-cup, and many others. The Countess of Warwick, in the reign of Edward I., held the manor of Hokenorton (Hogsnorton?), in Oxfordshire, by carving at the king's Christmas-dinner, keeping, moreover, the knife used on the occasion by way of fee. But among the most ludicrous tenures was that of Rowland de Sarcere, who for one hundred and ten acres of land in Suffolk was bound every Christmas Day to come into the king's presence and there perform "unum saltum et unum sufflum," — that is, to cut a caper and trumpet with his cheeks, — together with some other antics for his Majesty's diversion. This service was rendered to Edward I.; but afterwards, being considered indecorous — whether to the king or the performer, we are not told — was commuted for a fine of £1 8*s.* a year. The queen, when there was one, had her share in these services, receiving from all money fines ten per cent, under the denomination of "queen's gold," but sometimes enjoying her peculiar and especial privileges. For example, Peter de Baldewyn, for his estate in Surrey, was under obligation "to go woolgathering for the queen among the thorns and briers," or, in the original law-Latin, "ad colligendam lanam per albas spinas." By this service seems to be intended the collection, for the queen's use, of the locks of wool left by the sheep when feeding

among the thorn-bushes. The duty was commutable at 20*s.* per annum.

The cost and value of sundry articles of manufacture, agricultural produce, and domestic animals are shown by the terms at which the fines were assessed. We have mentioned a few instances already. Some tenants of the Earl of Warwick, who were bound to mow his hay and reap his corn, were allowed, after hay harvest, to take the Earl's "best mutton" — that is, sheep — "but one, or xiv*d.* in money; and after corn-harvest, his "best cheese" but one, or vi*d.* in money, together with the vat in which the cheese was made, full of salt.

Our list is getting over-long, and yet might be curiously extended. We will finish it, however, by describing one of the most valid tenures or titles which the landed proprietors of those early days could produce for their estates. King Edward I., we are told, having caused inquisition to be made by his justices of certain of his great subjects concerning the warrant on which they held their lands, John Earl Warren and Surrey showed them an old sword, saying: "Behold my warrant! My ancestors, coming into the land with William the Bastard, did obtain their land with the sword; and I am resolved with the sword to defend them against whomsoever shall attempt to dispossess me. For the king did not himself conquer the land and subdue it; but our progenitors were sharers and assistants therein." And "good sharers," adds our author, "were they, for it appears that the first Earl Warren was, at the time of the survey, possessed of two hundred lordships in several counties in England, whereof Coningsburgh in Yorkshire was one, which had twenty-eight towns and hamlets within its soke." Happily, no such accumulation of estated property is now to be found, even in the "Dukery." — *Chambers' Journal.*

DOOLING vs. BUDGET PUBLISHING COMPANY.

144 Mass. 258.

By Austin A. Martin.

[*The publication of an article stating that a dinner furnished by a caterer on a public occasion to the Ancient and Honorable Artillery Company of Boston was "wretched," and was served "in such a way that even hungry barbarians might justly object," and that "the cigars were simply vile, and the wines not much better," is not actionable, without proof of special damage.*]

GOD bless us, worthy counsellors!
God bless us, gentles all!
A woful dining once there did
In Boston town befall.

To tramp the streets with fife and drum,
The Ancients took their way;
Long did their gallant stomachs rue
The feasting of that day.

For, after grisly war's alarms
In many a muddy street,
To brace their martial bodies up,
Round festal board they meet.

A specious bill of fare, good sooth!
But when they did essay
To actually taste the food,
It filled them with dismay.

And false as Judas was the "wine"
From tinselled flasks did flow;
No sunny grapes of fair Provence
Their juice did there bestow.

And when the grewsome feast was done,
The "Pure Havanas" came:
Ah then, God wot! the warriors brave
Their bile did straight inflame.

No foreign clime the weed had borne, —
The Ancients stood amazed;
The good old State Connecticut
The dull brown leaves had raised.
. . . . .

Forbear! no more! we draw the veil
Upon the closing scene;
The wrath and oaths of those brave men
Were sore and hard, I ween.

In Flanders erst the army swore
Most terribly, 't is told;
And sure they had as good excuse,
Our martial Ancients bold.
. . . . .

And now begins the legal part;
The Budget poised its pen,
To right, within its columns straight,
The wrongs of these brave men.

A scurvy tale it did unfold;
Right hard it hit, I ween:
Such villain feast, cigars and wine,
Good Christians ne'er had seen.

It further wrote, in good set terms,
That e'en barbarian wight,
Though pressed with hunger or with thirst,
Such nauseous fare would slight.

Sore angered was the cater-man;
Straight brought his suit in tort,
Against the lib'lous Budget staff,
In the Superior Court.

But failing to allege or prove
Aught special damage then,
His suit did lose, before those twelve
Stanch, sturdy Suffolk men.

Swift to the Court Supreme he hied,
And strong did urge his woe;
It helped him naught, the Court Supreme
Sustained the Court below.
. . . . .

Then let us sing with mighty voice,
Long live the S. J. C.!
Long live the freedom of the Press
Through all eternity!

No longer need we eat the fare,
With indigestion fraught,
Which any caitiff caterer
Upon the board has brought.

Or if perchance the "perilous stuff"
Incautious we ingest,
In good set terms we may express
The wrath within our breast.

Ah! mighty is the trusty sword,
Wielded in bloody fight;
But mightier far the good goose-quill,
Each grievous wrong to right!

THE BUFFALO LIBRARY BUILDING AND LAW LECTURE ROOMS.

THE BUFFALO LAW SCHOOL.

By Charles P. Norton, *Professor of the Law of Practice in Civil Actions.*

THE series of articles upon the law schools of the country, which have been published in these pages, have presented in an entertaining and instructive way the history of the founding of these various schools, together with the method of instruction pursued in them. The presentation of the subject of legal education by a comparison of the methods employed in the different schools has never before been so effectively done, and the cause of instruction in jurisprudence must of necessity be con-

siderably benefited by the opportunity thus afforded of learning how the successful schools of the country are conducted.

It already sufficiently appears that the question whether training in schools or in offices is the more likely to produce the best lawyers, has been settled in favor of the method of giving regular instruction in classes.

This, however, by no means determines the question that the training which many of our most eminent lawyers received in offices was not in the highest degree excellent. It must of course be conceded that very many of our ablest jurists, who never sat in the law lecture-room, were most admirably fitted for their work by that combination of practice and theory which they found in the law offices where they studied. It must also be conceded that their cases are exceptional in this, that they either had peculiar advantages in being associated with painstaking lawyers, who gave much time to the direction of their reading, with frequent quizzes, and opportunities of seeing actual practice, or else that, as students, they were able to overcome the disadvantages of desultory office-reading by sheer force of their natural abilities. Wherever the student was able to study the principles of law carefully and intelligently, and at the same time could see these principles practically applied, there was a possibility of producing a good lawyer.

But the chances for such advantages were rare, and in the hurried and busy city offices of to-day they have nearly ceased to exist. These advantages could be perfectly obtained only in institutions where instruction, both theoretical and practical, could be given by men who make such instruction their chief work and not an occasional incident of their professional lives, and therefore the law school superseded the law office as the best form of legal education.

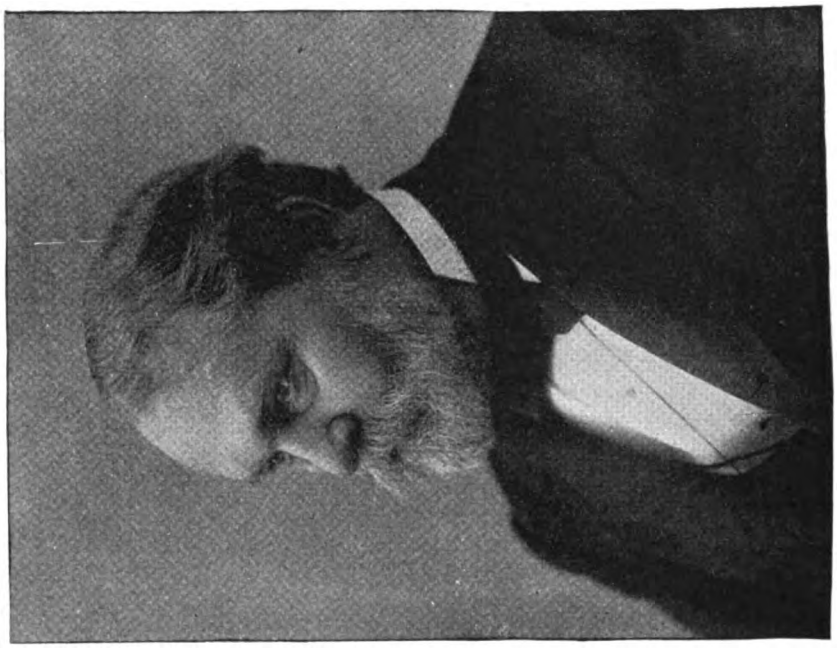
As the best possible school for the training of a lawyer is to be intimately associated with one learned in the law, who will daily impart that learning to the student and enforce it by frequent practical illustrations, so that law school will be the best which combines just these elements of theory and practice, taught by men whose theories of law are based upon their practical experience of the law as it is administered.

A possible danger, incident to law-school training, is that of making the study of the history and development of law unduly prominent, at the expense of time which should be devoted to imparting a knowledge of the law as it is and how to practise it.

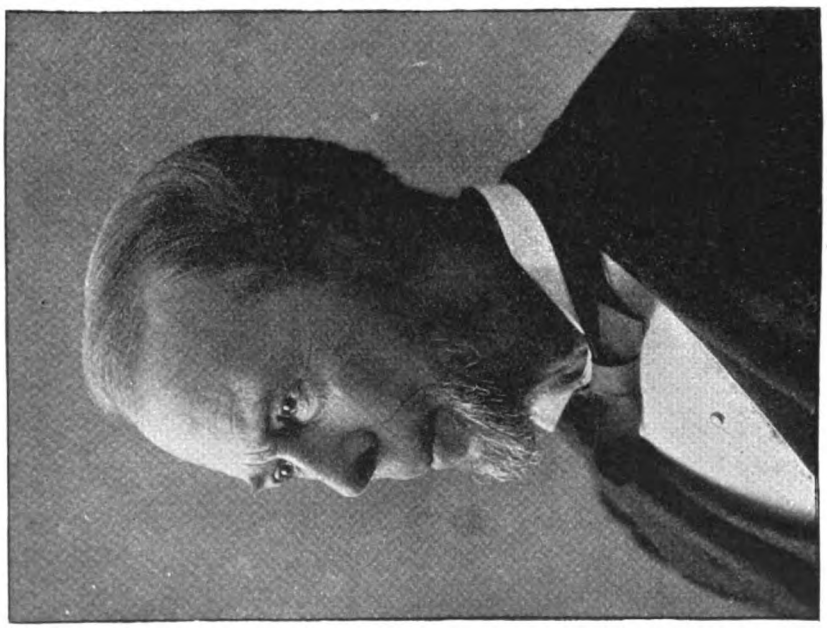
Most young men adopt the profession of law as a means of gaining a living, just as others become merchants or engineers. They cannot, at the age when they usually begin their legal studies, give more than three or four years to the preliminary work of fitting themselves for practice. At the end of that time they wish to be qualified for the actual transaction of such legal business as may be intrusted to them.

The student whose time is chiefly given to the study of the history of law, to the origin of legal procedure, and to the development of theories of law, may be well equipped for writing law treatises, but in the limited time which he can give to study preliminary to the practice of his profession, he will fail of attaining that particular knowledge of law procedure which is essential to its successful practice.

To what extent the law of the past should be studied so as not to infringe too much upon the study of the law of the present is a somewhat serious problem. The systematic study of any science, beginning with its first manifestations, following its gradual development down to its latest results, is doubtless the most orderly method of proceeding. In the beginning it is, of course, important to have some knowledge of the laws under which our fathers lived and which are in many cases the sources of the laws under which we live to day. But practical law is much more than this. From its very nature the law of a country reflects and



CHARLES BECKWITH.



CHARLES DANIELS.

must reflect the ever-changing conditions of its social and business life. The judges on the bench, the practitioners at the bar, the legislators in the senate, all have one common aim, — to determine what is fairest, most just, and best for the general interest, taking into consideration existing facts. Public opinion, too, and business or social gains or dangers strongly influence them. There may be many of these clearly present in the community now of which there was no trace a hundred years ago, and which must mould our present law into new forms substantially different from the old theories. Such are new enterprises and new ideas which call for new adjustments. These can only be studied, explained, and settled by men whose hands are on the pulse of affairs, and who are in sympathy with and understand them.

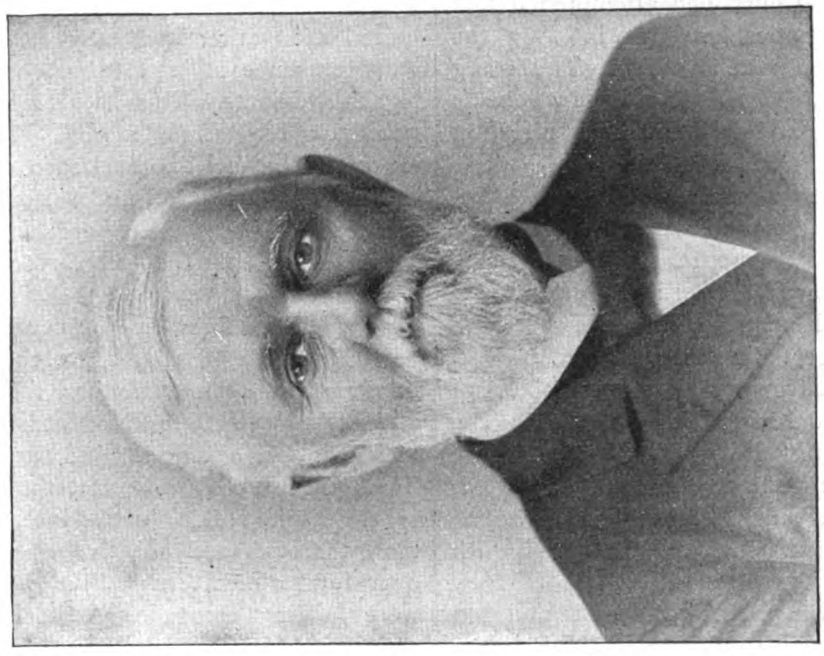
Thus jurisprudence, while it is admittedly in some sort a science, is in its practice a science unlike any other. It has not, and from its nature cannot have, the exact divisions and classifications of other sciences. It is as wide as human action, variable as human opinion. It follows and is shaped by human necessities arising from constantly changing facts; and the question to be solved is what method of teaching law in schools will best equip young men to give good practical advice based upon the law.

Of course the teaching of law depends upon the teacher, and he must have peculiar qualifications. The life of the recluse and student is not permitted to him; he must be abreast with events. He must be among men, understanding the inner nature of their manifold enterprises, watching the working and studying the extent and the limitations of the thousand and one new, unwritten business rules which control their dealings with one another. The law must be as wide as these, as flexible as these; and the teacher must not only know what it is in the books, but if it is not yet enacted or judicially pronounced, what it is most likely to be. With all this there must be knowledge of the law of the books, for provided it works no positive injustice, courts, in discussions before them, will treat as settled principles, theories which former courts have examined into and declared to be sound. Knowledge, therefore, of the adjudications of other courts, and knowledge, too, wide, thorough, and accurate, is requisite. Running throughout any branch of jurisprudence are theories of universal application, based upon decisions found in some half-dozen or more cases in which the theory is created by course of judicial reasoning upon analogous evidentiary facts. These facts, the theories of law which resulted immediately from them, and the distinctions, qualifications, and multiform phases of the theory as established, the instructor must be familiar with.

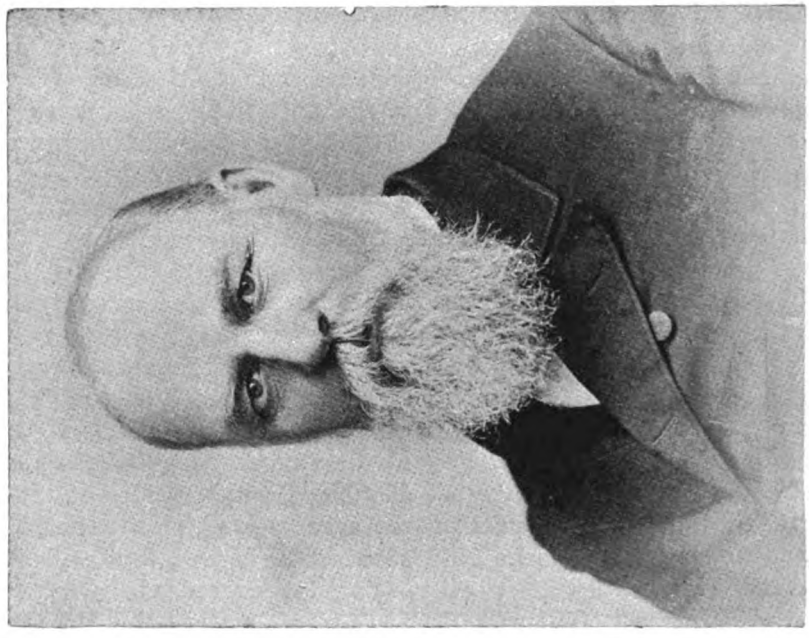
These seem necessary qualifications in an instructor who seeks to make ready a young man for the needs of modern law practice. The charge against law schools to-day, in the mouths of business men, is that they turn out men who are good legal theorists, perhaps, but who have not much practical knowledge. Their judgment is not to be trusted. They are not of much use. The lawyer who is wanted by business men must be an adroit business agent. He must understand how to advise business men in their business, how to manipulate men and things for them, how to suggest plans for them to win, how to snatch them from disaster when it threatens.

These are things which schools that give sole attention to legal theories can never teach. In these things the office experience of the law clerk is valuable. There he can watch men, and this is often quite as profitable as studying books.

Upon a theory of combining these methods of instruction the Buffalo Law School was founded in 1887. It had been a project of long standing. Many years before, a number of prominent Buffalo lawyers, who numbered among them Millard Fillmore, afterwards President of the United States, and the Hon. Nathan K. Hall, afterwards



LORAN L. LEWIS.



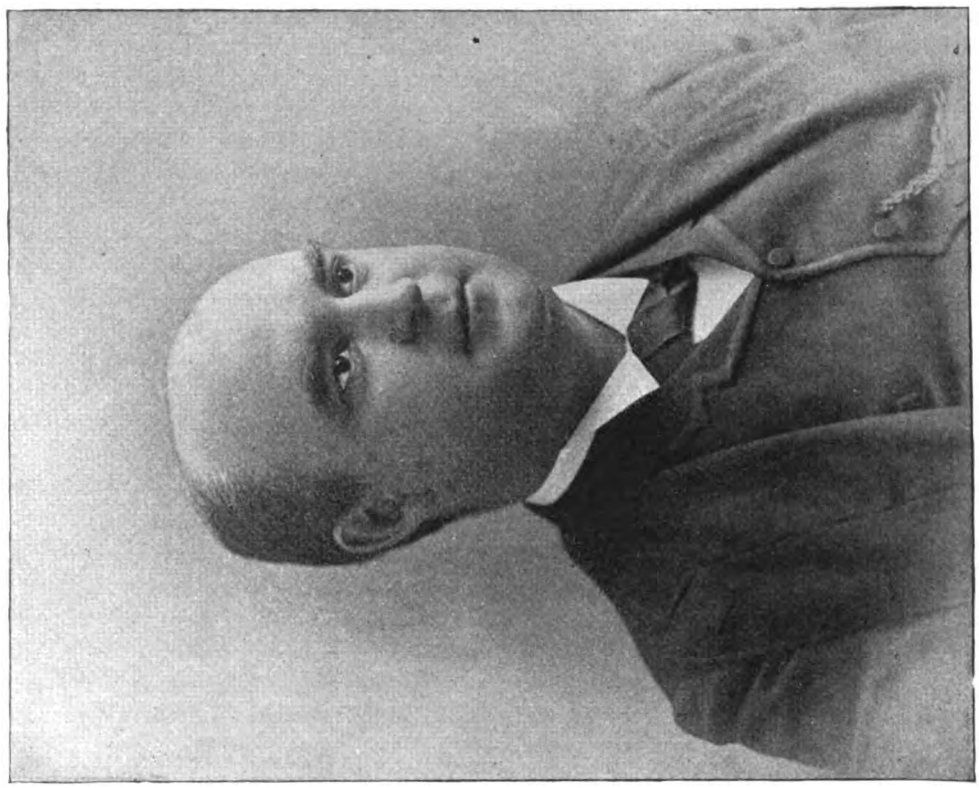
GEORGE S. WARDWELL.

Postmaster-General and a Judge of the United States Court, had attempted it and found it impracticable. But in 1887 the auspices seemed more favorable. The strong prejudices against education in law schools were dying out, and on the contrary a feeling in favor of them was steadily growing. The idea that to fit properly a young man to belong to this learned profession, he must have instruction from competent men, was beginning to prevail. There was, in short, a public demand for an institution of this kind, and Buffalo seemed a fit place for it.

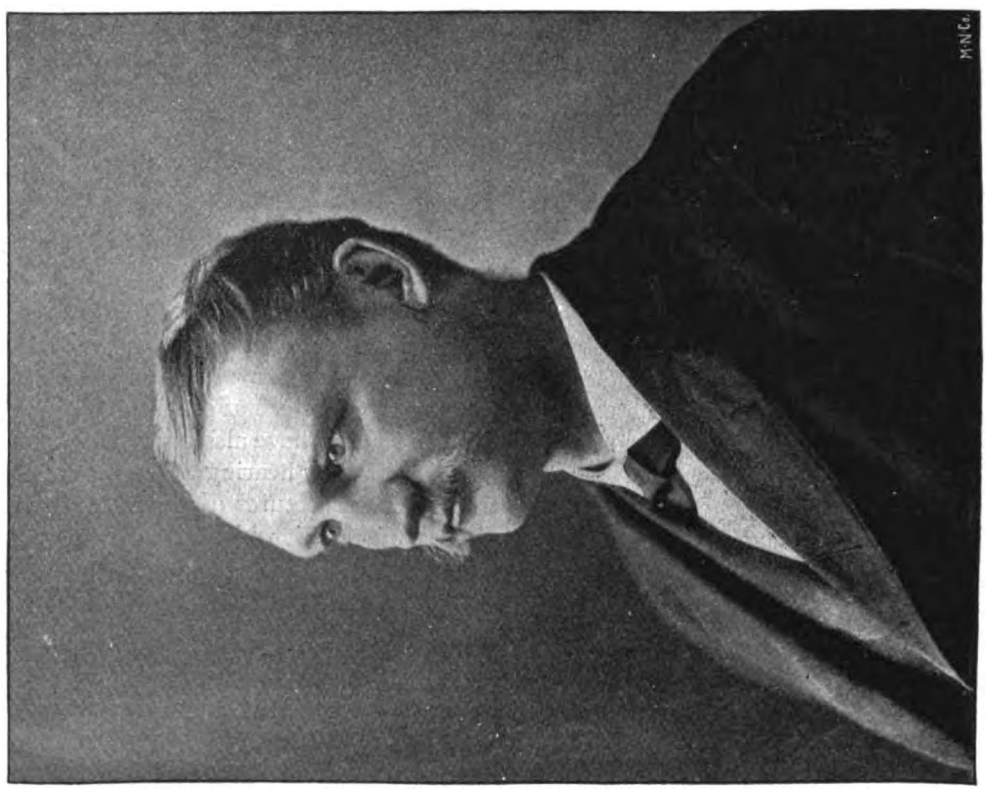
The city had grown into a metropolis of two hundred and fifty thousand people. The splendid lecture rooms of the Buffalo Library building gave shelter to the school until it should have a home of its own. Near at hand was the Law Library of the Eighth Judicial Department of the State of New York, comprising between eight and ten thousand volumes of Treatises and Reports, open to the students and affording them ample facilities for reference. Special terms of the Supreme Court and of the Superior Court of Buffalo were held daily, at which judges sat to hear and determine questions touching almost every branch of the law. Close by the school, four courts of general jurisdiction were constantly in session, where important cases were being tried by distinguished counsel from all parts of the country, drawn there by the heavy railroad and commercial litigations developed by the immense railroad, commercial, and manufacturing interests centring in this queen city of the great lakes. Thus the student in the school had under his eyes the lessons of that larger school the law court, and was drilled not only in the lecture-room but also in the forum itself. The advantage of this cannot be over-estimated. There is no place where law is learned so quickly and thoroughly as among the lawyers. No teaching is so effective as the object lessons of the trial of cases in court. There have been court stenographers who have probably never opened a law book and yet who are competent lawyers. The reason of this is that they absorbed law, as it were, — acquired it, in other words, by sheer force of daily presence at trial terms, listening to legal arguments. This is a fact which all practising lawyers understand. The founders of the school appreciated it. They located their institution under the shadow of the courts, and sent their pupils into them to learn law, as they themselves were learning it, by daily practice.

The alliance between the courts and the bar on the one hand and the school on the other, was the closer because the school instructors were chosen from the four hundred members of the judiciary and bar of Buffalo. The Law School was in fact the enterprise of the Buffalo Bar, in the interest of the more thorough and effective training of its own future members. Five judges, who were holding courts almost daily, became members of its faculty or of its lecture corps. Attorneys who had won reputation as specialists in various branches gladly gave their time and their services to it. The members of the bar who were not actively engaged in the law school offered places in their offices and the benefit of an older lawyer's supervision of study, to every student in the school who would come.

With these facilities the organization of the school was perfected. It was not able to start with a large sinking fund. There were no endowed professorships. The services and time of the gentlemen who engaged in it were given without compensation to them. Their aim was to fill a want in legal education by having practical lawyers give instruction in law. They sought to teach in such a way that advantage might be derived by the student from the theories of law in all fulness, without losing on the other hand the advantage which experience has clearly shown to be derived from an office training; — that thus, as medical students learn in hospitals and as apprentices in trades, so the law student of this school might readily appreciate not only what legal theories were,



JAMES FRAZER GLUCK.



SPENCER CLINTON.

but, what is of much more importance, how they are applied in the actual business of courts.

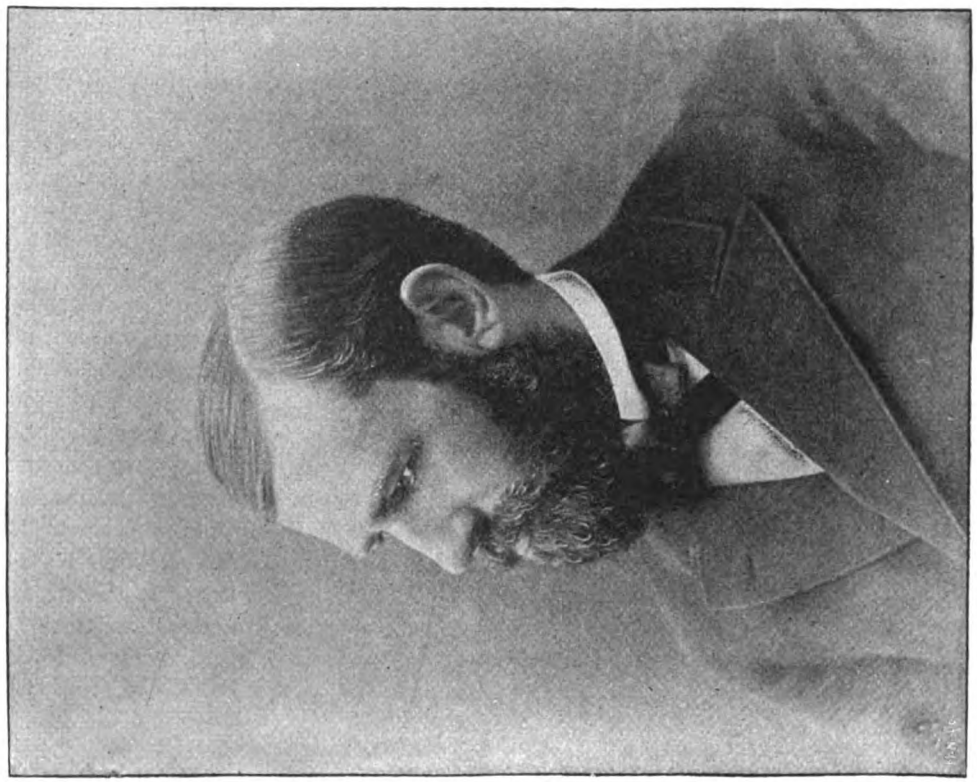
In arranging the studies of the school and completing the scheme of organization, the founders were singularly fortunate in being guided by men of great practical sagacity and unusual administrative skill. Foremost among them was the Hon. Charles Daniels, LL.D., the Dean of the Faculty, the head of the school, and its lecturer on Constitutional Law. Crowded as he is with causes from all parts of the State, submitted to him, as one of the judges of the General Term of the first department, and judge of the Eighth Judicial District, Judge Daniels always makes time for his duties as an officer of the faculty and for his lectures to the students. These last, nothing is permitted to interrupt. He will even adjourn court to give them. And to hear them is to hear such expositions as in past days might have been heard in other schools from James Kent or Joseph Story. From the days of his early studies in law at the shoemaker's bench to the time of his attaining a position at the New York State Bar, which few there have ever excelled, Judge Daniels has been what lawyers call a "hard worker." During all the time of his twenty-six years' judgeship he has never ceased to study law with the ardor of his youth. And now in his maturity he has a knowledge of legal principles and a ripened insight into the nature of law, that can only be described as marvellous. He seems equally well versed in all legal subjects, and is always ready to lecture on any subject when the instructor in it is absent. He speaks without notes, and it is one of the pleasures of the bar to hear him.

Side by side with Judge Daniels in the management and instruction of the school are his brethren of the bench, — the Hon. Charles Beckwith, Chief Judge of the Superior Court of Buffalo; the Hon. Loran L. Lewis, Justice of the Supreme Court of the State of New York; the Hon. Albion W. Tourgee, the legal author and ex-judge of North Carolina's courts; the Hon. Jacob Stern, the President of the Erie County Bar Association and the Probate Judge of Erie County; the Hon. L. N. Bangs, former Probate Judge of Genesee County, and the Hon. George S. Wardwell, senior Judge of the Municipal Court of Buffalo.

Unlike Judge Daniels's method of instruction, Judge Beckwith's lectures on Equity Jurisprudence are written out with the greatest care. With the members of the Buffalo Bar, who, as well as the school students, are his admiring listeners, they are spoken of as careful, thoughtful, scholarly expositions of the branch of the subject of which he treats. Indeed his character of mind is essentially that of an equity lawyer, as that of his colleague Judge Lewis is that of a skilful advocate. His subject, "The Trial of Cases in Court," is one of which Judge Lewis is peculiarly qualified to speak. Before his elevation to the Bench, he was conceded on all sides to be the best nisi-prius lawyer in the fifth department. No one understood as he did the secret which so many try in vain to learn, — the successful presentation of cases to juries. Always clear, always forcible, always logical, he seemed to the ordinary juryman to be always right. He added to an unusual knowledge of men an unusual power of eloquence, which never seemed to the listener to be oratory, but only quiet convincing conversation. This art he had learned through years of experience, as all rhetoricians must learn it, by close observation and careful conformity to the rules of tact; and the hints which he gives upon the conduct of cases are of great value.

The students have also peculiarly favorable opportunities for hearing the practical side of the law in the lectures of Judge Stern, on the subject upon which his practice and present position of a probate judge have made him an authority of much weight, "Wills and Estates of Deceased Persons," and of Judge Bangs upon the subject "The Law of Trusts." These gentlemen are specialists whose opin-

JOHN G. MILBURN.



ADELBERT MOOT.

ions are eagerly sought for. They simplify these complicated subjects, which not very many practising lawyers understand, so that they are clear and easily comprehended. So far as the students are concerned, they are, to employ a piece of college slang, coaches of the first order. Experience enables them to know just what facts a practitioner need keep in mind to have his knowledge always available and at his fingers' ends. Dissevering what law is necessary for a man working in the nineteenth century to use, from the curious but useless and cumbersome law of the past, they teach only that. Judge Stern especially realizes that law for lawyers means money and bread, and his lectures are clear, succinct, practical expositions.

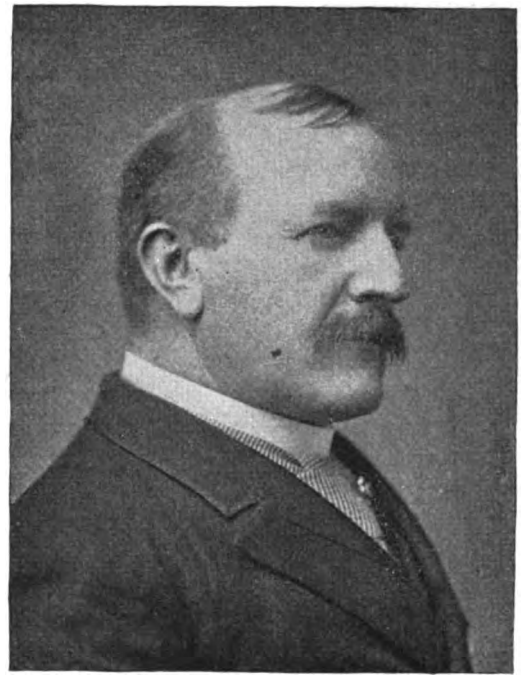
This may be said also of the lectures of Judge Wardwell on the Law of Torts, which are given weekly to the Junior class throughout the year. Judge Wardwell, before he went on the bench, was a lawyer of wide experience in cases involving questions of negligence, and since then he has been kept fresh by frequent trials of causes of the same character before him. He has, however, a characteristic which marks him, as a teacher, even more than his legal acquirements. Though he graduated from Harvard College and the Dane Law School many years ago, he retains as vividly as if it were yesterday his sympathy with young men. He understands how to infuse them with his own enthusiasm, how to incite them to work, how to make their studies one with their daily thoughts.

Something of this Judge Tourgee has, though, because of his non-residence in Buffalo, he is not so constantly among the students. Looked at from one point of view, the chair of Legal Ethics which he fills, is of importance. It may be said of law, as of no other profession, except possibly that of arms, that its practice is a match of wits. The conduct of cases is a counsel's campaign, and their trials are his battles. In these, as in grand tactics, very little things sometimes turn the scale of victory. A misunderstanding, a careless word, a missing paper, an omission of something, at the time deemed not worth noticing, often wins or loses a struggle to which weeks of thought and preparation have been given, and in which fortunes are staked. The lawyer who tries for points is the winning lawyer; and in the gaining of points there is wide room for the play of strategy. It cannot be said, however, in law, as in war, that "all is fair." On the other hand, the rules of decent practice require that one must be fair to gain; and deception, trickery, and knavery, so often separated by but a tenuous line from strategy, must be sternly ruled out. In the interests of decent practice, legal ethics lay down rules discriminating between knavery on the one hand and strategy on the other.

This is the subject on which Judge Tourgee lectures. Any one familiar with the fire of his writings, so well known to the world of letters, can easily conceive the electric energy which pervades his lectures. The dash and the nervous strength of his books appear in the literary knack which clothes with fresh life the dry rules of legal conduct which he lays down. The students and the public, who come to hear, listen with an attention rarely given to lectures upon this subject in other law schools. He tells so forcibly what is fair or foul, manly or ignoble, just or unjust, and the duty which a lawyer owes to his brethren and to his client.

While the Buffalo Judiciary are thus taking active part in the management and instruction of the school, the Buffalo Bar are not behind them. Her leaders and busiest practitioners are on her executive board. As instances of this may be mentioned among her teachers Spencer Clinton, George Clinton, Adelbert Moot, and James Frazer Gluck. The Clintons inherit their legal ability from families of lawyers. Their father was an illustrious judge, whose father bequeathed to the State of New York its greatness in the Erie Canal, and whose

grandfather sat in the Cabinet of Washington. Their maternal grandfather was John C. Spencer, one of New York's greatest jurists and the reviser of her statutes. The sons of such fathers have not failed to live up to the traditions of their line. And to-day the citizens of Buffalo estimate as their best the grandsons of De Witt Clinton. The Clintons have not given the benefit of their name alone to the school; they have given it their time and their attention. Both of them were among its founders, both are among its most energetic workers.



LE ROY PARKER.

In writing of the lectures of Spencer Clinton "On the Law of Property," criticism becomes of necessity praise. The sagacity of De Witt Clinton speaks in the practical turn he gives to the most abstruse legal propositions; the clear comprehension of John C. Spencer, in his lucid statement of what those propositions are. George Clinton lectures upon the subject, which he has made his specialty, — the subject of Admiralty Law. As well considered as are the lectures of his brother, they are worthy of as high praise. Conkling might have fathered them; Miller might have acknowledged them without discredit.

Of the work of James Frazer Gluck the public is soon to judge in his book on Corporations about to be published. Of the character of his work in the school an estimate can perhaps be gathered from the facts of his life. Comparatively a young man, Mr. Gluck has already won such prizes as few gain at his time of life. He graduated at Cornell University at the head of his class, in 1874. He became a partner in one of the most important firms of Western New York in 1877. A trustee of Cornell University in 1883, he was a prominent candidate for its presidency soon after. In the Buffalo School he shows those marked elements of strength which the facts of his past life warrant. Mr. Moot, formerly the partner of Judge Lewis, of whom we have already spoken, is a man to whom no college gave her training, but whose education was acquired at that better school, — the family hearthstone. A country-boy learning as best he could, a teacher of a village school, a student supporting himself while reading law with Judge Edwards, and at thirty-five a lawyer with the reputation of having successfully argued more cases before the New York Court of Appeals than any man of his years in the State, — this is the record of which his friends are proud. This is the name and prestige he brings to the Law School.

Besides these men whom we have mentioned are others of no less merit. These are Mr. LeRoy Parker, the Vice-Dean; Mr. John G. Milburn; and Mr. Tracy C. Becker, the instructor in Criminal Law.

Mr. LeRoy Parker, the Vice-Dean, a graduate of Hamilton College and of the Law School of Michigan University, was appointed to that office in 1889, because of the frequent

necessary absences of Judge Daniels at terms of court. To this position he has brought distinction. Together with his position of Vice-Dean, he has for two years held the Chair of Elementary Law, and Contracts, and has lectured four times a week to the students. In each of these positions he has much to do with directing the management and instruction of the school, and this he does with an exemplary faithfulness and care which already have reaped their harvest of deserved success.

Mr. Milburn is only an occasional lecturer at the school. He is a member of the firm of Rogers, Locke, and Milburn, whose railroad and corporation business takes him to all parts of the Union. It is to be regretted that he can spare time only for the few discourses he is able to give. In these, under the title of "The Theory of Law Codes," he speaks in a graceful way of the theory of Jurisprudence.

Of Mr. Becker, we may say that he was for several years in the office of the public prosecuting attorney, and has since then taken a high stand at the bar. Recently his name has become prominent in connection with the case of Kemmler, the first murderer sentenced to be executed by electricity. He was appointed by the Supreme Court a referee to take testimony in the proceedings to test the constitutionality of the New York Electrical Execution Act. As the prosecuting attorney, and as such referee, he has shown a mind possessing much more than ordinary culture, added to remarkable powers of analytic thought. To this school he has given his time and money with an open hand.

In addition to the topics already spoken of, instruction was given upon the subject of "Marriage and Divorce" by Mr. C. T. Chester, who distinguished himself at Yale College, where he was the salutatorian of his class, and a leading member of the Society of the Skull and Bones, and also at the Columbia Law School, and has since risen to prominence at the bar. Mr. E. C. Townsend, the secretary and treasurer of the school, a graduate of the Albany Law School, has in charge Domestic Relations; Transmission of Estates is lectured upon by Mr. Edward L. Parker, a graduate of Cornell University, a specialist doing much of the real-estate business of the city of Buffalo; Agency and Partnership, by Mr. H. H. Seymour, the Commissioner of the Supreme Court for the examination of students for the bar; Special Proceedings, by Mr. S. T. Viele, a lawyer of twenty years' standing; Manufacturing Corporations, by Mr. C. B. Wheeler, an authority on the Act of 1848; and Practice in Civil Action, by Mr. Charles P. Norton.

With these facilities and by these men the school was founded, and entered upon its first year in October, 1887. Its curriculum contemplated a course of study for two years, with a third year to be added as soon as there should be a demand for it.

To the Juniors, or first-year men, was appointed the study of such fundamental subjects as Rights as they appear in Contracts, Wrongs as they appear in Torts and Crimes, the Law governing the Relation of Families, and the Law and Nature of Estates in Real Property. To the Seniors, or advanced class, the more advanced subjects, such as Evidence, Equity, the more complex kind of Contracts, Admiralty, Corporations, and Constitutional Law. The subjects studied number twenty-three in all, under the guidance of a lecture corps of twenty members. The hours for lectures are made with reference to the usefulness of the students in the offices to which they go when the lecture hours are over. The Junior lecture hours are between nine and eleven in the morning; the Senior, the last hour in the morning, and the last hour in the afternoon. The general rule is, that a lecture is given on each subject once a week, though lectures are given more frequently than this on the subjects of Contracts, Elementary Law, and Practice. There is no fixed method of instruction, each instructor adopting the course which he con-

siders will result most effectively in fixing in the student's mind the work-a-day rules of law, but the aim is to combine the best methods of all the schools. Some read lectures carefully written out. Some take a head note or two of some leading principle or case, and discuss it with the young men during the hour. Some draw their subject from chapters of a text-book, which must be read and re-read by the pupils during the week. In Practice, blackboard work in the drawing of the commoner legal documents is much used in illustration of its general principles as they occur. In Evidence, students learn what testimony means by seeking to prove facts in mock examinations, matching wits with one another, under the supervision of some trial lawyer. In Negotiable Instruments, the students first have explained to them what a negotiable instrument is, and then have papers given them, to determine whether the particular instrument they have under consideration is a negotiable instrument or not. In Constitutional Law, they first study the Constitution, then they hear its interpretation by Judge Daniels, and afterward write of it in theses. In short, the picture that the instructor, in his teaching, has before his mind, is the lawyer sitting in his office hearing facts told by clients, and applying principles to them; the lawyer in the business world dealing with men, moulding men and things in their progress to conformity with law; the lawyer in court hearing facts, adducing facts, struggling with facts, the trenchant weapons of the legal arena. And they seek to inform the student to this end upon the same theory that other teachers would in teaching a pupil to run an engine or build a house. These experienced men show the beginner what the law is, and how it is applied; and their instruction, after this, consists in giving facts as they will come to the students in their future practice, and making them work out the legal solution for themselves. Stress is laid upon the last more than upon the first. Mining into the puzzling tangle of cases, and seeking to remember them as one would remember the Archimedean propositions, is not deemed important. The aim is to train lawyers equipped for office or court work, and to do this it is necessary to understand the law as a practical science.

TRACY C. BECKER.

In this aim the office connection is a most efficient aid to the school. By means of this the students learn thoroughly what the nature of important legal documents is, inasmuch as they copy them. They draw mortgages, deeds, leases, and contracts. They see wills drafted, and hear consultations in reference to them. They learn by practical observation the meaning of that most complex institution, the "trust." In listening to the affairs of business concerns they comprehend, as they could never learn from a teacher's lips, the application of the rules of mercantile law. They are expected, as soon as they show themselves competent, to take charge and

supervision of the instituting of ordinary suits, upon business claims, promissory notes, and the like. They learn, too, the fundamentals of business correspondence, and are taught how to write letters which shall be concise and to the point. In this way they learn, as no mere student can, what the laws of business are that govern and control the machinery of justice. It has, too, much more important results. It rubs them against men, and it takes them, in a certain sense, within the doors of that great school, the Court of Justice itself. It is true that courts of Justices of the Peace, into which the students go, are often not very dignified schools; yet probably the cases in them are as various in their character as in any of the highest courts of record. And there is no education to be had in any purely theoretical school which will confer the practical benefit of the trial by the student of half a dozen sharply litigated cases in a Justice Court. It presents the law in an aspect unfamiliar to the student in the lecture-room. With him, in this way, the beginnings of the great lesson of paring away all matters except essential points, are taught. He acquires something of the difficult art of court presence, of thinking on his feet, of formulating clearly facts and theories, to himself first, and then to the judge or jury. It is the best possible foundation for the study of evidence, which the student finds to be one thing in the books and another in the courts. He learns, perhaps, the secret of what questions not to ask. Besides this, students are frequently called in minor ways into the Courts of Record themselves. There they see, hear, and are brought into contact with older counsel, from whom they consciously or unconsciously learn much. It is seen, too, how justice is administered and how enforced. And these manifestations, scattered and fragmentary though they may be, are connected and made one whole system by the teaching of the theories by instructors in the school.

While the teaching of law by practical lawyers, in connection with its application by actual practice in offices, was the primary aim of the school, yet the instructors do not omit the other common methods. Moot courts are held by each of the instructors in their special subjects, and used by them to emphasize their teaching, and to gauge the practical benefit the students have derived from it. At intervals jury trials are held by some of the instructors, in which students act as counsel, witnesses, court officers, and jurors. In these cases sometimes expert testimony will be given by the young physicians and students of the Medical School in the neighborhood. Physicians array themselves on either side; and the combats, which take the form of personal examinations, are amusing to the lookers-on. In addition to this, there are the daily quiz and recitation, and on some of the subjects frequent dissertations are given by the students, in the shape of ten-minute speeches, upon points about which there has been discussion or in which there is especial interest. After reading the dissertation, the class discusses it, and the lecturer for the time being is expected to be able to stand the flood of questions which are generally poured in upon him. This, with the moot courts, has the effect of provoking discussion and arousing and holding interest. Its aim is to arouse in the student a sense of personal responsibility, and it is successful in that aim. The instructor, we will say, has been speaking of the case of Cook *vs.* Oxley or of Coggs *vs.* Bernard, and in illustration, statements of fact involving the doctrine of assent or of pledge are given out to the pupils. These leading cases are no longer the embodiment of abstruse theories, dim and uninteresting, but they become as real as is the theory of fluid pressure to the practical engineer, or of inoculation to the physician. The student who argues, ponders over the facts; the bearing of the leading case to these facts dawns at last with a stronger and stronger light upon him. Research shows the development of the theory down to the present time in all its tortuousness. These facts, which he has thus discovered, he imparts to

the class, who listen to him with far more critical attention than to any instructor. It shows his progress; and the spirit of rivalry in every student's breast forbids that student to allow another's progress to be greater than his own.

As additional incentives to earnest work, four prizes, amounting in the aggregate to five hundred dollars, are awarded each year. These prizes are subscribed by public-spirited citizens of Buffalo, who are interested in the school. They are of two kinds,—one kind being to reward excellence in general scholarship, the other to reward mastery of some especial topic as evinced by a written thesis. There are two prizes of each kind,—a first prize of one hundred and fifty, and a second prize of one hundred dollars. These prizes are known as the first and second "Clinton" prizes, or the prizes for excellence in scholarship; and the first and second "Daniels" prizes for excellence in some topic relating to Constitutional Law. No student is allowed to receive two scholarships, and the faculty reserves the right to withhold in its discretion any of these prizes in case the work of the student shall not be of sufficient merit. There is a twofold aim in them: the principal one is of course that they will operate as an incentive to study and legal thought; another and almost as important a one is that with them worthy and needy young men may pay part of the expenses of their legal education. Of the practical result of the first of these views mention will be made presently. Of the second it is important to say something here. No one need hesitate to come to the Buffalo Law School for pecuniary reasons. The policy of the school is so liberal in this respect that it is almost unique. By this is not meant to be understood that the school is free; far from it. Those who are able to pay must do so; but with those who are struggling for education, arrangements can be made to carry them for the time being, upon their payment to the school of its fees, with moderate interest, when and as they shall be able. In addition to this, in a large city fair board can always be obtained at moderate rates, and the student may thus for an extremely small sum live with a reasonable degree of comfort.

It remains to speak of the results attained by the school. That many should be perceived after so short a time is of course not to be expected, but there are indications of progress which cannot be mistaken. In June of this year the first graduating class received their degrees. Prior to that time many had taken their examinations for entrance to the bar. The faculty of the school watched the examinations of these men with anxiety, because they considered it a test of the efficiency of their own instruction. The result, however, was gratifying; they were rewarded by seeing all of their men pass these rigid investigations with high standing,—some of them the honor men of the classes. But more important than this mere incident of legal life is the judgment of the practitioners, whom the students serve as clerks. They are said to be young men with whom many matters may be left, and the shoulders of their superiors thus relieved of the burden. Attorneys speak of them as handy men around the office. They are clerks competent to institute an ordinary suit, take statements of witnesses, and post their employers thoroughly and effectually about the case on the eve of trial. In general, they can talk to clients in the offices about their deeds, mortgages, and leases, and advise them in ordinary matters what to do with them. Of their grasp of legal science there has yet been no opportunity definitely to ascertain. None of them have as yet appeared independently in the courts. But there is evidence in some of the theses which have been written, to warrant saying that their comprehension of law in its letter and spirit is, taking into consideration their years and amount of study, comparatively thorough and accurate. The prize essay of the class of 1889 on "The Policy and Effect of the First and Second Clauses of Article XIV. of the Amendments

to the Constitution of the United States," is an instance of this. It is also an instance of the methods of encouragement to study used by the faculty. It was read to a large audience, a considerable part of which was composed of members of the bar. Leaders of the bar pronounced it a thesis of extraordinary and very unusual merit. The several great dailies of the city aided in this by publishing copious extracts from it. In every way the meed of applause, so far as that is an incitement to study, was given. The student thus took rank at once. This is of value to any ambitious young lawyer; it gives him an opportunity to show his professional brethren what he is good for.

As a whole, then, these results are satisfactory, even if not as yet very marked. The future of the Buffalo Law School is promising, though beset with difficulties. Its way to public esteem and to public confidence in its methods must be won. This may be the result of some years of work, but its projectors look forward to those years with confidence.

COMMON ERRORS AND DEFICIENCIES IN LAW REPORTING.

By Seymour D. Thompson.

I HAVE had it in mind for some time to call the attention of law reporters to what I regard as common, and yet inexcusable, errors in law reporting. Some of the errors of which I shall speak, are to be laid at the door of the publishers, but for most of them the reporters are responsible.

In the first place, law reports should be published in *large open type*, or not at all. I know that it has become the recent practice on the score of economy, and having reference to the vast number of judicial decisions which invite the work of the reporter and the editor of the legal periodical, for publishers of legal periodicals to print the cases, which they report in full, in small and crowded type. This vice exists in the so-called "Reporters," which are now issued by two different publishers, and in most of the law journals which report cases, except the "American Law Register." To print the report of a judicial decision in type so small that no one can read it, is equivalent to not printing it at all; to print it in type so small that no one will read it at all except under some sort of compulsion, is next to not printing it at all. In books of reference merely, such as "Digests," and some works upon Evidence, notably the work of Roscoe and that of Abbott, the use of small type is permissible and even commendable, because it is more convenient to have a large amount of matter crowded into one volume than to have the same amount of matter scattered through two or three volumes, — especially in a book which is to be used merely as an index or as a dictionary. But the report of a judicial opinion must be read and studied; and, in order that it may be made available in the argument of counsel upon a trial or an appeal, it must often be read by old practitioners in dark court-rooms. Hence, the use of small type in such books is intolerable, and the profession ought to set its face against it, and discountenance it until publishers will abandon the practice. Within the scope of this malediction, come the whole series of reporter's issues by the Wests of St. Paul, those issued by the "Co-ops" of Rochester, the "Albany Law Journal," the "Central Law Journal," and several others that might be named. Where fine type is used, its legibility is greatly increased by "leading," as is done by the "Central Law Journal," by the "Albany Law Journal," and by the Wests in

their "Reporters." I regret to say that our friends the "Co-ops," whose reporting is usually so well done, adhere to a double column of small type not leaded. Their reports are the most difficult to read of any that come to me, if we except that of the new venture, the "Railway and Corporation Law Journal," which is printed in very much the same type and in very much the same style.

Before passing to defects which are remediable by the reporters and editors, I venture to allude to one which is to be laid *at the door of the judges*. Many judges in their judicial opinions allude to the parties as "appellant" and "appellee," or "appellant" and "respondent," or "plaintiff in error" and "defendant in error." Where the old common-law barbarism is adhered to (as in Illinois and Tennessee), of turning the parties upside down whenever the defendant prosecutes the writ of error, or prosecutes a statutory appeal at law in the nature of a writ of error, — and indeed in all cases, — this practice is very confusing and perplexing. It prevents the reader of a judicial opinion from keeping easily in his mind a mirror of the attitude of the parties as they stood in the court below. It is to be remembered that the opinion in every case is treating of what took place in the court below; and in order to convey to the mind of the reader a clear image of what took place there, the parties ought to be designated in the opinion of the appellate court as plaintiff and defendant, precisely as they were designated in the court below. I have been very much vexed recently in reading the opinions of the Supreme Court of Illinois, by having to turn back, every once in a while, to the heading to find which party was the appellant and which the appellee. This practice on the part of the writers of judicial opinions is inexcusable and abominable.

Coming now to defects which are remediable by the reporters, the first abomination of many of the reports is the want of *catch-words* or *head-lines* indicating the subject of each paragraph of the syllabus. A person, skilled in making these catch-words or head-lines, can, in a line which will scarcely extend more than across the page, convey to the searcher a quick idea of the subject of each paragraph. Every person who makes extensive use of the books of judicial reports knows how great is the value of this to the searcher. I desire to call special attention to the fact that the Supreme Court of the United States, whose reporter is probably the best-paid reporter in the country, allows him to keep up the old style. In this regard the unofficial series called the "Supreme Court Reporter," published by the Wests, of St. Paul, is a better series of reports than the official series.

Again, some of the reporters who endeavor to make catch-words to their propositions do it in such a clumsy way that they might almost as well have left it undone. This duty is not skilfully discharged where three or four words are thrown together in succession with dashes between them; such as, "fraudulent conveyance — assignment for creditors — priorities —." A skilful editor can, in one line, generally index each paragraph in the head-note so as to convey to the searcher an idea in outline of the nature of the propositions decided. I have not space to deliver a lecture upon how this may be done, and there are some editors into whose heads it never could be beaten; but I venture to say that the head-lines of the "Weekly Digest of Recent Cases," published in the "Central Law Journal" in the year 1885, are good examples of what may be done in this direction. In this regard, the reports of the Supreme Court of Iowa have, I conceive, always been the best models. The use of these catch-words and head-lines by the Wests, of St. Paul, in their series of "Reporters," now covering all the courts in the Union, is also to be much commended. The attempt to supply this want by printing in bold-face type certain emphatic words in the body of each para-

graph of the syllabus, which has been made by the "Co-ops" in their "Reporters," has not been, in my judgment, entirely successful, though this plan is better than no attempt at all. But I am very emphatic in saying that in this point the reporting of the Wests is better done than that of the "Co-ops," though in other respects the "Co-ops" surpass the Wests.

Another great aid to the searcher is what we may call *cut-in side notes*, such as those which are given in the reports of the Supreme Court of Iowa and in some of the recent reports of the Supreme Court of Missouri. These are very great aids to the searcher, and inform him where the discussion of the particular point in the syllabus which he has under investigation commences in the opinion. The advantage of this means of saving labor can scarcely be over-estimated. The Iowa reporter who invented it deserves the thanks of the profession. It ought to be adopted by every reporter, and in those States in which the subject of reporting is regulated by law, the law ought to require the reporter to adopt this simple and inexpensive means of saving labor. It is to be regretted that this feature of reporting has lately been abandoned in Missouri.

Another great aid to the rapid examination and quick citation of law reports, which nearly every reporter omits, is the practice of placing in the caption of each page the number and volume of the report, abbreviated as it should be cited. Thus, I hold in my hands Vol. 106 of the reports of the Supreme Court of Indiana. In turning over this volume to cite it, one who is working through a number of volumes has to turn to the back of it to see what volume it is. In a few years, if it remains in a well-used library, it will be an old and weather-worn book. The lettering on the back will very likely be effaced, as is the case with many volumes in the St. Louis Law Library. The searcher, then, in order to cite the book must fumble till he finds the titlepage. When he gets to it he will indeed find the letters "Vol. 106," but in nine out of ten volumes of law reports he will find the number of the titlepage given in those abominable Roman numerals, which are as difficult to gather up and understand quickly, compared with Arabic numerals, as Latin words are difficult to understand quickly when compared with our own short Saxon words. At the top of the left-hand page of this volume, instead of the legend "Supreme Court of Indiana, May Term, 1886," — a lettering which is of almost no value, — the caption words should be: "106 Ind. 564," or whatever the page happens to be, exactly as it ought to be cited in a brief. The searcher should be able to find out how to cite the book from a reference to the top of the page. What is here said of law reports applies also to text-books, to digests, and to every law book which, by any possibility, may be cited as authority. The omission of this simple aid to the searcher is unpardonably stupid. I know of but two sets of reports which contain this heading at the top of the page, — the Missouri Appeal Reports, and the West Publishing Company's "Reporters," though there may possibly be others.

Another abominable practice in reporters is to string out at the head of each case the *names of all the parties*, sometimes a dozen in number, on each side. Where this is done, the searcher who is examining cases for the purpose of making a brief, or writing a magazine article, a book, or a judicial opinion, must stop and pick out the surname of the first plaintiff and the surname of the first defendant, in order to get the two leading names by which the case is properly cited. This outrageous practice was kept up, by the old reporters of the Supreme Court of the United States, down to the end of the term of Howard. It was finally abandoned by Wallace, who adopted in its stead a practice of short designations; such as, "Smith *v.* Railroad Co." or "Smith *v.* Bank." Mr. Wallace probably carried abbreviation in this respect too far. The style of a case, when given in a volume of reports, should embrace, with-

out given names, the surnames of the leading plaintiff and the leading defendant merely. The words *et al.*, where there are more parties than one on either side, are of no use and should be omitted. The title of a case in a volume of reports is intended merely as an ear-mark by which it may be known and cited, and all that is necessary to be given is enough to distinguish it from other cases. Mr. Wallace may have gone too far in railroad and bank cases in saying "Railroad Co." or "Bank," instead of giving in brief form the name of the railroad company or of the bank; since litigation is so frequent in which railroad, banking, and other companies are parties that some designation of the particular company ought, it should seem, to be given. To illustrate: I find in the "Reporter System," of the Wests, the practice of citing a case which consists of a mandamus against a railroad company, where the proceeding is in the name of the State on the relation of some person or corporation, as "State *v.* Railroad Co." Now it is evident that every single case of this kind will have the same name, and therefore the name might better be omitted, for it is useless and occupies space. The true way is to give the leading name of the railway company, such as, "Minneapolis &c. R. Co.," or of the banking company, such as, "State Bank of Illinois," "Farmer's Bank," etc.

In contrast with this is the abominable practice, kept up by the reporters in Iowa and Texas, of giving the name of the railroad company abbreviated in *initials* merely, as, "Brown *v.* I. & G. N. R. R. Co." This lingo of capital letters conveys no definite idea of the name, unless one is familiar with the names of the railroads in the particular jurisdiction. A happy medium in this regard is the citation of such cases thus: "Brown *v.* Chicago, &c. R. Co." The use of "R. R." as an abbreviation for the word railroad is a useless duplication of the capital letter R., and is an abominable and ignorant Americanism. Railroad is strictly one word. Originally two words, then a compound word, it has come to be regarded and is properly spelled as a single word. Many of the simple words of all languages are, it is well known, created in this way.

It is believed that where one of the parties is a municipal corporation, it is amply sufficient to use the name of the corporation merely, thus: "Brown *v.* Chicago" or "Smith *v.* Lexington," instead of "Smith *v.* Town of Lexington." It is the practice of many writers, judges, and reporters, where a case is cited more than once, not to repeat the reference to volume and page, but to use the Latin direction, — *supra*, *ut supra*, or *ubi supra*. This is inadmissible except where the preceding citation occurs on the same page and but a short distance above the second citation. Many judges and reporters forget this entirely; and where a citation has been once made in a case and is again made fifteen or twenty pages farther on, instead of repeating the volume and page, they simply use the index, *supra*, thus sending the reader back on a long and tiresome search to find what the *supra* means. Several exasperating examples of this kind of work are found in the case of Louisville &c. R. Co. *v.* Falvey, 104 Ind. On page 424 the opinion cites a case as "Davis *v.* State, *supra*," and the reader actually has to go back to page 413, although almost every intervening page teems with citations, to find the volume and page where Davis *v.* State is reported. This is outrageous. This practice is a shameful one, because it consumes a great deal of the time of the judge, law-writer, or brief-maker.

Again, where legal works are cited and there is more than one volume of the same work or the same series, it is unpardonable not to give the number of the volume. Some of the old English Reports, such as those of Burroughs and of Lord Raymond, were paged consecutively through the successive volumes. From this some judges and writers fell into the habit of omitting to cite the volume, and of citing the page only. This was an inconvenient and abominable habit, since a person desiring to open the book for the

purpose of verifying the citation or quotation, or further examining the case, was liable to pick up the wrong volume and waste time in that way, unless he happened to be so familiar with the work as to have in his mind a recollection of the precise number of pages in each volume. Many authors and judges still keep up this wretched practice, and cite such standard works as "Greenleaf on Evidence," and other works which are in several volumes, without stating in what volume the citation is found. We knew of one reporter who, in citing the Revised Statutes of his State, habitually cut out the number of the volume, although the judge had put it in his opinion, — imagining that in some way by doing this he improved the quality of his reportorial work. Instead of doing this he made a needless addition to the time which is frequently consumed by the searcher, who has to refer to the particular statute, and who is liable to pick up the wrong volume.

The usefulness of a volume of reports is very much circumscribed if it have a poor *index*. The index is the key which unlocks the whole treasure-house. Unless it is skilfully made, much that is contained in the volume will be useless, because the practitioner will not be able to find it, in the time at his disposal for making the search. The time will come when indexing will be a distinct profession. Very much can be said upon the subject of legal classification, and it is believed that our ideas upon this topic are still in their infancy. But this can be said upon the subject of law indexing, that no one is competent to make a law index who has not some general idea of the different titles of the law and their classifications into sub-titles, secondary sub-titles, and so on down. The classifications employed in law indexing are to a great extent arbitrary. It frequently happens that, instead of a single grouping, the subject is split into several groupings, presented as independent titles. This may especially be said of such subjects as Contracts, Evidence, Equity. My judgment is that the best indexing requires the selection of the lowest practicable subdivision for main titles of the index. Thus, I would not put "Experts" under "Evidence," or "Witnesses" under "Evidence," nor would I put "Experts" under "Witnesses." Those matters which relate to the conduct of the trial, and which cannot be more conveniently put under a distinctive subdivision, ought to be indexed under the head of "Trial." But where it is possible to group such matters under a smaller subdivision, it ought to be done. Thus, there is a great deal of matter in the judicial reports relating to the limits to be allowed in the cross-examination of witnesses. Instead of putting this under "Witnesses," it ought to be put under "Cross-examination." I venture the opinion that the indexes and digests furnished for the official reports of the English Courts are in this respect good models, although they have been greatly criticised by the law journals of that country with which they are necessarily in a state of rivalry. I have never failed to find anything for which I was searching in those indexes, and have generally found the object of my search easily and quickly.

Most of the indexes of the reports are made with a paste-pot and scissors. The reporter receives an extra proof, and from this he cuts out the matter in his head-notes, and, pasting it under such titles as come into his head at the time as the most suggestive, he builds up what he calls an index of principal matters decided. In many, perhaps it may fairly be said in most cases, no system of legal classification has been stated beforehand by the maker of the index. A frequent result is that the same matters, instead of being grouped in one place in the index, are scattered under two or three different titles. Thus, the searcher will often discover that matters relating to the conveyances of real estate are sometimes grouped in the index under "Contracts," and that similar matters are frequently grouped under "Conveyances," and again under "Vendor and Vendee." A further search will discover that under "Vendor and Vendee" are

sometimes grouped cases referring to sales of real property and cases referring to sales of personal property.

An equally serious fault is the fault of having titles in indexes which mean so much that they mean nothing. Take for instance the title "Equity." Under this head may be grouped a collection of matters so extensive, that to index ordinary matters relating to the jurisdiction and practice of Courts of Chancery under the title "Equity," is not to index them at all. Most of the matters which are grouped under "Equity," by poor indexers, could be much better grouped under the particular heads of Equity Jurisdiction to which they refer, — as for instance, "Rescission," "Cancellation," "Receivers," "Mistake," "Fraud," and the like. Except where modern statutes have created an innovation upon the ancient rule, every conveyance of real property is by an instrument under seal, called a deed; and we accordingly find in some indexes, in addition to the title "Conveyances," the title "Deeds;" and the same matters are indifferently put, in one volume under one of these titles, and in the next volume under the other title. While this is so, many deeds relate to other subjects than conveyances of land, and the use of the word "deed," as a title in an index, accordingly results in mixing up incongruous matters in the same title.

The same may be said of the title "Contracts." In many indexes there is a great jumble of matters thrown under this title simply because the maker of the index is too indolent or too unskilful to analyze these matters and put them under the proper titles to which they refer. One half or two thirds of all the case-law could be grouped under "Contracts," but such a grouping would not be indexing. The whole subject of "Conveyancing" is a branch of the law of Contracts. "Mortgages" is a branch of Conveyancing; "Deeds of Trust," another branch. The whole subject of "Insurance" is simply a department of the law of "Contracts," which subject may be divided into "Life Insurance," "Fire Insurance," "Marine Insurance," and the more modern insurance against storms, lightning, etc. Then from "Life Insurance" may be exscinded a mass of decisions relating to that species of Life Insurance which is conducted by "Mutual Benefit Societies."

These observations might be very much extended, and they point to the conclusion that we need a more scientific system of *legal classification*, which must be made as the preliminary to a better system of legal indexing. But, with the existing systems of classification, most of our indexes may be improved, if the indexer will keep in view one or two simple considerations. 1. Every subject should be indexed under the title representing the smallest subdivision in legal classification to which the mind will naturally recur to find it. In carrying out this principle it should be remembered that an index is not an analysis. The true office of an index is to distribute. It is very seldom necessary in an index to a volume of law reports, to have several sub-titles under a single title, such, for instance, as "Evidence." In a work on Evidence the contrary is true; the writer will treat of a number of distinct topics, — such as, "Judicial Notice," the "Burden of Proof," the "Examination of Witnesses," the "Authentication of Written Instruments," the "Statute of Frauds," and the like; but in an index each of these subjects should stand in alphabetical order under its own proper sub-title. 2. The maker of an index should rigidly adhere to the rule of grouping the same matters under the same titles, and should avoid the abominable practice of splitting up entries referring to a particular subject and putting some of them under one title and some of them under another title which means the same thing.

LEGAL INCIDENTS.

I.

A POOR LAWYER.

By J. W. Donovan.

THE central facts of this incident are true; it actually happened.

In the year 1867 a young lawyer sat waiting alone in his office till nearly six, and as he waited he mused on the terrible uncertainty of his income and the reality of his expenses; for he was married, with a sickly wife and a child to support in a large city, with a meagre acquaintance and less practice. His grocer had been put off on the Saturday before; his rent was long over-due; the hired girl was about leaving for lack of wages, and times looked so hard that he actually half decided to abandon law practice for anything to earn a living for his family.

The dim light in the office lamp was just being turned out when the door opened, and in came a little odd-looking man in a dilapidated and seedy condition, appearing more like a tramp than a client, and said, —

"Are you a lawyer?"

"Yes. Why?"

"Well, I am in trouble."

"What about?" said the lawyer.

"They drove me out of town, and rode me on a rail, covered me all over with tar and feathers, and broke up my store at the '*Soo*,' and I come down to see what I could do about it; they're all well off, and I was not guilty."

The story sounded fishy; the location was five hundred miles away; the man was a Canadian. The lawyer doubted if any good would come of it, but said, —

"Why didn't you get a lawyer up there? Such a case is worth five hundred dollars."

"Lawyers up there all take sides against me," said the client; and down into his inside pocket he went, drew out and counted out five hundred dollars, which the lawyer took in amazement.

Then the little man looked like a prince. He was taller; he was important. Money made him stronger, braver.

"We'll *Capias* every mother's son of them," said the lawyer, defiantly.

He took the money home, threw it in his wife's lap, kissed her, kissed his child, paced the floor in joy and delight. It was a god-send; it was a fortune to a poor lawyer.

Monday morning he swore out a Capias, with twenty thousand dollars' bail, in the United States Court, gave it to the marshal, and waited. The time was long, — so long that he was about to complain to the Court of the marshal's lack of diligence, — when, on another Saturday night three weeks later, in walked the marshal with the rich defendants. They had come a long way to settle, to compromise, to ask the little man's forgiveness.

Now the lawyer grew haughty, then indignant; then proposed ten thousand dollars; then accepted six thousand and costs, with two hundred dollars extra to the marshal; then called his client, and received a snug two thousand dollars' fee; then furnished his home, and started business in earnest, with the spirit of the Indian, who believes that the spirits of all enemies captured in battle enter into the soul of the victor to make him a bigger Indian!

CAUSES CÉLÈBRES.

X.

FRÉDÉRIC BENOIT.

[1832.]

ON the 8th of November, 1829, M. Benoit, the juge de paix of Vouziers, departed from that town to visit a mill which he owned, situated at a distance of several leagues; he did not expect to return until the next day. Madame Benoit, his wife, remained alone in the house during his absence with her youngest son, Frédéric Benoit, aged seventeen, and her niece, Louise Feucher, who served the family as a domestic.

Madame Benoit slept on the ground-floor in a small dark room, the door of which opened upon a passage-way running from the dining-room to another sleeping-chamber. This last chamber had two windows opening upon the Place de Vouziers, which were guarded by wooden shutters. In this same room, between one of these windows and the chimney, stood a wardrobe, and at the other end of the apartment was an alcove with a bed in it, at the head of which was a small door communicating with the room in which Madame Benoit slept. The passage-way of which we have spoken separated the apartment of Madame Benoit from the kitchen, where Louise Feucher had her bed. Frédéric occupied a chamber on the first floor, directly over the kitchen.

Madame Benoit, as if impressed by a presentiment of danger, had locked the windows with more care than usual. Observing that the hook of one of the shutters did not fit tightly, but could be easily moved, she tied it with a piece of string in such a manner that it would resist any efforts which might be made to unfasten it from the outside. This shutter was that of the window near the wardrobe, which contained the table linen. In the lower part of this wardrobe was a box containing sums of money; among others, a bag containing six thousand francs in gold. The existence of this box and its use was unknown to any one outside of the family.

About the middle of the night following M. Benoit's departure, M. Dossereau, a surgeon living in the adjoining house, was awakened by the cries of Frédéric Benoit. He arose hastily, believing that his neighbor's house was on fire, and aroused his brother, Dossereau-Sorlet, with whom he dwelt. The latter hurried out first, in his shirt, and found Frédéric upon his doorsteps, who said to him, "Quick! quick! we have been robbed! the robbers are in our house." The two rushed back to the house; and as they entered the sleeping-chamber, Frédéric cried: "The robbers leaped out of that window; did you not see them go? One was a woman! there she is, crossing the place." Dossereau hastened to the door, but the place was deserted; there was not a living soul to be seen. He re-entered his house to dress, intending to return at once.

As he left the Benoits' house, his brother the surgeon entered it. Frédéric said to him, "M. Dossereau, we have been robbed!" Dossereau was about to search the house when Frédéric added, "M. Dossereau, call mamma." Having called repeatedly without eliciting a response, the surgeon inquired where she slept. "In that room," replied Frédéric, pointing to the door of her chamber. Dossereau opened the door, and by the light of the candle which he carried in his hand, perceived the dead body of Madame Benoit lying upon the bed, and the floor of the chamber covered with blood. He drew back, crying, "Horrible! my poor boy, your mother has been murdered!" and

he rushed out, repeating this cry and calling for assistance.

The neighbors crowded to the house; magistrates, officers of police, and physicians were speedily at the scene of the crime.

In the opinion of the medical men Madame Benoit had been dead for about an hour, and she had apparently been killed while asleep; for there was no disorder about the bed upon which she lay. Her position was that of a person sleeping, and at the first glance of the eye her body presented no sign of any wound; but on raising the head, which was bent slightly forward, an enormous gash extending across the throat was discovered. This wound had evidently been produced by a single blow with a very sharp instrument.

One of the windows opening upon the place was open, as was also the shutter. This shutter was the same which, according to Frédéric, his mother had so carefully fastened the evening before, the hook of which she had taken the precaution to tie with a string. One of the panes of glass in this window was broken. The aperture made was so surrounded by jagged glass that it seemed impossible to introduce one's hand through it without cutting it. The wardrobe in this chamber was open; the box it contained had been forced by means of a pointed instrument introduced into the lock, and the bag containing the six thousand francs had been stolen; another bag, in which were two thousand francs, had been taken from the wardrobe and placed upon the floor, where it was found by those who first entered the room.

It was observed with no little surprise that there was no trace of mud or of blood in this room; and yet if the murderers had come from without, they must necessarily have crossed this chamber to enter Madame Benoit's sleeping-room as well as to withdraw. There was no indication of their passage upon the sill of the open window.

On being interrogated the next day, Frédéric declared that he, his mother, and Louise Feucher had retired at about half-past eight; that at about ten o'clock, feeling indisposed, he had gone down and asked his cousin for the key of the wardrobe (the same in which the six thousand francs were placed); that he had taken some sugar from the wardrobe and made himself a glass of sugar and water; that he then went back to his room, leaving the key in the lock of the wardrobe; that about midnight he was awakened by a loud cry from his mother, and thinking that she had a nightmare, to which she was subject, he again arose, and went down and called to his mother several times; that on passing the door of the chamber where he had obtained the sugar, he saw the window open and glass scattered upon the floor; that, seized with fright, he rushed out of the house and called the brothers Dossereau. He added that the first that he knew of his mother's fate was from the exclamation of the surgeon.

Louise Feucher, on her part, declared that she retired at nine or half-past nine o'clock, after Madame Benoit had gone to bed and after taking her aunt's candle; she added that she heard no noise until her cousin, leaping from his bed, awoke her; that then she thought she heard a sound as of some one fleeing; that Frédéric, after having called the brothers Dossereau, had opened the street door and said to her that he had at that moment seen a woman running across the Place de Vouziers; that she and her cousin had entered the room where the robbery took place; that Frédéric asked her several times to call his mother; that she called vainly, and then approaching her room she saw the inanimate body of her aunt and cried, "*Mon Dieu, she is dead!*" that at the moment she drew back Dossereau, who had arrived, himself entered Madame Benoit's chamber.

Frédéric declared, from the first, that five or six thousand francs in gold had been stolen; he added that his father had taken fifteen hundred francs on his departure the day before. M. Benoit, who did not arrive at Vou-

ziers until after these declarations of his son, said that in fact he had counted his money before his departure, and had withdrawn fifteen hundred francs which he carried with him, but he did not think that any one could have known it, as he retired to a back chamber to count the money.

In the presence of the facts already stated, it was necessary to suppose that the authors of this double crime had a perfect knowledge of the house itself as well as of the habits of its inmates. The difficulty, not to say impossibility, of admitting that the guilty ones could have succeeded in opening the shutter from without; that they could, through the narrow opening made in the pane of glass, have thrown back the fastening of the window; that they could have entered and forced the lock of the box without being heard either by Frédéric, or by Madame Benoit, or her niece, who slept so near her; and, finally, if the robbers were strangers, the utter lack of apparent interest to commit a murder, — all these facts seemed of a nature to direct the suspicions of the magistrates upon the two persons who were alone in the house with Madame Benoit on that fatal night, and who had given such unsatisfactory and conflicting accounts of the crime, and of their own conduct both before and after its commission.

However, Frédéric and his cousin escaped the suspicions of the authorities. The magistrates of Vouziers knew Frédéric only as a young man of excellent reputation, and it never entered their minds that this boy, hardly eighteen years old, could be guilty of robbery executed by the aid of the crime of parricide. The same was true of Louise Feucher. A young girl of seventeen, living in her aunt's family, where she was treated like a daughter; suspect her of being accessory to such a crime? It was impossible!

A wooden hook, found a few feet from the open window, and with which it was believed it was possible that one might have opened the shutter, confirmed the idea that the assassins came from without. The authorities therefore made no search in Benoit's house for vestiges of the crime and the instrument which had served for its commission. It was, perhaps, for want of this precaution that the guilty ones owed their long impunity.

M. Benoit had three sons, the oldest of whom was a young man of unblemished reputation. Suspicions rested at first upon the second son, Auguste, who had been sent from home by his parents on account of his misconduct, and who at the time of the crime was living at Rheims. But investigations which were immediately made established a perfect *alibi* for this young man.

The investigation was thrown completely off the trail; all hope of discovering the guilty ones was renounced, and their security from punishment appeared assured, when suddenly it seemed as if the murderer had delivered himself up to justice by one of those inexplicable imprudences which show the hand of Providence in human affairs.

On the 6th of January, 1830, an anonymous letter was found upon the same window by which the murderer must have entered, addressed to the juge de paix, M. Benoit, in which he, as well as an advocate in Vouziers, and one Labauve, a butcher, were threatened with the same fate that had befallen Madame Benoit. This letter was placed in the hands of the procureur du roi, and was recognized as being in the handwriting of Labauve himself.

It was then recalled that anonymous letters of the same character had more than once been circulated in Vouziers, and that their appearance had always coincided with some case lost or won by Labauve. Labauve, however, in spite of all his eccentricities, had always been considered an honest, worthy man.

The anonymous letter of the 6th of January set justice on a new track. Labauve was immediately arrested. Upon the instances of the procureur-général of Metz, a new investigation into the murder of Ma-

dame Benoit was commenced, and important evidence was obtained against Labauve. A witness, a woman named Malvat, testified that at a late hour on the night of the crime she passed Labauve's house several times, and she observed that door opened and shut. The last time the door opened wide, and Labauve appeared in his shirt and asked what had happened. The woman Malvat informed him of the crime which had been perpetrated at Benoit's house; thereupon Labauve quickly shut the door, and ten minutes later he and his wife were at the scene of the murder.

Another witness related that at about two o'clock in the morning he had seen a man running rapidly; this man wore a white cap and a gray vest. Labauve had a vest of that color.

These were not proofs, but they were presumptions the gravity of which was augmented by the inexplicable character of the anonymous letter. Tried before the court at Ardennes, Labauve was acquitted on the 30th of July, 1830, but thanks only to a division of the jury, which stood six against six.

Such an acquittal was a stigma, and no one doubted that Labauve was guilty. However that might be, Labauve had saved his head. He did not, however, recover his liberty. He was held to answer for the anonymous letter in which he threatened the life of M. Benoit. For this he was convicted and sentenced to five years' imprisonment.

When the court pronounced this severe sentence, Labauve, trembling with emotion, suddenly arose and extending his arm toward the crucifix said in a solemn voice: "I swear before God and before men, that the author of the murder of Madame Benoit will be discovered within two weeks, and that the crime was committed by Fayer and Louise Feucher!"

Fayer, who was present in the court-room, immediately entered a complaint, and Labauve was further condemned to six months' additional imprisonment and to pay two hundred francs' damages. Louise Feucher, on her part, claimed damages for the outrage upon her reputation, and Labauve was condemned to pay her three hundred francs.

Labauve was taken to prison to serve his sentence, and human justice believed it must content itself with this incomplete satisfaction, when a new crime suddenly threw a fearful light upon the crime at Vouziers.

On the 21st of July, 1831, at about eleven o'clock in the evening, two young men presented themselves at the Hôtel des Bains at Versailles, and asked for a room for the night. They were refused, owing to the lateness of the hour, and were obliged to put up with quarters in the lodging-house of one Voisin. They registered under the names Jean François Clément, aged eighteen, a notary's clerk in Paris, and Nicolas Aubert, aged twenty, employé in the custom-house, born and living in Paris.

After passing the night at Voisin's house, they went out between five and six o'clock in the morning, and returned to the Hôtel des Bains, where they complained of having slept badly, and again asked for a room. They were conducted to the chamber numbered 8.

This chamber had two doors, one communicating with room No. 7, and the other opening upon a corridor. On entering one of the young men threw himself upon a sofa, and the other lay down upon the bed. About noon one of them was seen leaving the hotel. He walked out quietly, and did not return. At seven o'clock in the evening, his companion not having appeared, a servant was sent to ask if he desired anything. This servant found the door opening into the corridor locked. Having knocked and called without receiving a reply, he entered the chamber by the door leading from the room No. 7, and the first object that struck his eye was the lifeless body of the young man.

The body lay upon the floor near the

door. A deep wound extended across the throat, which had evidently been made by a single blow with a very sharp instrument.

No papers nor any object of any kind by which the body could be identified was found upon it, and it was removed to Paris and placed in the Morgue. There an anonymous letter identified it as that of Joseph Formage, aged seventeen, the son of a wine-merchant at Villette.

It was presently ascertained that Joseph Formage had been employed as a clerk by a bookseller named Vallée; that he had had intimate relations with a young man named Frédéric Benoit, who was no other than the youngest son of the juge de paix at Vouziers.

A short time after his mother's death, Frédéric Benoit had been sent by his father to Nancy, to study in a notary's office. He had lived lavishly, out of all proportion to his resources; he had often been seen with large sums of money in his hands, and he had lost considerable amounts at play.

Having been sent from Nancy to Paris, Benoit, instead of devoting his time to study, as his father had intended that he should, delivered himself up to an idle, dissipated life. He frequented gambling-houses, and found enjoyment in the society of dissolute and profligate young men. While in Paris chance threw in his way Joseph Formage, over whom he seems to have exercised a powerful influence, and who became positively infatuated with his new friend.

Formage belonged to an excellent family; he had an older brother who was an officer at Cambrai. He went to visit him in company with Benoit. This brother saw with astonishment the inexplicable intimacy which existed between the two. He questioned Joseph, whose responses were far from satisfactory; but he learned enough to make it evident that Benoit was probably something worse than a mere dissolute idle fellow. He tried to persuade his brother not to return to Paris with him; but Joseph persisted. Shortly after, whether owing to some spark of virtue which had been kindled by his brother's representations, or whether he had become disgusted with his infamous friend, Formage separated from Benoit, and entered the service of M. Vallée.

It was established, by the declarations of the bookseller and other witnesses, that on the 21st of July, that is, the day before the crime, Formage had been seen in the garden of the Palais-Royal in company with Frédéric Benoit, where they had an animated conversation which lasted for several hours. About five o'clock, according to Formage himself, Benoit obtained a promise from him to accompany him that evening on a short trip into the country. The bookseller Vallée, to whom Formage had spoken of this interview, tried to dissuade him from going, but Joseph persisted in his resolution. "*He will kill me if I fail to keep my word!*" he said. A woman, named Renaud, had met Formage, who took leave of her at once, saying that "he was going to Versailles to spend the night with his friend."

As if this were not sufficient proof, the lodging-house keeper and the proprietor of the hotel at Versailles declared that the companion of the murdered young man was afflicted with a protuberance upon his right shoulder; Benoit was slightly hunchbacked.

Search was immediately made for Benoit, and he was arrested on the 25th of July, in a house in the Rue Jean-Jacques-Rousseau.

He did not attempt to deny his relations with Formage, but he added that he had not seen his old friend for nearly two months. The keeper of the house where Benoit lodged stated that on the night of the 21st of July Frédéric had not slept in his room. This Benoit could not deny, but he stated that "he had reasons for not revealing to the authorities where he had passed the night." He declared, however, that he was not at Versailles.

"We ask you these questions," said the juge de paix, "because your friend Joseph Formage was killed, at Versailles, by a blow from a razor, on the 22d of July."

"*Why*," said Benoit, calmly, "*my mother was killed in the same manner!*"

Benoit was then taken to the Morgue: the body of Formage still remained there. Frédéric looked at it calmly. "That is not Formage," he said. They showed him the shirt and cravat of the victim, which he himself had given to Formage. He still persisted in his denials. They raised one of the arms of the body, and showed him two doves tattooed into the skin. "You have slept with Formage for several months; it is impossible that you should not have noticed this mark." Then memory seemed to return to Frédéric, and his frightful impassibility abandoned him.

In a trunk belonging to Formage were found several letters and copies of letters which served to explain Benoit's deed and to fasten upon him a still more execrable crime. One of them, dated the 2d of July, and addressed to Frédéric Benoit, who was then at his father's house at Vouziers, read as follows:—

Notwithstanding you have forbidden me to write, I am forced to disobey you. . . . I have no one to apply to but you, and you cannot abandon me in my necessity. With fifty crowns I can extricate myself from my diffieulty. Send them to me within a week. If you delay longer I will myself go to your father and make known to him the secret which you doubtless wish to conceal. Nothing shall stop me, if in one week the money I ask is not sent to me; the next day after that time has expired I will force you to confess your crime not only to your relatives but to all who know you. You have taken from me my honor, and I will avenge myself in this manner, if you do not repair your fault by sending me what I need.

J. FORMAGE.

What a sudden light! Formage murdered in the same manner as Madame Benoit,—wth a blow from a razor! Formage murdered twenty days after his threat to reveal an unpunished crime, of which he alone was cognizant! Whether or not the letter had been sent to its address, this posthumous revelation of Formage was none the less overwhelming. But if it was more than the draught of a letter, if it was a copy, if the letter had been posted, all was explained,—the precipitate return of Benoit, the long interview in the garden of the Palais-Royal, the trap at Versailles: Formage had signed his death-warrant in threatening the parricide.

While justice was collecting on all sides the evidence necessary for the conviction of Benoit, Louise Feucher died in Paris, and before her death made a full confession. *She had assisted her cousin in killing Madame Benoit.*

On the 16th of December, 1831, this human monster was brought to trial for his crimes, and on the 30th of August he paid the penalty upon the scaffold.

THE EVOLUTION OF A BARRISTER.

A VERY interesting book has recently been published in London, entitled "Bench and Bar," written by Mr. Serjeant Robinson. In one chapter he gives an insight into the process by which certain of the liege subjects of Her Majesty acquire the right to disguise themselves in the costume of the wig and gown. He relates his own experience as follows: —

"I entered as a student at the Middle Temple in April, 1833. There are four distinct establishments that have the exclusive privilege of granting the degree. A candidate must attach himself to one of them, although it is quite immaterial by which of the four portals he seeks to enter the profession. These Inns of Court, as they are called, are Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn. There are several other establishments called Inns, such as Clement's Inn, Staple Inn, Clifford's Inn, New Inn, Barnard's Inn, etc.; but they are not Inns of Court, and have nothing to do with the Bar, except that some of them are dependencies of the four superior ones, while others, originally in the same predicament, have now a totally separate existence.

"Any one wishing to become a student at an Inn of Court had (I speak in the past tense, although I believe the mode of proceeding is much the same now as it was formerly) to furnish himself with a certificate of respectability signed by two barristers, who vouched for his eligibility in that respect. He had then to go through the formality of what was technically called an examination, the crucial part of which occupied about a minute and a half. One or two questions in Latin or in general literature were put to him in the perfunctory style in which one asks a passing acquaintance after his health, being quite indifferent as to what answer he might give. The pursuit of knowledge by the examiner as to a youth's proficiency was not very ardent in those days, and the most superficial candidate for the honors of admission might have come off with great credit to himself.

"I believe the examination now is just a trifle nearer the real thing, but I never yet heard of any man being plucked in this preliminary 'little go.' If I had, I should expect the next intelligence I got of him would date from an idiot asylum.

"The next important step was the payment of one hundred pounds into the treasury of your elected Inn, while you entered into a stringent bond with two sureties that you would obey the rules and regulations of the establishments, attend church (in my case the Temple) every Sunday with strict regularity, and pay up your commons and other dues whenever they were demanded. As to the third of these stipulations the sureties were mere substitutions, — if you did not pay your debts, they would pay for you: but it was never understood that they could observe the rules of the Inn for you, or even that they could go to church for you when you were profligate enough to stay away.

"These preliminaries satisfactorily got through, no future penance was required to qualify you for a call to the bar, except a certain display of assiduity in eating and drinking, and it was prescribed in this wise. It was necessary that you should keep twelve terms, and, as there were four terms in the year, this stage lasted three years.

"A term was of three or four weeks' duration, and in the middle of each there was what was called a Grand week, and the remainder was divided into periods called half-weeks.

"Now, keeping a term meant that you had dined in the hall at least once in Grand week, and also once in each of two half-weeks. To partake of these dinners was *de rigueur*, but they need not be in consecutive terms. You might take your time about them; spread them over ten years if you liked, but to render yourself eligible for a call you must have completed your tally of twelve. Keeping a term then was not so harrowing a curriculum as many are found to be in these educational times.

"The dinners took place every day in term time, Sundays included. Each day at five o'clock the Benchers in their gowns walked in procession up the hall and took their seats on the dais, where their dinners were served. One long row of tables, each accommodating twelve persons, ran down the sides of the hall. The Bar were seated at the upper end according to seniority, and below them sat the students.

"I may mention here that by an old custom, still kept up at the Middle Temple, a porter goes round the different courts and avenues, half an hour before dinner, blowing a bullock's horn to remind all whom it may concern that dinner-time is at hand.

"The Bar and the students were parcelled off into messes of four men each, every one being treated to the same bill of fare. We had a bottle of wine (invariably port) to each mess, soup, a sirloin of beef, a fruit tart, cheese and bread, with an unlimited supply of small beer, certainly the best of the three classes of that beverage, which are described as strong table, weak table, and lamen-table.

"After dinner, which lasted about an hour, the Benchers marched out as they had marched in, and retired to what was called the parliament chamber, to finish their repast with wine and dessert, while we were left to our own devices.

"In the middle of Grand week there was a grand day, when the bench was graced by the presence of the old dignitaries, and retired and existing judges who had once belonged to us. I have on several occasions seen Lord Eldon and Lord Stowell, his brother, walk up the hall to take their seats at the Bench table, while Lord Wynford, whose limbs were paralyzed, was carried in on a chair. It told us how old association predominated over bodily infirmity.

"There was a custom of which some of us used to avail ourselves on a Friday in term-time. A barrel of oysters was placed on a table in the middle of the hall, half an hour before dinner, and those who chose to run the risk of opening them for themselves, could stimulate their appetites for the future meal, *ad libitum*. The opportunity arose from a bequest made by some old lady in ancient times, probably for the good of our souls, and perhaps with some little consideration for her own; but we never troubled ourselves about the origin of the refection. I dare say it had some reference to the duty of carnal abstinence on fast days. But, if so, there must have been some little misconception about it, for a single barrel, so far from satisfying our inward cravings, only had the effect of sharpening them.

"Having achieved the right to studentship, the next thing to do was to look out for a pedagogue under whose tuition I might become initiated into the science and subtle mysteries of the law, of which I was then as profoundly ignorant as an Ojibbeway Indian. This was usually accomplished by paying one hundred guineas a year, for as many years as were considered expedient or convenient, to a barrister or special pleader for the privilege of what was called 'having the run of his chambers.'

"I have used the word 'pedagogue,' but in a very different sense from its ordinary one; for it was no part of his duty to attend either to our minds or morals. He was always willing, in his leisure moments, to explain any matter of difficulty we might stumble upon, but if we never troubled him, we might be quite sure he would never trouble us. One saw the cases that came in for his opinion or his drafting, and might study and digest the answers before they went out; but this was all the benefit that one was likely to get, unless, like Oliver Twist, one asked for more; for a pleader or barrister in large practice — and it was useless betaking oneself to a teacher with a small one — had no time to devote to a systematic course of tuition. If a novice was bent on undergoing a three years' pupilage, the best way of disposing of himself was to apportion his time among three different preceptors instead of one, so that he might gain experience in various kinds of practice.

"In Easter Term, 1840, I was called to the bar. As a preparative for investiture, the aspirant who has sufficiently dined, must get himself proposed by one Bencher and seconded by another in the parliament chamber, where the official business of the Inn is conducted, and if his character is unimpeached, the *fiat* for his case goes forth. But no one could claim to be called as a matter of right. The Benchers might reject the candidate's application, if they pleased, but always subject to an appeal to the body of judges as visitors of the Inn; and their decision was final.

"The actual ceremony of being called was very short and simple. On the appointed day, while the Benchers and Bar were in the hall prepared to sit down to dinner, I happening to be the senior of nineteen infatuated beings, habited for the first time in the full panoply of gown, wig, and bands, and each brimful of hope of speedy distinction, walked up the hall, and stood in a row, before our venerable superiors. We then took a short oath that we would do our duty to the Inn, to the public, and to our clients, — should we ever have any, — and the formal business was at an end.

"We sat down to our repast as usual, and, as

soon as the Benchers had retired from the Bench table, private friends were allowed to flock in and partake of wine and dessert at the table assigned to their particular host, and the revels were generally kept up to a late hour.

"Next day, with light hearts, but many of us with aching heads, after the severe trials of the night before, we had to take divers oaths before a judge in the Bail Court, containing allusions not very complimentary to the Pope, or the Pretender, whoever that might be.

"After this swearing, which was, I recollect, interspersed with a fair sprinkling of cursing, I was entitled to call myself barrister-at-law. But the titular distinction was of very little use to me for a long time to come."

AN OBSTINATE JUROR.

By George F. Tucker.

COMPREHENSION of the facts of a case as presented by the evidence does not always enable jurors to render an appropriate verdict. A knowledge of the business, the details of which are involved, seems often indispensable to an analysis of the testimony, and an accurate estimate of the litigant's claims. When a juror happens to possess the required information, his fellows frequently defer to his views, and concur in the decision he recommends. But occasionally his suggestions seem so impracticable that they deem it unwise to accord acquiescence. It is fair to say that in such cases the ignorance of the majority is at fault, although, perhaps, the persuasions of the single juror may be prompted by considerations neither presented by nor deducible from the testimony. The writer vouches for the authenticity of the following story.

In the year 1875 an interesting case to determine the title to some oil was tried in New Bedford, Mass. The jury was composed of farmers, mechanics, and merchants, all of whom were men of good sense and excellent judgment. Only one of them, however, — a merchant, — was familar with the principles and details of the business involved in the litigation. This juror was over sixty years of age, had had a successful business career of over forty years, and was regarded by his fellow-merchants as one of the clearest-headed of them all. He had also the happy faculty of imparting information simply and naturally, and he never antagonized his listeners by bold utterances, or displeased them by obtrusive manners.

Without dwelling on the facts in minutiæ, let us observe that the case was well tried and given to the jury. The result of the first ballot in the jury-room was eleven for the plaintiff and one for the defendant. The old merchant constituted the minority of one. A discussion began, and was maintained with earnestness, but in a friendly spirit. The dissenting juror was exhaustively explicit in commenting upon the testimony, and probably fortified his reasoning by abundant allusions to his own experiences. He had received his business training not many years after the whaling enterprise was first developed, and his experience embraced the busy years during which three hundred and fifty vessels were sent from the little port of New Bedford to prosecute the industry in near and remote seas. That that business was one easily understood and as easily carried on, is an erroneous belief. Rendered uncertain by the perils of the sea, a growing scarcity of whales, and the use of substitutes for sperm and whale oil, as well as by the financial hazards which attend all commercial callings, it demanded from its very nature, and especially from the necessity of awaiting the course of events for tangible returns, patient plodding, the husbandry of material

resources, caution in assuming obligations, and an excellent knowledge of human nature in the selection of officers and crews. The peculiar features of the business gave rise to peculiar usages and methods of procedure; and the lawyer who looks for the first time within the covers of both Sprague and Lowell's Reports finds many a case decided upon equitable principles which offer no parallel to anything he gleans from other adjudications or experiences in his practice. Not alone, therefore, as a physical enterprise did whaling occupy a unique position; in its commercial features it was without example.

Now, as already stated, the difference was over some oil, and the claims of the respective litigants called attention to the methods employed in the active prosecution of the business, and, to a certain extent, to the contingent rights of the co-owners of the vessels, and to the practice relating to the disposal of the merchandise and the division of the proceeds. It may be that in his desire to do justice the old merchant went too far, and endeavored to enlighten his hearers by dwelling upon facts not presented by the evidence, although well understood by him and his merchant friends as necessarily attending transactions in the business. Persuasion proved fruitless; the eleven were inexorable. Forty years' experience was an argument of no weight in their estimation. The result was a disagreement, and the jury was discharged.

New Bedford is about fifty-six miles distant from Boston, and communication between the cities is rapid and easy. The morning after the disagreement the dissenting juror took the train for the last-named city. The late plaintiff happened to occupy a seat in the car which the merchant entered. The latter sat down with the disappointed litigant, and the two entered upon a discussion of the merits of the case.

"I want thee to understand," said the merchant, who was a member of the Society of Friends, "that I am the juror who prevented thee from getting a verdict. I was not influenced by my opposition to litigation in general. I was convinced that thee was in error, and that the suit should never have been brought."

The late plaintiff did not appear to relish this announcement, but he paid his companion courteous attention. The latter was as dispassionate and lucid as he had been in the jury-room. The listener gradually relaxed. He soon saw the pertinent bearing of points in the case which he had formerly ignored. At last he frankly acknowledged that his companion was justified in his adverse judgment. Rising from his seat, he went into the adjoining car, in which the defendant was seated, and extending his hand observed that he had come to discuss fairly and impartially their suspended controversy. The result was, that before the train reached Boston, *the suit was amicably settled, and to the advantage of the defendant.*

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.

ALTHOUGH as yet a mere "fledgling," only ten months old, the "Green Bag" has already demonstrated that it is a lusty youngster, and has come into the world to stay and live, we trust, to a ripe old age. We should feel fully gratified in "blowing our own trumpet," were there any occasion for our so doing, but our brother journalists and kind friends have sung our praises and complimented us to such a degree that any words in our own behalf would be superfluous. For the edification of our readers we published in our August number a few of the many appreciative things said of our new venture. To these we now add some of the cheery words received from correspondents: —

Your "Green Bag" is such a sparkling rill from the great fountain of law that it bids fair to become indispensable as a monthly "refresher." — HERBERT L. DOGGETT, Kansas City, Mo.

Accept my best thanks for the "Green Bag." It is a delightful and readable periodical. — N. MITTER, Public Prosecutor, Chupra Sarun, Bengal, India.

You have made a most handsome bow to the legal public. — PROF. THEODORE W. DWIGHT, Columbia Law School.

Your magazine is a success, and I congratulate you on it. — PROF. HENRY WADE ROGERS, Law School of the University of Michigan.

Let me say here that I am delighted with the "Green Bag." It fills a place that has always, so far as I know, been practically vacant, and fills it in an admirable manner. — PROF. H. B. HUTCHINS, Cornell University School of Law.

Viveat viridis baga! — PROF. W. G. HAMMOND, St. Louis Law School.

I find the publication not only entertaining but useful and instructive. The humorous portion, with its witty anecdotes and legal repartee, is (if you will pardon the slang) "immense." — ISAAC N. SOLIS, Philadelphia.

I have received the worth of my money in the numbers I have now received. I hope you may be as successful as you deserve to be in this new venture, which must be more valuable and entertaining to lawyers from month to month. — GEO. W. WING, Montpelier, Vt.

These we believe to be honest and candid expressions of opinion; and we must say that it is with a feeling of genuine pride that we gaze upon the picture thus drawn, and "see ourselves as others see us." It is not usually a pleasant thing to sit for one's photograph; but if the result could only be as satisfactory in every case as in that of the "Green Bag," there would be no necessity for the invariable injunction of the photographic artist, to "look pleasant."

Our thanks are due to Messrs. Matthews, Northrup & Co., of Buffalo, who kindly furnished the greater part of the plates used in illustrating the article on "The Buffalo Law School" in this number.

BOOKSELLERS' advertisements are not always attractive, but there is a list of books among the advertising pages in the first part of this number, which is extremely interesting not only to the antiquary, but also to the most alert and American of practical lawyers. There is a quaint flavor of not exactly romance, but rather of unreality, about black-letter books of the sixteenth and seventeenth centuries; heightened in this instance by the reproduction of one of Richard Tottell's rudely engraved but effective titlepages. Not all of us can afford to buy such luxuries, though any of us might at least possess, if he chose, one or two specimens of antique law literature; but not even the most exiguous income can prevent us from reading the list, and gloating over its glimpses into the days when the Common Law of England,

wrapped in its black-letter swaddling-clothes, was rocked in a cumbrous cradle of folio abridgments and reports. To read such a list is restful and soothing to the mind, exhausted with nineteenth-century hurry and turmoil.

LEGAL ANTIQUITIES.

THE following interesting document, copied from Norfolk County, Mass. Records, liber 27, fol. 28, possesses a touch of quaintness which our readers will appreciate: —

I, Uriah Harding of Medway, in the County of Norfolk, of lawfull age, do testify and say that I was with Nahum Thayer some time in the month of June, A. D. 1805, and som conversation took place between us about a hive of bees that was stole from Micah Adams, which said Adams laid to said Thayer of steeling and had searched his house for. Thayer then said to me the matters is now a coming out that the neighbours would know to the contrary and it is somebody that stole them bees that will hurt your feelings most Darnedly! I then asked Thayer who it was that stole them. Thayer then said to me by God it was Simon Plimpton that stole them bees and I can Prove it and I mean to bring him up for I won't bear the scandal any longer; I have suffered enough by them Plagy bees, and further Deponant say not.

URIAH HARDING.

Question asked by Simon Plimpton. Did you understand Nahum Thayer to say that Simon Plimpton stole the very hive of bees which Micah Adams searched Thayer's house for by Deponant. Answer — Nahum Thayer did tell me that Simon Plimpton stole that very hive of bees and that he could prove it.

Commonwealth of Massachusetts, Norfolk ss. Town of Medway this ninth day of September in the year of our lord one thousand eight hundred and six, personally appeared before us the subscriber two Justices of the Peace in and for the County of Norfolk quorum unus the aforesd deponant and after being carefully examined and duly cautioned to testify the whole truth and nothing but the truth made oath that the foregoing deposition by him subscribed is true. Taken at the request of Simon Plimpton of said Medway to be preserved in perpetual remembrance of the thing — and we duly notified all persons living within twenty miles of this place of caption we knew to be interested in the writ of the sute to which this deposition relates and no person attended but said Plimpton the said Deponant being so infirm as to be unabel to travel and attend at the Court at present in the course of taking this deposition.

JOHN WHITING, } Justices of the Peace
ELIJAH ADAMS, } quorum unus.

The Costs of this Deposition:

Justices fees for notifying	
Traveling, Writing &c	$3.16
Officers fees	.54
Deponant attendance	.33

Sept. 12, 1806. Received, entered and examined

By ELIPHALET POND, Regr.

FACETIÆ.

IT was a constable who remarked pleasantly that he had an attachment for his victim.

BARON MARTIN, who was a great connoisseur in horses, always had the greatest horror of what were called "prophets," a class of Sharpers who profess to give weak-minded men who are given to betting "the straight tip."

On one occasion, after he had become deaf, he was trying a racing case, an exercise of his functions in which he delighted. One of the counsel engaged in it was named Stammers, — a solemn, formal, sententious personage, who seldom made a speech without quoting passages from Scripture. In addressing the jury he was about to pursue his old habit, and got as far as "as the prophet says," when the judge interposed, —

"Don't trouble the jury, Mr. Stammers, about the prophets; there is not one of them who would not sell his father for sixpenny worth of halfpence."

"But, my lord," said Stammers, in a subdued tone, "I was about to quote from the prophet Jeremiah."

"Don't tell me!" said the Baron. "I have no doubt your friend Mr. Myer is just as bad as the rest of them." — *Bench and Bar.*

IT was a New York lawyer in whose peroration this occurred: "I hope, gentlemen of the jury, that you may have mercy upon this unhappy man, who has never yet strayed from the path of rectitude, and only asks your assistance to enable him to return to it."

THERE is a grim humor about some of Judge Lynch's executions. A bank president in southwestern Texas made away with all the funds under his charge, and then posted on the door of his institution "Bank Suspended." That night he was interviewed by a number of depositors, who left him hanging to a tree with this notice pinned to his breast, "Bank President Suspended."

IN a recent examination before the Supreme Court of Iowa, a student was asked whether the State Legislature of Iowa can pass an act granting a divorce. Having answered in the negative, he was requested to give his reason. He replied, that the Constitution of the United States forbids the State Legislatures from passing any act impairing the obligations of a contract.

IN the trial of a case recently, in one of the Middlesex District Courts, a witness was asked to repeat a conversation which she had with her husband. Objection was made, by counsel on the other side, that the question should not be answered because the conversation was *private* in its nature. The judge then asked the witness whether anybody except herself and husband were present. She replied that her mother and the husband's mother were. Whereupon the judge remarked: "It appears, Mr. B——, that both mothers-in-law were present. I shall therefore rule that the conversation was *public*."

ONE of the keenest retorts on record was the reply of Archbishop Ryan to ex-Attorney-General Wayne MacVeagh at a banquet given by some of the leading officials of the Pennsylvania Railroad Company.

On presenting Archbishop Ryan to several of the leading officials, Mr. MacVeagh playfully commented on their virtues, advising the Archbishop to cultivate their acquaintance, reminding him of the many conveniences and comforts they could offer him and especially of the free passes within their control. "Indeed," said he, laughingly, "I am not sure that it might not be worth your while to use your influence to get these clients of mine passes to the happier world beyond." Quick as a flash the witty Irishman replied, "Oh, no, I could not think of separating them from their counsel."

A CERTAIN lawyer arguing a case before a justice of the peace came across the expression "choses in action" in a decision from which he was quoting to the court. Fearing that the justice might not understand its meaning, he stopped to explain: "Your Honor, 'choses in action,' you of course know, means that a person has several rights of action and can choose which he will pursue."

DURING a session of the court at ——, Wisconsin, Lawyer Blank had been trying for two long hours to impress upon the minds of the jury the facts of the case. Hearing the dinner-bell ring, he turned to the judge and said: "Had we better adjourn for dinner, or shall I keep right on?"

Weary and disgusted, his Honor replied: "Oh, *you* keep right on, keep right on, and *we* will go to dinner."

ONE summer morning, years ago, a number of young lawyers surrounded Colonel Boyd, of Norristown, Penn., on the porch of the Stockton House at Cape May. When they were about to leave, the good colonel said he did not feel like parting with them without giving them some good advice. Said he: "Young men, I have practised law for forty years, and I have found that the best plan to have an easy conscience is to open each week in the proper way. Monday morning I go to my office about half an hour earlier than usual, lock myself in the back-room, and go over the events of the preceding week, so as to see that I have wronged no man. If I find that I have, I make amends at once. If I find on mature consideration that I have charged a client too large a fee, I promptly write him a check and reduce it to the proper amount. You cannot too soon adopt such a practice."

"Have you often had occasion, Colonel," innocently asked one of the young men, "to make many such repayments?"

"That is the singular part of it all," promptly replied the good colonel; "I have religiously followed this habit for forty years, and thus far I have never had occasion to do anything of the kind."

A VERY concise verdict was that of a coroner's jury in Idaho: "We find that the deceased came to his death by calling Tom Watlings a liar."

NOTES.

THE meeting of the American Bar Association was noteworthy in more respects than one. The address of David Dudley Field was of the highest character, and should be carefully read by every lawyer in our land. Simeon E. Baldwin's address was a scholarly production, and Judge Henry B. Brown and Walter B. Hill read papers which were masterpieces of logic and good sound common-sense. The banquet was a grand affair, and our Chicago brethren who had the matter in charge certainly left nothing to be desired. The meeting was well attended, and successful in every way.

TWENTY-SEVEN States outside of New York, containing a population of thirty-four millions, are said to have about thirty-five thousand lawyers. There remain, after these States and New York, fourteen other States, five Territories, and the District of Columbia, with a population of twenty millions; and these should, in the same proportion as the twenty-seven States, have over twenty thousand lawyers, making a total of sixty-six thousand. Now, compare this proportion with that of other countries. France, with a population of forty millions, has six thousand lawyers, and twenty-four hundred other officials who do the work of attorneys with us; and Germany, with a population of forty-five millions, has in the same category seven thousand. Thus the proportion of the legal element is, in France, 1 to 4,762; in Germany, 1 to 6,423; in the United States, 1 to 909. Now turn from the performers to the performance. The report just mentioned contains, in text and appendix, a statement of the length of time required in the courts of the country for the final decision of a lawsuit; and a melancholy record it is. "It appears," says the report, "that the average length of a lawsuit varies very much in the different States; the greatest being about six years, and the least about one year and a half." I might add that very few States finish a litigation in this shorter period. Taking all these figures together, is it any wonder that a cynic should say that we American lawyers talk more and speed less than any other equal number of men known to history? — DAVID DUDLEY FIELD'S *Address before the American Bar Association.*

As is well-known, there are two Courts in America of co-ordinate criminal jurisdiction in capital cases. Last year Judge Lynch had decidedly the whip hand of Judge Law. The former bagged 144 to the latter's 87. The total for the States was 231. In no other civilized country is there any such record as this in proportion to the population. What it means, says the "Journal of Jurisprudence," may be gathered from the consideration that whereas in Scotland executions at present average much less than one *per annum*, at the American rate there would be twenty *per annum*. — *Irish Law Times.*

THOUGH the "Green Bag" does not aim to give reports of judicial decisions, it occasionally finds one which it seems appropriate to place in a "useless but entertaining" magazine, as witness a recent case in one of the New York courts.

The head-note is as follows: —

"A reargument will not be granted for the omission of the court to notice a recent statute alleged to be decisive of the case, where the statute was not urged as controlling either at the trial or on the argument; its existence being then unknown both to court and counsel."

The learned court, after stating that the newly discovered statute had been in force seventeen days at the time the transaction in question took place, proceeds to surmount this obstacle as follows: —

The case was decided rightly upon the facts and law as presented at the last general term when it was decided. It is not claimed that the court overlooked any point presented at that time, but it appears that court and counsel were ignorant of the statute above quoted, and the case was decided upon the facts and law as they were supposed to exist at that time. *The parties are presumed to know what the law is even if the court does not;* and when the assignment was offered in evidence it was the duty of the plaintiff to make such objections to its introduction as he intended to rely upon, and all other objections were then and there waived. . . . . No good purpose can be served by granting a reargument and reversing the judgment. The assignment was eminently equitable and just, and under the present judgment the property will be equally divided; but if it is reversed, the assigned property will be diverted from an equal distribution among the creditors. . . . Motion denied."

No authority is cited in the opinion, but it might have been found in a case, reported in "Reminiscences of the Rhode Island Bar," by Abraham Payne, in which the attorney for the defendant in a suit for the value of butcher's meat sold and delivered sought out the justice of the peace before whom the case was pending, to file a plea in abatement. "He asked me," says the reporter, "what was the matter with the writ? I told him that it contained no bill of particulars. He said, very pleasantly, 'I shall not allow any plea in abatement. I know the man very well; he has had the meat, and he must pay for it. I shall enter up judgment for the plaintiff.'"

A NOVEL decision was rendered by Justice Miller in the suit before him at Youngstown, between John P. Kirby and John Scott, each claiming the ownership of a certain carrier pigeon, which was brought into court in charge of an officer. Justice Miller, in order to settle the ownership beyond question, ordered the pigeon placed in the hands of two disinterested persons, who took it four miles south of the city and released it. After it started two chasers were sent up by Kirby, and Scott followed suit by releasing another pigeon. The pigeon in controversy flew straight to the residence of Scott, and, according to the decision of Justice Miller, is now Scott's property. — *Cleveland Leader.*

SOME cases of comparatively recent occurrence will serve to illustrate the defects of the coroner system. The following is reported: "Inquisition held on the body of Holmes, deseasts December 8, 1853. We of the said jury, by being summoned and qualified, and hearing the evidences, and making true and diligous resentments over the said body of said deseasts, twelve men met, and, being duly sworn into the case, believes that he come to his death by some fit or other apoplexy. Doctor being duly sworn by myself, coroner, states that the lobis membrane of the spinal disease was affected to considerable extent." — *Forum.*

WHEN drunkards appear on the street of the village of Mons, Belgium, the *garde champêtre* takes them politely home. The next morning he goes to the houses of all those whom he had found drunk the night before, and presents to each a broom for sweeping the street. The drunkard is allowed to choose between working for the commune for one day and being prosecuted for drunkenness. He invariably elects to sweep the streets. The village streets are in consequence marvellously clean; and the sweepers, after swallowing more than their natural share of dust, pass mental resolutions of sobriety, and keep them.

THE practical mind of Dr. Frank L. James would utilize the bodies of condemned murderers, *ante mortem*, for experimental pathology. This is a good suggestion, and in lieu of the judicial condemnation formulary: "Hanged by the neck until you are dead — dead — dead, and may God have mercy on your soul," we hope to see the time come when, in pronouncing sentence for capital crime, the judge will solemnly say, "And now you are sentenced, under the laws you have violated, to pay the righteous penalty of your crime. You will, therefore, this day choose the method by which you prefer to die for the benefit of science and that society you have wronged, that dying you may serve mankind better than when you lived, and, in part at least, make propitiation to the world and to God for your great crime, and may God have mercy on your soul." Let the condemned then choose whether by poison, by inoculation of disease, or electricity.

Give the condemned murderer a chance to make some atonement for his crime before he goes hence. — *Alienist and Neurologist.*

THE following plea of *molliter dentes imposuit* was put in, in a dog-biting case, by Irving Browne, Esq., the genial editor of the "Albany Law Journal": —

"And the defendant further says that at the time mentioned in the complaint, the plaintiff, with sundry other unruly and boisterous youths, was throwing snowballs in the immediate vicinity of the defendant's house, and thereby endangering its safety and that of its inmates; and thereupon the defendant expostulated with said plaintiff, and requested him in a mild and gentlemanly manner to desist; but the plaintiff, refusing to observe the defendant's request, and moved and instigated by the Devil, there-

upon made an assault upon this defendant and upon his dog, which was providentially present, and threw and impelled a stone at the latter, whereupon the said dog, in self-defence, as he lawfully might for the cause aforesaid, instinctively resented the attack upon himself, and playfully and slightly inserted his teeth in and upon the person of the plaintiff, doing him no unnecessary damage, nor any damage beyond what was good for him; which are the same supposed trespasses alleged in the complaint."

The plea prevailed.

THE "Medical and Surgical Reporter" dishonors the medical profession by coming to the rescue of the doctors who cut open Bishop, the mind-reader, before he had been apparently dead six hours, and by supporting its defence of their conduct by such paragraphs as the following: —

"Besides this, if they had made the mistake with which a grief-stricken mother has charged them, they could not have been in doubt in regard to the matter as soon as they opened the thorax and abdomen of the subject. In the thorax they would have found the heart beating, and in the abdomen the intestines would probably have manifested vermiform contractions under the stimulus of the air or the mechanical conditions of the operation. But with these and other means of knowing what they did, the physicians who conducted the autopsy declare that there were no signs of life in the body; and they do this with the manner of men conscious of being right, and not of men endeavoring to hide an appalling blunder. For these reasons we think no medical man will hesitate to accept their statement, or fail to sympathize with them as they protest against the clamor excited by the horrible suspicion which has been raised in the minds of the general public."

It may be true that "no medical man will hesitate to accept" the statement of the doctors who did the cutting, that they found no signs of life in the thorax and abdomen, after they had so far cut the patient that if he had been alive their cutting must have produced his death; but no lawyer or judge accustomed to deal with evidence would pay the slightest attention to such a statement. There is not one medical man in a thousand, probably not one in the whole profession, that would confess to the finding of signs of life under such circumstances.

Recent Deaths.

JUDGE R. S. WILLIAMSON, of the Circuit Court of Cook County, Ill., died at his home in Palatine, August 10, 1889. Judge Williamson was born in Cornwall, Addison County, Vt., May 23, 1839, and was admitted to the bar in 1870. He was for a number of years a member of the law firm of Miller, Williamson, & Miller. He was afterward the senior member of the firm of Williamson & Cutting. He was elected a member of the lower house of the Illinois General Assembly in 1870, and State Senator in 1872. In 1880 he was elected to the Superior Court bench, and served one term of six years. Two years ago he was chosen one of the six new circuit judges.

HON. WILLIAM EMERY, a prominent citizen of Alfred, Me., died August 31, aged sixty-five. He was prominent in business and political circles, had been representative to the Legislature, county attorney of York County, and was the Democratic candidate for Congress against Thomas B. Reed in the first Maine district last year.

COL. THOMAS J. EVANS, one of the best-known lawyers in Virginia, died September 20, aged sixty-seven. He had represented Richmond twice as a member of the Legislature. He was a colonel in the Confederate army and a prominent Mason.

PHILEMON BLISS, ex-justice of the Supreme Court of Missouri and dean of the Missouri University, died at St. Paul, August 25, aged seventy-six. Judge Bliss was one of the early anti-slavery leaders of Ohio, and was a member of Congress from the Fourteenth District from 1855 until 1859. He was first chief-justice of Dakota.

ABRAHAM BROWNING, one of the oldest and best-known lawyers in New Jersey, died at his home in Camden on the 22d of August, aged eighty-one. He was admitted to the bar in Philadelphia in 1834, and in the same year was admitted to the bar of New Jersey. From that time on, until failing health obliged him to relinquish his profession, he was engaged in constant practice of the law at Camden.

JUDGE EDWARD LEWIS, late presiding justice of the St. Louis Court of Appeals, died suddenly at his residence in that city on September 21, from the bursting of a blood-vessel in his head. Judge Lewis was born in Washington, D. C., Feb. 22, 1820, and was a blood relative of George Washington.

HON. NINIAN W. EDWARDS, a prominent Illinois lawyer, died at Springfield in that State on September 2. He was the son of Ninian Edwards, the first and only territorial governor of Illinois, and was born April 15, 1809. He graduated from the law department of Transylvania University in 1833. As a lawyer he attained the highest rank, and his views and advice were frequently sought by the profession. He held many political offices, filling them all acceptably.

REVIEWS.

IN an article on the establishing of "A Court of Criminal Appeal," in the September number of the SCOTTISH LAW REVIEW, the writer, discussing trial by jury, says: "It is open to grave doubt whether the interposition of a jury in criminal cases has any advantage at all; but if the people think it has value, and are willing to serve on juries, the system will be continued. The day may come when the public will cease to regard the benefits of jury trial as equivalent to the trouble and expense which it involves. If our confidence in the honesty and wisdom of our judges grows as it has grown for generations, the time may come sooner than some imagine when juries will be dispensed with as cumbersome, valueless, and unnecessary."

A few more "Cronin" cases may bring Americans to the same way of thinking regarding juries.

THE third number of the JURIDICAL REVIEW (Edinburgh) maintains the high standard of its predecessors. Charles Scott contributes an interesting paper on "Insanity in its Relation to the Criminal Law;" John M. McCandlish discusses "Insurance Companies and the Income-Tax;" Ex-Chief-Justice Macleod gives an interesting sketch of the "Administration of Justice on the Gold Coast;" and there are articles on "The History of the Colonial Office," and "The Judicial System of Germany," by A. Wood Renton and J. J. Cook, respectively. The number contains a finely executed portrait of the late Lord Fraser.

IN the POLITICAL SCIENCE QUARTERLY for September, Prof. F. W. Maitland commences an article on "English Legal History," which will be read with interest by the layman as well as by the legal profession. Prof. W. J. Ashley contributes an account of "James E. Thorold," the English Economist, and his writings; and there are readable articles on "Town Rule in Connecticut," "Farm Mortgages," "Railroad Indemnity Lands," and "Italian Immigration."

THE CRIMINAL LAW MAGAZINE AND REPORTER for September has, for its leading article, "Admissions and Confessions in Criminal Cases," by Stewart Rapalje. The other contents are full of interest to the profession.

BOOK NOTICES.

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

We find the third volume of this valuable series equal in every respect to those previously issued. The character of the cases reported, the completeness of the report of every case, the thorough annotation by Mr. Desty, and the thorough indexing must commend these Reports to the profession.

THE LAW OF DAMAGES. By JOHN GUTHRIE SMITH. Second Edition. T. & T. Clark, Publishers, Edinburgh, 1889. $6.00.

It is nearly twenty-five years since the publication of the "Law of Reparation" by the same author. The structure and arrangement of the present volume make it substantially a new work rather than a second edition of the old one. Although denominated a treatise on the reparation of injuries as administered in Scotland, it covers so wide a scope, and goes so thoroughly into the general principles of the law of damages, that it will be found of great use to the legal profession in this country. The author treats

his subject under the following heads: I. Grounds of Responsibility; II. Deceit and Contract; III. The Limitations of Responsibility; IV. The Church and the Civil Law; V. Trespass to Person and Property; VI. Road and Railway Accidents; VII. Collisions at Sea; VIII. Fraud; IX. Injuries to Land; X. Defamation; XI. Abuse of Legal Process; XII. Infringement of Copyright, Patents, and Trademarks; XIII. Master and Servant; XIV. The Measure of Damages. The work bears the stamp of great industry and remarkable learning in domestic and foreign jurisprudence on the part of the author.

MODERN JURY TRIALS AND ADVOCATES. THE ART OF A HUNDRED LAWYERS. A New Fourth Edition. By J. W. DONOVAN. Published by Banks & Brothers, New York. $4.50.

This work of seven hundred pages is made up of forty condensed trials, each with the advocates graphically described, giving their art, skill, and eloquence. The cases are selected with extreme care from the most noted trials of twenty-five years. They cover the whole range of jury practice and romance of law. About one hundred advocates like Beach, Butler, Matthews, Storrs, Porter, Graham, Dexter, Chipman, Carpenter, Curtis, Voorhees, Marshall, Crittenden, Brown, Davis, Gordon, Stanton, Brady, Lothrop, Tremain, etc., are described, and samples of their eloquence, with others for ages back reviewed. A large space is given to *rules of practice, art of selecting juries and winning cases.* Thirty-four pages of eloquent closing periods conclude the volume. Judge Matthews says: "It is excellently made, highly interesting and permanently valuable." "The most interesting book lately written." — *Post and Tribune.* "That excellent work, Modern Jury Trials." — *Detroit Free Press.* "There is no work with near this extent of eloquence." — *Ann Arbor Courier.* "Well edited and exceedingly valuable." — *Indianapolis News.* "The rapid sale and strong recommend of many able lawyers show a demand for it." — *Milwaukee Sentinel.*

TACT IN COURT. By J. W. DONOVAN, 1889. Williamson Law Book Co., Rochester. Law Sheep. $1.00.

A work of condensed art, wit, and eloquence, illustrated; with Trial Rules, Sketches, and rare incidents. An exceedingly taking work; has reached fourth edition. Last edition greatly enlarged. Illustrated with portraits of Fuller, Blackburn, Curtis, etc. This book has received the highest praise from the very best judges of Trial Practice. Attorney-General Taggart says: "The best book on Trial Practice I ever read."

Truly yours
J. Mason

The Green Bag.

VOL. I. No. 11. BOSTON. NOVEMBER, 1889.

JEREMIAH MASON.

JEREMIAH MASON, the son of a Revolutionary officer of the same name, and a descendant of Major John Mason, the Puritan commander in the Pequot War, was born at Lebanon, Conn., on the 27th of April, 1768. His father was a well-to-do farmer, and young Mason's early life was spent upon the farm. The facilities for education were few in the retired situation in which his father lived, and until after the age of fourteen he attended school but three winters, and then only for three months in each winter. In 1782 he began to prepare for college at a school six miles from his home, under a Mr. Tisdale, a graduate of Harvard College. In less than two years he was fitted for examination, and was admitted to the Freshman class of Yale College in 1784.

While in college, he was in the habit of attending law-trials in New Haven, and from this developed an inclination to study law. This was strongly objected to by his father, who desired that he should teach for a time after his graduation, and then study divinity.

Finding that he could get no encouragement from his father, he determined to obtain a law education by his own exertions. With a view to this he visited Albany, where he saw Hamilton and Burr. Not finding any opening there, he returned to New Haven, and began studying in the office of Mr. Simeon Baldwin, who was afterward a Justice of the Supreme Court of Connecticut. In the autumn of 1789 he went to Vermont, and continued his studies in the office of Stephen Rowe Bradley (afterwards United States Senator) at Westminster. In June, 1791, at a Court of Common Pleas held for the County of Windham, he was admitted to the bar. Preferring the courts and bar of New Hampshire, he decided upon settling in that State, and was admitted to the bar there the same year. He lived in the village of Westmoreland until 1794, when he removed to Walpole.

In 1797 he determined to seek a wider field for the exercise of his profession, and removed to Portsmouth, where he remained for thirty-five years in active practice. Mr. Mason rose rapidly to the first position at the New Hampshire Bar, and before 1813 he had no equal in the State. In 1802 he was appointed Attorney-General of the State. His practice extended into most of the counties in the State, and occasionally into the courts of Massachusetts and Maine.

His antagonists in New Hampshire were certainly a remarkable set of men, — strong, hard-headed, and deeply versed in the common law. Mr. Webster removed from Boscawen to Portsmouth in 1807; and until he removed to Boston in 1816, he and Mr. Mason were constantly pitted against each other. Other distinguished opponents were Jeremiah Smith, Ichabod Bartlett, George Sullivan, and Richard Fletcher.

Long before his removal to Boston, which took place in 1832, Mr. Mason's position as the ablest lawyer in New England was fully recognized. With his great reputation he commanded in Massachusetts all the professional business he desired. He continued in the active practice of the law until about his seventieth year, and after his retirement

from the courts he survived for ten years in seemingly good health and with his intellectual faculties undimmed. He died at Boston on the 14th of October, 1848, at the age of eighty.

The character and abilities of Mr. Mason must be judged of now chiefly from the accounts given of him by his contemporaries and by the estimates which they formed of him. Judged by this standard, his abilities were undoubtedly of the very highest order. His unerring judgment in dealing with questions of law and fact, his profound learning in the common law, his sagacity and unfailing resources in jury trials, and his close and powerful logic were recognized by all who knew him.

Mr. George S. Hillard's remarks on his professional position deserve quoting in full: —

"Mr. Mason was a great lawyer, perhaps the greatest lawyer that ever practised at the bar in New England. But when we call a man a great lawyer, we use language which has a certain degree of vagueness. Chief-Justice Parsons, Judge Story, Mr. Webster, Chief-Justice Shaw, Mr. Choate, were all great lawyers; but no two of them were alike. Each had powers and faculties peculiar to himself. It is with lawyers as with painters. Raphael, Titian, Correggio, Rembrandt were great painters; but they differ widely in their characteristics, and no trained eye would ever mistake a work of one for that of another. For those who did not know Mr. Mason, we must analyze and discriminate. The question to be answered is, Wherein did he differ from the other great lawyers who were his contemporaries, when on the bench or at the bar?

"Mr. Mason's superiority as a lawyer may be thus stated: that of all men who ever practised law in New England, he was the most fully equipped with all the weapons of attack and defence needed in the trial of causes. It is but putting the same thing in another form to say that, of all men who have ever been at the bar in New England, he was the most formidable opponent. And, of all lawyers, he was the most successful; that is, no other man ever tried so many cases and lost so few, in proportion to the whole number tried. There was nothing which a client ever wants a lawyer to do for him, which Mr. Mason could not do as well as any and better than most. No man could argue a legal question before a court with more learning and power. No man could try a cause with more tact, judgment, and skill. Though not eloquent, in the common acceptation of that term, no man could address a jury more persuasively and effectively. No man's opinions as Chamber Counsel, whether oral or written, were more carefully considered or wiser. No man in all the departments of professional life ever made fewer mistakes."

Mr. Webster's well-known estimate of his powers, written while Mr. Mason was still alive, is too striking to be omitted: —

"If there be in the country a stronger intellect; if there be a vision that sees quicker, or sees deeper into whatever is intricate or whatsoever is profound, — I must confess I have not known it."

Of his personal characteristics, many accounts remain. His language was plain to homeliness; and his style, both in speaking and writing, as concise and pointed as it well could be. His wit was keen and trenchant, and his sarcasm very much feared. He was strong in his likes and dislikes; and his criticisms on people he did not like were biting and energetic. Of the numerous anecdotes related of him, many are probably untrue; some, however, are well authenticated. Thus, when a distinguished judge, before whom he was trying a case, put to a witness a question of very doubtful competency, Mr. Mason bluntly exclaimed, "If your Honor puts that question for us, we don't want it; if you put it for the other side, I object that it is n't evidence." On being asked what he thought of a judicial appointment, he replied, "He 'll make a slow judge." "Do you mean, Mr. Mason, that his mental processes are slow?" "No, it 's not that; but he 'll have twice as much to do as most other judges. He 'll have first to decide what 's right, and then to decide whether he 'll do it."

He seems to have been without conceit or

vanity; neither does he appear to have been particularly ambitious, certainly not outside of his profession. And what is more honorable in him, we seek in vain in his correspondence and autobiography for any tendency to disparage or depreciate the abilities and accomplishments of his competitors. He had strong religious convictions, and Mr. Hillard says of him: —

"Trained in the faith of the early fathers of New England, neither the growth of his mind nor his observations of humanity led him in his mature years to depart therefrom."

His death called forth numerous manifestations of respect, admiration, and regret from his professional brethren in Massachusetts and New Hampshire.

ENIGMAS OF JUSTICE.

III.

By George Makepeace Towle.

IN a former article some stress was laid upon the proneness of justice, now and then, to take too little account of the possibility or probability of fabricated evidence. When a crime has been committed, of course the perpetrator will, as a rule, shrink from no device to divert attention from himself; and there are few criminals who will not, at a desperate pass, seek to fasten their crime upon another. In doing this, a shrewd scoundrel will try to supply a chain of circumstantial evidence against the person who he intends shall suffer in his stead. He will, if possible, choose for his victim one who may easily be supposed to have a powerful motive for committing the crime, who has had the opportunity, and who may even have supplied to the real perpetrator the instrument with which the crime has been committed. Yet, now and then, instances have occurred of criminals striving at once to escape the consequences of their crime themselves, and to shield an innocently accused person from punishment for it. A curious illustration of this took place not many years ago in England. One day two men were seen fighting in a field. The struggle was fierce and long, and one of the men was seen to use a pitchfork. Not long after, the other was found lying dead in the field. The affray, and the bloody pitchfork, which still lay near the body, at once pointed out its owner as the murderer. He was easily traced, and was arrested, committed, and finally arraigned for trial. From first to last he most earnestly reiterated his innocence, and declared that not only had he not killed his antagonist, but he had been worsted by him, and had run away to avoid being pounded to a jelly. The case against him, however, was very strong; the fact that he had been seen using the pitchfork against the dead man, and that wounds evidently inflicted by it were declared by the surgeons to have been fatal, forced the conviction of his guilt upon all minds. The judge charged strongly against him, and when the case was given to the jury, every one expected their immediate return with a verdict of conviction. But hours passed, and the jury did not make their appearance. Finally they were sent for, when it appeared that one of the twelve had held out for acquittal from the first. The other eleven had at once voted for conviction. The judge told the obdurate juryman that the case was a clear one, the proof overwhelming, and that there was no reason why he should not coincide with his colleagues. He persisted, however, in dissenting; and after the

jury had been detained some time longer, they were discharged, and the prisoner escaped.

The reader has not, perhaps, guessed that the twelfth juryman was the real murderer of the man in the field. Such was the fact. After the fight between the two men, he had come along, and, having a grudge against the one who remained, he caught up the pitchfork and assailed him. On dealing him the fatal blow, he fled. No one had happened to see him. When the innocent man was arrested, the real criminal, who had, it would seem, some remnant of human feeling in his heart, resolved to save himself and the prisoner also. By some hook or crook he succeeded in getting upon the jury, with what result has been told.

Instances of reparation by an aroused conscience are not rare in the annals of human delinquency. Every now and then the Secretary of the Treasury at Washington receives anonymous packages of money, which has come to be called "conscience money;" and we not seldom hear of cases of confession by men who have injured others in purse or reputation. So, too, where the innocent have been punished by fabricated evidence, the real enigma is sometimes solved by the avowals of the guilty; nor are these avowals always reserved to be elicited by the terrors of the death-bed. It has been frequently remarked, that sometimes truth is so strange that the most daring writers of fiction would not venture to present it to their readers, even as a creation of the fancy. Of such a character was an instance of fabricated evidence which occurred about thirty years ago at Gibraltar.

There lived in London a merchant named James Baxwell. He was prosperous in affairs, and was looked upon in the "city" as a shrewd and an industrious trader, with unblemished reputation and conspicuous business talents. Being a very ardent Roman Catholic, however, James Baxwell made up his mind that he would rather live in a country where that faith predominated, and where he might still pursue his avocations. With this view he took up his residence at Gibraltar. There he continued to thrive, and in due time became very wealthy.

Baxwell had an only daughter, who grew up to be the most beautiful girl in the town. The youths of Gibraltar were infatuated with her, followed her in the street, gazed admiringly at her when she was at her devotions in church, and sought by every means to attract her attention. But she was demure and timid, and no thought of love ever seemed to enter her head. At last, however, the man and the hour came. One day, when she was attending Mass, she saw a youth so comely and noble that she yielded up her heart at sight. He could not fail to be as much struck with her beauty as was every one else. He sought and obtained her acquaintance; and soon the young couple learned to communicate each other's passion. The successful lover turned out to be a young Englishman named William Katt; poor, and perhaps of not too sound a reputation, but, at least to the fair Elezia, romantic and devoted. Katt lost no time in asking Baxwell for his daughter's hand; but Baxwell at once declared his invincible opposition to the match. Katt should never have his daughter, he said. The young man was a Protestant, and Elezia should never wed a heretic. Elezia pleaded tearfully with her father, but all in vain. Then the demure beauty became furious, and declared that her father should not prevent her marrying whom she chose.

The lovers still contrived to see each other; but finally Baxwell shut his daughter up and kept her under lock and key. He was, it appears, a choleric and tyrannical person; and the fanaticism with which he clung to his religion added strength to his cruelty. Elezia pretended to submit, and was released from durance vile; that her submission was a subterfuge, strange events very soon proved. It must be stated that James Baxwell had declared, in presence of witnesses, that he would kill his daughter

with his own hands rather than that she should become Katt's wife.

Just by Baxwell's house was a sort of a cave, probably a disused cellar. One day unwonted sounds were heard issuing from this cave. There were several shrieks, which ended in groans that became less and less distinct. A sad silence followed. The sounds were so peculiar that they became the gossip of the neighborhood. A day or two afterwards it transpired that Elezia had disappeared from her father's house, and was nowhere to be found. Baxwell pretended to be distracted, and demanded a search. Then a rumor began to grow, connecting the screams in the cave with the girl's disappearance; and people began to suspect foul play. These things soon reached the officers of justice. Baxwell's arrest and a strict search of the premises were ordered. In the cave, whence the sounds had been heard, were found parts of the girl's dress and some of her hair; while here and there were spots of blood, which was also discovered on the dress and the hair. The remembrance of Baxwell's threat now came to the minds of those who had heard it, and Baxwell was arraigned for the murder of his daughter. The trial was brief, and the proof so conclusive that the jury came in almost immediately with the verdict of guilty.

Poor Baxwell was overwhelmed, and spent the short period between the close of the trial and the day of execution in a state bordering upon insensibility. When the jailer came to lead him out to the scaffold, he cried out, with visible agony, "Before my God, I swear that I am innocent of my poor daughter's death!" As he passed up the steps to the fatal platform, he saw William Katt standing among the spectators with sombre countenance. The doomed man stopped, and stretched out his hand. When Katt took it, Baxwell said, in a tremulous voice: "My friend, I am about to die. I wish to die at peace with all. I freely forgive you for giving evidence against me." Katt had sworn to having heard Baxwell make the threat. On hearing these words Katt now turned pale, and fell back with great agitation.

The prisoner ascended to the platform. The executioner shouted, "Justice is doing! Justice is done!" placed the black bonnet on Baxwell's eyes, and was in the act of adjusting the fatal rope, when a cry was heard just below, — "Stop! I am the guilty man — and I alone!" William Katt, having said this, came forward and presented himself to the officers of justice.

The whole was soon explained. Elezia was not dead at all, but, having become Katt's wife, was now hidden in the outskirts of the town. Katt had planned the tragedy which had followed her disappearance, from first to last. He had placed the dress, the hair, and the blood in the cave, and had made the lugubrious cries which had been heard to proceed from it. He fully intended that Baxwell should suffer the penalty of the supposed murder, in order to be revenged upon him for his obstinate refusal. But Baxwell's word of pardon at the last moment bred in him a sudden and overwhelming repentance, and in the nick of time he shouted and saved him.

But it was too late. Baxwell, on hearing the truth, sank down on the scaffold as if overwhelmed. The black hood was drawn from his head, when he was found to be dead. Whether it was from excess of joyful emotion or from the fear of death, could not be told. Katt was condemned to a long imprisonment, and Elezia spent the rest of her life secluded from the world in a convent.

Never did circumstantial evidence bear more heavily upon a man than upon Jonathan Bradford, the Oxfordshire innkeeper. There was in his case a strange conjunction of circumstances, which makes the paradoxical assertion that he was at once guilty and not guilty a justifiable one. Certainly no more singular instance of a criminal intent, followed by the result of the intent, for which result he who conceived the intent was not responsible, was ever cited in court of law. Bradford's case has more than once fur-

nished the English judges with a powerful illustration of the fallibility of circumstantial evidence, and, as it is not a very familiar one in this country, we will venture to state it briefly.

Bradford's inn stood in a somewhat lonely place, on the highway between the University city and London. One night a gentleman named Hayes, on his way to the former place, stopped at the inn, where he met two of his acquaintances. They took supper together; and as they chatted over their toddy after the meal, Hayes happened to mention that he had a large sum of money with him. In due time the three retired. Hayes occupied a single chamber, and the other two a double-bedded chamber next to him. In the middle of the night one of these thought he heard a low groan in the room occupied by Hayes. He woke his companion, and called his attention to it. The sounds growing yet more dismal, they softly rose, went into the entry, and so to Hayes's door. The door was ajar, and they were astonished to observe that there was a light in the room. Still greater was their surprise when, on going in, they saw a man, holding a dark lantern and a bloody knife, leaning over the bed, on which lay poor Hayes in agony and bleeding profusely. The evident assassin was no other than Bradford, the innkeeper. Hayes died almost immediately. The two gentlemen seized Bradford, took away the knife, and charged him with the murder. This he stoutly denied. He declared that he had heard groans, and had hastened up to see what was the matter, bringing with him a knife in case it might be necessary to defend himself; that, having come in and found Hayes at the point of death, in his dismay he had let the knife fall, whereby it became bloody.

He was, however, duly committed and arraigned. The evidence of the two witnesses was overwhelming, and at once disposed of the case; the jury found Bradford guilty without leaving the court-room. He was soon after executed.

Yet he was absolutely innocent of the murder of Hayes. Two years after Bradford's death, Hayes's own footman, on his death-bed, confessed that he was his master's assassin. He had gone in and stabbed him, taken all his valuables from his pocket, and hurried back upstairs to his own lodging. Bradford must have gone close upon the footman's retreating footsteps; but Bradford, though innocent of the actual murder, was unquestionably guilty of the intent to murder. He had heard Hayes speak of having money about him, and had gone up to Hayes's room to do the very deed which he found just done when he reached him; and he did as he said he did, — dropped the knife on the poor, bleeding man in his amazement and horror. This he confessed to the minister who visited him in jail previous to his execution.

WILLS IN FICTION.

By Nathan Newmark.

WHERE would the novelist of the period be without the disinheriting will, the manipulated will, the secreted will, and all kinds of wills in every style of obliteration and in every stage of destruction? Why, he would be nearly as bereft of staple stock in trade as if he had lost the lovelorn maiden, the tender-hearted soldier, or the grand old "hall of my ancestors." Even writers of a higher grade find it convenient to make use of such machinery to help make the story go. In "The Pennycomequicks," for instance, Baring-Gould tells the tale of a prig of a clerk who becomes the *master* of a manufactory after the supposed drowning of his uncle in a flood, and all because another more scheming relative had torn off the signature to a will in which the grim ancient had left all his property to the niece of his old partner. This is but a type of countless plots. A little more novelty appears along familiar lines when, as in a story we recently read, the will which gives the heroine everything is thrust into the fire by her in a spirit of self-sacrifice, but is picked up from the grate by the usual spying servant and turns out to be merely charred, and still sufficiently decipherable to set everything right. We might expect to find truth at the bottom of a well, but only the fervid imagination of the story-writer of the day would enable us to discover in such a place the all-important will, in the form of a damp and soiled roll of parchment, hidden by the false but fair step-mother, who walks in her sleep and so leads to the spot the investigating cousin from abroad, determined to ferret out the mystery and restore the wronged heiress to her rights. We are not entirely surprised to find the devoted worshipper of the cousin going down the well for the precious document, breaking his arm, inhaling gas, and dying to waterfalls of tears.

Many readers may recall in this connection an interesting article on "Law in Romance" which appeared in one of the legal periodicals about twenty years ago. The writer, whose name did not appear, divided his suggestive illustrations into two classes. First, he dealt with the stereotyped instances where the plot turns on a disputed will, a forged deed, an altered marriage register, or a contested inheritance. Then he took up those cases where, after a variety of adventures, the hero or heroine is justly or unjustly accused of some crime, generally murder, and where a picture is given of a court-room during a capital or other trial.

As noticeable among the first class was placed Warren's "Ten Thousand a Year," — a novel, by the way, whose popularity is attested to-day by large successive editions. It was remarked that this was a work filled with accounts of barristers and attorneys without number, including the celebrated pleader who saw law-points in every affair that came up, from a wedding to a funeral; that there was scarcely a page in which some reference was not made to deeds, courts, or conveyancing; that the author was himself a barrister of excellent standing, who had written an admirable work on the study of the law; but yet that the whole plot turned on a question of title which could not be held to be otherwise than bad law. In this respect it was contrasted with George Eliot's "Felix Holt the Radical," where the law on an ancient and abstruse point of like character was approved. So that it would appear that the lore of this most learned of women and philosophic chief of novelists was superior to the knowledge of the distinguished practitioner who, nevertheless, composed such a lively story.

In discussing the second class, the writer considered in very palatable style the le-

gal pictures in such well-known novels as Reade's "Very Hard Cash" and "Griffith Gaunt," with their entertaining passages on pleadings and their crisp and clever examinations of witnesses, more possible in fiction than in reality. Note was also made of Dickens's "Bleak House," with its over-familiar chancery case, and of his "Pickwick," with its laughable satire on trial by jury, and its series of sketches which we may possibly deem even more lifelike if we credit the story just published, that the original hero of the tale appeared in court the other day. Mention was not made, however, of "Great Expectations," with its convict will-maker standing behind the melodramatic spinster, and its most penetrating of lawyers, the inimitable Jaggers.

But an instance of the first class was noted which is of greater interest in the present connection. This is the plot of Trollope's "Orley Farm," a novel which is praised as giving, in cabinet-painting style, all varieties of the profession in court and out. The story turns on the validity of a codicil which proves to have been forged by the second wife of the testator. It cuts off the son by the first wife, and leaves the farm to the son by the second wife. It is in the handwriting of the widow, witnessed by an attorney whose daughter received a handsome legacy and also by a clerk and a maidservant. The widow swears that she drew up the codicil at the attorney's dictation in her husband's hearing, because the latter had the gout, and that she had seen all parties sign it. The witnesses give evidence in favor of the due execution of the codicil. Testimony is heard, it is true, which would hardly be admitted in a court of law, but the will thus amended is admitted to probate. But it afterwards appears that the names of the same witnesses appeared on a deed of separation of partnership, of the same date as the supposed codicil; and as they all testified that they witnessed but one paper on that day, the charming widow is found guilty of perjury. Of course the trial gives the fullest scope for the detailed art of the author.

It would be interesting to bridge over the period of nearly a quarter of a century since this review of law in fiction was written, and merely to survey the notable novels in which the story hinges upon the execution or validity of wills. But there is room here for little more than an outline of a recent novel of unique features in this regard. In "Mr. Meeson's Will," the popular Rider Haggard has turned from accounts of age-defying, smiling-eyed goddesses of beauty, passing through the centuries until the dazzling form shrivels to a mummy in the fire, and of frowning cities, and hot-potting savages, and mythical mines, and strange blossoms of ostrich-land, to tell us of a fiendish publisher and a lone island and a tattooed will. It is the particular delight of this issuer of books, though he largely sends forth works of a religious cast, to crush all the originality out of his authors and turn them into literary hacks, so that they may become dreary drudges in his vast establishment, sinking even their names in numbers, and losing every atom of individuality and every symptom of spirit. Of course he makes a shamelessly cruel contract with the heroine, who writes novels; and the hero, his nephew, protests and is driven out of the concern. But he is driven into love with the reciprocating maker of manuscript. Then the heroine embarks for distant lands; and it happens, to the great good fortune of the inventor of the story, that the publisher sails on board the same vessel. The vessel is wrecked, and these two chance to be cast on a desert island, where they manage to get along after the style of "Robinson Crusoe" and "Foul Play," with variations. But the heavy villain of a publisher is all upset in body and mind by these experiences, and he dies to slow music, pursued by raging furies in the form of ghastly visions of the suffering authors he has driven to desperation and harassed into poverty-stricken nonentities.

Yet these very visions make him see the

error of his ways, and prompt him to do justice. It is plain to him that he must set all things right by making a will in favor of the nephew whom he had disinherited. But how to carry out the plan on this spot, that is the question. Ink might be made from the heart's blood, as is done by lovers and prisoners. But here are no walls nor any other thing to serve as a substitute for paper. At last a happy thought strikes the lady. He shall tattoo the will upon her own person. Shame must yield to the good of her beloved hero. So she bares her back, and across her shoulders the will is punctured. The victim endures no end of dramatic agony, and faints away when the job is over. As might be expected, she is rescued by a passing vessel, rejoins her lover, and seeks to establish his rights. For this purpose the will must be probated, and here comes in a grand dilemma. The original will must be filed in the office. The law of course requires it. But is the lady to be locked up until the hearing? Perish the thought! Beauty in distress touches the heart of the Registrar. He allows a photograph of the will to be taken with due delicacy. Then he allows the original will with its female appurtenances to be taken away upon promise of future production. But of course the will is contested by other heirs. At the trial the counsel for the lady, a hitherto briefless barrister, is about to break down when a timely interruption from a compassionate quarter gives him a chance to regain his confidence and deliver a splendid address. The arguments are, in fact, given at length, but do not make quite as lively reading as Mark Twain's amusing report of the decision upon the question whether an echo is real property, personal property, or any kind of property. But of course the original document must be introduced into evidence. The court-room is crowded; but it is for the sake of her lover, and the lady does not flinch from an exposure which cannot be helped. For a third time she becomes as bare of drapery as a ball-room belle. We are not told whether she has a Langtry bang or a Langtry back, but the ocular proof she offers is sufficiently convincing. Sympathy hovers around her, and victory perches on her shoulders. This is the real climax of the story. But we are carried on through the ringing of the marriage bells, to learn that they lived happy ever after, in spite of the fact that the heroine was almost as strikingly decorated as many a sailor, and was forever debarred from becoming such a type of beauty unadorned as may attend the Queen's receptions or the full-dress party of the period.

If we had opportunity to pass from the realm of the novel into that of general literature, poetry and drama would yield us no end of apt and ingenious instances of the ways and devices of will-makers. Should we not have to refer, at least, without touching on favorite authors or exploring the treasures in modern libraries of song, to the rhyme of the jolly testator who makes his own will, and to the well-framed account in verse of the lately revived twin puzzle? Then what thrilling and touching situations in plays turn upon the drawing or keeping of a will, its contents or its force! Countless are such incidents, from the days of the great old masters to the time of prolific producers like Scribe and Boucicault, and suggestive fun-makers like that modern Aristophanes, Gilbert, with his surface puns for the multitude and his subtle wit for the few. In one of the productions of the delineator of low life in New York, he finds a new hiding-place for the momentous testamentary document in the leather patch on a pair of breeches! Sensational scenes enough would have to disappear from the stage as well as from the story, if we were no more to see the will which untangles the plot suddenly appearing out of the depths of the mysterious drawer or the unsuspected panel, or were no longer to behold the tableau when at last the will is read which has been eternally made, and made by the crabbed arbiter of legacies.

THE COW AND THE MAPLE-SYRUP.

BUSH *v.* BRAINARD. (1 Cow. 78.)

By Irving Browne.

[*An action will not lie for carelessly leaving maple syrup in one's unenclosed wood, whereby the plaintiff's cow, being illegally suffered to run at large, and having strayed there, is killed by drinking it.*]

ONE Brainard owned a favorite cow,
With placid eyes and gentle brow,
Renowned for milk — he called it "milch."
Her coat was smooth and soft as silch;
A star upon her forehead lay,
Appropriate to her milky way;
Her voice was noticeably low —
It necessarily was so;
With care that each good wife adorns,
She kept the buttons on her horns.
Old Brainard loved her like a sister;
And several little Brainards kissed her,
Or tweaked her tail and punched her udder
With boldness that would make one shudder.
She never kicked, not e'en when man
Stripped her for his small tin god, Pan;
She was — to paraphrase the poet's line —
A little more than kin nor less than kine.

Bush owned a lot of wooden cows,
Which had no need to drink or browse,
Nor of restraint by rope or rail,
Nor spoiled the milk by switch of tail;
For he possessed a sugar-bush,
Where he a thriving trade did push
By maples for their rich juice boring
And the sweet stream in buckets storing;
No patriot he, for every season
Still found him meditating trees on;
So he was rocked in luxury's lap,
And had a fortune on the tap.

This bush was destitute of fence,
But as there was no evidence
Of any law to keep it closed,
His syrup Bush left there exposed.
Now Brainard's cow did often range
This bush in search of pasture strange
Beyond her strict-appointed pale
Quite undeterred by wall or rail,
As Bush well knew; but though no dolt,
He quite forgot that cows would bolt
This article of commerce staple
Drawn from the smooth-bark sugar-maple.

At length, when Moolly in the grove
In search of provender did rove,
She found this palatable drink,
And hanging o'er the fatal brink,
So greedily did Moolly suck it,
That giving one convulsive cough,
She speedily did "kick the bucket"
And lay completely "sugared-off."

Brainard sued Bush for negligence
In keeping bush without a fence,
Or leaving syrup without care,
Well knowing that his cow ran there.

SAVAGE, C. J.

This case to us presents two views, —
Two horns between which we must choose.
This sugar-Bush did very wrong
To leave his syrup there so long,
Knowing that cows in search of pasture
Might thereby meet with sore disaster.

THE OTHER JUDGES.

Oh, Bush deserves much to be blamed,
He really ought to be ashamed!
He should have known that cattle lap
Inviting liquids. — *Verbum sap.*

SAVAGE, C. J.

But then again, though it is shown
That Bush knew Brainard's cow frequented
His sugar-bush, it is not known,
From evidence, that he consented.

THE OTHER JUDGES.

Yes, circumstances cases vary;
This may excuse the harm to dairy.

SAVAGE, C. J.

And then, what 's more conclusive still,
There is no by-law of the town
Permitting cattle at their will
At large to wander up and down.

THE OTHER JUDGES.

Ah! this is quite another story;
'T is negligence contributory.

SAVAGE, C. J.

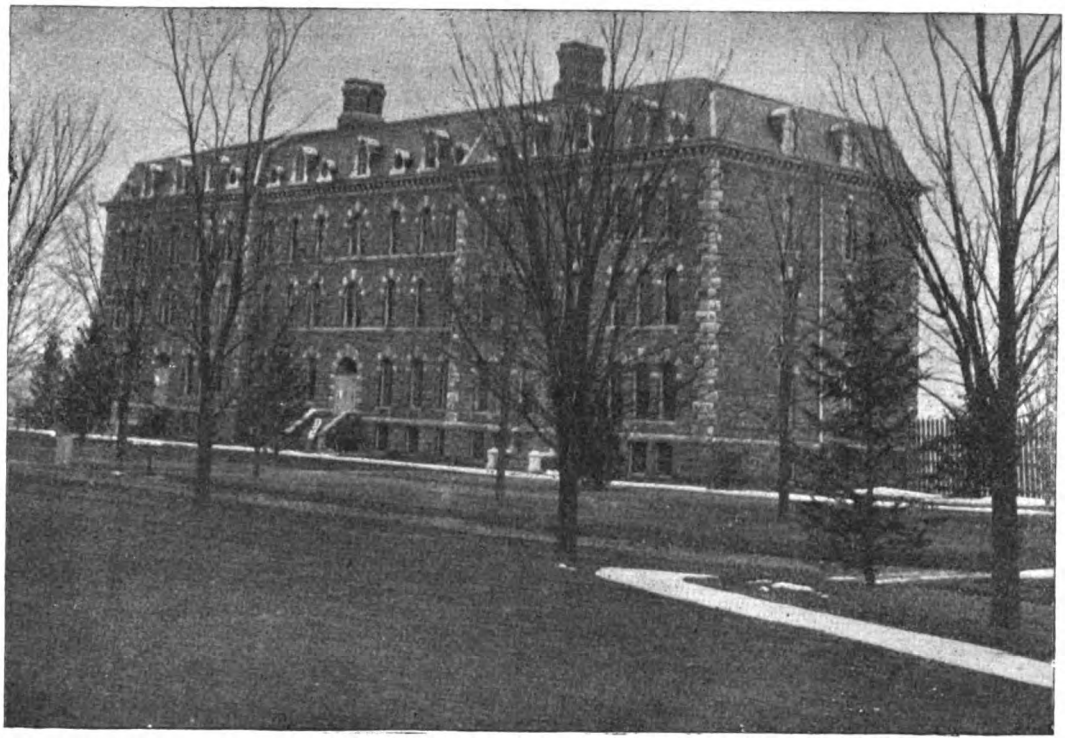
The law doth measure not degrees
Where both the parties careless are;
Betwixt the cow and maple trees,
Damnum absque injuria.

ALL TOGETHER.

So this decree we ratify:
That Brainard pay the cost.
Perhaps it may him gratify
That Bush his syrup lost;
And *obiter*, we can't discover
How Bush can e'er for it recover.

THE REPORTER.

A less poetic version, I 'll allow,
You 'll find reported in the 1st of Cow.



MORRILL HALL.

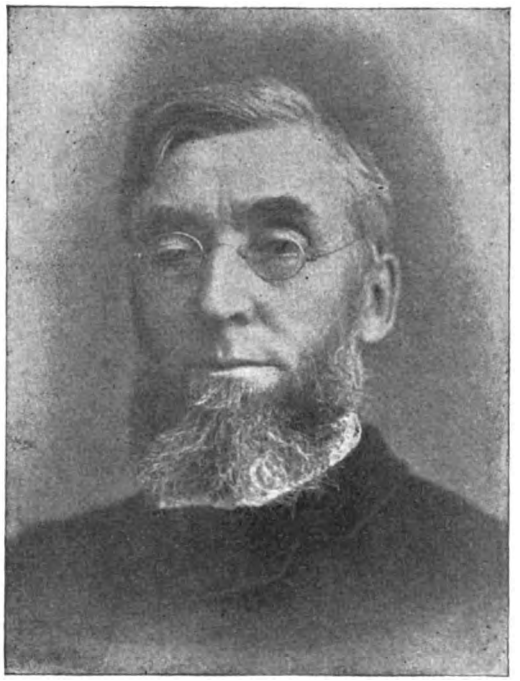
THE CORNELL UNIVERSITY SCHOOL OF LAW.

By Professor Harry B. Hutchins.

THE Cornell University but recently celebrated its twenty-first annual commencement. Though among the youngest of the higher institutions of learning in the country, it enjoys the distinction of being among the largest. The University Register for 1888–1889 contains a Faculty roll of ninety-four, exclusive of officers whose duties are wholly administrative or clerical, and a student list numbering twelve hundred and twenty-nine. The marked increase in attendance, however, has taken place during the past four years. In that time the enrolment has more than doubled, and that, too, notwithstanding the fact of a considerable increase in the requirements for admission. The material equipment of the University is ample, and in many respects superior to that of any other in the country; and its location, on highlands overlooking the beautiful waters of Cayuga Lake, is unsurpassed. The visitor at Cornell is at once impressed with the fact that the little city of Ithaca is the home of a great university and of a living educational power. But the title of Cornell to distinction does not rest upon the beauty of its surroundings or upon its substantial halls and laboratories, not even upon the numbers that daily crowd its lecture-rooms, but rather upon the catholic spirit in which the institution was conceived and took form, and upon the liberal and enlightened policy that has thus far characterized its management.

The University owes its existence to the bounty of the United States and of Ezra Cornell. Its principal income is derived from two separate funds, known as the "Land Scrip Fund" and the "Cornell Endowment Fund." In July, 1862, Congress passed an act granting public lands to the several States which should provide at least one college where the leading object should be, without excluding other scientific and classical studies, and including military tactics, to teach such branches as relate to agriculture and the mechanic arts. The share of New York under this legislation was nine hundred and ninety thousand acres. This gift, however, was in the form of land scrip. And as there were no public lands in the State of New York, the only way in which the bounty of the General Government could be made available, was by sale of the scrip. The other Eastern States were, of course, similarly situated. The result was a flooding of the market, and a corresponding decline in value. Meanwhile the Cornell University had been incorporated, and the income arising from the sale of this government paper appropriated to its use. The important conditions contained in the act of incorporation were that Ezra Cornell should give the institution five hundred thousand dollars, that provision should be made for instruction in branches relating to agriculture, mechanic arts, and military tactics, and that the University should receive without charge for tuition one student annually from each assembly district. Mr. Cornell not only complied with the first condition mentioned, but also made an additional gift of more than two hundred acres of land, with buildings to be used for general purposes and for the department of agriculture. The requirements of the Congressional grant were fully met by the provision in the act of incorporation concerning instruction in agriculture, the mechanic arts, and military tactics. But the act went further, and declared that "such other branches of science and knowledge may be embraced in the plan of instruction and investigation pertaining to the University as the Trustees may deem useful and proper." Although the act incorporating the University appropriated to its use the income arising from the sale of the public land scrip granted to the State by Congress, yet without some manipulation whereby its value could be increased, the appropriation was of comparatively little importance. Therefore, with a view of giving to the University, or some person acting in its behalf, an opportunity to make the most of this Congressional grant, the State Legislature, by an act passed April 10, 1866, authorized the Comptroller to sell the scrip remaining unsold to the Trustees of the University, at a price not less than thirty cents per acre; and it was further provided that in case the Trustees should not agree to make the purchase, the sale could be made to any other person or persons, provided that proper security should be given that the whole net avails and profits derived therefrom should be paid over to and devoted to the purposes of the University. The Trustees not being in a condition to take the scrip, Mr. Cornell offered to make the purchase on certain conditions, the most important of which was embodied in a letter to the Comptroller in the following words: "I shall most cheerfully accept your views so far as to consent to place the entire profits to be derived from the sale of the lands to be located with the college land scrip in the treasury of the State, if the State will receive the money as a separate fund from that which may be derived from the sale of the scrip, and will keep it permanently invested, and appropriate the proceeds from the income thereof annually to the Cornell University, subject to the direction of the Trustees thereof for the general purposes of said institution, and not to hold it subject to the restrictions which the act of Congress places upon the funds derived from the sale of college land scrip, or as a donation from the Government of the United States, but as a donation from Ezra Cornell to the

Cornell University." The terms proposed were accepted by the State; and subsequently the rights and obligations of Mr. Cornell under the contract were, with the consent of the State authorities, assumed in full by the Trustees of the University. The "Land Scrip Fund," then, is the fund realized from the original sale of the scrip, while the "Cornell Endowment Fund," which at present constitutes the larger part of the endowment from which the income of the University is derived, is made up of the profits realized from the sale of the lands located with the college land scrip. The income from the former must be used for the purposes indicated in the original grant from the United States; while the income of the latter can be applied to any and all university purposes in the discretion of the Trustees.



CHARLES KENDALL ADAMS.

As will be seen from the foregoing, the act of incorporation contemplates, and the endowments are planned with a view of providing for, a university in the most comprehensive sense of that term. That such an institution was in the mind of Ezra Cornell from the first, and has been constantly kept in view by the Trustees as an end to be realized, is apparent from the most cursory examination of the documents bearing upon the history of the undertaking. At the inauguration of Andrew D. White, LL.D., the first President of the University, Mr. Cornell indicated his comprehensive purposes by the use of language that cannot be misunderstood. In the course of his remarks upon that occasion he said: —

"I desire that this shall prove to be the beginning of an institution which shall furnish better means for the culture of all men, of every calling, of every aim; which shall make men more truthful, more honest, more virtuous, more noble, more manly; which shall give them higher purposes and more lofty aims, qualifying them to serve their fellow-men better, preparing them to serve society better, training them to be more useful in their relations to the State, and to better comprehend their higher and holier relations to their families and their God. It shall be our aim and our constant effort to make true Christian men, without dwarfing or paring them down to fit the narrow gauge of any sect. Finally, I trust we have laid the foundations of a University, an institution where any person can find instruction in any study."

Nor were the ideas of the men who cooperated with Mr. Cornell in his great work any less liberal and far reaching. The report of the committee on organization announced a university scheme that was both advanced and comprehensive. Besides making provision for the ordinary classical course, for general courses in which French or German should be substituted for Greek, for a scientific and for an optional course, the plan embraced the organization, at such times as should be thought practicable, of the following departments, — agriculture, mechanic arts, civil engineering, commerce and trade, mining, medicine, law, jurisprudence, political science and history, and

education. The extent to which the subsequent development of the University has been in accordance with the policy announced in this report, is apparent from the fact that all of the courses and departments just named, with the exception of the departments of commerce, mining, and medicine, are in operation at the present time, together with several additional courses and schools.

The establishment, therefore, of a school of law at Cornell was but the carrying out of a part of the original university scheme. That such a school was not organized earlier was due to circumstances beyond the control of the governing board. The University was opened in the fall of 1868, with ample provisions, as it was supposed, for the demands that would naturally be made upon its treasury. In a very few years, however, the financial outlook was threatening in the extreme. Pine lands had become a drug; and in consequence of this, the income which had been counted upon from this source was not forthcoming. Expenditures were, of necessity, reduced to a minimum. All departments suffered, but most those whose prosperity depended upon expected profits from the sale of lands. The establishment of new schools at such a time was, of course, out of the question. This condition of affairs continued until 1881, when a marked appreciation in the value of pine lands and large sales by the University at good figures put the institution upon a solid financial basis. From that time to the present, the growth and prosperity of Cornell in all directions have been uninterrupted.

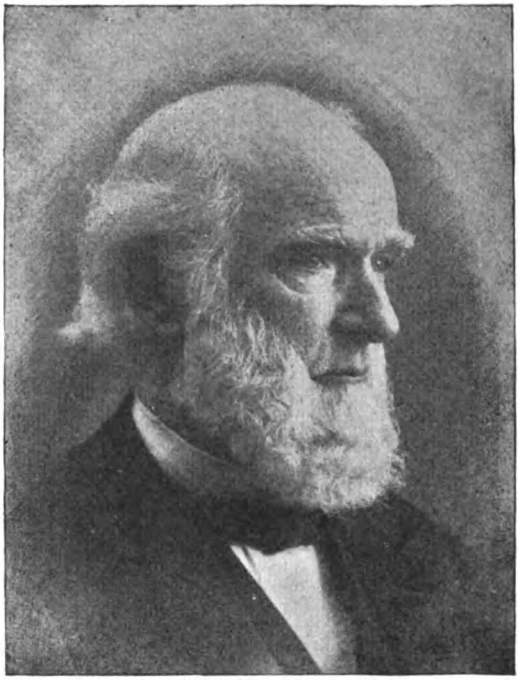
With the incoming of the present administration, the original purpose of the founders and Trustees of the University to add at some time professional schools was again made a question of the hour. In his inaugural address, delivered Nov. 19, 1885, President Adams, in considering the possibilities of enlarging the scope and the influence of the University in the near future, suggested, among other desirable advancements, the early establishment of a school of law. In his first annual report, submitted to the Trustees June 16, 1886, the President brought the matter formally to the attention of the Board, and concluded his consideration of the subject by recommending that a department of law be established, and that it be opened for instruction in the autumn of 1887. At the same meeting an exhaustive review of the situation was also presented by a committee that had been previously appointed to consider and report on the question, and this, too, concluded with a recommendation that such a department be opened at an early date. As the result of these recommendations, the School of Law was officially established. By an announcement issued by the President, June 17, 1886, the public were advised of the fact, and that the school would be in readiness for the admission of students in the autumn of 1887.

The Faculty of the school was chosen the following March. It had been previously determined that that body should consist of resident professors, whose time should be devoted to the work of instruction, and of such non-resident professors and lecturers as might from time to time be appointed. It was thought by the Trustees that the teaching of the law is as much a profession as is the practice of it, and that no school can now attain to the greatest power or usefulness without having a resident faculty of competent men whose duty it is to give their predominant energies to the labor of imparting instruction. The Hon. Douglas Boardman was elected Dean of the school, and Harry B. Hutchins, Charles A. Collin, Francis M. Burdick, Moses Coit Tyler, and Herbert Tuttle, resident professors. The last two named were already professors in the University. The following gentlemen were elected non-resident lecturers: The Hon. Francis M. Finch, the Hon. Daniel H. Chamberlain, the Hon. William F. Cogswell, the Hon. Theodore Bacon. Since that time the following have

been added to the list of non-residents: The Hon. Benjamin F. Thurston, George S. Potter, Esq., Albert H. Walker, Esq., Prof. Marshall D. Ewell, the Hon. Orlow W. Chapman, the Hon. Alfred C. Coxe, and the Hon. Goodwin Brown.

This article would certainly be incomplete without at least a brief reference to the career and position of different members of the teaching force.

The Hon. Douglas Boardman was born Oct. 31, 1822, in the town of Covert, Seneca County, N. Y. He was graduated at Yale, in the class of 1842. Soon after leaving college, he began his professional studies, and was admitted to the bar in 1845. He settled in what was then the village of Ithaca, and was very soon in the enjoyment of an extended practice. During the years 1848, 1849, and 1850 he filled the office of District Attorney of Tompkins County in a manner creditable to himself and highly satisfactory to the people. His next public trust was that of County Judge, and the duties of this office were discharged with marked care and ability during the years 1852, 1853, 1854, and 1855. In the year 1856 a law-partnership was formed between Judge Boardman and Judge Finch, now of the Court of Appeals and a member of the Law Faculty at Cornell. This business connection continued until the year 1866. The firm of Boardman & Finch at once became prominent in legal circles; and litigation of the most important character was committed to their charge. No lawyers of the locality were better known or more highly respected, and none attracted a more desirable clientage. Judge Boardman became a member of the Supreme Court Jan. 1, 1866, and from that time until 1887, when he retired from the bench, was in continuous service in that tribunal. He brought to the discharge of his duties a temperament eminently fitted for a judicial career. Upon the bench he was always modest but firm, tolerant but at the same time independent. His sterling integrity and fearless performance of duty on all occasions secured for him the confidence and respect of his associates and of the bar. His opinions, scattered through many volumes of the Supreme Court reports, indicate thorough research, good sense, and marked fairness of spirit. The Trustees were certainly fortunate in securing a man of Judge Boardman's learning and experience as the official head of the school. It should be added that for many years Judge Boardman has been an influential member of the Board of Trustees of the University, and that his services as chairman of the Finance Committee have been invaluable.



DOUGLAS BOARDMAN.

The Hon. Charles A. Collin is a native of western New York. He was graduated from Yale College in 1866. During the four years following his graduation, he was a teacher in the Norwich (Conn.) Free Academy. He was admitted to the bar of Connecticut and also of New York in 1870. From that time until his appointment as

professor of law at Cornell in 1887, he resided and practised his profession in Elmira, N. Y., and was for several years City Attorney of that city. His practice covered the wide range customary with lawyers of the inland cities, and he acted as referee in many important cases arising in that section of the State. While devoting his principal energies to his profession during his residence at Elmira, Professor Collin nevertheless retained a special interest in sociological studies, particularly in the line of charities and corrections. A natural love and aptitude for teaching found exercise in conducting a Sunday class of several hundred prisoners in the Elmira Reformatory, for the discussion of questions in practical ethics, which proved a successful as well as an unique experiment, attracting considerable attention from prison reformers. He is a prominent member of the National Prison Association, and the author of several important bills, in the line of his special studies, which have lately become laws in New York. The most important of these are the Consolidation Act for the care of pauper and dependent children, the act consolidating the laws governing the Elmira Reformatory and the law of the past winter, known as the "Fassett Prison Law." During each of the last three years he has been employed, during a portion of the closing months of each session of the Legislature of this State, as special counsel of the Governor, to examine and report upon the constitutional and legal character of bills awaiting approval. In June last, he was appointed a Commissioner of Statutory Revision in this State, which office he still holds.

FRANCIS MILES FINCH.

In the School of Law Professor Collin has shown himself to be specially fitted for the work of imparting instruction. He is possessed of the teaching power to a marked degree, and of a manner that at once wins the confidence, respect, and good will of his students. His work embraces instruction in the following subjects: Criminal Law and Procedure, Torts, Civil Procedure under the Codes, Private and Municipal Corporations, Wills and Administration.

Professor Francis M. Burdick is a native of DeRuyter, N. Y. He was graduated from Hamilton College in the class of 1869. For a time after leaving college, he was a member of the editorial staff of the "Utica Morning Herald," though during most of this period he gave a part of his energies to the study of law in the office of the Hon. Charles Mason. In 1872 he was graduated from the Law School of Hamilton College, and upon his admission to the bar in the same year, entered upon the practice of his profession in the city of Utica. He was elected Mayor of Utica in the spring of 1882, and in the fall of that year was offered the professorship of law in Hamilton College, which he accepted. He entered upon the duties of his position at once, and was soon recognized as among the leading law-teachers of the country. Professor Bur-

dick remained at Hamilton until the opening of the Cornell University School of Law, when he became a member of its Faculty, his work being instruction in Elementary Law, Contracts, including Agency, Evidence, Bailments, Mercantile Law, including Bills, Partnership, Sales, Suretyship, etc., and Roman Law. Thoroughly equipped for his duties by an extended experience as a practitioner and as a teacher, scholarly in his tastes, studious in his habits, of a sympathetic nature and of affable manners, Professor Burdick brings to bear upon the student an influence that is at once stimulating and refining. A young man is always at his best in his presence.

DANIEL H. CHAMBERLAIN.

Professor Moses Coit Tyler was born in Connecticut, and was graduated at Yale in 1857. He was Professor of the English Language and Literature in the University of Michigan from 1867 to 1881 inclusive, except during the years 1873–1874, when he was literary editor of the "Christian Union." He has occupied the chair of American History in the Cornell University since 1881. Professor Tyler has been a frequent contributor to reviews and magazines, and has published, among other works, a "History of American Literature," a "Manual of English Literature," and the "Life of Patrick Henry." For years he has devoted his chief energies to studies in the fields of American Constitutional History and American Constitutional Law, and his lectures to the students of the School of Law at Cornell upon these subjects are most thorough and comprehensive in character, as well as being models from a purely literary point of view.

Professor Herbert Tuttle was graduated from the University of Vermont in 1869. He immediately entered journalism, and was for several years at Berlin as correspondent of the "London Daily News." While abroad, Professor Tuttle made an exhaustive study of international law and of political and historical subjects. Returning to the United States, he was a lecturer on international law at the University of Michigan for a year, when he was called to Cornell. His present position is that of Professor of the History of Political and Municipal Institutions, and of International Law. He is the author of a "History of Prussia to the Accession of Frederic the Great," and of a "History of Prussia under Frederic the Great," and has been for several years a frequent contributor to American and foreign reviews and periodicals. As a lecturer, Professor Tuttle at once commands the attention of his hearers by his comprehensive treatment of the subject under consideration, and by his conciseness and clearness of statement.

From the date of his admission to the bar in 1876 to the time of his coming to Cornell, Mr. Hutchins was engaged in the practice of his profession in Michigan. When elected to his present position, he was Jay Professor of Law in the Law Department of Michigan University, having occupied that chair for

three years. At Cornell he gives instruction in Domestic Relations, the Law of Real Property, Common Law Pleading and Practice, Equity Jurisprudence, and Equity Pleading and Procedure. He is also Secretary of the school.

Of the non-resident members of the Faculty, perhaps those most thoroughly identified with the school are the Hon. Francis M. Finch and the Hon. Daniel H. Chamberlain.

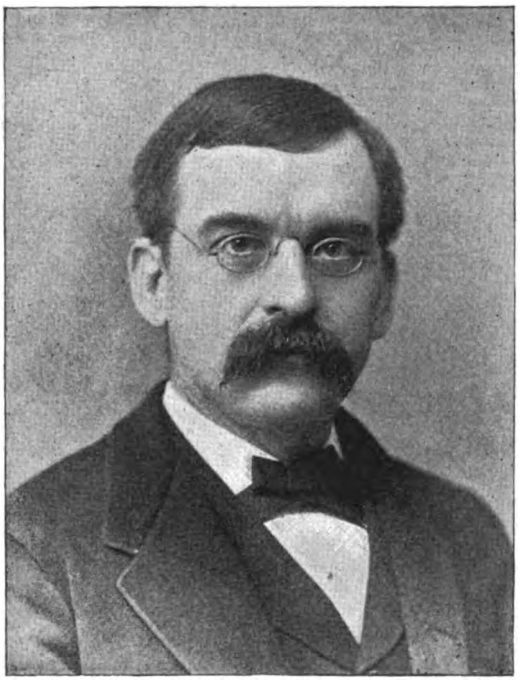
Judge Finch was born at Ithaca in 1827. He was educated at Yale, where he took a leading position as a student and for his general attainments. Even before going to college, he manifested a remarkable literary talent, which he still retains, although he insists that "the practice of law has chastened and choked it down." He studied his profession in his native town, and was admitted to the bar in a little over a year after leaving college. The following extract from a sketch of Judge Finch's career, which has recently been made public, is so accurate in its statements and conclusions that we take the liberty of inserting it in this connection: —

"Mr. Finch's practice was of rapid growth; he was a gentleman of fine scholarship, a hard student, a clear and persuasive reasoner, a wise, reliable counsellor, conscientious to a marked degree in the fulfilment of his relations to his clients, and tenacious in the advocacy of their rights, and he soon took a commanding position among the ablest lawyers of the Sixth District. The most important cases were confided to him, and his opinions upon legal questions were eagerly sought by the most eminent of his brethren at the bar. Early in General Grant's first presidential term he was appointed Collector of Internal Revenue for the Twenty-sixth District, New York, which office he resigned after holding it four years. At the organization of Cornell University, Mr. Finch became warmly interested in the institution, was one of its trustees, and its counsel and friendly adviser through its early troubles. In May, 1880, Mr. Finch was appointed Judge of the Court of Appeals of the State of New York, to fill a vacancy of six months. In 1881 he was reappointed to fill a vacancy of one year. In the fall of 1881 he was elected to a full term of fourteen years, which will expire Dec. 31, 1895. Mr. Finch possesses a natural mental grasp which seems able to take in the manifold bearings of a subject, to perceive its resemblances and harmonies, as well as its inconsistencies, almost at a glance. He has a judicial temperament without bias. In speech he is methodical, correct, rounded, and concise; his critical analysis of a subject, or *résumé* of a case, covers all its points and leaves no gaps to fill. His opinions have been always characterized by the utmost fairness of spirit, depth of learning, and thorough research. In short, it may be truly said that he possesses all the elements necessary for a career of honor and usefulness upon the bench. He is approachable, genial, and affable; and while he possesses large perceptive faculties and keen discrimination, he is almost philosophically tolerant. His chief relaxation is his large and well-selected library, to which he turns with delight from his arduous legal and judicial labors."

It remains only to add that in the lectures of Judge Finch before the law students on the Statute of Frauds and Fraudulent Conveyances, one at once discovers, not only a literary finish and excellence of the very highest order, but also the same depth of research and legal learning, the same power of discrimination and analysis, and the same comprehensive grasp of the subject in hand that in his opinions upon the bench have made him famous the country over.

The Hon. Daniel H. Chamberlain was graduated from Yale College in 1862, pursued legal studies at the Harvard Law School for one year, when he entered the army as a volunteer officer, and served till the close of the war. In December, 1865, he settled in Charleston, S. C., where, in 1867, he was a member of the State Constitutional Convention, and was elected Attorney-General of the State in 1868, filling the office for a term of four years. Returning to his profession in 1872, he was elected Governor in 1874, and occupied the office till 1877. He then resumed his practice in New York City, where he has since pursued his profession without interruption.

Here he has been chiefly engaged in the line of constitutional and corporation law, especially in the law of railway corporations. He has been counsel for the Virginia bondholders since 1880 in all their prolonged litigation; and was counsel for the bondholders in the well-known recent Reading and Wabash foreclosures. He has devoted much time and study to general topics of the law, some of the fruit of which has appeared from time to time in the shape of addresses, essays, and reviews. His course on Constitutional Law at Cornell consists of twenty-four lectures, and covers a compendious treatment of the entire Constitution as expounded and fixed by the latest authorities. The course is most admirably adapted to the purposes for which it is given, and, although designed for students in the School of Law, is largely attended by members of other departments. As a lecturer, Governor Chamberlain is remarkable for the logical treatment of his subject, for absolute clearness and accuracy of statement, and for the richness of his style.



CHARLES A. COLLIN.

Instruction in the Patent Laws of the United States is given by the Hon. Benj. F. Thurston, of the Providence Bar, and Albert H. Walker, Esq., of the Hartford Bar. Mr. Thurston is a patent lawyer of national reputation, and a lecturer of great power. Mr. Walker is well known to the profession, not only by his career as a practitioner, but also through his valuable Treatise on Patent Law.

The course on Medical Jurisprudence is given by Professor Marshall D. Ewell, of Chicago, the well-known legal author and law teacher.

The Hon. Orlow W. Chapman, a prominent member of the New York Bar, and now Solicitor-General of the United States, delivers a special course on the law of Life Insurance.

The Hon. Goodwin Brown, of the Albany Bar, for the past seven years Executive Counsel in pardon and extradition cases, gives a brief course of instruction upon the Law of Extradition.

Instruction in Admiralty Law and in the Law of Marine Insurance is given by George S. Potter, Esq., a member of the well-known admiralty firm of Williams & Potter, Buffalo, a gentleman of large experience in those specialties. And the Hon. Alfred C. Coxe, of the United States District Court, has recently been elected a non-resident lecturer in the school upon the subject of Admiralty.

Several important questions connected with the organization of the school had been determined by the Trustees before the election of the Faculty, but in a way entirely satisfactory to that body. One of these was as to the length of the course of instruction. It had been very much desired to make the course from the first one of three years. But in view of the fact that by court rule in the State of New York one of the three years of study required must be in the office of a practitioner, this was not thought to be

advisable. It was the opinion of the committee to whom the question was referred, that, for the present at least, the period of instruction should extend through two years of nine months each, and that the course in law should in all respects be co-ordinate with the courses then existing in the University; and it was so determined by the Board. It should be said in this connection, however, that steps have been taken looking to the extension of the course to three years, and that the necessary action to bring about such a result will undoubtedly be had in the near future.

FRANCIS M. BURDICK.

Another question that the Faculty found satisfactorily solved was as to the requirements for admission to the school. It is, perhaps, unfortunate that the conditions in this country are such that a thorough college education cannot be made a prerequisite to the study of the law. We cannot, however, close our eyes to the fact that some of our most distinguished jurists and lawyers have attained their eminence without the preliminary training represented by an academic degree. It seemed to the committee that it would be unjust, as well as unwise, not to recognize this fact in fixing the standard for admission at the opening of the school. It was therefore determined that applicants for admission must have a preliminary education at least equal to that required for registration as a student of law by the rules of the Court of Appeals of the State of New York. The requirement consists of a thorough knowledge of arithmetic, English grammar, geography, orthography, American and English history, and English composition. This still remains the minimum standard; and all applicants for admission, except graduates of universities or colleges, graduates of reputable academies or high schools, and persons who have received the "law students' certificate," issued by the Board of Regents of the University of the State of New York, who are admitted upon diploma or certificate, are required to pass a satisfactory examination upon the subjects named.

Although no law faculty in this country has as yet thought it just or wise to limit attendance to such only as have completed an undergraduate course, yet several of the schools, Cornell among the number, are making earnest efforts to raise the standard for admission, and to attract students who have already taken a baccalaureate degree. It is the purpose of the Faculty at Cornell to add to the requirements in the near future at least an elementary knowledge of the Latin language, and to increase the standard from time to time as the state of education in the territory from which they draw their students will warrant them in so doing.

The questions that at the outset demanded the attention of the Faculty were as to the course of instruction and the methods to be followed. The first was easily settled. The elements of the law are essentially the same in all parts of the country, and the members

of the profession are substantially agreed as to what the student should study before he presents himself for admission to the bar. But as to how he should study and be taught, there is as yet considerable difference of opinion. It is not the purpose of the writer to discuss the merits and the defects of the several systems of instruction. This has been thoroughly done in articles that have appeared from time to time in this periodical. Suffice it to say that it was not thought wise that any particular method should be made, by special Faculty action, distinctively characteristic of the school, but that the proper course lay in giving to the different members of the teaching force entire freedom in that regard. The result has been a use of all recognized methods by each member of the Faculty, the method changing frequently with a change of subject; but it is probably correct to say that instruction to the more advanced students by means of the study of specially selected cases has been from the first a special feature of the school.

The course of study is a graded one. The following is a statement of the subjects upon which instruction is given and examinations required, together with suggestions as to the methods in use: —

Junior Year.

1. Elementary Law. Selected parts of the Commentaries of Blackstone are used as the basis of this work. The student is thoroughly examined each day upon portions of the text that have been previously assigned; he also listens to lectures and expositions by the professor in charge.

2. Contracts, including Agency. The work in this subject is carried on by text-book exposition and recitations, and after the elementary principles have been mastered, by the study of selected cases.

3. Criminal Law and Procedure. General lectures in which the fundamental principles are fully explained, supplemented by the study of selected cases. With New York students, special attention is given to the New York Penal Code and the New York Code of Criminal Procedure.

4. Torts. Text-book and recitations, supplemented by lectures and to some extent by work upon cases.

5. Domestic Relations. Text-book exposition and recitations principally; some parts of the subject, however, are taught by lecture.

6. The Law of Real Property. This is begun during the junior year, one term's work of eleven weeks being devoted to it. The work consists of a thorough mastery of the second book of Blackstone so far as it is devoted to real property, with daily examinations.

7. Evidence. Text-book, lectures and cases.

8. Common Law Pleading and Practice in Cases at Law. Some approved text-book on pleading is used as a basis for this work. In connection with the text-book work, informal lectures on practice are given. The student is also given work in the preparation of pleadings, and his efforts are carefully examined and criticised by the professor in charge.

9. Civil Procedure under the Codes. This subject is begun during the last term of the junior year, and is taught chiefly by lecture.

10. English Constitutional History. Lectures.

Senior Year.

1. Private and Municipal Corporations. Lectures, supplemented by a thorough study of cases.

2. Mercantile Law, including Bills, Partnership, Sales, Suretyship, etc. These subjects are taught principally by cases.

3. The Law of Real Property. Some standard text-book is used as the basis for the general instruction. With New York students, special attention is given to statutory modifications.

4. Equity Jurisprudence. A full course of lectures is first given which covers the fundamental principles of the science. This work is supplemented by a thorough study of cases, selected with a view of illustrating such principles.

5. Equity Pleading and Procedure in State and in United States Courts. Lectures.

6. Civil Procedure under the Codes. Lectures and practical work, together with a special study of the Code of Civil Procedure, by New York students.

7. Bailments. Lectures and cases.

8. This is a lecture course given by the Dean,

and consists of "Practical Suggestions concerning the Preparation, Trial, and Argument of Causes."

9. Roman Law. Lectures.
10. International Law. Lectures.
11. American Constitutional History. Lectures.
12. American Constitutional Law. Lectures.

It should be added that whenever a subject is taught by lecture, the professor giving instruction holds frequent and usually daily examinations, upon ground covered by previous lectures.

COURSES OF SPECIAL LECTURES.

Instruction by the non-resident members of the Faculty is by lecture, and for this work both classes are brought together. The non-resident courses as at present arranged are the following: —

1. The Statute of Frauds and Fraudulent Conveyances (two courses). The Hon. FRANCIS M. FINCH, of the New York Court of Appeals.
2. Constitutional Law. The Hon. DANIEL H. CHAMBERLAIN, of the New York City Bar.
3. The Law of Shipping and Admiralty and the Law of Marine Insurance (two courses). GEORGE S. POTTER, Esq., of the Buffalo Bar.
4. The Patent Laws of the United States (two courses). The Hon. BENJAMIN F. THURSTON, of the Providence Bar; ALBERT H. WALKER, Esq., of the Hartford Bar.
5. Medical Jurisprudence. Prof. MARSHALL D. EWELL, of the Chicago Bar.
6. The Law of Life Insurance. The Hon. ORLOW W. CHAPMAN, of the Binghamton Bar.
7. Extradition. The Hon. GOODWIN BROWN, Esq., of the Albany Bar.

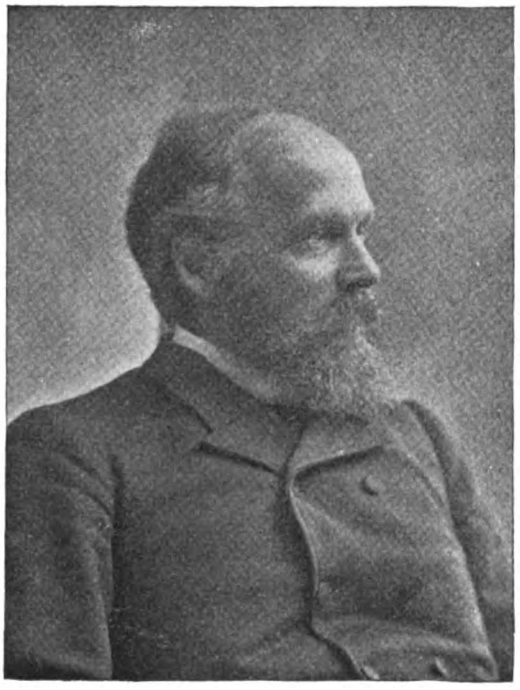
The regular class-room instruction of the school is fifteen hours per week for each class, or three lectures or recitations each working day. During some parts of the year, however; it has been found necessary to increase the amount somewhat. Attendance upon all the exercises of the school is compulsory, and the student who becomes lax in this respect is either "dropped" at once, or not admitted to examinations. It is the experience of the Faculty that in no other way can the best results be attained.

It is the effort of the Faculty at Cornell to teach both the principles of the law and how to apply them. To this end the University Court, so called, is made the forum for the discussion of such practical questions as most frequently arise in a professional career at the bar; and so far as it can be used for that purpose, it is made the means of familiarizing the student with pleading and practice, and with the general routine of court work. A session of the court is held, as a rule, each week during the school year; and all members of the senior class are required to attend regularly. The court is made up of the resident members of the Law Faculty, who sit together for the hearing of causes. The proceedings are conducted upon the hypothesis that certain facts are true, the only questions open to discussion being the principles of law that should be applied to the facts. The student having obtained from the Faculty a statement of facts, is required to prepare pleadings and to draw up a brief in which the principles of law applicable to the case must be clearly stated under appropriate divisions, and sustained by the citation of such authorities as he intends to rely upon in the oral argument. The pleadings are submitted to the professor having in charge the subject of pleading and procedure, who calls attention to such errors as may exist, and gives such practical information as he may deem advisable. The opinions of the court are in writing, and are placed on file in the Law Library for future reference.

The work done in this court both by professors and students has from the first been thorough and exhaustive. It is probable that no other school in the country furnishes the opportunities in this direction that are enjoyed at Cornell. Each member of the last graduating class engaged during his senior year in the preparation and argument of four causes, while the number presented

by each member of the previous class during their last year in the school was six.

It was the purpose of the Trustees in the establishment of the school at Cornell, and has been the constant endeavor of the Faculty, that it should be characterized by the thoroughness of the training afforded. With this end in view, the examinations have been frequent, searching, and comprehensive. The university year is divided into three terms. At the end of each the members of both classes are subjected to oral and written examinations upon the work accomplished. The promotion of a student to full standing in his class at a subsequent term, and his continuance in the school are dependent upon the manner in which he passes such examinations. Furthermore, the Faculty do not hesitate to drop a student from the rolls at any time during the year on becoming satisfied that he is neglecting his work. At the end of the senior year all candidates for graduation are also required to pass satisfactory oral and written examinations on all of the subjects of the course. In the conducting of the written term and final examinations, no departure has been made from the ordinary university methods; but in the oral examinations a scheme has been adopted that is believed to be somewhat novel in law-school work. All oral examinations are conducted in private, no one being present except the professor and the candidate. The scheme in brief is this: each student is examined separately and in private upon each subject by the professor who has given instruction in the subject. It is believed that by this method several desirable results are secured, not the least among which is the opportunity thereby given for a second test of the student's acquirements, under circumstances where it is practically impossible for him to receive outside aid. The plan is also an eminently fair one for the candidate, as it removes the embarrassment that frequently comes from a public oral examination.



MOSES COIT TYLER.

Each member of the senior class who is a candidate for a degree is required to prepare and deposit with the Faculty, at least one month before graduation, a thesis, not less than forty folios in length, upon some legal topic selected by himself and approved by the Faculty. The production must be satisfactory in matter, form, and style; and the student presenting it is examined upon it. Many of the essays prepared in obedience to this requirement have shown a range of investigation and a grasp of legal principles quite unusual in productions of this nature; and at least two out of those prepared by a single class have been accepted for publication, — the one by a leading English, and the other by a prominent American law periodical. The efforts of the students in this direction have probably been stimulated of late by the generosity of a friend of the school, who has given a fund of two thousand dollars, the income of which is devoted each year, under the direction of the Law

Faculty, either for prizes for graduating theses, or for printing theses of special merit, or for both such purposes. The way in which the income is to be applied is determined each year upon the presentation of the theses.

Provision is made for the instruction of law students in elocution and oratory. All or any of the university courses in these subjects are open to members of the school who may elect to take the work.

Students who have received the full course of instruction, performed all regular exercises, and passed the regular examinations, are admitted to the degree of Bachelor of Laws. And those admitted to advanced standing are entitled to all the privileges of the class of which they become members. When a person has been connected with the school for a period not entitling him to graduation, he may, on application to the authorities, receive, instead of a diploma, an official certificate, showing the length of time that he has been in attendance, and the degree of his attainments.

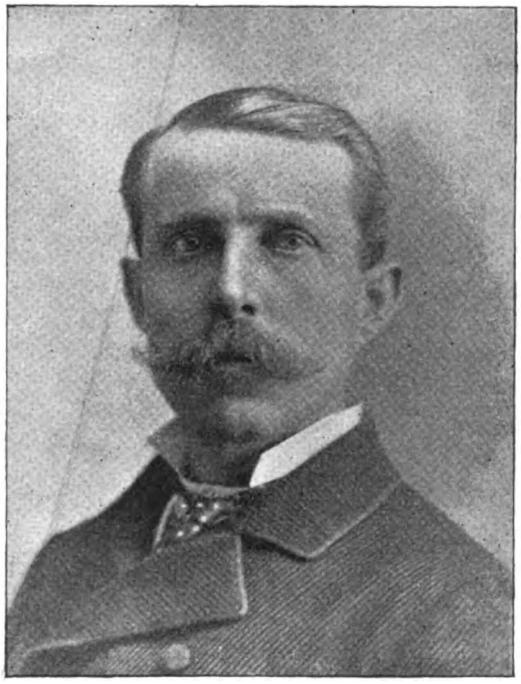
The school was first opened for the admission of students Sept. 23, 1887. The writer will perhaps be pardoned for inserting in this connection the following quotation from the Report of the President of the University for the academic year 1887–1888, in so far as it refers to the School of Law: —

"Among the changes of the year one of the most noteworthy has been the opening of the School of Law. The members of the Board of Trustees will recollect that it was with some solicitude that the first definite steps were taken looking toward the establishment of this school. It is but just, at the end of the first year of instruction, to say that our most sanguine expectations have been most fully realized. The school opened with an enrolment of fifty-five students, eleven of whom, having previously studied law for a considerable length of time, were admitted, on examination, to the senior class. Of these, nine have been successful in passing the examinations at the end of the year for graduation. The school entered, at the very beginning of its existence, upon a vigorous career, and at once showed all the energy of full maturity. In some of its peculiarities the school differs from those established elsewhere in the country. The amount of class instruction per week during the past year has amounted to about fifteen hours, or three lectures or recitations per working day. This is nearly fifty per cent more than is customary, and it is believed is a somewhat greater amount than is given in any of the other schools. The students, moreover, have had unusual facilities for practice in the drawing up of legal papers and the presenting of causes in court. Every member of the senior class has taken active part in the trial of as many as six causes in the course of the year, each cause having been argued before a court consisting of Professors Hutchins, Collins, and Burdick. The proceedings of these trials have been conducted with all the care that would be necessary before one of the State courts; and the final opinions of the court have been written out by one of the judges and left on file in the Law Library for consultation by members of the class. This feature of the school is so unusual, and brings to the students so unusual an experience, that it is in this connection worthy of special mention. By this method every student, before graduation, has an experience which he might be unable to gain during several years of practice at the bar.

The courses given by the non-resident lecturers have been an invaluable feature of the work of this year. They have stimulated the members of the classes, have given valuable opportunity for observing methods of legal investigation and thought pursued by men actively engaged in the courts, and have brought the students into personal contact with several prominent members of the American bar. On all of these courses the students have been regularly examined, and in this way the work of the non-resident lecturers has been closely incorporated into the requirements of the school. In not a few of the law schools of the country the work exacted is somewhat less in amount than is required of university students in other branches of instruction. I am of the opinion, however, that during the past year the most laborious class of students connected with the university has been connected with the School of Law. From every point of view we have reason to congratulate ourselves upon the harmony with which the members of the Faculty have worked together, upon the dili-

gence and success of the students, and upon the high quality of the instruction given. If the future of the school shall equal the promise of its first year, this new department will soon add very greatly to the influence and power of the University."

The attendance of last year was eighty-five, the senior class numbering forty-one and the junior forty-four. Thirty-six were graduated at the last commencement. The attendance of the present year is one hundred and four, divided as follows: graduate students, nine; seniors, thirty-six; juniors, fifty-nine.



HERBERT TUTTLE.

The students in every law school fall necessarily and naturally into two somewhat distinct grades, the one being made up of those who have enjoyed the advantages of a collegiate training, and the other of those who come from the preparatory and the common schools. There are exceptions, of course, but in most cases the extent of a man's preliminary training is speedily seen by the manner in which he masters legal principles. Although the students of both grades at the time of their admission are equally ignorant of the law, yet it is, as a rule, very soon apparent that the graduate is acquiring his profession with much greater facility than his neighbor whose early advantages have been limited. The young man who has come from the common school or the academy may in the end make the better lawyer and possibly the more learned man, but he surely cannot get into the profession so soon or so easily as his college-bred companion. The distinction is recognized by rule of court in New York, and probably in other States, a liberal allowance of time being made in favor of the college graduate. No law school in the country entirely escapes the embarrassment that naturally arises from this difference in preparation. The majority of law-school students are not college-bred, and the amount of work assigned must be within their capacity to master. This state of things results not unfrequently in the graduate student concluding that it is better for him to devote a single year to vigorous work upon a selected course of study in a law school than to remain the full time and take the degree. These difficulties have to a certain extent been met and solved at Cornell through the advantages offered by the close connection between the School of Law and the School of History and Political Science. Special inducements are offered to those desiring to supplement their work in law with studies in the latter school, the courses of which cover a wide range of subjects, embracing among others the various branches of constitutional and political history, as well as the history of political and municipal institutions. It has been provided, by resolution of the Board of Trustees, that any student, who, in addition to his course in the School of Law, shall pursue studies in history and political science, amounting to at least four hours a week during two years, and shall

pass creditably the regular examinations in the same, in addition to the required examinations in the School of Law, may, upon the creditable completion of the course in law, and on the recommendation of the Faculty of Law and the Professors of History and Political Science, be accorded the degree of Bachelor of Laws, *cum laude.*

In obedience to what seemed to be a demand for such action, it was recently determined to provide hereafter opportunities for graduate work in the law, and an announcement to that effect has been made. The scheme proposed involves advanced instruction and study in the following subjects: Contracts, Mercantile Law, Corporations, Railroad Law, Insurance Law, The Law of Real Property, Jurisdiction and Procedure in Equity, Domestic Relations, Admiralty, Roman Law, American Constitutional Law, American Constitutional History, English Constitutional History, English Constitutional Law, Comparative Jurisprudence, General Jurisprudence, Political and Social Science. An extract from the Announcement of the School for 1889–1890, will indicate the nature of the work and how it is to be conducted: —

"Each graduate student at the opening of the university year will be required to select three subjects, to which the work of the year will be devoted. One of these he will designate as his *major* subject. To this he will be expected to give his best energies, making his investigations therein thorough, comprehensive, and exhaustive. To the other subjects, known as *minors*, he will give such attention as his time will permit. It is expected that his work in the minor lines will be of a more general character, and although thorough so far as prosecuted, will be less extended than that given to the major subject. By special permission from the Faculty, a student may devote all his time to one subject. Each student will be under the guidance of the professors in whose departments his subjects lie. He will receive from each full instruction as to the subjects to be investigated and as to the nature and direction of his work, and also such individual assistance as may be needed from time to time during the progress of his studies. Periodical reports and examinations upon work assigned will be required, at which time the professor in charge will go over carefully with the student the ground covered since the last report, making such criticisms and suggestions as may be necessary. In a word, the scheme proposed contemplates independent investigations by the student in the lines chosen, under the immediate direction and supervision of the different members of the Faculty. In addition to the foregoing, each student will be required to prepare a thesis upon some question connected with his *major* subject. This production must be scholarly in character and exhaustive in its subject-matter, and the author must be prepared to defend the positions taken therein. Graduate students will be expected to attend all non-resident courses of lectures given before the school, and in making provision for such courses their needs will be kept specially in view."

It should be added that the course of instruction covers one year; that it is open to the graduate students of this or any law school of recognized standing, and that, if completed in a creditable manner, it leads to the degree of Master of Law.

It is believed that the work proposed will meet the needs, *first*, of those who desire to devote an additional year, under the direction of teachers, to the general study of the law; *secondly*, of those who propose to make a specialty in practice of some particular branch of the law, and who wish to take advanced preparatory work in the line of the specialty chosen; and *thirdly*, of those who have in view the study of the law as a science, and who desire to become familiar with the sources and philosophy of our jurisprudence.

The school is at present housed in Morrill Hall, where an entire floor is given up to the lecture-rooms, the library-rooms, and the offices of the resident professors. While the accommodations have thus far been ample, yet, if the attendance continues to increase, more spacious quarters must be provided. The authorities and the friends of the school realize this; and a building, to

be devoted exclusively to its use, will, without doubt, be erected in the near future.

The Law Library contains at the present time about seven thousand volumes. All sets of reports are kept up to date; and the collection is constantly being enlarged and enriched by additions. The books of this library are at all times accessible to the students of the school, as are the private libraries of the professors, which are located on the same floor. The General Library of the University, which is also open to use by students in the School of Law, contains about ninety-eight thousand seven hundred volumes, besides twenty-six thousand pamphlets. This includes the President-White Library of History and Political Science, containing about thirty thousand volumes and ten thousand pamphlets, presented to the University, in 1887, by ex-President Andrew D. White.

Although young in years, the School of Law of Cornell University must, we think, be regarded as far beyond the experimental stage, and as giving promise of a future that will more than meet the most sanguine expectations of those who were immediately instrumental in its founding.

BARBAROUS LEGAL CUSTOMS.

NO person who has visited the Tower of London can have failed to remark the many instruments of torture now shown there as curiosities; but notwithstanding the opinions of many great lawyers, and among the rest Blackstone, there seems to be very good reason for believing that their use was not always regarded in the same light which it is at the present day. The presence of some of these in the Tower is, indeed, accounted for, they having been brought to England by the Dukes of Exeter and Suffolk, ministers of Henry VI., who made an attempt to introduce the civil law into England; and the rack, which is there still, was called, in derision, "the Duke of Exeter's daughter."

They were, however, used as instruments of law in that reign; for Fuller in his "Worthies" mentions the case of one Hawkins who was then tortured to extort evidence; and some arguments, which show that their use was more general than is usually supposed, may be found in Barrington's "Observations on the Statutes." It is commonly supposed that torture is one of the evils guarded against in Magna Charta, but the only reason for the supposition is Sir Edward Coke's interpretation of a passage in that celebrated statute. The words are that "no free man shall be destroyed except by the legal judgment of his peers or by law." *Nullus liber homo destruatur nisi per legale judicium parium suorum aut per legem terræ.* And "destroyed," according to Sir Edward Coke, means tortured, as well as killed or maimed.

But whether judicial torture, properly so called, was ever a part of the English judicial system or not, there cannot be the least doubt of the existence of a practice just as barbarous, called "peine fort et dure." This, which is vulgarly called "pressing to death," consisted in placing the accused, in case he refused to plead, naked, on his back, with a hollow under his head, in a low dark chamber in the prison, and putting on his body as great a weight as he could bear *and more*, (so ran the sentence), and feeding him, alternately, with the coarsest bread and the most filthy water that could be procured. There are many instances of men having undergone this savage punishment in order to save their estates for the benefit of their children, as they would be forfeited if the prisoner, by pleading, submitted to a trial

and was convicted. The sentence was, originally, that the delinquent should be thus kept "till he pleaded," but it was afterwards altered to pressing "till he died."

Blackstone's very laudable zeal for the purity of the English Constitution leads him into a strange contradiction on the subject. After very justly exposing the absurdity of the theory of the civilians, that judicial torture originated in the mercy of the judges, he gives identically the same reason for this diabolical practice of pressing to death, "that it was intended as a *species of mercy* to the criminal, to deliver him the sooner from his torture!"

This barbarous practice no doubt originated in the avarice of the feudal lords to make the only means by which the accused could save the forfeiture of his lands as frightful as possible. To the honor of the English judges, however, it must be admitted that "peine fort et dure" was never inflicted till every other means of making the prisoner plead had been tried in vain.

It is not generally known that the punishment of sending to the galleys was also once practised in England, as appears from a statute of Elizabeth (48 Eliz. c. 14); and Lord Coke, in his third Institute, mentions it without remarking its being very uncommon. The practice was, probably, discontinued from its inconvenience, as galleys such as were in use in the Mediterranean were unfit for the navigation of English seas. The word "gallimafry," now used to signify a jumble of nonsense, originally meant a meal of coarse victuals such as was given to galley slaves. The nearly synonymous word "hotchpot" (vulgarly, "hotchpotch") is well known to have a similar origin.

Two other barbarous customs which once formed a part of the English law were ordeals and trial by battle. The last instance of the former occurred, it is believed, in King John's reign; though Barrington remarks that a vestige of it was retained in the formal phrase, used by a criminal on his arraignment, when asked how he would be tried; the answer, "by God and my country," being a corruption of "by God *or* my country," that is, by ordeal or by jury. But the equally absurd trial by battle was not abolished until a very much later date. Two instances in which it was attempted to be put in actual practice occurred in the reign of Charles I.

One was an appeal of treason between Lord Rey and Mr. David Ramsay (an account of which appeared in the March number of the "Green Bag"), and the other attempt to have a legal duel was in a civil case (Lilburn *v.* Claxton), and the champions were hired to fight with sand-bags and batons. This was put a stop to by the good sense of the king, who wrote to the judges to prevent it if possible, and the clerk purposely made a mistake in the record so that it could not immediately take place, in consequence of which the parties to the suit seem to have let the matter drop.

From this time it is believed trial by battle was totally disused until revived in the case of a most atrocious murder, a short time before the passing of the statute for its abolition. A man of the name of Thornton had abused and murdered, under circumstances of the greatest aggravation, a girl of the name of Mary Ashford. Though the evidence for the prosecution was supposed to be irresistible, the ingenuity of his counsel saved him, and he was acquitted on the indictment. However, as the public in general had no doubt of his guilt, a plan was entered into to bring the matter forward again, which it was allowable to do by the old form of an appeal of murder, to be prosecuted by William, the brother of Mary Ashford. This was one of the modes of proceeding in which wager of battle had been formerly permitted. Ashford was very weak and delicate, while Thornton was an immensely powerful man; and as there was no doubt of the case going against him if it was brought to a second trial, he availed himself of this antiquated right and challenged the appellant. The judges, though exceedingly

unwilling to allow the right, especially in a case of such atrocity, were obliged to admit that it was still legal; and as it would have been the height of madness in Ashford to accept the challenge of one so much his superior in bodily strength, the murderer was suffered to depart without further molestation. This occurred in the year 1818.

This practice would certainly not have continued so long the letter of the law if the good sense of the nation had not practically discontinued it when the court of chivalry was in its palmy days. Circumstances must, indeed, have frequently occurred to show its utter absurdity. Barrington, in his comments on the Statute, quotes from Grafton's "Chronicle" a story of a citizen of London in the time of Henry VI., who was very tall and strong but a great coward, while his opponent was very short and weak, but whose courage was as great as his body was small. The big man's friends fearing that his little modicum of courage might ooze like Acre's through the points of his fingers on the day of trial, determined to brace him up, and so dosed him with wine that his diminutive antagonist threw him down with ease and beat away until the judges decided the cause in his favor.

In the reign of Henry VIII., Richard Rose, a cook, was *boiled to death* in Smithfield, for poisoning several persons in the family of the Bishop of Rochester; an *ex post facto* act had been passed for this purpose. In 1541 Margaret Davy suffered a "similar death" in Smithfield for poisoning three families with whom she had lived.

Could anything exceed the barbarity of the old punishment of traitors, who were hanged, cut down alive, disembowelled while still living, and then quartered. This sentence was only humanized in the time of George III., by the exertions of Sir Samuel Romilly, which were for a long time baffled by the protest of the crown officers that he was breaking down "the bulwarks of the Constitution." Burning females to death for the crimes of petty and high treason continued to be practised until a comparatively recent date.

The law of imprisonment for debt, which prevailed so long in England, is perhaps the most irrational that ever existed; even the ancient law which made the debtor the slave of the creditor, far excelled it, for by compulsory service the slave might work off his debt, or at least in part; but by the other process this was simply impossible. The purposeless cruelty of imprisonment for debt was demonstrated in 1792, when a woman died in Devon gaol, *after forty-five years' imprisonment* for a debt of £19. And when the Thatched House Society set to work to ransom honest debtors by paying their debts, they in twenty years released 12,590 at a cost of 45*s.* per head.

LEGAL INCIDENTS.

II.

COVERING UP CRIME.

By J. W. Donovan.

"WHEN I was a young man," said Ira Lee to the writer, "I had a lesson in covering up crime that nearly took my life, and has lasted me ever since; and as I look back on that dark and dreary winter night, it seems like a dream of Rider Haggard's, so full is it of terrible tragedy.

"I had kept a little cross-roads store and sold a little cider to my customers for a long time, when one day an evil genius induced me to add beer to my little stock of merchandise, and I bought a small barrel, and began to sell it in large glasses for a sixpence each. One dark cold night about nine a tall coarse-looking stranger entered, and called a second time for beer, and grew boisterous, till finally a third glass was drunk, and he became drowsy and stupid.

"He lived some three miles away, and the road was banked high with snow and dangerous to one in his condition, and I realized it. Finding him almost asleep, and not desiring to turn him out to freeze, I concluded to make up a bed of buffalo robes in the cellar and let him rest till morning.

"I had made his 'bunk' and led him to the cellar-way all right, when he suddenly stumbled and fell head-first down the stairway, striking on his head on the cellar floor at the bottom, where he lay in a lifeless heap, bleeding terribly, with his head curled under him.

"I hurriedly placed him upon the bed, and was about to apply some restoratives when the store-door opened, and I was forced to go up and meet a customer, who stayed and stayed till I thought he never would go, and finally left me.

"Going once more to my man, who lay lifeless and silent, I began to realize the awful risk I was running. Instead of calling in neighbors to explain it, I went right on to create testimony by digging a grave in the cellar for the victim, and when about two feet deep, I luckily struck water, and that ended the cellar burial.

"The store was near Kenka Lake, and I had a good hand-sled, and determined to dump the body in the lake near the steamboat dock where it was not then frozen over. Loading the heavy body on the little sled, I started down a back street for the lake side, leaving a bloody trail all the way for detection. What a journey, what a feeling! How the stars brightened, and the window-curtains seemed to open; how the sled creaked on the frosty snow! How I looked at every corner; how I realized the awful crime of manslaughter! I shall never forget that agony.

"Going down the last hill to the lake, the corpse slid off the sled, and I began to lift it on again. I had placed the body fairly on the runners; but the face hung downward, and in turning it over, which was no easy task, I was startled by the sound, 'What are — you — doing — with — me?' 'Taking you home,' I gasped, as I almost fell prostrate from fright and joy and confusion. In a few minutes more he had revived, and I had cleared myself of a hanging by his coming to life again.

"The motion in the air, the stupor, the limp condition of the body from drink, the roundabout way of covering up crime, saved me, and I may by this lesson save others, from a terrible fate."

The man who told me this incident is living, is married, well-to-do, and no one would dream of his early experience as he now truthfully and freely relates it.

CAUSES CÉLÈBRES.

XI.

HÉLÈNE JÉGADO.

[1851.]

MORAL perversity is something most inexplicable. The contemplation of it fills the reasoning mind with positive terror. A crime committed in the full consciousness of its sinful nature, without appreciable or sufficient interest, often for the sole pleasure of doing wrong, for the simple reason that it is a thing that should not be done, — this is an anomaly which confounds the physician, the magistrate, and the philosopher. And yet, without going so far, perhaps, as murderous perversity, who will deny the inclination of human nature to violate the law for the simple reason that it is the law and that it is right that it should be the law? The spirit of revolt is contemporaneous with the soul itself.

It remains, therefore, to ascertain to just what point, in certain natures, responsibility survives the irresistible impulse which draws one toward evil. That is the question which addresses itself in such a case, not to society, which in the presence of such monsters thinks only of defending itself, but to the calm, dispassionate mind, which approaches it as a most delicate and most terrible moral problem.

The trial of Hélène Jégado presents this problem, but does not solve it. Here is a girl who during a long series of years patiently, persistently, and constantly devoted to death all those whom she approached; who in cold blood, without the slightest apparent reason in most of the cases, poisoned more than thirty persons. What is the right, what is the duty, of society in the presence of such a monster? Is not this frightful perversity insanity; and if it is lawful to put a madman under surveillance, has one the right to punish him? Science hesitates in this case, as it always does when it meets a moral problem. Justice speaks in a loud clear tone, as it should always do when the irresponsibility of an accused is not clearly evident. The philosopher would not, perhaps, decide as the magistrate, but he would not be confounded and hesitate as the physician. Without pretending to sound the impenetrable mysteries of human intelligence, he would show the vanity of these unequal struggles between Science and Justice; and without solving this or that particular problem, he would strive to show what principal cause of error obscures, even in our day, the general problem of human responsibility before the law.

. . . . .

On Tuesday, the 1st of July, 1851, two eminent physicians of Rennes, Doctors Pinault and Baudoin, presented themselves at the office of the Procureur-général; and one of them, M. Pinault, made the following declaration: "For a long time I have had a feeling, not of remorse, but of doubt and uncertainty, concerning the death of a girl named Rose Tessier, who was a domestic in the family of M. Bidard. I suspected at the time a case of poisoning. With my brother Baudoin, I have just been attending another servant in the same house, a girl named Rosalie Sarrazin; and she, who died with the same symptoms which I observed in the first case, has certainly been poisoned, — my *confrère* and I are convinced of that. Even if no traces of poison should be found in the organs, we should nevertheless remain firm in our conviction."

A few moments later the authorities repaired to M. Bidard's house. "We have come upon a painful mission," said the magistrate to the proprietor. "One of your servants has just died, and the physicians believe that she was poisoned."

"I am innocent!" cried at once Hélène Jégado, M. Bidard's cook.

"Innocent of what?" asked the magistrate; "no one has accused you of anything."

It was necessary, upon this significant response and upon the suspicion, so formally expressed, of the two doctors, to investigate the past life of Hélène Jégado. The following facts were developed by the first researches.

On the 7th of November, 1850, one of the domestics of M. Bidard, professor of law at Rennes, died after the most cruel sufferings. The malady of this girl was accompanied by severe vomitings and terminated in convulsions. The physicians called to attend her could explain her death only on one of these two theories, — a rupture of the diaphragm or poison.

This last supposition did not appear admissible, and the physicians did not wish even to insinuate the possibility that a crime had been committed.

Rose Tessier — that was the name of the poor girl who had succumbed — was replaced by another servant, a girl named Françoise Huriaux. She found herself, as Rose Tessier had done, associated in M. Bidard's house with another domestic, Hélène Jégado.

Françoise Huriaux had been but a short time in this house when she herself was struck down by a malady, which in its symptoms closely resembled that of Rose Tessier. Fortunately for herself, she imdiately threw up her situation, and once outside of M. Bidard's house she speedily recovered.

Rosalie Sarrazin succeeded her in May, 1851; it was this young girl, scarcely nineteen years old, full of health and vigor, who had just died, on the 1st of July, after several days of atrocious sufferings. The physicians, struck by the similarity of the symptoms in her case to those to which Rose Tessier had succumbed, did not hesitate this time to assert that these two deaths were the result of poisoning by means of some irritating substance, like arsenic; and they felt it their duty at once to inform the authorities.

Hélène had alone cared for these two sick girls, and had prepared their food and medicine; other circumstances also served to increase the suspicions of justice, and she was immediately arrested.

Scarcely had the report of her arrest and the nature of the crimes attributed to her been noised abroad in the department of Morbihan, where she was born, and where she had been in service for a long time, than sinister reports were circulated on every side. It was recalled that numerous deaths had, so to speak, marked her passage in all the houses where she had sojourned, and the belief spread that all of these deaths, or at least the greater part of them, the cause of which had hitherto remained a mystery, might also have been the result of poison.

Paying no attention to the energetic denials of Hélène, the authorities entered upon an active and searching investigation. The entire past life of Hélène was submitted to a severe scrutiny. A long examination, skilfully directed, followed with the minutest care, led to the discovery of a frightful series of crimes committed with a *sang-froid*, an audacity, and a perversity, the mere thought of which makes human reason stand aghast with horror.

Hélène Jégado was born at Plouhinec in 1803. An orphan at the age of seven years, she was received by the Curé of Bubry, M. Riallan, in whose house two of her aunts were servants. After a sojourn of seventeen years in this village, she accompanied one of her aunts to Seglien, where she entered the service of the Curé, M. Conan. An inclination for evil had already developed itself in Hélène Jégado; while in the Curé's house grains of hemp were found in a soup prepared by her.

In 1833 Hélène obtained a situation with M. Le Drogo, a priest, at Guern. In this house, in three months, from the 28th of June to the 3d of October, seven persons

died, — among the number, Anna Jégado, a sister of Hélène, the father and mother of the priest, and M. Le Drogo himself. This last, notwithstanding his robust constitution, was carried off in thirty-two hours.

All these persons died after enduring the most frightful sufferings. All had eaten food prepared by Hélène, and had been cared for by her during their last moments. After each death Hélène had manifested the most poignant grief, constantly repeating, "*This will not be the last!*" In fact, two deaths followed that of M. Le Drogo.

So many sudden deaths ought to have aroused suspicion; and yet only one body was examined, that of M. Le Drogo. In this case one doctor ascribed his death to perfectly natural causes, but another suspected a poisoning. Hélène, however, exhibited in her conduct such an exemplary piety that he did not dare to insist.

Hélène then returned to Bubry, where she found a situation with M. Lorho. There, again, three persons died in three months, and all these deaths were preceded by the same symptoms already observed at Guern. Hélène had cared for all three of these victims; she had passed whole nights at their bedside.

Leaving Bubry, Hélène then went to Locminé, where, after passing three days at the priest's house, she was engaged as a servant by Marie-Jeanne Leboucher. Two new deaths followed her entrance into this last position, — the widow Leboucher and one of her daughters. A son, Pierre Leboucher, also fell ill; but as he had taken an aversion to Hélène, he refused to allow her to attend him, and he consequently recovered. Hélène at once left the house, saying: "I fear that public opinion will accuse me of all these deaths. Everywhere I go, death follows me."

A widow lady named Lorey then received her into her family. Still another death! The widow Lorey, so the witnesses said, partook of soup prepared by Hélène, vomited and died. The mother of the deceased, the widow Cadic, arrived the next day. Hélène threw herself upon her neck: "My poor friend," she exclaimed, "I am so unhappy! Everywhere I go, at Seglien, at Guern, at Bubry, at the Lebouchers' house, they all die!"

Hélène was right; in less than eighteen months thirteen tombs had already opened and closed behind her, and others were still to open.

On the 9th of May, 1835, Hélène entered the service of Madame Toussaint at Locminé. There four new deaths speedily followed her arrival, and she was at once driven from the house by a son of Madame Toussaint, who had heard the rumors of the deaths which had previously followed her steps.

Hélène then repaired to the convent of the *Père-Éternel* at Auray. Admitted as a *pensionnaire*, she was shortly afterward sent away, upon the accusation of having maliciously mutilated the garments of the pupils. The acts which were imputed to her ceased at once upon her departure.

On leaving the convent, Hélène found a position with an old lady named Anne Lecorvec. This unfortunate woman died in two days after eating soup prepared by Hélène. "Ah!" exclaimed the latter to a niece of Anne Lecorvec, "I bring misfortune; wherever I go, the masters and mistresses die!" She departed from this house on the day of the funeral.

One Anne Lefur, at Pluneret, was the next mistress of this undesirable servant. Hélène remained with her about a month, manifesting during this time a deep interest in religion. Anne Lefur, who was in excellent health, suddenly became very ill after drinking a preparation recommended by Hélène. For some reason or other Hélène abandoned this patient and returned to Auray. Anne Lefur recovered her health as soon as she escaped from Hélène's care.

Hélène then entered the service of one Madame Hertel at Auray, but she remained there only a few days. M. le Doré, a son-in-law of Madame Hertel, having learned the

reason of her dismissal from the convent, expelled her from the house. It was already too late; Madame Hertel, seized with vomitings after eating some meat prepared by Hélène, died a few days after her departure.

Hélène could find no other situation in Auray. She went to Pontivy, and engaged herself as cook to one M. Jouanno. She had been only a few months in his employ when Émile Jouanno, aged fourteen, died of an illness which lasted only five days, and which was characterized by vomitings and convulsions. The autopsy revealed an inflamed stomach, but as the child was in the habit of drinking vinegar, the physician ascribed to this pernicious beverage the disorders shown by the autopsy.

Hélène was, nevertheless, dismissed by her master. She then entered the family of M. Kérallic, at Hennebon. M. Kérallic was just recovering from an intermittent fever. A cup of tea prepared by Hélène was followed by a relapse. Hélène alone cared for the sick man, who expired in a few days. This was in 1836.

Toward the end of 1839 we find Hélène in the service of one Madame Veron. Here there was still another death preceded by vomiting.

In the month of March, 1841, Hélène entered the service of M. Dupuy at Lorient. M. Breger, a son-in-law, who lived in the same house with his family, presently lost his little daughter two years and a half old. The very next day Madame Breger, M. Dupuy, M. Breger, and in fact all the members of the family, were seized with vomiting. All these persons escaped death; but for some of them the consequences were very serious.

Forced to abandon Lorient, Hélène went to Port-Louis to the house of a M. Duperron. There she was accused of having stolen a dress belonging to a relative of M. Duperron.

Twenty-three deaths, five serious illnesses, several thefts, — for others were discovered later, — such was the terrible list of crimes which the investigation revealed against Hélène, during the period between 1833 and 1841. But all these crimes were covered by the Statute of Limitations, and Hélène could be called to account for them only to God and to her conscience.

Here commences a new series of crimes of which, fortunately, justice could take cognizance.

In March, 1848, Hélène took up her residence at Rennes. Her predisposition to evil still continued to manifest itself, and the several families in which she lived were the victims of numerous thefts. But if she was guilty of robbery, Hélène had not escaped the frightful fatality which sowed death about her path. Three deaths and many illnesses made up the record to the time that she entered the service of M. Bidard. We have already related the new deaths which marked her stay in this house.

Hélène, however, persisted in denying all the facts as to these deaths by poison which were imputed to her. "I do not know what arsenic is," she repeated constantly; "no one can say that he ever saw any in my possession." No witness, in fact, appeared to deny this assertion. In vain science asserted the presence of arsenic in the bodies of her victim; the authorities could not discover where Hélène had procured this substance. It certainly was not at Rennes; the most active searches failed to reveal the slightest clew. Was it not, probable, then, that she had had it in her possession for a long time, and that, on the first suspicion of which she had been the object, she had made disappear all traces of it? This supposition was all the more admissible, since at Locminé, where seven deaths had signalled her passage, there had been found in a box, which she had used, three packages, one of which contained *a white powder like gum-arabic.*

The Court of Appeals at Rennes sent Hélène Jégado before the Court of Assizes of Ille-et-Vilaine, under the accusation of having committed eleven robberies, three poi-

sonings, and three attempts at poisoning. Twenty-three poisonings, five attempts, several robberies, which dated back more than ten years, were disregarded, they being covered by legal limitation.

On the 6th of December, 1851, the trial began. The facts already known to the reader were fully established, but Hélène Jégado, from beginning to end, still persisted in her denials and her assertions of innocence. In response to a question she exclaimed: —

"This is how my kindness is recompensed. I lost my health in nursing them. Oh! if the good God permits me again to find myself beside a sick person, I will give him nothing, even if he were about to die! This is how all my kindness is recompensed!"

Hélène was skilfully defended by M. Dorange, the defence of course being "monomania." The medical testimony in the case as to her mental condition was exceedingly conflicting, and he failed to convince the jury, who after a short deliberation brought in a verdict of guilty, and Hélène Jégado was sentenced to death.

We will pass rapidly over the details of the expiation. The interest is not in the material act of legal vengeance; we must seek it in the monstrous subject, in this psychological and physiological enigma. Hélène Jégado remained to the end that which she had been to her defenders and her judges, a mystery of perversity. Upon the scaffold, a few moments before appearing before her God, having for auditors only the executioner and the officers of the law, faithful to the habits of her whole life, she accused of having counselled the crimes, and of being an accomplice in them, a woman whose name had not even been mentioned in the trial. No attention was paid to these last words, and human justice was meted out to the condemned. When the Procureur-général was informed of this revelation, he was indignant that it had not been made known to him at the time; but when he investigated the matter, he found that the person designated by Hélène was a poor old paralytic woman, whose whole life had been exemplary, and who was revered as a saint by all who knew her.

The great question underlying this trial of Hélène Jégado is that of the punishment of death. This punishment, absolute and irremediable, is an instrument disproportionate to our human weakness. It exceeds the right of man, and man who applies it is crushed by the slightest doubt which arises as to the real responsibility of him whom he kills. That which constitutes the terrible doubt, in a case like the present, that which divides men of science and men of law in their opinions, is not so much the responsibility of the monster as *the barbarism of the scaffold.* Do away with the punishment of death, and all doubt will disappear. The right which society has to drive from its ranks a dangerous being will no longer be contested when it becomes a question of the social suppression in place of the capital punishment of the condemned.

CHINESE JUSTICE.

Scenes in a Canton Court-room.

IT was in Canton, a city like no other Chinese city I have seen, a colossal human ant-hill, an endless labyrinth of streets a dozen feet wide and a score high, crowded from daylight to dark with a double stream of men and women, exactly like the double stream between an ant-hill and a carcass. All this mass of humanity is presided over by the most foreigner-hating viceroy in China, and therefore it may be imagined what is the temper of the populace, especially as the Cantonese are the most turbulent people of the Flowery Kingdom.

During the day the streets of Canton are in semi-obscurity, as they are closed in at the top by broad strips of cloth and long advertising streamers, but at night they are as black as Tartarus. Public safety and order are supposed to be preserved by occasional posts of soldiers, with a collection of weapons and instruments of torture hung up outside to strike terror into the evilly disposed. But, as may be imagined, crime of every kind is rife in Canton; and so bad is the reputation of the place that very often a servant from another part of China, travelling with his master, will rather forfeit his situation than accompany him there. And where the crime is, there is the punishment too. It by no means follows in China that the person punished is the criminal, but there is enough cruelty in Canton to glut an Alva. Respect for the presence of an occasional foreigner causes a good deal of it to be hid, and the spectacle of a man hung up in a cage to starve to death in public is not a common one there, as it is in other parts. But I think I can describe enough to satisfy you.

The magistrate sat in his yamen, dispensing justice. He was a benevolent-looking man of perhaps forty, with an intellectual forehead and an enormous pair of spectacles. He glanced up at us as we entered, visibly annoyed at the intrusion and hardly returning our salutation. But as we were under the wing of a consul for whom Chinese officialdom has no terrors whatever, a fact of which the Cantonese authorities have had repeated experience, we made ourselves quite at home. There was little of the pomp of Western law in the scene before us. The magistrate's own chair, draped with red cloth covered with inscriptions in large characters, was almost the only piece of official apparatus, and behind it were grouped half-a-dozen of the big red presentation umbrellas of which every Chinese official is so proud. Before him were a large open space and a motley crowd, in which the most conspicuous figures were the filthy blackguards in red hats, known as "Yamen runners," whose business is to clear a way before their master in the streets, and do anything else that he wishes, down to the administration of torture. The magistrate himself sat perfectly silent, writing busily, while several persons before him gabbled all at the same time. These were presumably the plaintiff, the defendant, and the policeman. After a while the magistrate interrupted one of the speakers with a monosyllable spoken in a low tone without even raising his head, but the effect was magical. The crowd fell back, and one of the little group in front of the chair wrung his hands and heaved a theatrical sigh. Before we could realize what had happened, half-a-dozen pairs of very willing hands were helping him to let down his trousers, and when this was accomplished to the satisfaction of everybody he laid himself face downward on the floor. Then one of the "runners" stepped forward with the bamboo, a strip of this toughest of plants, three feet long, two inches wide, and half an inch thick. Squatting by the side of the victim,

and holding the bamboo perfectly horizontal, close to the flesh, he began to rain light blows on the man's buttocks. At first the performance looked like a farce, the blows were so light and the receiver of them so indifferent. But as the shower of taps continued with monotonous persistence, I bethought me of the old fiendish torture of driving a man mad by letting a drop of water fall every minute on his shaved head. After a few more minutes of the machine-like rap-tap-tap, rap-tap-tap, a deep groan broke from the prisoner's lips. I walked over to look at him, and saw that his flesh was blue under the flogging. Then it became congested with blood, and, whereas at first he had lain quiet of his own accord, now a dozen men were holding him tight. The crowd gazed at him with broad grins on their faces, breaking out from time to time into a suppressed "Hi-yah" as he writhed in special pain or cried out in agony. And all this time the ceaseless shower of blows continued, the man who wielded the bamboo putting not a particle more force into the last stroke than into the first. At length the magistrate dropped another word, and the torture stopped as suddenly as it had begun, the prisoner was lifted to his feet and led across the court to lean against the wall. For obvious reasons he could not be "accommodated with a chair."

The next person to be called up was a policeman. The magistrate put a question or two to him, and listened patiently for a while to his rambling and effusive replies. Then, as before, the fatal monosyllable dropped from his lips. With the greatest promptitude the policeman prepared himself, assumed the regulation attitude, and the flagellation began again. But I noticed that the blows sounded altogether different from before, much sharper and shriller, like wood falling upon wood rather than wood falling upon flesh. So I drew near to examine. Sure enough, there was a vital difference. The policeman had attached a small piece of wood to his leg by means of wax, and on this the blows fell, taking no more effect upon his person than if they had been delivered upon the sole of his boot. The fraud was perfectly transparent; everybody in the room, including the magistrate himself, must have known what was happening. Thus another peculiarity of Chinese justice is evidently that the punishment of an ordinary offender is one thing, while that of an erring official is quite another. I learned that the policeman was ordered to be bambooed for not bringing in a prisoner whom the magistrate had ordered him to produce. When the sham punishment was over he jumped briskly to his feet, adjusted his clothing, and resumed his duties about the court.

While we had been watching the process of "eating bamboo," far different punishments were going on in another part of the court-room, unnoticed by us. The bamboo is not so very far removed from still existent civilized deterrent methods, but what was now before us recalled the most brutal ages. In one corner a man had been tied hand and foot on a small bench the length of his back in such a manner that his body was bent as far back as it could possibly be stretched in the form of a circle, his back resting on the flat seat of the bench, and his arms and legs fastened to the four legs. Then the whole affair, man and bench, had been tilted forward till it rested upon two feet and upon the man's two knees, almost falling over, — almost, but not quite. The position of the miserable wretch was as grotesque as it was exquisitely painful; his hands and feet were blue, his eyes protruded, his mouth gasped convulsively like a dying fish, and he had evidently been in that position so long that he was on the eve of losing consciousness. And he was apparently forgotten. A few boys stood gazing at him open-mouthed, but nobody else paid any more attention to him than if he had been a piece of furniture. This was enough for my companions, and they left the room. But how is the Western World to know what the Celestial Empire really is, unless people are willing to see and

hear of its innumerable horrors? The utterly mistaken notion of China which is so widespread at home is due in great part to this very unwillingness to look straight in the face what a French writer has so well called the "rotten East."

In another corner an unfortunate creature was undergoing the punishment called "kneeling on chains." A thin, strong cord had been fastened to his thumbs and great toes, and passed over a hook in an upright post. Then, by pulling it sufficiently, he was of course lifted off the ground, his knees being the lowest part of his body. Under them a small chain, with sharp-edged links, had next been coiled in a circle, as a natty sailor coils a rope on the deck. The cord had then been slackened till the whole weight of the man rested upon his knees, and his knees rested upon the chain. The process seems simple, but the result is awful. And this man had been undergoing a prolonged course of torture. Among other things, his ankle-bones had been cracked by being hammered with a piece of wood shaped like a child's cricket bat. His tortures ended for the moment while we were looking at him. Two attendants loosened the cord, and he fell in a heap. They rolled him off the chain and set him on his feet. The moment they let go he sank like a half-filled sack. So they stretched him out on the floor, and each of them rubbed one of his knees vigorously for a couple of minutes. But it was of no use; he was utterly incapable of even standing, and had to be dragged away.

As we passed out, a woman was before the magistrate, giving evidence. Her testimony, however, was either not true enough or not prompt enough, in the official's opinion, for he had recourse to the "truth-compeller." This is a pleasing little instrument, reserved exclusively for the fair sex, shaped exactly like the thick sole of a slipper, split on the sole part, and fastened at the heel. With this the witness received a slap across the mouth which rang out like a pistol-shot.

It is only fair to add that the Chinese have a sort of rational theory of torture, although they are far from adhering to it. By Chinese law no prisoner can be punished until he has confessed his guilt. Therefore they first prove him guilty, and then torture him until he confesses the accuracy of their verdict. The more you reflect on this logic, the more surprising it becomes. To assist in its comprehension I procured, by the aid of the consul and a couple of dollars, a complete set of instruments of torture, — light bamboo, heavy bamboo, ankle-smasher, mouth-slapper, thumb-squeezer, and sundry others. — Henry Norman, *in the Boston Herald.*

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.

THE first few months of the existence of a magazine are always an experimental stage. To please a host of readers of different tastes and desires is no easy task. One wishes one thing, and another prefers something very different. The Editor of the "Green Bag" has often felt that if he could only get a friendly word of advice or an expression of the likes and dislikes of those whom he is striving to please, his task would be greatly lightened. However, he has tried to do his best to entertain and amuse those to whom the magazine goes from month to month; and the expressions of opinion from his readers have been so uniformly kindly and encouraging that he feels that his labor has not been in vain, and that the "Green Bag" has proved a source of real entertainment to his legal brethren. The Editor, however, desires to say right here, "If you don't find what you want, ask for it; and if it can be done, he will endeavor to conform to your desires."

As we are drawing toward the close of our first volume, our readers may, perhaps, feel an interest in knowing what we propose to offer for their edification during the coming year.

Upon the completion of the series of articles upon the Law Schools, we intend to commence a series upon the Courts, which will include the Supreme Court of the United States, illustrated with portraits of the past Chief-Justices and the present bench; the several United States Circuit Courts, with portraits of the present judges and eminent judges who have been connected with them in the past; the Supreme Courts of the different States, with portraits of the past Chief-Justices and the present bench of each. Besides these, other illustrated articles will from time to time appear, among which we hope to number a series on the Bars of our principal cities, with portraits of leading lawyers connected therewith. The series of Causes Célèbres will be continued, and also the short biographical sketches, with full-page portraits. The other contents will be made up, as now, of short, bright, interesting articles upon legal subjects.

The continued success of the magazine will depend, to a great extent, upon the interest and hearty co-operation of its friends; and the Editor trusts that all those who can will send in short articles upon subjects of interest to the profession, and anything in the way of good stories or facetiæ that they may run across.

FOR the material for the brief sketch of Jeremiah Mason in this number, we are largely indebted to an article written by Clement Hugh Hill, Esq., in the January number of the "American Law Review," 1878.

OUR "anonymous" Philadelphia correspondent sends another communication which we are sure will be read with much interest. It is as follows: —

Editor of the "Green Bag," —

A copy of the September number of your "useless but entertaining magazine for lawyers" having been handed to a young lawyer of ability, — a near relative, by the way, of a most distinguished jurist and who at one time was in the cabinet of the nation, — and his attention having been called to the communication commenting deprecatingly upon the fact that so many lawyers gave more of their attention to the hunting up of court decisions than to examining and investigating the legal principles which underlie and produce them, astonished your correspondent by replying that this was "an utilitarian age, — that it was the day of case lawyers," — and then going into an argument to show that the standard English works which have from the foundation of our country been used as text-books, both by the student and the practitioner, are no longer desirable or useful for the American student. He seemed to regard a general knowledge of American decisions as all that was

necessary for a complete legal education and success in the profession. It may well be imagined that the thought came speedily to your correspondent that the lawyer had not spoken the opinions held by his relative during his lifetime, and that the mantle of legal learning of the latter had not fallen upon him.

Without entering upon an argument to prove that the mere having of the memory stored with a mass of points and cases is not evidence of a thorough legal education, — for to those who have a higher and better idea as to the requisites of such an education, this would be both "useless" and unentertaining, — your correspondent has thought that a word or two upon the subject might meet with your approval.

No doubt these case-lawyers, as they are called, would be as much delighted as those anxious to enter the profession without having undergone a preparatory course of study, were the efforts being made here and there to reduce the number of forms of action, change the rules of pleading and practice, and to build up a new and "simplified" code of jurisprudence, to prove a success; for much labor and study would not be required of the lawyer, intellectual qualifications would not be requisite, and of course there would be no necessity of studying the rise and formation of the common law of England, which at present is the substratum of the jurisprudence of all the States of this Union, with but two or three exceptions. Intellectual and reasoning powers would not be required in the work of hunting up decisions, whilst business would be increased from the numberless decisions which would be made necessary under the new and changed conditions of the law. The case-lawyer would certainly be in his element.

It must be admitted that there is quite a prevalent and growing idea among the younger members of the profession, that it is not essential to devote any portion of their time to the continued study of the text of the acknowledged standard works. With their admission to the bar, they deem their education completed, and hence conceive that no more labor devolves upon them than that of looking up court decisions whenever cases are placed in their charge. At such times no question of law occurs to them beyond that relating to the form of action to be brought; but search is at once made for some decision upon a similar case or one which seems to possess similarity; and the finding of such a decision is regarded as completing the principal part of their preparation for trial. In many cases, too, the form of action as revealed in the decision is adopted as a guide. To their mind, the decision of the court makes the law; not the law, the decision. How frequently has it happened that in the argument of a case and at the moment of quoting a decision, when questions have been propounded by the court, lawyers such as these have been overwhelmed with discomfiture at being compelled to betray their own ignorance. As a rule, case-lawyers are exceedingly weak in discerning or discovering what are nice distinctions in law, and what are the fine legal points in a case. This faculty can only be possessed by the lawyer of thorough legal training, of experience, and who has devoted not only years of a student's life but those of a practitioner, to a laborious and careful study "of the principles that rule in all departments of the science." On the other hand, the case-lawyer will generally be found to be the hastily made lawyer, and of the class who "mistake the smattering of knowledge which they have picked up for profound acquirements." The lawyer whose education has been limited to the knowledge gained only from American text-books — and here your correspondent uses the word "text" advisedly — cannot be said to possess a sound and thorough legal education. Of necessity, he will have obtained but a scant knowledge of the common law of England, which undoubtedly is the substratum of American jurisprudence, and of which an eminent American chief-justice said, "It is one of the noblest properties of this common law, that instead of moulding the habits, the manners, and the transactions of mankind to inflexible rules, it adapts itself to the business and circumstances of the times, and keeps pace with the improvements of the age;" and of which another distinguished American chief-justice has said, "It is to be considered as the obedient and useful handmaid who in her place and sphere has facilitated progress and smoothed the way of national prosperity." He will have but a stinted knowledge of the departments of both Pleading and Evidence, to say nothing of the original sources and the fundamental principles of all law. He may consider himself versed in American constitutional law, but had he, as preliminary to the study of a Kent or a Story, taken up such works as those of Paley, Vattel, and of Miller and Hallam on the English Constitution, his knowledge would have been increased, and American law appeared in a new and improved light. As "a sound and thoroughly learned bar is of vast importance to the public, a sound legal education is proportionally important." Lawyers with such an education are not likely to become merely case-lawyers who conduct their practice by reference to indexes rather than to the text of standard works.

ERRATA. — It is a pity that the delicate little pun of our kind friend, Prof. Wm. G. Hammond, should have been spoiled by a typographical error in our October number. In his greeting to the "Green Bag," the word *viveat* was substituted for *vireat*. His words should read *vireat viridis baga!*

It was also anything but gratifying to the Editor to find that the type had made him say that he "should feel fully *gratified* in blowing his own trumpet." He now desires to justify himself by stating that the word *justified* would have better expressed his sentiments.

LEGAL ANTIQUITIES.

NOTARIES have existed as public officers from a period of remote antiquity, though their office and duties were not similar to those of the present day. In early times, when writing was known by very few, it was natural that a demand should exist for a class of officers who were able to prepare and attest a written instrument embodying the terms of a contract. We find them described under various names in ancient history, but the generic term applicable to all such persons was *Scribæ*. Gradually their functions were extended, but their acts were not accorded full public authenticity until the time of Charlemagne. In one of his capitularies in the year 803, he desired his deputies to nominate notaries in every place, and in 805 he obliged every bishop, abbot, and count to have each a notary. In England, notaries exercised their powers before the Norman Conquest, and at a very early period these officers were employed to attest or authenticate instruments of more than ordinary importance and solemnity. In Shakspeare's time, the custom of executing instruments of a solemn nature before a notary was well established, as is shown by the following passage from the "Merchant of Venice" (Act i. scene 3): —

"SHYLOCK. This kindness will I show; go with me to a notary, seal me there your single bond.

"ANTONIO. Yes, Shylock, I will seal unto this bond.

"SHYLOCK. Then meet me forthwith at the notary's."

Banking Law Journal.

BENTHAM, in his "Principles of Legislation," would have it that no law should be passed without a proper preamble, but it may be doubted whether most of those prefixed to the older English enactments would have been recognized by Bentham as "proper preambles." Take, for instance, the curious *proœmium* to the Act granting a subsidy to Henry VIII., in the thirty-seventh year of his reign: —

"Whereas, We, the people of this realm, have, for the most part of us, so lived under his Majestie's sure protection, and yet so live, out of all fear and danger as if there were no warre at all, even as small fishes of the sea, in the most tempestuous and Stormie weather, doe lie quietly under the rock or brookside, and are not moved with the surges of the water, nor stirred out of their quiet place, however the wind bleweth," etc.

In the first year of the following reign we meet with another florid recital, in a statute repealing treasons and felonies: —

"That subjects should rather obey from the love of their princes than from dread of severe laws; that, as in tempest or winter one course and government is convenient, and in calm or more warm weather a more liberal care or lighter garments both may and ought to be followed and used, so it is likewise necessary to alter the laws according to the times."

Indeed, the statute book overflows with strange and quaint materials of this kind.

FACETIÆ.

[THIS column of the "Green Bag" has been used freely by our contemporaries in search of material for "jokes" and "humors of the law," and the Editor has been pleased to see that his selection of "Facetiæ" has been deemed worthy of so extended a circulation. We claim no originality for these anecdotes, except in a few cases, and our brother editors are heartily welcome to use them as they choose. We have, however, made it a point to credit other legal journals with anything taken from their columns; and if other journalists would reciprocate by kindly crediting the "Green Bag" with what is taken from its pages, it would be only a courteous recognition of the many hours spent by the Editor in digging and delving for good stories to amuse and entertain our readers.]

BARON ALDERSON once tried a civil action in which the plaintiff had had his ribs broken and his skull fractured by the defendant. The facts

were unanswerable, and the jury found a verdict for the plaintiff with one pound damages. "We won't try any more causes with this jury," said the Baron; "call another." And as they left the box he quietly added, "Go home, gentlemen; and as you value your heads and ribs at one pound, I hope you may find some liberal purchasers on your journey!"

JUDGE KENT, the well-known jurist, presided in a case in which a man was indicted for burglary; and the evidence at the trial showed that the burglary consisted in his cutting a hole through a tent in which several persons were sleeping, and then projecting his head and arm through the hole and abstracting various articles of value.

It was claimed by his counsel that inasmuch as he never entered into the tent with his whole body, he had not committed the offence charged, and must therefore be set at liberty.

In reply to this plea, the judge told the jury that if they were not satisfied that the whole man was involved in the crime, they might bring in a verdict of guilty against so much of him as was involved.

The jury, after a brief consultation, found the right arm, the right shoulder, and the head of the prisoner guilty of the offence of burglary. The judge accordingly sentenced the right arm, the right shoulder, and the head to imprisonment with hard labor in the state-prison for two years, remarking that *as to the rest of the man's body, he might do with it as he pleased.*

DEFENDANT. Now, Docthor, by vartue of your oath, didn't I say, "Kill or cure, Docthor, I 'll give you a guinea"? and didn't you say, "Kill or cure, I 'll take it"?

DOCTOR. You did; and I agreed to the bargain, and I want the guinea accordingly.

DEFENDANT. Now, Docthor, by vartue of your oath answer this: Did you cure my wife?

DOCTOR. No; she 's dead. You know that.

DEFENDANT. Then, Docthor, by vartue of your oath answer this: Did you kill my wife?

DOCTOR. No; she died of her illness.

DEFENDANT (*triumphantly to the bench*). Your Worship, see this. You heard him tell our bargain, — it was to kill or cure. By vartue of his oath, *he done neither*, and he axes his fee!

BARON POLLOCK has a strong aversion to trying cases which involve questions of accounting. The other day, in opening a case before his lordship, the counsel for the plaintiff mentioned that his client's husband had gone to "his long account." The learned judge pricked up his ears at once. "What is that?" he exclaimed, — "a long account? I am not going to try a question of account. I shall refer this case." Counsel had to explain, in order to avoid an instant remit. — *Irish Law Times.*

ONE of the wittiest as well as one of the most brilliant men Pennsylvania has produced was the late George W. Barton, of Philadelphia. Trying a case before a judge who was chiefly remarkable for obtuseness, he took occasion to say that he had often seen a great ass in judicial robes.

"You speak from experience, I suppose," was the angry retort.

"Not at all," replied Judge Barton; "I am speaking directly from observation."

AT the opening of a term of court in —— County, Maine, a young clergyman was called upon to act as chaplain, who concluded his prayer with this supplication: "And finally may we all be gathered in that happy land where there are no courts, no lawyers, and no judges."

SIR WILLIAM MAULE once said: "People talk about a man and his wife being one. It is all nonsense. I do not believe that under the most favorable circumstances they can be considered less than two. For instance, if a man murders his wife, did ever anybody hear of his having committed suicide?"

"PRISONER at the bar," said the judge to a man on his trial for murder, "is there anything you wish to say before sentence is passed upon you?"

"Judge," replied the prisoner, "there has been altogether too much said already. I knew all along somebody would get hurt, if these people did n't keep their mouths shut. It might as well be me, perhaps, as anybody else. Drive on, Judge, and give me as little sentiment as you can get along on. I can stand hanging, but I hate gush."

No one ever encountered a harsh word from Baron Cleasby, when he was on the Bench, except that he had a way of sternly rebuking prisoners for the enormity of their crimes and finishing with a ridiculously small sentence. "You are one of the worst men I ever tried," Cleasby would say, "and the sentence of the Court is that you be imprisoned one month." — *Bench and Bar.*

"MR. ROBINSON," said counsel, "you say that you once officiated in a pulpit. Do you mean that you preached?"

"No, sir; I held the candle for the man who did."

"Ah! the Court understood you differently; they supposed that the discourse came from you."

"No, sir, I only throwed a light on it."

"GENTLEMEN of the jury," said an Irish barrister, "it will be for you to say whether this defendant shall be allowed to come into court with unblushing footsteps, with the cloak of hypocrisy in his mouth, and draw three bullocks out of my client's pocket with impunity."

AN undoubted alibi was some time ago successfully proved in an American court, as follows: —

"And you say that you are innocent of stealing this rooster from Mr. Jones?" queried the judge.

"Yes, sir; I am innocent, — as innocent as a child."

"You are confident you did *not* steal the rooster from Mr. Jones?"

"Yes, sir, and I can prove it."

"How can you prove it?"

"I can prove that I did n't steal Mr. Jones's rooster, Judge, because I stole two hens from Mr. Graston same night, and Jones lives five miles from Graston's."

"The proof is conclusive," said the judge; "discharge the prisoner."

NOT unlikely.

LAWYER. Do you swear positively, sir, that you know more than half this jury?"

WITNESS. Yes, sir; and now that I have taken a good look at 'em, I 'll swear that I know more than all of 'em put together. — *Puck.*

NOTES.

IN the current advertisement of a famous legal treatise it is stated that the present edition contains citations of *five thousand* cases in addition to those supplied by the original author and by a former editor. In another five years the number will doubtless reach ten thousand. What, the lay mind wonders, will be the ultimate result? The lawyer of the twentieth century will probably be a gnome, invisible to the eye, but burrowing industriously beneath the huge volumes that are piled upon him, and communicating with the court by means of a telephone. — *Boston Post.*

As with many other great judges, law was all in all to Baron Parke. "I wonder," said a lady to him shortly before his death, "that with your great mind, Baron, you have never written anything." "Written anything!" was the astonished answer; "why, my dear madam, I have written the judgments in the volumes of 'Meeson & Welsby,' and they will remain long after the perishable literature of the present time has passed away."

ENGLAND has made great strides forward in her civil jurisprudence during the last fifty years. The sponge of legislative enactment has wiped out so much of her common-law procedure that Tidd's Practice and Buller's Nisi Prius, those *vade mecums* of the olden time, are of but little more use in her civil courts of to-day than they would be in those of France or Germany. It is not so, however, with her criminal courts. There the common law — "the bloody old beast," as Pennsylvania's great jurist, Judge Jeremiah Black, more forcibly than elegantly styled it — continues to shock the civilization of the age. Parliament, with that indifference to the cries of justice which has always characterized the English law-maker wherever human lives and not pounds and pence are involved, has paid but little attention to reforms in criminal procedure. As a consequence English homicide trials are to-day frequently the same travesty upon justice that they were a century ago. A man in England on trial for his life may now, it is true, have the right of counsel, and may cross-examine the witnesses who testify against him; but that is about the only improvement. The right to testify in his own behalf is still denied him; and

what is far worse, however much the judge may err in his rulings, however openly or defiantly he may violate the rules of evidence, however much he may override all justice in his charge to the jury by misstatements of fact and of law, however deftly and cunningly he may mould by the bias of that charge the pliant minds of an ignorant jury, — in short, however unfairly the trial may have been conducted, yet there is no appeal, no court of review, no redress. Were the issue involved a mere matter of so much money, or even of the ownership of a sucking calf or a stray pig, the rulings of the trial court could be reviewed and justice be eventually secured; but as only the life of a human being is at stake, this "bloody old beast," which can find no better way of punishing its criminals than by choking them to death with the end of a rope, will listen to nothing of the sort. Such are the criminal courts of England in this year of our Lord 1889. In this country, were a judge to take the place of counsel by delivering such an argument to the jury as appears from all accounts to have been delivered by Mr. Justice Stephen in the Maybrick case, a court of review would set the verdict aside in about as little time as it took the jury to render it. Mrs. Maybrick may be guilty of deliberately poisoning her husband, and the verdict may have been justified by the evidence (though we doubt it); nevertheless her conviction was by no means so necessary to the safety of human life in England as is a reform in the methods of English criminal trials. — *Washington Law Reporter.*

By the Roman laws every advocate was required to swear that he would not undertake a cause which he knew to be unjust, and that he would abandon a defence which he should discover to be supported by falsehood or iniquity. (Cicero's oration *pro Milone* is a striking instance of the strict observance of this rule.) This is continued in Holland at this day; and if an advocate brings forward a cause there which appears to the Court clearly iniquitous, he is condemned in the costs of the suit. The examples will, of course, be very rare; more than one has, however, occurred within the memory of persons who are now living. The possible inconvenience that a cause just in itself might not be able to find a defender, is obviated in that country by an easy provision: a party who can find no advocate, and is nevertheless persuaded of the validity of his cause, may apply to the Court, which has in such cases a discretionary power of authorizing or appointing one. — *Quarterly Review.*

With reference to the suggestion that there should be a Court of Criminal Appeal in England, Baron Bramwell, one of the best-known English judges, in a letter to the London "Times" says: "Lord Esher writes to you that he 'has the strongest possible opinion that there should be a Court of Criminal Appeal.' I have the strongest possible opinion to the contrary. I do not say this to pit my opinion against his, but to show that it is not every one with some experience in the administration of the criminal law that thinks as he does, and to ask that public opinion may not be fixed till a fitting time and opportunity have enabled the matter to be properly discussed. I agree with the Lord Chancellor that the present is not a fitting time."

Dr. Henry M. Scudder relates a case of Oriental justice that could hardly be outdone for sharp and subtle discriminations. Four men, partners in business, bought some cotton-bales. That the rats might not destroy the cotton, they purchased a cat. They agreed that each of the four should own a particular leg of the cat; and each adorned with beads and other ornaments the leg thus apportioned to him. The cat by an accident injured one of its legs. The owner of that member wound about it a rag soaked in oil. The cat going too near the fire set the rag on fire, and being in great pain rushed in among the cotton-bales, where she was accustomed to hunt rats. The cotton thereby took fire and was burned up. It was a total loss. The three other partners brought an action to recover the value of the cotton against the fourth partner, who owned the particular leg of the cat. The judge examined the case and decided thus: "The leg that had the oiled rag on it was hurt; the cat could not use that leg; in fact, it held up that leg and ran with the other three legs. The three unhurt legs therefore carried the fire to the cotton, and are alone culpable. The injured leg is not to be blamed. The three partners who owned the three legs with which the cat ran to the cotton will pay the whole value of the bales to the partner who was the proprietor of the injured leg."

We have heard of a "full bench," but this latest animadversion on its reprehensibility is taken from the syllabus of Repath *v.* Walker, decided by the Supreme Court of Colorado, June 7, 1889.

"NEW TRIAL. — MISCONDUCT OF JUDGE AND JURY. Where the record on appeal shows by uncontradicted affidavits that the jury, during the time they were supposed to be deliberating, were seen on the streets, one of the jurors being intoxicated, and that the trial judge was intoxicated on the trial and at the time of overruling a motion for new trial based on the jury's misconduct, the judgment will be reversed."

We should say so!

Recent Deaths.

MR. FRANKLIN FISKE HEARD, widely known as an author and compiler of law books, died in Boston, September 30, aged sixty-four years. He was born in Wayland, and graduated at Harvard College in the Class of 1848. With Judge Bennett he edited the "Massachusetts Digest," and with the Hon. Charles R. Train he published a standard work on "Precedents of Indictments." Editions of "Gould on Pleading" and "Metcalf on Contracts," besides works on "Civil Pleading," "Slander and Libel," "Curiosities of the Law," "Oddities of the Law," "Shakspeare as a Lawyer," and a treatise on "Criminal Procedure," have made him widely known as an accurate lawyer and ripe scholar, and his services have been in request by the bench and bar in the preparation of cases for trial and argument. He was especially regarded as an authority in criminal law, and served as assistant district attorney of the county of Middlesex during the incumbency of Mr. Train. He married Harriet Hildreth, a sister of the wife of General Butler, and a married daughter living in Virginia survives him.

THE bar of Columbus, Ohio, have sustained a great loss in the death of Hon. J. WILLIAM BALDWIN. He was born at New Haven, Conn., April 30, 1822, and graduated at Yale College. In 1843 he went to Ohio and studied law with Samuel Brush and Matthew Gilbert in Columbus. He was admitted to the bar in 1844. He rose rapidly in his profession, and achieved such success as is given to but few men. He was appointed to a position on the Supreme Bench of Ohio, succeeding Judge Matthews.

WILLLIAM T. MINOR, ex-Governor of Connecticut, died October 13, at his home in Stamford. He was born in Stamford, Oct. 3, 1815, and was graduated at Yale in 1834. He taught school in his native town from that year until 1841, studying law at odd moments. He was admitted to the bar in 1840. Mr. Minor was a member of the Connecticut Legislature for eight years, and in 1855 he was elected governor, serving from 1856 to 1858. President Lincoln made him consul-general at Havana in 1864, but he resigned after three years. In 1868 he was made a Superior Court judge.

REVIEWS.

THE CHICAGO LAW TIMES for October contains a fine portrait of James Kent, with a biographical sketch of that eminent jurist. Charles B. Waite contributes an article on "Amendments to the Federal Constitution," and Hon. Elliott Anthony has an interesting paper on "The Trial of William Penn for preaching the Gospel."

THE STUDENTS' LAW MONTHLY, Vol. I. No. 1. — This is the first number of a series of prize essays which Messrs. T. & J. W. Johnson & Co. of Philadelphia propose to publish monthly. The idea of this firm in offering a prize to the students of the graduating class of each of the Law Schools in the United States for the best essay on some legal topic is a most excellent one. It encourages the careful study, on the part of the student, of some one particular subject, and the result must be the production of a series of papers which will be really useful to the profession.

In the present number we have an essay on "The Law relating to Mercantile Agencies," by Joseph W. Errant, a graduate of the Union College of Law, Chicago. The article displays a careful and patient investigation of the subject by its author, and thoroughly covers the law relating

[illegible]

The American Law Review [illegible] "Judicial Independence" and "Ballot Reform" [illegible] George H. Smith; "The Determination of an Agency by Authority" [illegible] "Marriage in Private International Law," by Emile Stocquart.

Johns Hopkins University Studies, seventh series, X-XI-XII. This number is made up of a series of four lectures delivered before [illegible] University, Toronto, Canada, on the "Federal Government in Canada." The author, Hon. John G. Bourinot, is fully qualified to speak with knowledge upon the subject, being clerk of the House of Commons of Canada and also author of "Manual of the Constitutional History of Canada" and "Local Government in Canada." The work is one of peculiar interest to American readers, most of whom have but a vague idea of the political history of our sister Dominion.

BOOK NOTICES.

Wait on Fraudulent Conveyances. By Frederick S. Wait, Esq., of the New York Bar. Baker, Voorhis & Co., Publishers, New York, 1889. $6.00 net.

This is a new and enlarged edition of one of the most valuable law books published within recent years. The work treats fully, Of the remedies of Creditors instituted to annul Fraudulent Conveyances and recover Equitable Assets, and the Modern Procedure regulating Creditor's Bills, both at law and in equity, and the rules concerning provisional relief, reimbursement, and subrogation are fully [illegible] to the profession.

A Treatise on the Law relating to Executors and Administrators. By Simon G. Croswell, Esq., of the [illegible] Bar. Little, Brown & Co., Boston, 1889. [illegible]

We have received, through the courtesy of the author, a copy of this new book. With so many well-known works upon this important subject already in the field, it requires no little courage on the part of an author to present to the profession a new treatise on executors and administrators. From a somewhat hasty examination of Mr. Croswell's book, however, we are confident that it will meet with general commendation, and will rank as a standard work upon the subject. In addition to the citation of statutes in the body of the book, the author has included in an appendix such a selection from the statutory provisions of the States of the Union as is necessary to supplement the statements of the text. This will be found to be of great assistance to all those who have business in the Probate Courts of other States. The table of cases includes about five thousand references.

American State Reports. Vol. VIII. Bancroft, Whitney & Co., San Francisco, 1889. $4.00 net.

This admirable series of Reports, selected, reported, and annotated by A. C. Freeman, has now become so well known to the profession, and has been so heartily endorsed by leading lawyers, that further words of commendation seem almost superfluous. Mr. Freeman brings to the task of preparing these Reports the vast experience gained by his work upon "American Decisions," and as a result we find his selections and editorial work most satisfactory in every respect. In the present volume, which contains more than 1,000 pages, nearly one hundred and sixty cases, gathered from the reports of decisions in every State of the Union, are reported. The publishers deserve the thanks of the profession for the clear, distinct type, good paper, and generally attractive manner in which these Reports are gotten up.

to agencies of this nature. It is a valuable work for the practising lawyer as well as the student.

The subscription price for the Monthly is five dollars a year.

THE AMERICAN LAW REVIEW, September–October, contains several interesting articles, the most important of which are Henry B. Brown's admirable paper, read before the American Bar Association, on "Judicial Independence," and "Ballot Reform: Its Constitutionality," by John H. Wigmore. The other contents are: "Of the Certainty of the Law, and the Uncertainty of Judicial Decisions," by George H. Smith; "The Determination of an Agency or Authority," by John D. Lawson; "Condition of the Law as to Combinations," by Austin Abbott; "Acquisition of Citizenship," by Prentiss Webster; "Marriage in Private International Law," by Emile Stocquart.

JOHNS HOPKINS UNIVERSITY STUDIES, seventh series, X.–XI.–XII. This number is made up of a series, of four lectures delivered before Trinity University, Toronto, Canada, on the "Federal Government in Canada." The author, Hon. John G. Bourinot, is fully qualified to speak with knowledge upon the subject, being clerk of the house of Commons of Canada, and also author of "Manual of the Constitutional History of Canada" and "Local Government in Canada." The work is one of peculiar interest to American readers, most of whom have but a vague idea of the political history of our sister dominion.

BOOK NOTICES.

WAIT ON FRAUDULENT CONVEYANCES. By FREDERICK S. WAIT, Esq., of the New York Bar. Baker, Voorhis & Co., Publishers, New York, 1889. $6.00 net.

This is a new and enlarged edition of one of the most valuable law books published within recent years. The work treats fully, Of the remedies of Creditors instituted to annul Fraudulent Conveyances and recover Equitable Assets, and the Modern Procedure regulating Creditor's Bills, both at law and in equity, and the rules concerning provisional relief, reimbursement, and subrogation are fully considered. In this new edition numerous additions have been embodied in the original text, a number of new sections have been written, and the citations increased by reference to about one thousand new cases. The work of revision has been done by the author personally, and the treatise bears evidence of the care taken to cover fully and entirely all points bearing upon this important subject. It is a work invaluable to the profession.

A TREATISE ON THE LAW RELATING TO EXECUTORS AND ADMINISTRATORS. By SIMON G. CROSWELL, Esq., of the Suffolk Bar. Little, Brown & Co., Boston, 1889. $6.00.

We have received, through the courtesy of the author, a copy of this new book. With so many well-known works upon this important subject already in the field, it requires no little courage on the part of an author to present to the profession a new treatise on executors and administrators. From a somewhat hasty examination of Mr. Croswell's book, however, we are confident that it will meet with general commendation, and will rank as a standard work upon the subject. In addition to the citation of statutes in the body of the book, the author has included in an appendix such a selection from the statutory provisions of the States of the Union as is necessary to supplement the statements of the text. This will be found to be of great assistance to all those who have business in the Probate Courts of other States. The table of cases includes about five thousand references.

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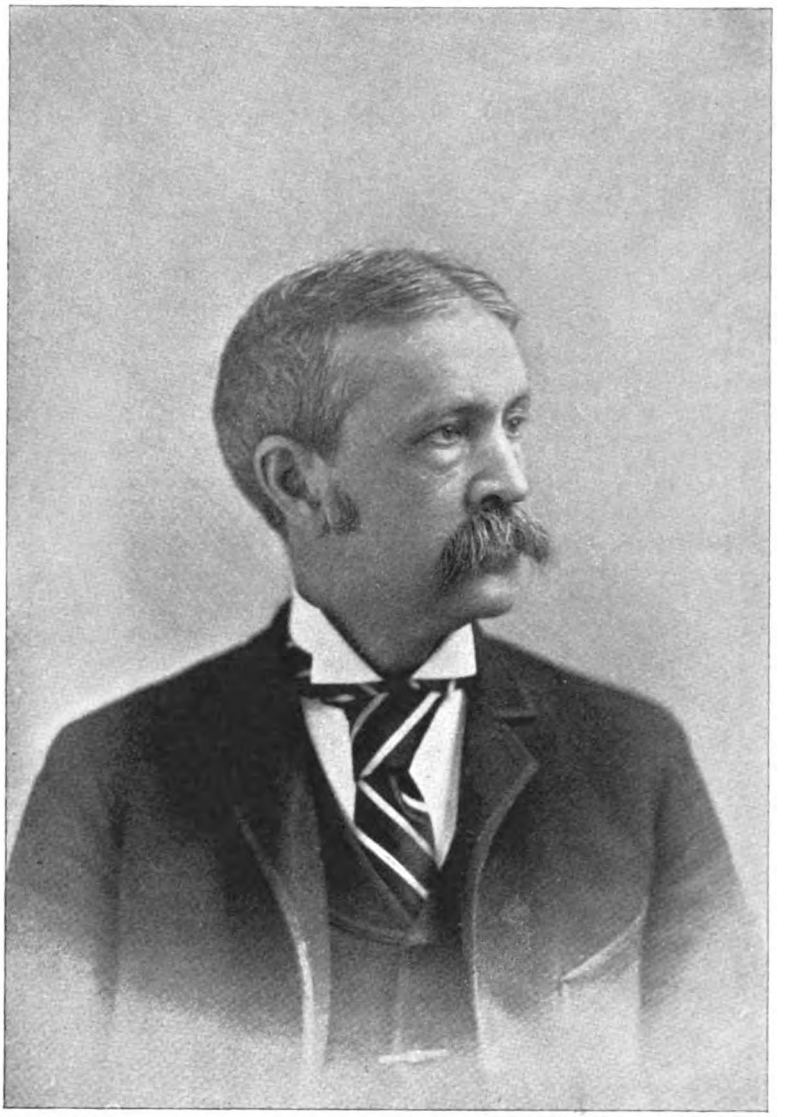


Yours truly,
Irving Brown

The Green Bag.

VOL. I. No. 12. BOSTON. DECEMBER, 1889.

IRVING BROWNE.

NO name in the legal profession is, probably, better known, both here and abroad, than that of IRVING BROWNE, the editor of the "Albany Law Journal."

Mr. Browne was born at Marshall, Oneida Co., N. Y., in September, 1835. His early education was received in the common schools and academies at Nashua, N. H., and Norwich, Conn., where his father resided during young Browne's boyhood. At the age of fourteen he began to study printing and telegraphy, in both of which he speedily became an expert. He was one of the first operators who habitually read by sound, and in the spring of 1853 was employed in a telegraph office in Boston. He remained but a short time in this position, however, and later in the same year entered the law office of Theodore Miller at Hudson, N. Y., and began to fit himself for the bar. After three years in the office, Mr. Browne entered the Albany Law School, from which he was graduated in the spring of 1857 and admitted to practice. Shortly after his graduation he formed a partnership in Troy, N. Y., with Rufus M. and Martin I. Townsend, under the firm-name of Townsends & Browne, which continued until 1878, when the firm was dissolved and Mr. Browne continued the practice of the law alone until the fall of 1879.

At the bar Mr. Browne was, during the last years of his residence at Troy, a favorite referee. He was best known by his arguments before the appellate courts. The chief of these, perhaps, was that in *Meneely* v. *Meneely*, 62 N. Y. 427; S. C. 20 Am. Rep. 489, in which he established the right of a man to the fair use of his family name in the same kind of business pursued by his brothers who claimed a monopoly of the name in that business by gift of the business and good-will from the father. Of this argument it has been said that "it has become standard authority, and is used as a text for citation by the whole legal profession."

In *Corcoran* v. *Holbrook*, 59 N. Y. 517; S. C. 17 Am. Rep. 359, Mr. Browne struggled unsuccessfully against the application of the doctrine of *alter ego* to the case of an individual employer. This is probably the leading case on the precise point in this country, and is opposed to the English doctrine. In *Cowee* v. *Cornell*, 79 N. Y. 91; S. C. 31 Am. Rep. 428, he succeeded in preventing the application of the doctrine of constructive fraud as between grandfather and grandson. The case also involved an interesting and novel question of alteration of a note by removal of a stub. In *Organ* v. *Stewart*, 60 N. Y. 413, Mr. Browne was unsuccessful in an endeavor to persuade the court to adopt the Massachusetts doctrine which allows a parol modification of an agreement for the sale of goods invalid under the Statute of Frauds.

But it is as a writer and journalist that Mr. Browne is best known to the profession, and he has at different times made valuable contributions to legal literature, prominent among which are: "Short Studies of Great Lawyers," "Humorous Phases of the Law," "Law and Lawyers in Literature," the "Judicial Interpretation of Common Words and Phrases," and the "Law of Domestic Relations." He has also written a sketch of the

"Judicial History of New York." His style in writing is concise, clear, and forcible. He strikes vigorously, without fear or favor, and at the same time with perfect honesty and impartiality. As a worker, his industry is marvellous; and the care, grace, and finish with which he completes his literary undertakings are evidence not only of congenital literary taste, but also of cultivation and study.

His tastes and characteristics outside the law are illustrated in his volume of essays entitled "Iconoclasm and Whitewash, and other Papers." The title essay is a study of historical vindications of bad characters and detractions from good ones. That on "Bibliomania" treats of the follies and fancies of book-collectors. Another is on the absurdities of "Shakspearian Criticism," and the last on "Gravestones, æsthetically and ethically considered." Mr. Browne has also published a translation in English verse of Racine's only comedy, "Les Plaideurs," which is a broad satire on lawyers.

From his father, who is a graceful poet, Mr. Browne seems to have inherited considerable poetical taste and skill. He has written a good deal of humorous verse on general subjects, as well as on the law. Some of the latter has from time to time appeared in the pages of the "Green Bag." In addition, he has written much serious verse, showing that he has the humorist's common sadness of fancy.

Upon the death of Isaac Grant Thompson, the founder and editor of the "Albany Law Journal," in 1879, Mr. Browne was called to Albany to fill the editorial chair, which position he now holds. In legal journalism his chief aim has always been to reform the laws, to render them cheap, speedy, and certain. He has always been a persistent advocate of general codification, and of the amelioration of the law of evidence and of married women. His journal is something more than a mere reporter of decisions, for its editor has strong and decided opinions which he does not hesitate to express. His secondary aim has been to render the law interesting, and to enliven it by pointing out and commenting on its humorous phases. For these reasons his journal is undoubtedly more read and quoted by lawyers and newspapers than any of its contemporaries. Mr. Browne also succeeded Mr. Thompson in the editorial charge of the "American Reports," which he conducted from the 25th to the 60th and closing volume. He has never had any assistant on the "American Reports," and for several years has done all the editorial work upon the "Law Journal" also, and yet has found time to compile a digest of the New York Court of Appeals Reports, and two volumes of National Bank Cases, and is now engaged in the preparation of an annotated edition of the New York Reports.

Notwithstanding the severe demands made upon his time, Mr. Browne has also been for eight years a lecturer in the Albany Law School on "Domestic Relations" and "Criminal Law."

PARISIAN LAW-STUDENT LIFE.

MOST foreigners get their ideas of the Parisian student and his way of living from books like Kimball's "Romance of Student Life Abroad," Thackeray's "Paris Sketch Book," Murger's "Le Pays Latin," and some of the tales of Alfred de Musset. They consequently obtain a rather narrow and one-sided view of life in the Latin Quarter. Kimball presents only the romantic side of the French student; Thackeray takes you among the art students only; Murger does not so much describe the Latin Quarter as he does the career of a woman who happened to live in it; and Alfred de Musset, with his Mimi Pinsom and his Bernerette, gives you a poetical rather than a real picture of persons and things on the left bank of the Seine.

The writer has not yet come who has treated the Parisian student life as thoroughly as Tom Hughes did the Oxford, and Astor Bristed the Cambridge student doings; nor have we in our language any work on French schools, colleges, and universities half as complete and interesting as Mr. Hart's book on life at Göttingen, Berlin, and Leipsic. Until such a faithful chronicler arrive, the following sketches may throw some light on an attractive subject.

The Latin Quarter is that extensive part of Paris which is bounded on the north by the Seine, on the south by the Mont Parnasse Railway Station, on the west by the Rue Bonaparte, and on the east by that shapeless pile, the Halle aux Vins. The university buildings are not contiguous. The Law School is at ten minutes' walk from the Medical School, and it takes you eight minutes to walk from the College de France and the Sorbonne to the School of the Fine Arts. The Sainte Geneviève Library is at least at twelve minutes' distance from the Mazarin Library, and the uniformed members of the Polytechnic School have to walk at a brisk step if they wish to gain the Boulevard St. Michel in eight minutes. The visitor to the quarter and the student living in it are therefore obliged to ramble about, if they desire to see the attractions of this scholastic spot. The attractions are numerous. There is the Odéon, the second theatre in France, — a Doric structure, that witnessed the early triumphs of Hugo, Ponsard, George Sand, and Dumas. There is the Institute, whose massive cupola resembles that of the Invalides, — a resemblance which suggested to Heine the bitter hint that the men beneath the former cupola are also invalids. The Mint, the Senate, the Court-House, the Prefecture of Police, the Sainte Chapelle, are all in the student quarter. It is a quarter which in spite of the modern improvements set on foot by Napoleon III., its aristocratic-looking Boulevard St. Michel (the main artery of the section), its many new houses and pretty shops, its broad streets usurping small, winding, and romantic ones, still contains much that gives it a stamp of its own. When you stand under the shadow of the Pantheon, or within earshot of the silver chimes of St. Etienne de Mont, or under the gloomy vaults of St. Severin, — when you see the crowds of young men seated in front of the cafés, grouped in front of the lecture-rooms, strolling along boulevard and street, you are persuaded that you are in the midst of a quarter where youth and merriment and studious quiet predominate. In the spring the lilacs waft their sweet perfume upon the student as he passes the garden of the Luxembourg, and in autumn he can behold the gorgeous tints of falling leaves in the Jardin des Plantes.

The Parisian student, with the exception of the followers of Æsculapius, is a late riser. "Paris is like the Duc de Vendôme," said Benjamin Constant. "It is epicurean, cynical, lazy; it gets up at noon, but it arises to go forth and conquer." The Parisian student is something like that. At any rate,

when he does not arise he takes his breakfast in bed, and when he does he takes it in a *crémerie* restaurant. This repast consists not of beefsteak, nor of buckwheat cakes, nor of ham and eggs, but of a bowl — a Caspian Sea full — of coffee and an infinitesimally small roll. We should not forget the spoon, which may be classed just after the ladle in size. When he has finished this breakfast (20 *c.* to 30 *c.*), the student goes to the lecture-room or to the hospital, as the case may be.

Students of the law generally complete their studies in three years; at the end of that they are *licenciés*. In order to obtain this degree, which opens the way to all liberal and administrative positions, they must have passed four examinations satisfactorily, and presented a thesis that has been approved by the Faculty. They attend lectures at the Law School, and frequent private classes called *conférences*. There is no roll-call at the lectures, and therefore attendance is as irregular as at an American college chapel. Every regularly registered student has his card (*carte d'étudiant*), signed by the Dean and Secretary of the Faculty, and the signature of the bearer is likewise affixed. This card is good for one year only, and must be shown by the student when requested to do so. The lecture-rooms are generally arranged in amphitheatre form. They are old and dingy, and the system of ventilation dates back to Noah's days. The professor has a red gown. He now and then takes a sip of the sugar water on the desk before him. The students distinguish themselves by the noise they make before the learned gentleman's arrival, by the paucity of the notes they take, by their listless attention when he is there, and by the impatient snapping of their watch-cases when he stays beyond his time. The *conférences* — a species of French "Coaching Clubs" — are the real workshops of the law students. There they are questioned by young and keen tutors, who stand in pretty much the same relation to the Law School that the Privat Docenten do to the University in Germany. The *Conférenciers* treat of the same subjects as the lecturing professors, but in a more thorough and questioning manner. Indeed, they supplement the professors.

The following are the studies to be mastered by the French law student. In the first year he is required to study Books I. and II. of Justinian's "Institutes," the general history of French law as taught by the professor, who of course recommends his own text-book; two books of civil law, two books of penal law, and certain specified articles of criminal procedure. In the second year the candidate takes up Books III. and IV. of Justinian's "Institutes," political economy as taught by the professor, the third book of the civil law, and three books of civil procedure. His third and last year comprises study of administrative law, the Commercial Code, some more articles of the civil law and private international law as taught by the professor. Having passed on those subjects, the last examination taking place before five Professors, he presents his thesis, consisting of two dissertations, one in Latin and one in French; and when it has been approved he has it printed. He usually dedicates it to his grandparents, if living, and if deceased, to their memory; to his brothers and sisters, to his favorite professor, and to his intimate friends, not collectively, be it noted, but singly and by names. The dedication page of a French student's thesis somewhat resembles the string of hieroglyphics on the obelisk in the park. The degree of *licencié* is not the highest in the gift of the Law Faculty, though it is the one generally sought. The highest is that of LL.D.; and this is obtained by another year's study, and satisfactory examination on all of Justinian's "Institutes," the Pandects, the whole of the civil law, the history of law, the *droit coutumier*, industrial and commercial law, constitutional law and finance.

Though there is no Professor of Elocution as in our Law Schools, and though moot

courts are not held, the students exercise their oratorical powers in the *conférences*, but, above all, in the cafés and beer saloons. It is there that you can frequently hear some hot debate on law or politics between two students. I have also assisted at some very fine informal discussions in students' rooms, where the arguments were good, the flow of elocution easy, and the reading displayed broad. But what the French student lacks is training in parliamentary law. He has but a very faint idea of it in his youth, and that he continues in his mature years to have a vague idea on the importance of the matter is proved by the worse than schoolboyish indecorum of the proceedings in the Chamber of Deputies. A little less Demosthenes and a little more Cushing would do them no harm.

When eleven o'clock strikes in the dome of the Sorbonne most of the students hasten to their lunch or *déjeuner à la fourchette*, and when that meal is despatched they stroll leisurely to their habitual café. The most popular of the day cafés are the Source, frequented by Parisians, South Americans, a few Luxembourgers, a colony of Basques, and a sprinkling of other nationalities; the Voltaire, a respectable solid establishment, with a good stock of papers; the Cluny, the Anglo-Saxon headquarters, though there are numerous Roumanians in the billiard-room upstairs; the Vachette, the "swell" café of the quarter, where coffee costs just one cent more than in the other coffee-houses on the Boulevard St. Michel, and where the women are just one shade older and better dressed. It is in these resorts that the Parisian student takes his noon cup of coffee, or sips his *mazagran*, or slowly quaffs his *liqueur*. Here he reads the morning news, or discusses a question of study with his friends, or plays a game of sixty-six, écarté, baccarat, or whist, or tries his hand at checkers or chess. At about 1.30 he leaves and goes about his regular occupation. — *New York Times.*

ODD OFFENCES.

IN an old number of "Chambers' Journal" the writer came across an article with the above title; and a number of the cases therein referred to are sufficiently interesting and amusing, he thinks, to "entertain" the readers of the "Green Bag."

Lovers of liberty as they were, our forefathers had but little patience with propounders of novel notions. When Henry Crabb, suddenly awaking to the fact that success in business was not to be attained without much lying and deceit, forswore his calling of haberdasher of hats, and betook himself to playing the hermit and practising vegetarianism, he was put in the stocks, ousted from one refuge to another, and finally lodged in prison, to prevent others imitating his evil example.

"Sir George Carteret," says Pepys, "showed me a gentleman coming by in his coach who hath been sent for up out of Lincolnshire. I think he says he is a justice of the peace there that the council have laid by the heels here, and here lies in a messenger's hands, for saying that a man and his wife are but one person, and so ought to pay but twelvepence for both to the Poll Bill, by which others were led to do the like; and so here he lies a prisoner."

It does not do to be in advance of one's day. In 1618 a Weymouth butcher was amerced in three shillings and fourpence for killing a bull unbaited, and putting the flesh thereof unto sale. About the same time certain good citizens of Worcester presented a formal complaint against John

Kempster and Thomas Byrd for not selling their ale according to the law, — charging only a penny a pint for beverage of such extraordinary strength as to lead to assaults, affrays, bloodsheddings, and other misdemeanors; in other words, for giving their customers too good an article, — an offence not by any means likely to occur in our modern times.

In all times and in every land an over-free tongue has proved troublesome to its possessor. A man was sent to prison, in Plantagenet days, for twelve months, for offering to call the chief magistrate of London a scoundrel, and fight him too, if any one would pay him for his pains. King James I. ordered two Londoners to be whipped from Aldgate to Temple Bar for speaking disparagingly of Spain's unpopular representative, Gondemar; and Recorder Fleetward let every one know that liberty of speech was an offence against the Commonwealth by sending a saucy fellow to jail for venting his enjoyment of a hearty bread and cheese meal by swearing he had supped as well as my Lord Mayor.

A sapient coroner read a witness a severe lecture upon the enormity of being out of bed at one o'clock in the morning, refusing him his expenses by way of marking his disapproval of such an impropriety. Of the same way of thinking was Constable Snooks, who took a man into custody for presuming to come outside his own door at that early hour, after the zealous officer had put him inside the house. Another active and intelligent officer, catching a young man late at night in the heinous act of putting his latchkey into its proper keyhole, hauled him, spite of resistance, to the station-house; and the next morning had the satisfaction of hearing the magistrate indorse the action, and sentence the delinquent to a term of hard labor for "resisting an officer in the execution of his duty."

The law presumes that everybody knows what he may and may not do, and acting on that presumption unpleasantly enlightens those who are not so wise as they should be. An Illinois citizen brought his daughter's young man before a justice for violently ejecting him from his own parlor one Sunday evening. After hearing the other side, the justice said: "It appears that this young fellow was courting the plaintiff's gal, in plaintiff's parlor; that plaintiff intruded, and was put out by the defendant. Courting is a public necessity, and must not be interrupted. Therefore the law of Illinois will hold that a parent has no legal right in a room where courting is afoot. Defendant is discharged, and plaintiff must pay costs."

Different notions as to the necessity of courting prevail in Texas, or a susceptible individual would hardly have been fined for telling a pretty girl he should very much like to kiss her; leaving him as much puzzled as to where the justice came in, as the man in Indiana who, returning home from a journey, found the house empty, his wife having raffled all the furniture and absconded with the proceeds, and before he thoroughly comprehended the situation, found himself arrested by the sheriff for permitting gambling on his premises.

When in Rome do as the Romans do, is easily said but not so easily accomplished. Some years since, a Western man, spending a day in Boston, bought a cigar and started for a stroll. He had not gone many yards before he was tapped on the shoulder by a policeman, who politely informed him that he had incurred a penalty of two dollars by smoking in the street. The innocent offender handed over two dollars and walked on. Presently he came across a hungry-looking urchin, to whom he good-naturedly proffered a piece of gingerbread, and immediately a policeman was at his elbow intimating he had thereby violated a city ordinance. Tendering his informant a three-dollar bill, with instructions to keep the change, as he should want to whistle by and by and might as well pay beforehand, the disgusted visitor went on his way, resolved never again to make holiday in Boston.

THE WICKED SHOEMAKER AND SACRILEGIOUS FARMER.

COMMONWEALTH *v.* JOSSELYN, 97 Mass. 411; COMMONWEALTH *v.* SAMPSON, 97 Mass. 407.

By Irving Browne.

[*The hoeing of corn or the gathering of seaweed on Sunday is not a "work of necessity," although otherwise the one may suffer from neglect and the other may be swept away and lost.*]

JOSSELYN was a humble citizen,
Who paid his way by cobbling boots and shoes,
As kind and sober as most other men,
Who ne'er a moment from his bench dared lose,
Because upon his stitching and his pegging
Depended wife and several children small,
Who, if he failed them, must perforce go begging;—
He was indeed to them their treasured awl.
A curious, prying, and malicious neighbor,
At eight o'clock one peaceful Sunday morn,
Saw Josselyn one hour at worldly labor,
To wit: in hoeing a few hills of corn
Which grew in his remote back-garden-patch,
And which he cultivated as he could
Contrive some scattered anxious hours to catch
To furnish his small frugal table food.
And so this shoemaker incendiary,
Upon complaint of this detested sneak,
Was brought to trial for unnecessary
Labor upon the first day of the week,
As by the wiles of Satan instigated,
Without the fear of God before his eyes,
He had this corn of mammon cultivated,
Instead of Christian graces for the prize.
In vain he represented to the court
How hard it was to make both waxed-ends meet;
That his wrong-doing was so very short;
Disturbed no others in reflections sweet;
That the corn needed hoeing very much;
And asked the judge to let the jury say
Whether the immorality was such
That he deserved a penalty to pay.

But for his humble brother of the bench
No sympathy had this fell magistrate;
In durance vile poor Josselyn must blench
And cobble shoes for puritan Bay State.
Ill weeds disfigure now his humble garden,
His wife and little ones of foot go bare;
Consigned to cruel mercies of the warden,
He meets a due reward in prison fare.
On Sunday cobbler should become knee-suitor,
At church in morning be among the first,
Seek not his suffering garden-sauce to tutor,
Hoe not, however much he is athirst.
On bended knee of him one lesson cram,
To wit: *Ne sutor ultra crepidam.*

. . . . . .

Sampson a license legally acquired
To gather seaweed on a neighboring beach,
To spread which on his land he much desired,
That into every cranny it might leach;—
It was a sort of heaven-sent manure
Which very cheaply he could thus secure.
One Sunday was unusually good for weed,
And so to haul it higher up the shore,
Lest it should wash away he did proceed;
This was his crime, and really nothing more, —
A simple exercise of Yankee thrift
Lest gifts of Providence should go adrift.
It was at ten o'clock that Sunday night,
Afar from any house or public road,
There was no proof of any one in sight,
He did not try to draw a single load, —
But probably it made his crime the worse,
That he to observation was averse.
He might have been at "meeting" all day long,
And played the double-bass in country choir,
Or raised his voice in nasal sacred song,
Till he and all his listeners did perspire; —
But on this point the report, I must concede,
Is silent, therefore we return to weed.
The court apparently thought the defence
In Sampson's case than Josselyn's was stronger;

On the enormity of his offence
They aired their views in an opinion longer;
Nor curtly in six lines "*per curiam*"
Did they this noxious Sabbath-breaker damn.
"To save the life of animals or men,
Prepare fit food for man as well as beast,
Save things from fire or flood or tempest when
They otherwise would perish; — this at least
On Sunday godly men may always do,
And there are such occasions not a few.
But if the fish in bay or birds on shore
Uncommonly abundant then should be,
Fishing or shooting would be none the more
Devoid in law of immorality.
As fish and birds are not uncommon prey,
So waves will cast up seaweed every day.
How it might be in case a goodly whale
Should on the beach be driven high and dry,
Tempting of bone and blubber to avail,
'T is not important now to signify.
That case exceptional, which doth involve
Such sum accessible, we need not solve."
Thus spoke the venerable Hoar, who wrought
His morals from the hoar antiquity
When Puritans unanimously thought
It reprehensible iniquity
For one to kiss his wife on Sabbath day
Or in the meeting-house on organ play.
If Sampson could have got his arms about
The pillars of that court-house where Hoar sat,
He would have raised as great a rout
As when great Samson laid the temple flat.
But he was sent on mush and milk to feed,
And in striped clothes repent of gathering weed.

So listen, all ye Massachusetts men,
Unto the lesson which we here would teach
With trembling awe and reverential pen:
On Sunday weed not garden nor the beach,
Nor let the Enemy your thoughts assail
With profit less than prophet-bearing whale.

HASTINGS COLLEGE OF THE LAW.

(Law Department of the University of California.)

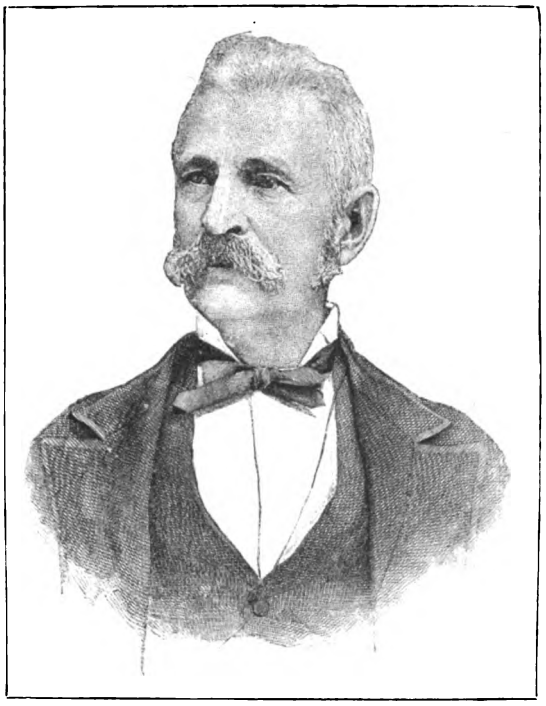
By Charles W. Slack.

It is not possible to say much of an institution of learning which has had an existence of scarcely more than a decade. The time is so brief that any beneficial results which it may have achieved are but beginning to be noticeable. The most that can be done is to state whence it came and what it is attempting to accomplish.

In March, 1877, an article appeared in one of the college papers at Berkeley, announcing, upon authority, the intention of Hon. S. Clinton Hastings, a well-known millionnaire and ex-Chief-Justice of the State, to found a law school, which should become a part of the University of California. Although the organic act of the University provided that there should be maintained in the University a college of the law, yet the increasing demands for the support of the more necessary academic departments of the young institution had compelled the Regents to abandon any notion which they might have entertained of establishing a law department. A medical school of the University had already been founded through the munificence of a distinguished physician and surgeon of San Francisco, and was in successful operation. A law school was much needed, in which the California youth, intending to enter the legal profession, might obtain a systematic knowledge of the law. The schools of Harvard, Yale, Columbia, Ann Arbor, and other Eastern institutions were open to but a favored few, and besides no instructions could be expected to be given by them in the important local laws of the State. It was for these reasons that Judge Hastings's proposition was enthusiastically received by the Regents of the University, students, and many prominent judges and lawyers.

At the next session of the Legislature an Act drafted by Judge Hastings was passed, creating the "Hastings College of the Law," and providing for its affiliation with the University. The Act was approved by Governor Irwin March 26, 1878, and went into immediate operation. By its terms Judge Hastings was to pay into the State Treasury

one hundred thousand dollars, on which the State was to appropriate seven per cent. per annum, in two semi-annual payments, for the support of the College. The following eight distinguished members of the bench and bar were named as Directors, who, with the Chief-Justice of the State as *ex-officio* president of the Board, were to constitute the governing body: Joseph P. Hoge, W. W. Cope, Delos Lake, Samuel M. Wilson, Oliver P. Evans, Thomas B. Bishop, John R. Sharpstein, and Thomas I. Bergin. Any vacancies which might occur in the Board were to be filled by the Board itself. By the terms of affiliation with the University, the entire management of the affairs of the school was to be in the hands of the Board, with the right to select its officers and instructors. The President of the University is, however, the President of the school, and the degrees are conferred and the diplomas issued to the graduates by the authority of the Regents of the University.



S. CLINTON HASTINGS.

Within two months after the passage of the Act, Judge Hastings had paid into the State Treasury the one hundred thousand dollars provided to be paid. The formal transfer of the institution to the Regents of the University and the Directors of the College was made in public on Commencement Day of the University in June, 1878. Judge Hastings on that occasion delivered an address, in which he set forth his wishes and expectations concerning the College. This was followed by a response on behalf of the Directors by Thomas B. Bishop, Esq., and a response on behalf of the bench and bar by Mr. Justice Crockett of the State Supreme Court.

Shortly afterwards the Directors met and elected Colonel Hoge Vice-President of the Board; Judge Hastings was appointed Dean; John Norton Pomeroy of Rochester, N. Y., was selected as the first Professor of Municipal Law; and C. F. D. Hastings was appointed Registrar. It was resolved that the course of study should extend over three years, the terms to be co-extensive with those of the undergraduate departments of the University at Berkeley; and a plan of instruction was prepared and announced by Professor Pomeroy in accordance therewith. It was Judge Hastings's idea to place the advantages of the school within the reach of every one who possessed a good moral character and reasonable educational qualifications. No charges were therefore to be required of students except a yearly fee of ten dollars, to cover incidental class expenses.

On August 9, 1878, the school was formally opened in the Old Hall of Pioneers in San Francisco. The inaugural address was delivered by Professor Pomeroy in the Assembly Room, which was crowded with judges, lawyers, and students. A large number of persons applied for admission, many of them being young members of the bar. Among the applicants were two ladies, who had already been admitted to practice by the

Supreme Court. The Directors decided to reject them; but they brought suit to compel their admission, and succeeded on the ground that the University was by law open to women, and therefore the Law School was also open to them, as a department of the University. True to the traditions of their sex, however, when they could be admitted they seemed to have lost their desire to attend, and they soon severed their connection with the school. It was at first thought advisable to form two classes at the beginning, — the Junior and Middle, — and an examination of applicants for the Middle Class was in fact held; but it was finally concluded that it would be better to start all at the foundation, and this was accordingly done.

JOHN NORTON POMEROY.

For two years the principal part of the work of instruction was done by Professor Pomeroy. During the first year a course of lectures on Legal Ethics was delivered by Rev. W. H. Platt, D.D. In 1880 Hon. Oliver P. Evans, then Judge of the Superior Court of San Francisco, was appointed Assistant Professor in charge of the Junior Class. Judge Evans, although comparatively a young man, brought to the position a wide experience both at the bar and on the bench, and discharged the duties well and ably for two years, when he resigned the professorship. This was followed by his resignation from the bench shortly afterwards, in order to devote himself to practice, which was better suited to his inclinations. Judge Evans has continued to be a member of the Board of Directors, and has always taken an active interest in the welfare of the school. Calhoun Benham, a scholarly and accomplished gentleman, was appointed to fill the vacancy caused by the resignation of Judge Evans. Professor Benham died in 1884, and Professor Pomeroy died during the following year. The writer received a temporary appointment to the position made vacant by the death of Professor Pomeroy, until his successor could be chosen. The principal chair was finally tendered to Hon. E. W. McKinstry, who resigned from the Supreme Bench of the State for the purpose of accepting it. The writer's connection with the school was continued as Assistant Professor.

The chair of Legal Ethics has been filled since 1886 by a well-known Californian, Rev. J. H. C. Bonté, D.D. Dr. Bonté is himself a graduate of an Eastern law school, and practised the legal profession for several years before he took up the study of theology. He has enjoyed an interesting and extensive acquaintance and association with prominent professional men throughout the country, and has a large fund from which to draw materials for his lectures.

Judge Hastings resigned from the office of Dean, and accepted instead the honorary position of Professor of Comparative Jurisprudence. His son, Robert P. Hastings, is now the Dean. Mr. Hastings is a graduate of Harvard, and one of the first graduates of the Law School which bears his father's

name. Edward J. Ryan, a recent graduate of the school, is at present the Registrar.

The Directory of the College has continued the same as at first constituted, with the exception of W. W. Cope and Delos Lake, who resigned, and whose places were filled by Robert P. Hastings, the present Dean, and Ralph C. Harrison.

The course of instruction at the College has remained substantially the same as that introduced by Professor Pomeroy. The following will give an idea of its scope: —

JUNIOR YEAR.

Elementary Law. A course of lectures, recitations, and discussions, the object being to acquaint the student with the entire field of jurisprudence. Some considerable attention is paid to the works of Blackstone and Kent.

Domestic Relations. A full consideration of the subject of Husband and Wife (including Marriage and Divorce), Married Women (including particularly their power to contract, and their property rights), Parent and Child, Infants, Guardian and Ward, and Master and Servant.

Contracts. The general principles of the law of contracts.

Real Property. The subject begun and completed.

Torts. An outline of the law of torts.

MIDDLE YEAR.

Commercial Law. The principal portion of the year is taken up with the important subjects of Sales, Bailments, Common Carriers and Telegraph Companies, Negotiable Instruments, Mercantile Guaranties and Suretyship, Insurance, Agency, Partnership, and Corporations.

Wills and Administrations. Part of the year is devoted to Wills and the Administration of the Estates of Decedents, including the probate of wills, the appointment, powers, duties, and liabilities of Executors and Administrators, and the settlement and distribution of Estates, particularly with reference to the Statute Law of California.

SENIOR YEAR.

Pleading. A course on common law, equity and code pleading, including the manner of commencing actions, the place of trial and parties, with practical exercises.

Practice. A considerable portion of the year is devoted to practice under the Code of Civil Procedure. This includes a study of the law of Arrest and Bail, Claim and Delivery of Personal Property, Injunctions, Attachments, Receivers, Trials, Judgments, Executions, New Trials and Appeals, and the Writs of Certiorari, Mandamus and Prohibition, with practical exercises.

Evidence. The general principles of the law of evidence.

Equity. A course on equity jurisdiction and jurisprudence.

Constitutional Law. Constitutional law of the United States.

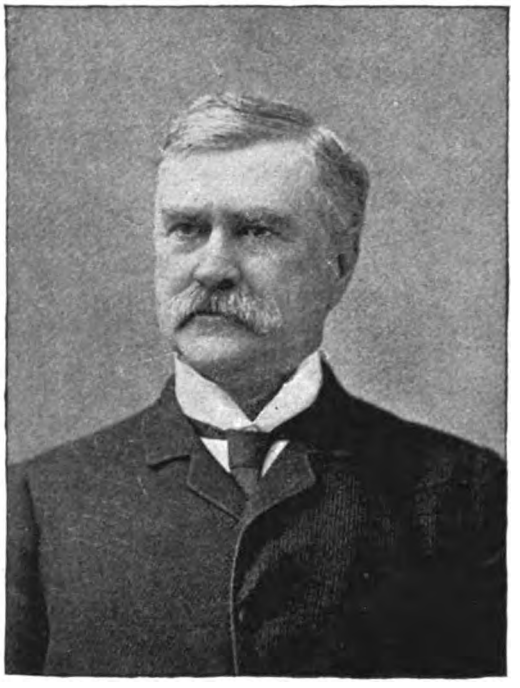
Legal Ethics. A course of ten lectures on legal ethics.

Some notion of the exhaustiveness of the treatment and study of the subjects considered may be formed from the fact that the college year is nine months, and that there are no interruptions, with the exception of a recess of two weeks at Christmas.

The aim is to make the student's theoretical knowledge as practically useful to him as possible. A Moot Court is established in which the members of the two upper classes participate. Each argument is presided over by a member of the Faculty and by some student. Briefs are required to be prepared and filed at the hearing, and an opinion is written by the student-justice under the direction of the professor in charge. Besides these exercises, students are required to draft papers relating to the subjects on which they may be engaged; such as leases, mortgages, deeds, and wills; and in the Senior year, pleadings, notices for various purposes, papers relating to the change of place of trial, papers on attachment, injunction, etc. Occasional papers, such as criminal informations and indictments, are also prepared. This practice has been found to be so valuable that it is hoped it may be extended in the future. The professors in charge devote all the time they possibly can to it; but the work to be prop-

erly done would require almost the exclusive attention of one person; and the income of the school does not at present permit of any increase in the staff of instructors. Of course, no Law School can, nor does it attempt to, supply the things which must be learned by actual practical experience in a lawyer's office; but this is to be said of the graduates of the Hastings Law School, that they find little difficulty in commencing to practise at once for themselves, without any previous actual practical training.

The lecture system of instruction was at first adopted, but there were so many objections to it, that formal lectures are not now given except on special subjects. Text-books are principally used, but leading cases are constantly referred to and required to be studied. Comments are made, to such an extent as may be thought necessary, but they are chiefly informal. There are daily recitations and discussions. The school is distinctly Californian, and therefore special attention is paid to the Codes of the State. How far the Code provisions have adopted, modified, or abrogated particular rules of the Common Law, is constantly attempted to be shown. Such peculiar topics as community property are also noticed at length. The exercises are held in comfortable rooms in the Old Hall of Pioneers on Montgomery Street, near Jackson. The school has no library of its own, but students have access to the excellent San Francisco Law Library, at the New City Hall.



E. W. MCKINSTRY.

Formerly, like many of our Eastern sisters, the only qualification for admission, aside from good moral character, was that applicants should possess "a good English education." This really means no educational requirements whatever. The result was that many entered who were totally unprepared to begin the study of the law. They were generally rejected, at least at the end of the first year, but it proved to be a loss of time to them and an injury to the standing of the school. Accordingly, in 1886, the Directors resolved that unless an applicant was a graduate of some institution of learning of recognized standing, he should be compelled to pass an examination in the following subjects; being substantially the same as is required to enter the Literary Course of the University: —

1. English. A short composition, correct in spelling, punctuation, paragraphing, and grammar, upon a subject taken from the following works: Scott's Lady of the Lake; Scott's Ivanhoe; Irving's Alhambra; Thackeray's Newcomes; Shakspeare's Merchant of Venice and Julius Cæsar. Applicants are also required to analyze sentences from these works, and to pass an examination on the first seventy-one lessons in Kellogg's Textbook on Rhetoric.

2. Arithmetic. Including the metric system, and the technical parts of Commercial Arithmetic; namely, banking, profit and loss, commission, taxes, duties, stocks, insurance, exchange, and average payments.

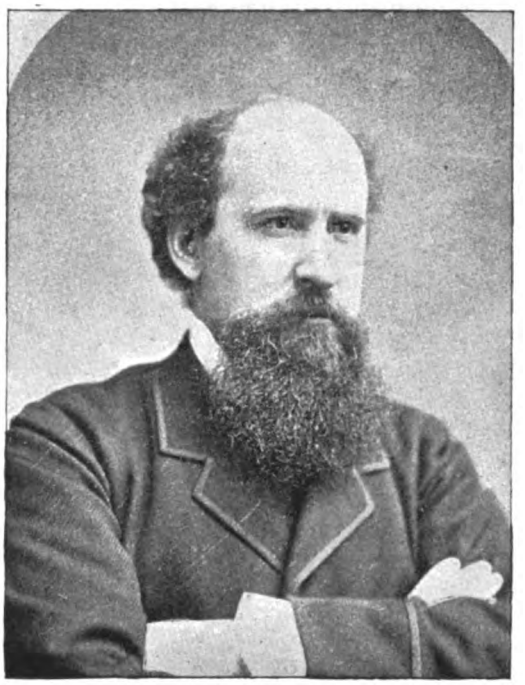
3. Algebra. To Quadratic Equations, including the various methods of factoring, the theory

of exponents, integral and fractional, positive and negative, and the calculus of radicals.

4. Plane Geometry.

5. History and Geography. History of the United States and of England, and the general facts of Physical and Political Geography.

6. Latin. Cæsar, Gallic War, Books I.–IV. (or Civil War, Books I.–II.); Cicero, the Four Catilinarian Orations, and the Orations *Pro Archia Poeta* and *Pro Lege Manilia;* with questions in each case on the implied grammar and on the subject-matter and the corresponding archæology.



OLIVER P. EVANS.

These examinations are conducted by the Faculty of the University at the same times and places as those for entrance to the undergraduate departments. Furthermore, no one is received into the Junior Class unless he is at least eighteen years of age. An applicant for admission to the Middle Class, besides being qualified to enter the Junior Class, must be at least nineteen years of age, and must pass a satisfactory examination on the work of the Junior year. Similar conditions exist for admission into the Senior Class, the required age being twenty. No one has ever yet been admitted into the Senior Class, without an actual attendance upon the exercises of the previous year. The college authorities very strongly prefer to have students who wish to commence at the beginning of the Junior year.

The effect of these entrance requirements has been to diminish the number of students about one half. There are now seventy-seven students in the school: sixteen seniors, twenty-five middle men, and thirty-six juniors. Of these, forty-three, or more than fifty-five per cent of the entire number, hold collegiate degrees. The average age is about twenty-two or twenty-three years. It would be difficult to find in any college a body of young men of equal number who are superior in point of education, ability, earnestness, and in all the qualities which go to make up perfect gentlemen. Not only is this true of the present, but of previous classes. The writer has always found it a pleasure to meet them.

At the end of each year an examination on the year's work, lasting several days, is held. A standing of seventy-five per cent in each subject is required to pass. Some idea of the severity of these examinations may be had from the fact that in 1886 twenty-five seniors passed and five were rejected; in 1887 twenty-one passed and three were rejected; in 1888, twenty-five again passed, with three rejections; and in 1889 eleven passed, and two were recommended not to appear. A proportionately larger number of rejections occurs in the junior and middle classes. It might be further stated that if a student fails at the end of the first year, he is almost always admitted to the Supreme Court, on examination, shortly afterwards.

The number of graduates of the school thus far, in nine years, is two hundred and fifty-nine. Of these, eight are dead; and fifty-one of the remainder are not in practice. Of the other two hundred, sixteen

were admitted by the Supreme Court before graduation. Three of the earlier graduates were women, one of whom is following the profession. A diploma from the College admits to all the courts of the State. During this same period the Supreme Court has admitted on examination and motion more than twice as many as have graduated from the school.

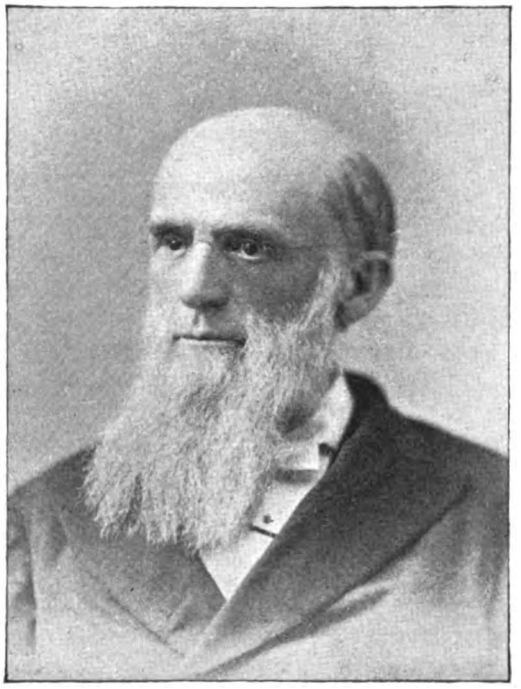
The graduates are rapidly pushing forward to the front ranks of the profession. One is a Superior Judge, and several of them are District Attorneys. They have done much to overcome the stupid prejudice which once existed against the institution because, principally, of the number it turned into the profession. The foregoing figures ought to be a sufficient answer to any assertion that the school is overcrowding the profession. Adverse criticism upon the methods and results of law schools usually comes from persons who were never educated in them, know nothing about them, and who will not learn anything. Suffice it to say, that among those who are competent to judge, there is but one opinion as to their superiority over any other means of legal education. The authorities of the school have labored industriously and unselfishly to establish the public confidence in it, and perhaps the best proof of their success is that judges and lawyers send their sons to it to be educated. We cannot claim for it many of the advantages possessed by the Eastern institutions; but if for lack of means and a larger corps of instructors we cannot accomplish what we should like, we have at least the consciousness of doing the best we can.

This sketch would be incomplete without some more extended mention of the founder, through whose large liberality the College exists, and of its first and present principal professors, John Norton Pomeroy and E. W. McKinstry.

ROBERT P. HASTINGS.

Few men have had such a remarkable career as Serranus Clinton Hastings. He was born in Jefferson County, N. Y., Nov. 22, 1814. At the age of twenty he was principal of the Norwich Academy, Chenango County. He resigned this position at the end of a year, and went to Indiana, where he completed his legal studies, and was admitted to the bar. He did not immediately enter upon the practice of his profession, but engaged in journalism, editing the "Indiana Signal" during the presidential campaign of 1836. In 1837 he removed to the Black Hawk Purchase; and when this became the Territory of Iowa, in 1838, he was chosen a member of the first legislature, and continued to be a member, either of the House or Council, until 1846, when Iowa became a State. He was then elected a Representative to the Twenty-ninth Congress, and was, with one exception, the youngest member of the House. In 1848 he was appointed Chief-Justice of the Supreme Court of Iowa, but resigned at the end of the year, for the purpose of going to California. He arrived in California during

the early part of the year 1849, and was shortly afterward unanimously elected by the legislature Chief-Justice of the Supreme Court of the State. He served out his term of two years, and in 1851 was elected Attorney-General on the Democratic ticket. At the expiration of his term of office, in 1853, he retired to private life, and devoted his attention to his business interests and investments, which had begun to increase in importance. His entire career, politically and financially, has been one of marvellous success. He has lived to see the institution which bears his name increase in strength and usefulness, and to feel the grateful appreciation of the many who are indebted to him for a systematic legal knowledge.



J. H. C. BONTÉ.

John Norton Pomeroy was born at Rochester, N. Y., April 12, 1828. He entered Hamilton College at the age of fifteen, and graduated in 1847. After his graduation he engaged in teaching, first at Rochester, and then near Cincinnati, Ohio. While employed at the latter place, he studied law with Senator Thomas Corwin. Returning to Rochester, he continued his legal studies with Judge Henry R. Selden, and was admitted to the bar in 1851. He practised his profession at Rochester, also devoting much of his time to writing on legal and political subjects. In 1864 he was chosen a Professor of Law and Dean of the Law Faculty in the University of the City of New York, — a position which he held until 1870, when he resigned and returned to Rochester to resume the practice of the law. In 1878 he accepted the chair of Municipal Law in the Hastings College of the Law, and continued in the position until his death, Feb. 25, 1885. Professor Pomeroy was perhaps more widely known through his writings than as a teacher. His first work was his "Introduction to Municipal Law," published in 1864. An "Introduction to the Constitutional Law of the United States" followed four years later. In 1874 he edited "Sedgwick's Statutory and Constitutional Law." His next and perhaps his best work — "Remedies and Remedial Rights, according to the Reformed Procedure" — was published in 1876. He prepared an edition of "Archbold's Criminal Practice and Pleading" in 1877. During his connection with the Hastings College of the Law he wrote a treatise on the "Specific Performance of Contracts" and one on "Equity Jurisprudence." His lectures on "International Law in Time of Peace" were edited after his death by Prof. Theodore S. Woolsey, and published in 1886. Hamilton College conferred the degree of LL.D. upon him in 1865. Professor Pomeroy was a complete master of the principles of our jurisprudence. Added to this, he possessed wonderful powers of analysis and great clearness of expression, — a combination of qualities which made him a successful teacher.

Perhaps no one has a better knowledge of the laws of the State of California, and of

the history of their growth and development, than Judge E. W. McKinstry, the present head of the College. He was born at Detroit, Mich., in 1826. He came to California during the early days of the gold excitement, and was elected a member of the first legislature. From 1852 until 1873 he was almost continuously on the bench, being part of the time a District Judge and part of the time a County Judge. In 1873 he was elected a Justice of the Supreme Court, and held that office until 1888, when he resigned to accept the chair of Municipal Law in the Law School. In 1889 the University of Michigan conferred upon him the degree of Doctor of Laws. Judge McKinstry's career on the Supreme Bench has given him a national reputation. It is fortunate for the College that it is placed in the charge of one so able and experienced.

OATHS.

IT seems to have been recognized, from time immemorial and among all peoples, that a man's word was not to be relied upon unless emphasized by the taking of a solemn oath. The peculiarities attending the ceremony of oath-taking in various countries, and among different sects and parties, present some curious features, not only in connection with the terms of the adjuration, but the actions employed to make them more forcible or impressive.

In the Holy Scriptures we find that it was usual for the oath-taker to place his hand under the thigh or to raise it toward heaven. Among other forms of adjuration the Hebrews and Egyptians swore by the head, or the life of an absent prince. In the case of the later Jews the earth, the heavens, and the sun, as well as angels, were adjured, as also the temple, Jerusalem, etc.; the phylactery was sometimes touched on taking the oath. Selden says the Jews were accustomed to swear laying the hand on the Book of the Law; and from this may have arisen the practice of swearing on the Gospels, prevalent at an early period throughout Christendom.

The Greeks had a special reverence for oaths; the adjurations were multifarious, and were commonly by the god to whom the business in which men were engaged, or the place in which they were, belonged. The manner of swearing was by lifting up the hands to heaven or placing them on the altar. Some Greek oath-takers held their garments, and pointed a sword towards the throat, invoking Heaven, Earth, or the Furies. The ancient Roman swore by his faith or honor; Livy tells us that the sanctity of an oath had more influence than the fear of laws and punishment.

The Orientals and ancient Persians swore by the sun; while the Scythians adjured the air, and a more tangible object, the scimitar. The early Anglo-Saxons, like the Celts and northern nations, laid their hands on some pillar of stone. Before the introduction of Christianity, Freia, the wife of Woden, was a frequent attestator of oaths. Among the Frisii, or Frieslanders, a most solemn appeal was to take up a lock of hair with the left hand, and to lay two fingers of the right upon it. The Franks were accustomed to swear holding straws in their hands. The ancient Byzantines swore by their own copper coins; this was also an old German custom before the introduction of Christianity.

Several oaths of the Middle Ages were borrowed from the pagans, as idols upon arms, — the usual mode of adjuration among northern nations; upon the scabbard of the sword; confirmation of the oath by joining hands; by taking hold of the hem of the garment; swearing upon bracelets, and oth-

ers. Concerning the bracelet oath, Sir Henry Ellis has observed that Arngrim Jonas, in his work on Iceland, describes a bracelet of twenty ounces' weight, which was kept upon the altar, and, being sprinkled with the blood of victims, was touched by those who took any solemn oaths.

Swearing on the cross was practised by the Russians from early times; thus in 1557, on the conclusion of a treaty of peace with Sweden, Ivan ratified it by kissing the cross before the eyes of the ambassadors, — a ceremony that was repeated by his representative at Stockholm in the presence of the Swedish monarch.

Selden mentions an oath taken by the Spaniards, which is very curious: "If I first designedly fail of this oath on that day, ye Powers above, torment me — my body in this life and my soul in the next — with horrid tortures. May my strength and my words fail. In battle let my horse and arms and spurs and subjects fail me, when need is sorest." This oath was confirmed by the parties sharing between them the consecrated wafer.

The "oath by the bosom," formerly observed in Germany, had a curious and interesting origin. Women and boys were generally accustomed to carry on their bosom, suspended from the neck, a small copy of the Gospel; so the hand, when laid upon the breast, was in reality laid upon the Gospel. Chrysostom mentions a similar custom as prevailing in his time.

A curious custom observed on taking an oath in the Mine Court of the Forest of Dean, dating apparently from the thirteenth century, and continued until the middle of the eighteenth, is thus related: "The witnesses in giving evidence wore their caps, to show that they were free miners, and took the usual oath, touching the Book of the Four Gospels with a stick of holly, so as not to soil the sacred volume with their miry hands."

A Hindoo saying is: "Let a judge swear a Brahmin by his veracity; a soldier by his horses, his elephants, or his arms; an agriculturist by his cows, his grain, or his money; and a Soudra by all his crimes." In some respects these are similar to the ancient Greeks and Romans.

The Chinese have a curious mode of oath-taking. Some years ago two Chinese sailors were examined at the Thames police-court on the charge of assaulting one of their countrymen. The complainant was examined according to the practice of his country. A Chinese saucer was given to him, and another to the interpreter, and they both advanced to the window, directing their eyes to heaven, and repeating in their own tongue the following words: "In the face of God I break this saucer: if it comes together again, Chinaman has told a lie, and expects not to live five days; if it remain asunder, Chinaman has told the truth, and escapes the vengeance of the Almighty." They then smashed the saucer in pieces on the floor, and returned to be examined.

The Mohammedans do not employ adjurations in their judicial proceedings, but regard deliberate perjury, even when extra-judicially committed, as incurring God's vengeance. — *All the Year.*

A COUNTRY LAWYER'S CHRISTMAS EVE.

THIS happened thirty years ago. Then I measured many inches fewer round the waist than I can pretend to now; then my easy-chair was enjoyable as a luxury, — it was not in those days, as it is to-day, almost a necessary.

It was Christmas Eve. I had dined at hospitable old I——'s, — a pleasant party, and a sumptuous dinner, to which I, for one, with a naturally good appetite sharpened by the keen frost, had done ample justice. The wine was excellent, its supply unstinted, and our host had kept his decanters in rapid and effective circulation; so that, when we came to bid the genial old gentleman good-night, we were in that complacent and beamingly benevolent mood which such good cheer alone can induce.

Wrapped carefully and bulgingly though I was in overcoat and muffler, I could not quite repress a shiver as I left the warm and well-lit rooms, and stepped into the cold and pitch-black night. It was a contrast. The thermometer was far below freezing-point. Not a single star had the courtesy to come out to greet me; and as for the moon — well, but for the faith one comes to repose in the prophetic almanac, I should have concluded it gone from our sky never to return. Yet, as I briskly trotted along over the crisp snow, I was far from dispirited. I relished it. The cold only whetted my anticipation of the warmth to come. Positively, I chuckled like a boy at the prospect before me; the cheering prospect of warm slippers (after my tight pumps) before a blazing fire; with just a "night-cap" before turning in; and then — the turning in. So I got very fleetly over the few hundred yards which separated my modest house from I——'s, and I was soon seated with all my late alluring anticipations now becoming delicious realities.

Quite a young man, I had but recently begun to practise as a solicitor, and was settled as such in the old county of P——, in the Scottish Highlands. After a term of waiting, endured with what patience I could command, business had begun to come in satisfactorily; and as is natural in the new (of every species, including the proverbial broom), I was very attentive and anxious in regard to this budding practice of mine. But, for this Christmas eve at least, I meant to leave business behind in my office. I had locked up all recollections of it when I turned the key in my meagrely filled safe. Little resolve, indeed, was necessary to do that. My mind was comfortably filled with lingering recollections of my evening's amusement, and it would be an engrossing item of business, a very self-important and forward item of business indeed, that could insinuate itself even edgeways into such a mind at such a time.

Eleven struck. I smoked the pipe of utter contentment with myself and all mankind. The fire made me pleasantly drowsy; and when the pipe should be finished and the tumbler empty, I would yield to the drowsiness. So I blinked at the fire, and it at me. By and by, as I was lazily winding up my watch, I was repeating to myself some of the jokes I had heard at old I——'s, and was indulging in a kind of ruminating laughter, when a name by association, ——! woke me up in earnest! Through the stout barriers of snug fire, warm slippers, steaming beverage, and soothing pipe; through the brave outposts of a pleasant company, rare good cheer, and generous wines, lately enjoyed, — brushing past resolution and elbowing aside habit, — there rushed in on my sleepy brain, abruptly, rudely, and unannounced, one baneful thought of business, and dispelled all besides. I had duly summoned creditors and all others concerned for the day after Christmas; all the arrangements for the meeting had been carefully made. But until that moment I had

forgotten all about the bankrupt himself. I had omitted to give him the requisite notice to attend for examination.

Gazing dejectedly at the watch which I held in my hand, I went mechanically through the calculation that it wanted only thirty-six hours of the time fixed for the meeting.

The insolvent gentleman, a farmer, was then lying asleep in his bed near the village of R——, just forty-eight miles from my easy-chair.

No trains found their way into those remote regions in those days. There is not a telegraph even now. A stage-coach made the journey twice a week, but Christmas was not one of its days. The unsuspecting farmer could not be informed timeously or fetched timeously by the coach. I must send specially for him, and my messenger, whoever he should be, must be despatched at once. No time was to be lost. The roads, bad at any time, were peculiarly difficult during the winter months, — if, indeed, they might not be all but impassable in consequence of the recent snow.

Very hastily I muffled up again, and without informing my slumbering domestics that I was going out, I made my way to the livery-stables. The snow was falling now, thick and clammy; a gradually rising wind kindly assisting gravitation at times by fitfully hurrying the flakes to the ground. Few prospects could be less inviting to a man who had quitted the very essence of comfort.

The distance I had to walk was something under a mile. That allowed time for reflection, and I made such use of it. Strange and incredible though it may appear to the reader, true it is that before I reached the stables, I had resolved to undertake the journey myself. I chose to face the severities of the weather — repelling though these were to a philosopher of my persuasion — rather than intrust to a post-boy the rectification of a serious mistake. Not only would I be more active in my own interests than I could expect any mere hireling to be; there was also, at the turning-point of the journey, the farmer to be soothed and persuaded, and fetched back with me without loss of time. A post-boy could not do that.

The ill-slept hostlers got me out a gig and a horse, with an alacrity which the most finished hypocrite could not have shown had he been about to perform the journey himself. They aroused the poor brute from a sound sleep, and led him forth from a warm stable, so that I felt servilely apologetic towards him from that moment onwards. He had not at all taken in the situation, when I was obliged to put him in motion. He quitted the yard in a docile but thoroughly dazed state. We passed through the badly lighted streets without breaking their stillness, for the freshly fallen snow made us glide along as silently as spectres. When we had cleared the town, and its few but companionable lights were receding rapidly, I felt (I must own) a gloomy feeling coming over me. It looked so black ahead. Penetrating farther into it seemed so desperate and comfortless that, in spite of myself, my spirits sank. Reason myself out of the feeling I could not; it lowered on me and shrouded me like a mist. Had it not been truly, that half mechanically I had to keep urging forward my unwilling horse, — had I been, for instance, walking, and so dealing with my own will alone; had I not had to combat also that of another creature, — I must certainly have turned my face at once and have sped swiftly back to bed. But I pressed the horse forwards, from habit, I suppose; and not unnaturally I and the gig continued to go forward too.

The thermometer must have been in a bad way. Before I reached the toll my fingers were so chilled and powerless that I could hardly get out my money. Not that I was at all hurried in the operation. The toll-keeper (tacksman, I beg his pardon) gave me ample time. Indeed, he took so very long to come out after he had at length apprised me of his awakening that I twice

took the liberty of shouting to prevent his falling asleep again. The cottage looked so comfortable when its light fell through the open door across my dark path, that for the moment I considered that grumbling toll-keeper with his lantern the most enviable man in the world. I would fain have held some parley with him, the situation was so lonely and depressing. But he had not devoted his leisure to dressing, whatever he did with it; his attire was scanty, and the "nipping and eager air" made him anxious to return to his couch. He opened the gates, let me pass through, took my money, shone his lantern into my face, grunted a brief meteorological remark, shut the gates again, went in and banged his door. Diogenes ought to have kept a toll. The good old institution of tolls has recently passed away into the historical past. What has become of the toll-keepers, I have not been able in a single instance to discover. The houses now deal in sherbet and cooling non-alcoholic beverages for 'Arry on his Sunday afternoon walks. But whither have the keepers vanished? They were a class of men unique and by themselves; incapable, I should think, from their souredness and specialty training of betaking themselves to any other occupation. No Act of Parliament could adequately compensate *them* for its interference with their vested rights.

And now the toll-gates were closed behind me! I felt more than ever desolate and dejected, regarding the gates as an insuperable barrier between me and all the known and wholesome world. I drove on doggedly. The snow drifted against me, covering my coat and every surface presented to the blast with its white and chilly flakes. Mile after mile passed, the road becoming, if possible, darker and drearier. We crossed the bridge which spans our broad and tossing river. The flood, black and ice-edged, was most hideous to look at intelligently at such a time; for to look at it intelligently meant ghastly suggestions, ghastly fears, and ghastly impulses. Next, we toiled our weary way up a long and steep incline, shut in on either side by a dense wood. That much I could see in spite of the dark. While the horse trudged along at the slowest of equestrian walking paces through the deep snow, stopping at short intervals to breathe himself, my mental state was rendered still more distressing by my now realizing for the first time that I had left my house, left my town, without giving a hint to my domestics as to where I was going or that I was going anywhere! Vivid visions now haunted me of their consternation in the morning, when after repeated calls unanswered, they should enter my room at length, and find it vacant! Then the news would spread. My friends would meet each other; they would compare notes, and form conjectures, and compile an elaborate explanatory story. And as they exchanged their Christmas greetings, they would discuss the news, and say how sad it was about S——, poor fellow, going home, just a little elevated, missed his way, fell into the river, etc., etc. Or, perhaps, some more charitable people would shake their heads and hint darkly at difficulties, clients' funds, absconding! I knew that the stable people would be late in the day in throwing their light on the subject. That light would be more than doubtful, except, indeed, in the direction of confirming the absconding theory. Altogether, these reflections and imaginings were most comfortable. Nevertheless, they had their good effect. I brooded less intently on every trying circumstance about me. I felt less sensitively the depressing character of my situation.

When thus absorbed in my reflections, I was startled by my horse stopping abruptly and beginning to tremble violently all over. Glaring at me wildly, fiercely, fixedly, and most brilliantly, — placed just ahead of him, — were a pair of the most horrible eyes I ever saw. Positively I shook with terror, as violently as my horse. When I met their gaze, I could not withdraw mine. I

felt my blood curdle and freeze, and I verily believe that my hair stood on end. The eyes — whatever may be the physical explanation of the lighting — shone clearly out from the darkness. I could see dimly and indistinctly the figure of the person to whom they belonged, looming a little darker than the black surrounding night. But the eyes were weirdly bright. They were turned on me "most constantly." I could not speak. Nor, beyond violently trembling, could I move. I seemed incapable of anything but passive terror. The horse, no less agitated, seemed as powerless as myself. It sought neither to advance nor retire.

How long we remained so, I cannot tell; but the time seemed interminable. At last the spectre, for so I thought it, came towards the gig, stepped sedately into it, and sat down in the vacant place, — all in absolute silence. As it did so, I could see more distinctly what manner of person it was. The results of this closer observation were not calculated to reassure me. A tall, spare man, with sunken cheeks beneath his awful eyes; long, bony, nervous fingers; his dress a thin black coat and gray trousers; no covering on his head, no gloves on his hands. Yet he did not seem cold; and, somehow or other, the snow did not cling to him as it did to me. It seemed to shrink from him and fall aside. A strange figure to meet in such weather, at such a time and place! I still doubted his humanity most strongly; but my terror of him even as human was not a whit less intense and paralyzing, when, as he stretched out his hands to take the reins from my grasp, I saw that they were red with blood! I resigned the reins even before he touched them, and the horse started at once. We drove on in silence several miles. The agony of terror which I then endured I cannot describe, and shall not attempt to do so. I vainly tried to throw it off from time to time by an attempt to believe that the hideous experience I was then passing through was only a dream, — a dreadful nightmare; and that I should wake erelong to find myself snugly in bed, or even still dozing before my sitting-room fire. But the efforts were sickly, and proved ineffectual against the terribly real feelings and surroundings; and I abandoned them at length. Then I tried to bring myself to address the mysterious being beside me. As futile an effort as the other; I could not utter a sound. He drew a blood-stained handkerchief from his pocket, and dried his forehead. Snow and frost appeared to have no effect on him, — he was perspiring profusely! Then, without looking at me, he took my hat off my head and put it on his own. Whether or not this strange being was impressed with a sense of justice, and meant it as a compensation for the loss of my hat, I cannot tell; but he thrust into my pocket a peculiarly shaped jar (which I instinctively knew to contain loathsome leeches!) and three billiard balls.

We were now nearing a second bridge by which the road recrosses the river. My weird companion threw down the reins, as it seemed to me, on the first roar of the swollen current reaching his ears. He folded his arms across his chest, and stared sternly and moodily before him. Between dark rows of snow-laden trees, round a sharp turn, we went; and then the bridge rose before us, — rose abruptly to the middle, narrow, dark, and dismal. We reached the middle of it, and the horse almost stopped. The river rushed a perfect torrent below, crashing against rocks and banks, and dashing huge masses of ice furiously against every obstacle that had the hardihood to oppose it. My companion stood bolt upright in the gig, sprang on to the parapet, waved his arms wildly, and leaped into the torrent! Above all the roar and furious tumult I thought I could distinguish the ghastly splash with which the black waters received and closed over him.

Then my head swam round, and I lost all consciousness for a time, — for how long, I had no means of guessing. My first recollection thereafter is of careering along at a

rapid pace, the snow falling coldly on my uncovered head, my fingers numb, and my feet cold as icicles. My poor horse was at a good canter, with the reins kicking amongst his feet; the night as dark, the way as desolate as before. I made no movement to recover the reins or to check the pace. I was drowsy and indifferent. I cannot say that I was longer terrified or depressed. I was too drowsy to care much about anything, or to feel acutely in any way. I felt myself wondering if I was not dreaming or, rather, gradually awaking from a dream. Then, too drowsy to settle the point with regard to the present, I seemed to feel that the former part, at least, of the awful night's experience was only a dream.

So for a mile or so, and then I saw, not very far off, lights! Imperceptibly again, I dozed away into unconsciousnes.

The sequel — since it took place on Christmas Day — need not take long to tell, for this paper is headed "Christmas Eve," and has not undertaken to pass beyond that eventful night.

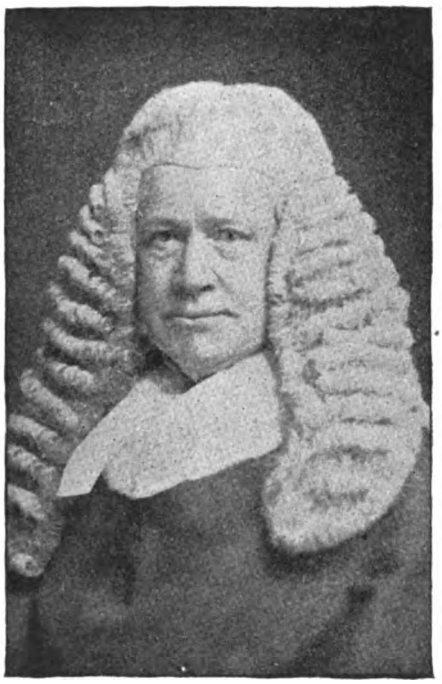
When I became conscious again, it was broad daylight and I was in bed, — in a bed, but the bed a strange one. I could not, from the appearance of the room, tell where I was, but I afterwards knew it to be an inn. Two men, complete strangers to me, were talking in whispers. They were standing in the window, and I could hear the tenor of their conversation. It was, in brief, to this horrible effect, that I was "the man they wanted." That much sought after individual had left a lunatic asylum "without leave first asked and obtained." Probably mistaking them for eatables (say pickles), he had taken a jar of leeches with him; and had also been guilty of asportavit in the matter of the billiard balls of the establishment. Both these commodities had unmistakably been found upon me. Then, in addition, I also coincided with the missing gentleman in the trifling eccentricity of ranging the country in December without a hat! Lastly, he had broken through a glass window. Some of the blood from his cut hands had been transferred to me. Conclusive, these people thought.

It was two whole days before I succeeded in establishing my identity with the humble solicitor in P——, and in proving my non-identity with the escaped lunatic.

There was a more tragical side of the adventure. My weird and mysterious travelling companion of Christmas Eve was, of course, the missing madman, of whose dreadful end I had been an awe-struck witness. His body was never found. But my hat, which he had worn during the performance, was picked up from the river just at P——. This fact was taken (not unnaturally, I must concede) as furnishing the true explanation of my sudden disappearance; and for two whole days my friends believed me no more. —*Journal of Jurisprudence.*

PERSEVERANCE.

BY CHARLES READE.



MR. JUSTICE LUSH.

ON a certain day in the year 1819 Mr. Chitty, an attorney in Shaftesbury, was leaving his office for the day, when he was met at the door by a respectable woman and a chubby-faced boy with a bright eye. He knew the woman slightly, — a widow that kept a small stationer's shop in the town.

She opened her business at once.

"Oh, Mr. Chitty, I have brought you my Robert; he gives me no peace, his heart is so set on being in a lawyer's office. But there, I have not got the money to apprentice him. Only we thought perhaps you could find some place or other for him, if it was ever so small."

Then she broke off and looked appealingly, and the boy's cheeks and eyes were fired with expectation.

Most country towns at that time possessed two solicitors, who might be called types, — the old established man, whose firm for generations had done the pacific and lucrative business (wills, settlements, partnerships, mortgages, etc.); and the sharp practitioner, who was the abler of the two at litigation, and had to shake the plum-tree instead of sitting under it and opening his mouth for the windfalls. Mr. Chitty was No. 2.

But these sharp practitioners are often very good-natured; and so, looking at the pleading widow and the beaming boy, he felt disposed to oblige them, and rather sorry he could not. He said his was a small office, and he had no clerk's place vacant; "and, indeed, if I had, he is too young; why, he is a mere child!"

"I am twelve next so-and-so," said the boy, giving the month and the day.

"You don't look it, then," said Mr. Chitty, incredulously.

"Indeed, but he is, sir," said the widow; "he never looked his age, and writes a beautiful hand."

"But I tell you I have no vacancy," said Mr. Chitty, turning dogged.

"Well, thank you, sir, all the same," said the widow, with the patience of her sex. "Come, Robert, we must n't detain the gentleman."

So they turned away with disappointment marked on their faces, the boy's especially.

Then Mr. Chitty said in a hesitating way, "To be sure, there is a vacancy, but it is not the sort of thing for you."

"What is it, sir, if you please?" asked the widow.

"Well, we want an office boy."

"An office boy! What do you say, Robert? I suppose it is a beginning, sir. What will he have to do?"

"Why, sweep the office, run errands, carry papers, — and that is not what he is after.

Look at him; he has got that eye of his fixed on a counsellor's wig, you may depend; and sweeping a country attorney's office is not the stepping-stone to that." He added warily, "At least there is no precedent reported."

"La, sir," said the widow, "he only wants to turn an honest penny, and be among law-papers."

"Ay, ay, to write 'em and sell 'em, but not to dust 'em!"

"For that matter, sir, I believe he'd rather be the dust itself in your office than bide at home with me."

Here she turned angry with her offspring for half a moment.

"And so I would," said young master, stoutly indorsing his mother's hyperbole very boldly, though his own mind was not of that kind which originates metaphors, similes, and engines of inaccuracy in general.

"Then I say no more," observed Mr. Chitty; "only mind, it is half a crown a week, — that is all."

The terms were accepted, and Master Robert entered on his humble duties. He was steady, persevering, and pushing; in less than two years he got promoted to be a copying clerk. From this, in due course, he became a superior clerk. He studied, pushed, and persevered, till at last he became a fair practical lawyer, and Mr. Chitty's head clerk. And so much for perseverance.

He remained some years in this position, trusted by his employer, and respected, too; for besides his special gifts as a law-clerk, he was strict in morals, and religious without parade.

In those days country attorneys could not fly to the metropolis and back to dinner. They relied much on London attorneys, their agents. Lawyer Chitty's agent was Mr. Bishop, a judge's clerk; but in those days a judge's clerk had an insufficient stipend, and was allowed to eke it out by private practice. Mr. Bishop was agent to several country attorneys. Well, Chitty had a heavy case coming on at the assizes, and asked Bishop to come down for once in a way and help him in person. Bishop did so, and in working the case was delighted with Chitty's managing clerk. Before leaving he said he sadly wanted a managing clerk he could rely on. Would Mr. Chitty oblige him, and part with this young man?

Chitty made rather a wry face, and said that young man was a pearl. "I don't know what I shall do without him; why, he is my *alter ego*."

However, he ended by saying, generously, that he would not stand in the young man's way. Then they had the clerk in, and put the question to him.

"Sir," he said, "it is the ambition of my heart to go to London."

Twenty-four hours after that, our humble hero was installed in Mr. Bishop's office, directing a large business in town and country. He filled that situation for many years, and got to be well known in the legal profession. A brother of mine, who for years was one of a firm of solicitors in Lincoln's Inn Fields, remembers him well at this period, and to have met him sometimes in his own chambers, and sometimes in Judge's Chambers; my brother says he could not help noticing him, for he bristled with intelligence, and knew a deal of law, though he looked a boy.

The best of the joke is that this clerk afterward turned out to be four years older than that solicitor who took him for a boy.

He was now up amongst books as well as lawyers, and studied closely the principles of law whilst the practice was sharpening him. He was much in the courts, and every case there cited in argument or judgment he hunted out in the books, and digested it, together with its application in practice by the living judge, who had quoted, received, or evaded it. He was a Baptist, and lodged with a Baptist minister and his two daughters. He fell in love with one of them, proposed to her, and was accepted. The couple were married without pomp, and after the ceremony the good minister took them aside,

and said, "I have only £200 in the world; I have saved it a little at a time, for my two daughters. Here is your share, my children." Then he gave his daughter £100, and she handed it to the bridegroom on the spot. The good minister smiled approval; and they sat down to what fine folk call breakfast, but they called dinner, and it was.

After dinner and the usual ceremonies, the bridegroom rose and surprised them a little. He said, "I am very sorry to leave you, but I have a particular business to attend to; it will take me just one hour."

Of course there was a look or two interchanged, especially by every female there present; but the confidence in him was too great to be disturbed, and this was his first eccentricity.

He left them, went to Gray's Inn, put down his name as a student for the bar, paid away his wife's dowry in fees, and returned within the hour.

Next day the married clerk was at the office as usual, and entered on a twofold life. He worked as a clerk till five, dined in the Hall of Gray's Inn as a sucking barrister, and studied hard at night. This was followed by a still stronger example of duplicate existence, and one without a parallel in my reading and experience, — he became a writer and produced a masterpiece, which, as regarded the practice of our courts, became at once the manual of attorneys, counsel, and judges.

The author, though his book was entitled "Practice," showed some qualities of a jurist, and corrected soberly but firmly unscientific legislative and judicial blunders.

So here was a student of Gray's Inn, supposed to be picking up in that Inn a small smattering of law, yet, to diversify his crude studies, instructing mature counsel and correcting the judges themselves, at whose chambers he attended daily, cap in hand, as an attorney's clerk. There's an intellectual hotch-potch for you! All this did not in his Inn qualify him to be a barrister; but years and dinners did. After some weary years he took the oaths at Westminster, and vacated by that act his place in Bishop's office, and was a pauper — for an afternoon.

But work that has been long and tediously prepared can be executed quickly; and adverse circumstances, when Perseverance conquers them, turn round and become allies.

The ex-clerk and young barrister had ploughed and sowed with such pains and labor, that he reaped with comparative ease. Half the managing clerks in London knew him and believed in him. They had the ears of their employers, and brought him pleadings to draw and motions to make. His book, too, brought him clients, and he was soon in full career as a junior counsel and special pleader. Senior counsel, too, found that they could rely upon his zeal, accuracy, and learning. They began to request that he might be retained with them in difficult cases, and he became first junior counsel at the bar; and so much for Perseverance.

Time rolled its ceaseless course, and a silk gown was at his disposal. Now, a popular junior counsel cannot always afford to take silk, as they call it. Indeed, if he is learned but not eloquent, he may ruin himself by the change. But the remarkable man whose career I am epitomizing did not hesitate; he still pushed onward, and so one morning the Lord Chancellor sat for an hour in the Queen's Bench, and Mr. Robert Lush was appointed one of her Majesty's Counsel learned in the Law, and then and there, by the Chancellor's invitation, stepped out from among the juniors and took his seat within the bar. So much for Perseverance.

From this point the outline of his career is known to everybody. He was appointed in 1865 one of the Judges of the Queen's Bench, and, after sitting in that court some years, was promoted to be a Lord Justice of Appeal.

A few days ago he died, lamented and revered by the legal profession, which is

very critical, and does not bestow its respect lightly.

I knew him only as Queen's Counsel. I had him against me once, but oftener for me, because my brother thought him even then the best lawyer and the most zealous at the bar, and always retained him if he could. During the period I knew him personally Mr. Lush had still a plump, unwrinkled face, and a singularly bright eye. His voice was full, mellow, and penetrating; it filled the court without apparent effort, and accorded well with his style of eloquence, which was what Cicero calls the *temperatum genus loquendi.*

Reasoning carried to perfection is one of the fine arts; an argument by Lush enchained the ear and charmed the understanding. He began at the beginning, and each succeeding topic was articulated and disposed of, and succeeded by its right successor, in language so fit and order so lucid, that he rooted and grew conviction in the mind. *Tantum series nexuraque pollent.*

I never heard him at Nisi Prius, but should think he could do nothing ill, yet would be greater at convincing judges than at persuading juries right or wrong; for at this pastime he would have to escape from the force of his own understanding, whereas I have known counsel blatant and admired, whom Nature and flippant fluency had secured against that difficulty.

He was affable to clients, and I had more than one conversation with him, very interesting to me. But to intrude these would be egotistical, and disturb the just proportions of this short notice. I hope some lawyer, who knew him well as a counsel and judge, will give us his distinctive features, if it is only to correct those vague and colorless notices of him that have appeared.

This is due to the legal profession. But, after all, his early career interests a much wider circle. We cannot all be judges, but we can all do great things by the perseverance, which, from an office boy, made this man a clerk, a counsel, and a judge. Do but measure the difficulties he overcame in his business with the difficulties of rising in any art, profession, or honorable walk; and down with despondency's whine, and the groans of self-deceiving laziness! You who have youth and health, never you quail

> "At those twin jailers of the daring heart,
> Low birth and iron fortune!"

See what becomes of those two bugbears when the stout champion SINGLE-HEART and the giant PERSEVERANCE take them by the throat!

Why, the very year those chilling lines were first given to the public by Bulwer and Macready, Robert Lush paid his wife's dowry away to Gray's Inn in fees, and never whined nor doubted nor looked right nor left, but went straight on — and prevailed.

Genius and talent may have their bounds, but to the power of single-hearted perseverance there is no known limit.

Non omnis mortuus est; the departed judge still teaches from his tomb; his dicta will outlive him in our English courts; his gesta are for mankind.

Such an instance of single-heartedness, perseverance, and proportionate success in spite of odds is not for one narrow island, but the globe; an old man sends it to the young in both hemispheres with this comment: If difficulties lie in the way, never shirk them, but think of Robert Lush and trample on them. If impossibilities encounter you, — up hearts and at 'em.

One thing more to those who would copy Robert Lush in all essentials. Though impregnated from infancy with an honorable ambition, he remembered his Creator in the days of his youth; nor did he forget Him, when the world poured its honors on him, and those insidious temptations of prosperity, which have hurt the soul far oftener than "low birth and iron fortune." He flourished in a sceptical age; yet he lived and died, fearing God.

CAUSES CÉLÈBRES.

XII.

LOUIS DE LA PIVARDIÈRE.

[1697.]

ONE of the most remarkable cases of the seventeenth century, and one which has seldom found its parallel in the records of criminal jurisprudence, was that in which LOUIS DE LA PIVARDIÈRE figured as the hero.

The youngest of three sons of a gentleman of noble lineage but decayed estate, De la Pivardière found himself left, at his father's death, absolutely without resources. The easiest method of remedying this unsatisfactory condition of affairs was unquestionably by marriage with a lady of wealth, and young Louis felt himself in good luck when he succeeded in captivating the affections of a widow named De Menon, who possessed an estate producing an excellent income. She was older than he, to be sure, and the mother of five children by her first marriage; but these were trifles to De la Pivardière, who found her other attractions more than sufficient to offset any such encumbrances.

The marriage took place between the two in 1687, and for two years all went well, their domestic felicity being interrupted only by passing fits of jealousy on the part of the young husband. In 1689 De la Pivardière, as Lord of Narbonne, was compelled to take his turn of service, and two years later he obtained a lieutenantcy in the regiment of dragoons at St. Hermine.

By this time a certain coolness had been engendered between the pair, and the inevitable absence of Louis was endured by both with an amount of resignation hardly consistent with real affection. The wife found apparently, consolation in the attentions of the Abbé of Mizeray, who was a frequent and welcome visitor at the château.

While travelling from place to place on pretence of military duty, De la Pivardière, while at Auxerre on one occasion, met with the daughter of a man who held the office of *huissier* in the town, and fell desperately in love with her. Concealing the fact that he had a wife living, he married this new object of his attachment. He went through the ceremony under his family name of Bouchet, dropping that of De la Pivardière. For two years he lived in undisturbed union with his Auxerre wife, paying twice a year a visit to his property at Narbonne, where he drew his rents and then went away, meeting with no opposition to his departure from his first wife, at whose house he generally found the Abbé an inmate on his return. Matters continued in this state for more than four years, until some of those who delight in communicating evil tidings found means to inform Madame de la Pivardière of her husband's pretended marriage, but without indicating name or place. She at once adopted measures for verifying the statement, and had just obtained the required assurance when her husband set out on one of his semi-annual visits to the château.

Though she had ceased to love him, and in all probability had herself for a long time been equally culpable, this discovery inflamed her jealousy, and she only waited for his appearance to upbraid him with his infidelity.

It was the evening of the fête of Notre Dame in August, 1697, and a brilliant party had assembled at the château to do honor to the day. A magnificent collation had been served, and the neighboring gentry were present with their families. To the astonishment of all the master of the house strode suddenly into the room, and took his seat at the table. His sudden apparition disconcerted the guests, and his wife received him with such

marked coldness and aversion that the company, who were ignorant of the true cause, could not forbear expressing their surprise. The mirth of the feast departed with Louis's appearance. A consciousness of "something wrong" silenced every one; and at the earliest possible moment consistent with good-manners, the guests departed, and Louis and his resentful wife found themselves alone.

No sooner had the company gone, than Madame de la Pivardière broke out into passionate reproaches, and told her husband to go to his new wife and ask her, if he wanted an explanation of her own coldness and displeasure. In vain Louis attempted to deny the wrong. She refused to credit, even to listen to, any defence, and heaping on him the bitterest reproaches, ended by declaring that in a very brief space he should be made to repent bitterly the injury he had done her. With these ominous words she withdrew, her husband retiring to a separate chamber prepared for him by her orders.

During the night a knocking was heard at the gate of the mansion, and when one of the female servants went down to inquire who was there, a man asked whether M. de la Pivardière had arrived, and, being told that he had, he immediately disappeared.

Next day De la Pivardière was not to be found, although his horse and riding apparel remained at the château. Several days elapsed, and nothing was heard of him. Then there started into life a sinister rumor. Louis de la Pivardière, it was affirmed, had been assassinated in his own house at Narbonne! How, when, or where the report originated was never known, but it reached the ears of the authorities, and finally the *lieutenant-criminel* and other officers of justice arrived at the house to investigate the matter and draw up a *procès verbal*. The discoveries they made were of a startling nature. The mattress and the bed on which De la Pivardière had slept were found to be stained with blood, and in the cellar a deep trench dug about the size of a man's body was discovered, but there was no body in it when they examined it. In addition to these and other circumstances, two maidservants, being arrested, gave a precise and detailed account of the murder of the missing gentleman. One of them, Marguerite Mercier, stated that Madame de la Pivardière introduced two male servants of the Abbé's into her husband's chamber, by whose hands he was then and there put to death. The second, Catherine Le Moine, declared that she had been sent out of the way, and only returned just as the murder had been accomplished.

The little daughter of De la Pivardière, nine years old, stated that in the middle of the night she had heard her father's voice exclaiming, "Oh, my God, have pity on me!"

Numerous other witnesses were examined, some of whom deposed to having heard a shot fired during the night of the supposed murder.

What proof could seem more complete than this? Madame de la Pivardière was thereupon ordered into custody. But the lady had fled, and taken refuge in the house of a friend, pending the issue of the inquiry. The Abbé, however, was arrested, and the two maidservants were confronted with him; but in his presence they hesitated, faltered, and at last openly retracted all that they had previously sworn to. No sooner, however, was he removed than they reiterated their former statement, and on being again confronted with him they pertinaciously adhered to it.

While matters were in this state, a most unexpected turn was given to the proceedings. It was confidently asserted that La Pivardière was alive, and several witnesses swore that they had seen him at Châteauroux and at Issoudun, a few days after the time when he was said to have been murdered at Narbonne.

Upon this, Madame de la Pivardière, upon whom such a load of suspicion rested, applied to the court for a warrant of arrest against her husband, that the fact of his existence might be duly proved. She herself

pressed the search with the greatest perseverance, and no long time elapsed before he was actually discovered in his humble home at Auxerre. When informed that he was sought for by his wife, the idea that he was to be arrested for bigamy, then a capital crime, at once presented itself to his mind. He took to flight. Overtaken at Flavigny, he for the first time learned the real state of affairs; and now his apprehensions for himself were lost in anxiety for his wife.

He returned to Auxerre, where he was compelled to avow his true position to the loving woman who had believed herself his wife. With a nobility of soul hardly to be expected under circumstances so trying, she did her best to comfort the repentant man and urged him to proceed, without a moment's delay, to the aid of his legitimate wife.

Following her generous advice, De la Pivardière started at once for Narbonne. Shocked at the disturbance of which he had been the unconscious cause, he proceeded forthwith to the judge of Remorentin and demanded a formal and legal recognition. To remove all question as to his identity, more than two hundred witnesses testified on oath that there could be no doubt that he was indeed De la Pivardière.

To account for his mysterious disappearance from the château on the night of the supposed murder, he stated that, having been warned by one of the maidservants that his life was not secure so long as he remained under that roof, he resolved to depart under cover of the night; and taking with him his dog and gun, he had stealthily left the house and started for Auxerre on foot.

In this connection we may remark that there is perhaps nothing more inexplicable in criminal records than the conduct of the two maidservants, Marguerite Mercier and Catherine Le Moine, in testifying as they did at the investigation of this affair. They had no grudge against their mistress, who treated them with the utmost kindness, and, in fact, they had everything to lose and nothing to gain by contributing to her ruin.

It was believed by many, however, that the testimony of these girls had some foundation in fact; that a murder had really been committed, but upon the person of the servant of De la Pivardière, whom his master, under some feeling of distrust, had caused to occupy his bed, while he himself escaped; and that next day, on discovering her mistake, Madame de la Pivardière had, with the aid of the Abbé, buried the body of the murdered valet in the garden. But there was no evidence of any kind to give reality to this hypothesis, and it was at least certain that M. de la Pivardière had brought no servant with him to the château.

One would have thought that his reappearance and the mass of evidence as to the identity of De la Pivardière would have set the question at rest. Far from it. The law appeared to consider that if M. de la Pivardière was not murdered and buried, he certainly *ought* to have been, and declined to accept the contrary without much more satisfactory proof than that supplied by the reappearance of the murdered individual among his gratulating friends. The *lieutenant-criminel* made the matter a personal one; he refused to give any credence to the statements of De la Pivardière, and resolved to continue his investigation of the murder of a living man. He caused De la Pivardière to be taken to the prison and confronted with the two maidservants who had related the story of his murder. To the surprise of every one, they positively denied his identity, pointing out the differences they professed to discover between their visitor and their master. They declared that they had never before seen the individual presented to them. It was imagined that the *lieutenant-criminel* had prompted this denial.

In this perplexity the *procureur du roi* demanded the detention of De la Pivardière, that the mystery might be cleared up; but the authorities refused to interfere, and he

went away from the place, leaving the fact of De la Pivardière's existence enveloped in greater mystery than ever.

Some time afterward, the accused parties were put upon their trial for the supposed murder, and an order was issued for the arrest of the individual who was said to be De la Pivardière, wherever he might be found. He did not, however, require to be searched for, but voluntarily came forward, and appearing before the *procureur* at Remorentin, declared that he was De la Pivardière, and avowed his double marriage. What follows is indeed singular. Instead of being arrested and tried for bigamy, he made a formal demand that his identity should first be established by legal proof in a civil process.

We will not weary the reader with a recital of the various trials which were found necessary before the final settlement of this perplexing question. It was not, however, until the 14th of June, 1701, that this extraordinary case came to an end, and De la Pivardière was legally himself again. A judgment was finally entered in his favor, and a decree made, acquitting all those placed under arrest, and condemning Marguerite Mercier (her fellow-servant Le Moine had died during the proceedings) to make the public *amende honorable*, and to be publicly whipped and branded with a fleur-de-lis on the right shoulder, and thereafter to be banished.

Through the exertions and intercessions of the noble woman he had so foully wronged, De la Pivardière was saved from a prosecution for bigamy; and after revisiting Auxerre to bid a final farewell to her whom he had devotedly loved, he obtained through his relative, the Duc de la Feuillade, a semi-military employment, in which he was killed while leading his brigade against a large band of *contrebandiers*.

THE EARLY DAYS OF ADVOCACY.

"UNDER the law of nature and Moses there were no lawyers" (*avocats*), says Boucher d'Argis in his short history of the Order, or, as he goes on to explain, "no class of persons professionally appointed to defend the interests of others." Under the Mosaic dispensation men pleaded their own cause in primitive fashion before the tribunals; and such, for many ages, was the simple rule of advocacy.

It may not be without some interest to trace, as briefly as may be, something of the rise and history of the professional advocate, evolving him, as we shall, chiefly from the interesting and scholar-like pages of Mr. Forsyth's "Hortensius," a book in which much quaint and various learning on matters connected with the history of the bar is pleasantly collected.

An advocate and a lawyer, though in accordance with common usage we have given the latter sense to D'Argis's "avocat," are two very different people, and legal knowledge may be said, even now, to be more an accident than the foundation of an advocate's training. It belongs to him as a smattering of all knowledge belongs to him, — as matter for the exercise of his powers of talk. All that Cato required of the advocate was that he should be "a good man skilled in talking;" and, the element of goodness more or less modified by circumstances, such the eminent nisi-prius barrister very much remains. In Athens and at Rome, until some period difficult to fix, advocacy and law were things apart. Athens, indeed, had no lawyers properly so-called, unless we seek them in the "logographers," who wrote and composed the speeches that were to be delivered in court by others; and at Rome, the juris-

consults and the "prudentes," the "procuratores" and the "cognitores," chamber-lawyers as we should call them now, were not given to practice in the Forum, — the first recorded instance of the appearance of one of them in that capacity having resulted in disastrous failure. One, Scævola, the wisest jurist of his time, took on himself to argue a will case — as with some confidence he might, seeing that it turned entirely on a point of law — against his learned friend Crassus, who boasted of much eloquence but no law. And Crassus won, probably because he was put up to his points by some one as good as Scævola, or that he knew more than he allowed, while in the matter of speaking he had it all his own way. Cicero was wont to assert that he knew no law, but that in three days he could make himself as good as any jurisconsult of them all; but in comment on the silly boast, we may read Niebuhr's acute criticism, that, though he may have had no scientific view of the law, he had probably very sufficient practical knowledge of it. In the difference between the practical and the scientific knowledge lies the distinction between the advocate and the lawyer.

But if it is right that we, for our present purposes, should not confound the lawyer and the advocate, to the world, which much affects generalities, especially when abusive, a lawyer is a lawyer, and there is an end of him. And a pleasant time the lawyers have had of it from the laity, since Lucian first began to gird at the "clever fellows ready to burst themselves for a three-obol fee," and Juvenal let loose the flood-gates of his magnificent abuse upon the hapless head of the barrister.

> "Men of your large profession, who could speak
> To every cause, and things mere contraries,
> Till they were hoarse again, yet all be law.
> . . . . . .
> So wise, so grave, of so perplexed a tongue,
> And loud withal, that could not wag, nor scarce
> Lie still, without a fee."

So writes rare Ben Jonson of the profession that Gulliver further describes as "bred up in the art of proving, by words multiplied for the purpose, that white is black and black is white, according as they are paid; but in all points out of their own trade usually the most stupid and ignorant generation among us."

"Pray tell me," says a brilliant French writer, "where I am to find an advocate with principles;" and Racine, in *Les Plaideurs*, has the pleasant passage, —

> "Vous en ferez, je crois, d'excellents avocats;
> Ils sont fort ignorants."

Perhaps on these lines may have been based a certain eminent barrister's reported estimate of his own qualifications when attributing his success to "unbounded assurance, popular manners, and total ignorance of the law."

Sir Thomas More would have no lawyers in his Utopia, as a "sort of people whose profession it is to disguise matters as well as wrest laws."

The lawyers, however, have had their friends, though chiefly among their own numbers. Cicero knew nothing in the world "so royal, liberal, and generous" as the advocate's art. And "what," says a quaint old Englishman, Davys, "is the matter and subject of our profession but justice, — the lady and queen of all moral virtues?" D'Aguesseau calls his brethren "an order as old as the magistracy, as noble as virtue, as necessary as justice."

When and where was the origin of the advocate, it is impossible with preciseness to say. D'Argis is right in saying that "his function is older than his name." For the name, in its present application, dates back no earlier than Imperial Rome. Originally, the "advocatus" was the friend who attended to give an accused the support of his presence on his trial, a sort of witness to character; the advocate of old Rome had no name but "orator." When advocacy became a profession the advocate got many names; his most complimentary title being of the Middle Ages, when he was in some countries called "clamator," which D'Argis refers to a

Celtic root, "clain," signifying "suit," but for which malevolence will suggest a more obvious meaning. As for the function, a writer, from whom Le Berquier quotes, calls it "contemporary with the first law-suit and the first court," but not with strict correctness. There never was a country without law-suits; but there have been and are countries without advocates. In Turkey, for instance, there are none now.

"Advocacy is, in fact," says M. le Berquier, "the growth of liberty; and the bar, a body of men springing up in a free country, self-born and self-governed, called into gradual existence by the gradually increasing complication of social relations, till out of the rude speakers who pleaded their own cause before the Mosaic tribunals, grew the barristers of the present day. Where there has been freedom, there have been advocates, even in the forests of old Germany; without it there are none." Advocacy, according to this ingenious writer, is the result and corollary of what he calls the "right of defence," and grows and flourishes only where, and in proportion as, that natural and indefeasible right is acknowledged. In Rome in the Republican days, "the bar" had, perhaps, no distinct and recognized existence; but advocacy and eloquence flourished in the highest degree. Under the Empire the bar was a body at once supported and restrained by a long line of imperial ordinances, but the eloquence of advocacy was a thing of the past.

Whatever the true philosophy of the matter may be, to Athens we must look for the earliest records of the advocate's eloquence, speaking not in his own cause, but in that of others. That the right of addressing the judges was not confined to the immediate parties to the suit, is clear; but it is equally clear that an orator could not obtain a hearing when he was a stranger to the client and the cause. Some personal interest in one or the other would seem to have been the necessary qualification. There was, however, one class of cases in which, to judge from Lucian, litigants were allowed professional assistance, — when they were too drunk to speak for themselves.

A peculiar class at Athens were the logographers, — men who devoted themselves to composing speeches which were afterwards delivered in court by others. In this way Demosthenes himself was at first employed. He wrote one for Phormio, which all his relations came to court in a body to deliver. It began with an apology for Phormio's notorious incompetency to make a speech for himself. In this case Demosthenes further signalized himself by writing the speech for the other side also. One of the most celebrated of logographers was Antiphon, who deserves an immortality, for good or evil, for having been the first lawyer who took money for his work. Among its great discoverers, the world should not forget the inventor of fees. The practice of fee-taking extended rapidly, as was not unnatural, among the speakers of speeches as well as the writers; and once treated as the legitimate means of turning an honest obol, advocacy may be fairly said to have entered upon a recognized professional existence.

If this discovery of Antiphon's was an epoch in advocacy, the leading case of Phryne marked another. After her trial it appears to have occurred with some force to the authorities, that there might have been a miscarriage of justice. Her case, therefore, led to the passing of the first recorded law that limited the discretion and regulated the conduct of advocates. The law which grew out of Phryne's case was simple and effective. All oratorical tricks calculated to move pity or indignation were forbidden; and the judges were enjoined not to look at the accused during a criminal trial if anything of the kind was attempted. "This rule," says D'Argis, "did much to chill the eloquence of the Greek orators."

Speakers were also ordered to confine themselves within the bounds of modesty; not to attempt to gain the private ear of

the judges; *not to raise the same point twice;* to refrain from abusive language and from stamping the feet; not to speak to the judges when they were considering their judgment; and not to make a noise on leaving the court, or collect a crowd around them. Fifty drachmas was the lowest penalty for disobedience to any of these rules, some of which, in their primitive simplicity, might have been framed for a pack of unruly schoolboys, while others would be invaluable even at the present day. We may compare with them, in more modern times, a series of rules prescribed for the guidance of the "advocates of parliament," in the time of Philip the Fair. They were warned not to undertake just and unjust causes without distinction, or support their arguments by fallacies or misquotations; not to abuse the opposite party or his counsel; *not to be absent from court when their cause was called on* (mark that, ye modern lawyers!); not to be disrespectful to the court, or greedy of fees. Finally, they were not to lead immoral lives, or (those were the days of chivalry) refuse their services to the poor and oppressed.

From an old book called the "Stylus Parliamenti," the advocate may get yet more valuable hints; for he will there learn that he must have an imposing presence, a graceful figure, and a smiling face; that he must be modest in manner and respectful in attitude, in dress neither a dandy nor a sloven; that he must not bite his lips while he is speaking, must use appropriate action, and not talk too loud or too low.

To recur to the advocates of Athens; another important restriction imposed on them at the same period was that which limited the time for which the "good man skilled in talking" was allowed to occupy the court. This was the famous clepsydra, or water-clock (or rather water-glass), which ran its course in three hours, at the close whereof, unless the speaker had obtained part of the water of another pleader engaged in the cause (a permitted practice), he was forced to conclude his address, whether he had sufficiently perorated or no.

Bearing in mind that all speeches in those days were carefully prepared beforehand, we may imagine with what anxiety the orator would rehearse his speech in his study at home, and "cut" it (to borrow the language of the stage) to the prescribed length by the aid of a private water-glass. That the limitation was rather trying sometimes, we know from Demosthenes, who in one of his speeches complains of the impossibility of going through the whole of a heavy case "in the same water."

Professional advocacy in ancient Rome had its beginnings in the perplexing relation between the patron and the client, which, as it puzzled Niebuhr himself, no one else can fairly be expected to understand. One of the duties of the patron certainly was "to appear for his clients in court, and to expound the law to them, civil and pontifical;" and we may easily imagine that as the law became more complicated, the latter duty was somewhat difficult for men who only took advocacy in the Forum as one of the accidents of a public life. Hence arose the class of "jurisconsulti," who made a profession of the delivery of legal opinions, like the Pundits of India, and a class yet more scientific than they, the "prudentes," whose opinions had in themselves the force of law. The advocate, as during the pre-Antiphonic period at Athens, received at first no money for his labors; he would as soon have thought of being paid for a speech in the Forum as a member of Congress would think of being paid (directly) for a speech in the House. Nor was he therein a loser, for a brilliant speech in the Forum opened at once to a young orator all the distinctions of the Senate and of public life, the legitimate objects of his ambition. But as clients became richer and patrons more busy, presents from the former to the latter, in order to give them an interest in their cases, became the fashion, and so the fee grew, as at Athens, into a

recognized institution. It was at first regarded as an abuse, and produced the first legislative interference with the Roman bar in the shape of the Cincian law, which forbade the taking of money for advocacy, but with very little purpose.

The history of advocacy under the Republic is a brilliant record of great names and great speeches, and the growth of a society untrammelled by any rules save its own. Under the Empire it is a perpetual succession of petty ordinances at first to protect and then to restrain; and at this period the Roman bar loses much of its interest.

Among the various edicts it is amusing to find one forbidding women to argue any case but their own, in consequence of the troublesome behavior of "a most wicked virgin," one Afrania, who wearied the court with her importunities. That women in the old days were not excluded from the Roman bar, we know from the fame of Hortensia, the daughter of the great advocate Hortensius, who argued so effectively against a "tax on matrons," when the orators of the day declined to undertake their cause, that she procured its remission, in a speech which won high praise from Quintilian.

Besides women, blind men were forbidden to practise as advocates, on account of the ridicule caused by one Publius, who, being blind, went on addressing the court for some time after it had risen. Justinian prohibited the clergy from practising, and restrictions on account of religion were numerous. But it is needless to dwell further on this, the most uninteresting period of the history of the Roman bar. —*All the Year.*

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.

WITH the present number we close our first volume. The year has been a prosperous one for the "Green Bag," far exceeding the expectations of both publishers and editor, and we only hope that our readers have derived one half the pleasure from the perusal of its pages that we have had in providing for their entertainment. Our friends have been exceedingly kind in sending contributions for our columns, for which we tender them our most sincere thanks, and trust that they will still continue their attentions in this respect. In our last number we briefly outlined our intentions for the coming year; and if we succeed in carrying out our designs, we can safely promise that the "Green Bag" for 1890 will be more attractive and "entertaining" than ever. A number of the articles on the Supreme Courts of the several States are already in preparation, and they will be profusely illustrated. The series will, we are sure, prove to be of great interest to the profession. An article on "The Women Lawyers in the United States" will appear in an early number, and our readers will be glad to become acquainted with the faces of many of their "sisters in law." A number of short articles have been promised by well-known lawyers, which we shall be delighted to "bag."

And now we have only to wish our readers one and all a "Merry Christmas" and a "Happy New Year," trusting that the pleasant relations which have existed between us may be continued for many a year to come.

SUBSCRIBERS whose subscriptions expire with this number should send in their renewals at once, accompanied with a check or Post-Office order for $3.00.

ANY of our readers desiring back numbers to complete their sets can obtain them up to Jan. 1, 1890, at the present price, 35 cents a number. After that date we shall advance the price to 50 cents a copy for all numbers issued during 1888.

THE most severe test to which an object can be subjected is that of microscopical examination. The "Green Bag" has been through the ordeal with the following exceedingly satisfactory result:

Although primarily intended for the amusement of lawyers, this magazine should be a welcome guest at any library table. It is certainly one of the brightest, sprightliest, and most entertaining of all the non-scientific journals that come to the "Microscope's" book-table. Well edited, beautifully printed, finely illustrated, it should meet with a cordial reception from any intelligent reader. — *The Microscope.*

IT may interest our readers to know that the portrait of Jeremiah Mason, published in our November number, was reproduced from a photograph which we had taken of the painting hanging in the State House at Concord, N. H. We believe that no portrait has ever before been published of this distinguished lawyer.

THE article entitled "An English View of the American Bar," which appeared in our October number, has aroused the ire of one of our esteemed contributors who gives vent to his righteous indignation in the following communication: —

Editor of the "Green Bag," —

A curious article of some piquancy and less value — except as an exposure of the writer's ignorance — appeared in your October number under title of "An English View of the American Bar." That no lawyer ever wrote the article is clear enough on its face, and an argument to refute it is complete by the simplest statement in the briefest form. First, the writer is one of those thick-headed fellows who, if in England, would readily believe that the average American lawyer would be about half Indian. They

except Mr. Benjamin, who went abroad and catered to the English for reasons of his own, and won their good-will by his un-American notions. Plenty of such men come over to our country expecting to see herds of buffaloes and tribes of Indians on the farms next adjoining our large cities. No such views ever come from Coleridge or Russell or Gladstone. And it is to the lower class of opinions in England that the article in question certainly caters. This is seen by an attempt to make the very lowest kind of justice-practice of "whittling" judges and quarrelling lawyers represent the average bar; while they no more fairly represent the bar than slugger Sullivan represents Boston aristocracy, or Buffalo Bill represents the farmers of Michigan. Happily within the last quarter-century quite a large number of American attorneys have successfully contended with those over the water, and the net results are decidedly in our favor. As a slight reminder we might mention the little fifteen millions and over gained in the Geneva Award, and the high respect accorded to our Mr. Edmunds, who was called over the water to deliver an oral opinion to the House of Lords, which opinion was promptly adopted by that august body.

Of the "character and acquirements of American lawyers" mentioned, it may also be said that things are best measured by results. This is true in science; for when Edison produces a perfect light, or Bell makes a new telephone, or Morse an original telegraph, which the world admires in wonder, the question of fame is settled beyond dispute. The lawyers of our country being and having been the leaders of Congress, the Senate, and the Government for the most brilliant century of growth and development ever known by any country, entitles them to some credit to aristocracy if they wanted it; but happily their fame rests not alone on titles or foreign opinions, but on the monument they have built in the national system of laws and government that stands to their honor forever. Of the men who built this splendid structure several hundred could be named that would rank with and outrank any lawyer that England ever bred or will ever produce.

To call but a partial roll of those brilliant leaders of the past like Webster, Story, Choate, Marshall, Waite, Seward, Stanton, Lincoln, Chase, Howard, Adams, Tilden, O'Connor, Matthews, Conkling, Carlisle, McDonald, Butler, Doolittle, and their kind, is to name the peers of any English barrister who ever spoke or wrote on legal subjects. And to name the living leaders like Evarts, Edmunds, Field, Broadhead, Russell, Gray, Curtis, Parker, and Cooley, with plenty more unnamed, would swell the list till no American need dread an intellectual combat even now. And the magnitude is to us a trifle. This is not a little island, where one may step off, but a nation that would square up and make up into a great many kingdoms like Great Britain. By the fruits of our country men may know it. As Webster once said of his grand old State: "There she stands! she needs no defenders; she speaks for herself!" So I say of our lawyers: their country is their monument. They were not all born great, — very many were born in humble life; but they have shown their greatness by their works.

The natural selection and the all-around lawyer — good for more works than one — is another Americanism that we are proud of. We are not hedged about with wigs and gowns, nor dignified by titles, nor too dependent upon royalty for fleeces; and if I read aright, some of the vilest pages of ancient and modern legal history were written of Scroggs and Jeffries, of Bacon, of the Dilke and Parnell cases, that fairly reek with iniquity, and will stand as a set-off to any small malpractice of the American courts, that are not all, of course, quite perfect, yet average remarkably well for such youngsters.

The court scenes and motion days are held up as a target of wit, and the "Sirs" and "Colonels" are used to play small parts in the article mentioned, of which our gentle foreigner saw so much behind his eyeglass on a single motion day, where straw hats so shocked his royal highness that he fairly gets behind himself in horror of the awful thing — you know! And lastly he whets his knife once more over the "political lawyers," the "money-makers," and wonders, after all, why American lawyers of to-day occupy any social position at all. Poor fellow! how it hurts, how it wounds, that any standing is left for Americans in society! Taking his item as a whole, it is about as weak as soup from the photograph of a chicken, and it is to be hoped his countrymen know better. If they grin or laugh at his flippancy, they may live to learn how foolishly they have been misled by him. Why, the real fact is, that New York alone has a bar eminently superior to that of London; Philadelphia, Washington, Boston, Cincinnati, Chicago, St. Louis, Detroit, St. Paul, Milwaukee, Kansas City, Denver, and San Francisco are splendidly equipped with learned, able, and experienced men, who can stand before kings by the diligence in their legal business; who can entertain princes, conduct suits, formulate governments, and who on all occasions where wit, learning, experience, or cultivated judgment is needed, are the peers of the best the earth affords, — men who have attained their places, be it social, political, or legal, by work, by genius, and by that power of forecast that comes in the very struggle that royalty scorns. But royalty — trembling and shaky as it stands — has no such monument as the American lawyers have produced; for truly may we say, the lawyers are the leaders of our Western World.

J. W. DONOVAN.

LEGAL ANTIQUITIES.

In the middle of the seventeenth century the common-law judges adhered to their coifs, or black cloth caps, which they still put on when they pass sentence of death; but the Lord Chancellor and the Speaker of the House of Commons wore round-crowned beaver hats. The full-bottom wig and the three-cornered hat were introduced from France after the Restoration. Barrister's wigs came in at the same time; but very gradually, for the judges at first thought them so coxcombical that they would not suffer young aspirants to plead before them so attired. Who would have supposed that this grotesque ornament, fit only for an African chief, would be considered indispensably necessary for the administration of justice in the middle of the nineteenth century? — *Lives of the Chief-Justices.*

A PECULIAR penal statute is the 52 Geo. III. c. 146, entitled an Act for the better regulating and preserving Parish and other Registers of Births, Baptisms, Marriages, and Deaths in England, which provides (Sect. 18) that one half of the amount of all fines and penalties to be levied in pursuance of this Act shall go to the person who shall inform or sue for the same. As the only clause in the Act mentioning any specific penalty is Section 14, which declares certain offences against it to be punishable with fourteen years' transportation, it is probable that there have been few informers.

Different variations of this statutory blunder are to be found in many books of legal anecdote; but readers have generally thought them all apocryphal, for want of any specific reference.

By an ancient act of the Scottish Parliament, passed about the year 1228, it was "ordaint that during ye reign of her maist blessit maiestie, Margaret, ilke maiden, ladee of baith high and lowe estait, shall hae libertie to speak ye man she likes. Gif he refuses to tak her to bee his wyf, he shale be mulct in the sum of ane hundredity pundis, or less, as his estait may bee, except and alwais, gif he can make it appeare that he is betrothit to another woman, then he shall bee free."

FACETIÆ.

It was a Harvard law-student who, having found a flea in his bed, described the insect as a *chose in action.*

The lecturer on Criminal Law at the Boston University Law School remarked that earthly tribunals inferred the intent from the act, while the heavenly courts did not. A student whose love of brevity was extreme, noted the latter statement concisely, with "*contra supra.*"

Baron Alderson had a very profound dislike to scientific witnesses, especially those of the medical profession, called upon to give an opinion upon the evidence they had heard in court, and he rarely failed in proposing some question to them which eventually proved a floorer.

At the end of a very long examination of a celebrated medical man, who had been called upon to establish the incompetency of a deceased testator to make a will, the witness unfortunately said that he believed "*all* persons were subject to temporary fits of insanity."

"And when they are in them," asked the judge, "are they aware of their state?"

"Certainly not, my lord," was the reply; "they believe all they do and say, even if nonsensical, to be perfectly right and proper."

"Good Lord!" exclaimed Alderson, "then here have I taken no less than thirteen pages of notes of your evidence, and, after all, *you* may be in a fit of temporary insanity, talking nonsense, and believing it to be true!"

A very neat *mot* is credited to Judge Grover in a tilt at the bar with Judge Peck. The latter had delivered a particularly rasping speech, to which the former felt compelled to reply in kind.

"Your Honor," he said, "it rained last night, and this morning when I took my course across the fields, at almost every step I came upon some slimy venomous creature that had issued from its hiding-place. Snails, toads, frogs, lizards, worms, snakes, vipers, adders, — every description of loathsome reptile was to be seen crawling, filled with venom; and yet, your Honor, though there seemed so many of them, all of them put together would not have made up a Peck!"

An old darkey was under indictment for some trivial offence, and was without counsel. The judge appointed a young lawyer to defend him, who had never tried a case in court.

As he walked forward to consult with his client, the prisoner turned to the judge and said, —

"Yo' Honah, am dis de lawyer what am depointed to offend me?"

"Yes."

"Well," continued the old darkey, "take hit away, Jedge; I pleads guilty."

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Judge. It would be more respectful to this court, sir, if you would keep your hands out of your pockets. Why do you do so, sir?

Defendant. Just for the novelty of the thing, your Honor.

Judge. Novelty! What d' ye mean?

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"Your Honor, that fellow might do for a judge, but I should hate to trust him for a juryman."

NOTES.

In one of the law courts of Helsingborg, Sweden, a queer case of hypnotism has puzzled the judges. A young medical student brought suit against a practising physician in the town for having hypnotized him several times against his will, with the result that his nervous system was injured and his mind somewhat enfeebled. Several witnesses appeared for the plaintiff; and to the astonishment of the court, they all appeared to be crazy, and gave the most contradictory and astounding testimony. Hereupon a medical gentleman came upon the stand and further astonished the court with the announcement that his confrère, the defendant, had hypnotized the witnesses and made them say just whatever he liked. Finally the court adjourned the case, and appointed a commission to see if the entire crowd were not crazy.

A curious question of criminal law has arisen in Virginia. Mrs. Virginia Taylor was indicted and tried for the murder of her husband by poison, and was convicted of murder in the second degree. The court set aside the verdict as contrary to law, as the statute makes murder by poisoning murder in the first degree. Afterward, on the application of the prisoner, she was discharged without any further trial or proceeding, the court basing its action in discharging her upon the statute which provides that "if the verdict be set aside and a new trial granted the accused, he shall not be tried for any higher offence than that of which he was convicted on the last [first] trial." (Code, Sec. 4,040.) The court, in discharging the accused under the circumstances, by implication, if not expressly, held that a conviction of murder in the second degree was unwarranted by the law; and as the statute quoted prohibited a conviction of murder in the first degree, and as the facts would not warrant a conviction of a lesser offence, the prisoner had to be discharged.

From an address delivered by the Hon. Samuel F. Miller, the senior Associate Justice of the Supreme Court of the United States before the Law Department of the University of Pennsylvania, the following extract is taken: —

"It is of very little use to the court that counsel should refer to a case in a general way, unless it is one of those remarkable cases the principle of which

is well known to all lawyers and judges; and it is no compliment to a court for counsel to rely upon a case of which in oral argument he merely reads a part of the syllabus or a few lines of the head notes. . . . If a case is worth citing in an oral argument to the court, and especially to a court of final resort, it is worth while to put that court in possession of so much of the elements of it as is necessary to understand what was decided in it. The counsel whom I have known who used the authority of adjudged cases with most skill and effect, will, with the book from which they intend to read lying before them, make, in their own language and not in that of the reporter, a condensed statement of the issues in the case, and how they arose, so far as they are applicable to the point in hand. Having done this and given the court whom he is addressing to understand, if necessary, the character of the court which decided the case he is about to cite, counsel then reads from the report of the opinion the most condensed statement he can find of the decision of the court and of the reasons on which it was based. This can be done within a very short time if counsel will prepare themselves in advance for the presentation of the case, and it is vastly more effectual in its influence on the mind of the listening court than reading page after page from a voluminous decision which the court cannot remember, much of which is useless so far as the case in hand is concerned, and the relation of that part which may be pertinent obscured by the reading of a long and uninteresting opinion. By the former method the court is at once put in possession of the point actually decided in the case cited, and is enabled to discern how far it is applicable to the case before it, and to gain some idea of the reasoning on which that principle was made to rest in the former case. If it becomes necessary in the further consideration of the matter by the court to refer to this decision, the care and skill of counsel has pointed out where all that is valuable may be found without the labor of reading through a hundred pages of useless matter to find it."

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Guy Ashton Brown, of Omaha, Neb., died in that city, October 27. He was State Librarian, Clerk of the Supreme Court, and Official Reporter. He was born at Batavia, N. Y., in December, 1846. His father was Joshua Lawrence Brown, Judge of Genesee County. The son received his education at a village school and neighboring academy, finishing at a New England military academy. In 1862, when a lad of sixteen, he joined the Twenty-second Battery of New York. This company being consolidated with the One Hundred and Thirty-eighth New York Volunteers, became Battery M of the Ninth New York Artillery, and Guy Brown was made sergeant-major of the largest regiment in the army of the Potomac. In this capacity he performed, in a great degree, the duties of the office of adjutant, while on duty building and guarding the defence to Washington. When the regiment was ordered to the front, the young sergeant-major was promoted to the office of adjutant over forty-eight ranking subaltern officers. Soon he was offered a position on the staff of his commanding general, but declined, preferring to fight in the line with his comrades. Upon re-enlistment he was commissioned captain for meritorious services, and assigned to Company M of the Second New York Artillery. He served in the campaigns from the Wilderness to the close of the war, participating in the battles of Cold Harbor, the attack of Ream's Station, the disaster at Monocacy, which made possible the preservation of the nation's capital; the victories in the Shenandoah valley, and numerous other engagements. He was never absent a day from his command until he fell, severely wounded, at the beginning of one of the last battles of the war. Captain Brown was brevetted major for gallant services in the field, and returning home at the close of the conflict, engaged in the crockery business at his native place. In 1867 he removed his establishment to Nebraska City, and after a short mercantile career was appointed clerk of the District Court for Otoe County. Upon that position becoming an elective office, he entered the office of James M. Woolworth, in Omaha, studied law, and was admitted to the bar. In 1868 he was appointed Clerk to the Supreme Court, removed to Lincoln, and performed the labor of editing one of the early volumes of the Supreme Court Reports. He was also librarian of the then law division of the State Library; was made executive clerk of the House of Representatives at its session of 1873, — an office created by the exigencies of the time, never existing before or since. The same year he prepared the General Statutes of Nebraska. In 1875 he was chosen secretary of the Constitutional Convention, and under the new regime, became the first reporter, Clerk of the Supreme Court, and State Librarian, which triune office he held until his decease.

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Among the victims of the recent terrible elevator accident in Cincinnati, was Hon. W. M. Dickson, a prominent member of the Bar of Cincinnati. Judge Dickson was sixty-two years old. He was born in Indiana in 1827; graduated at the Miami University, in that State, in 1846, and at Harvard Law School in 1850. He worthily filled many public offices, — Prosecuting Attorney, Judge of the Common Pleas Court of Hamilton County (appointed by Governor Chase to fill a vacancy), Presidential Elector, and others of minor importance, — but his greatest influence was in private life, where his thoughtful conversation and his brilliant pen contributed much to moulding the public opinion of his time. His personal life was pure and lovable. Respected by all, and loved by those who best knew him, he leaves behind the reputation of one who did his work well and passed away full of years and of honor.

Hon. John T. Nixon, Judge of the United States District Court for the District of New Jersey, died on the 28th of September, having almost completed the twentieth year of his service on the bench. He was a graduate of Princeton College. He studied law with Judge Pennypacker, who was Judge of the United States Court for the Western District of Virginia, and was admitted to the bar in that State. He served in the State Legislature of New Jersey for two terms, and was twice elected to Congress. His death will be greatly deplored, not only by the Bar of New Jersey, but by many eminent counsel from other States.

REVIEWS.

The November number of the Century contains a feast of good things, and he must indeed be hard to satisfy who does not find therein instruction and entertainment. The long looked for autobiography of Joseph Jefferson, whose "Rip Van Winkle" has made his name a household word, is begun in this number, and will be continued during 1890.

No more interesting record of a life upon the stage could be laid before the public. Mr. Jefferson is the fourth in a generation of actors, and, with his children and grandchildren, there are six generations of actors among the Jeffersons. His story of the early days of the American stage, when, as a boy travelling in his father's company, they would settle down for a season in a Western town, playing in their own extemporized theatre; the particulars of the creation of his famous "Rip Van Winkle;" how he acted "Ticket-of-Leave Man" before an audience of that class in Australia, etc., — all this, enriched with illustrations and portraits of contemporary actors and actresses and with anecdotes, will form one of the most delightful serials the Century has ever printed.

The prospectus of the magazine for the coming year is most attractive.

Amelia E. Barr, Frank R. Stockton, Mark Twain, H. H. Boyesen, and many other well-known writers will furnish the fiction for the new volume, which is to be unusually strong, including several novels, illustrated novelettes, and short stories. "The Women of the French Salons" are to be described in a brilliant series of illustrated papers. The important discoveries made with the great Lick Telescope at San Francisco (the largest telescope in the world) and the latest explorations relating to prehistoric America (including the famous Serpent Mound, of Ohio) are to be chronicled in the Century.

Prof. George P. Fisher of Yale University is to write a series on "The Nature and Method of Revelation," which will attract every Bible student. Bishop Potter of New York will be one of several prominent writers who are to contribute a series of "Present-day Papers" on living topics, and there will be art papers, timely articles, etc., etc., and the choicest pictures that the greatest artists and engravers can produce.

The Harvard Law Review for October contains an exceedingly interesting and valuable article by Prof. F. W. Maitland on "The History of the Register of Original Writs." The other contents are: "Is the Statutory Action for Injuries causing Death Transitory?" by Jesse W. Lilienthal; "The Doctrine of Stare Decisis as applied to Decisions of Constitutional Questions," by D. H. Chamberlain.

To the Law Quarterly Review for October Edwin H. Woodruff contributes an article of particular interest to the Bar of this Commonwealth, entitled "Chancery in Massachusetts." A peculiar interest attaches, as the author says, to the history of chancery jurisdiction in Massachusetts, from the fact that "the opposition continued

to so late a day that even after the province became a State, there was no decided effort to evade or pervert existing laws, in order to provide some substitute for the lack of equitable remedies. The common law prevailed in unmitigated rigor, and that, too, in a State which of all States in the Union has ever been looked to for examples of administrative reform."

The other contents are "Indian Codification," by C. P. Ilbert; "Codification of the Law of Mortmain," by R. E. Mitcheson; "Administration of Trusts by Joint Stock Companies," by T. Crisp Poole; "Derry *v.* Peek, in the House of Lords," by Sir Frederick Pollock; "Through Bills of Lading," by H. D. Bateson.

THE JURIDICAL REVIEW (Edinburgh) maintains its high standard of excellence in its October number. The most interesting article is, perhaps, "A Medico-Legal View of the Maybrick Case," by Dr. Henry D. Littlejohn. Charles Scott contributes a second paper on "Insanity in its relation to the Criminal Law," and J. C. Thomson an article on "Imprisonment for Debt in the United States." The other contents are the "Universities Act, 1889," by Professor Kirkpatrick; and "County Government in Ireland," by J. T. C. Humphreys. The frontispiece is an excellent portrait of Hon. David Dudley Field.

WE have received a copy of Hon. James C. Carter's address on "The Province of the Written and the Unwritten Law," which was delivered before the State Bar Association of Virginia in July, 1889. In it the writer takes a decided stand against codifications, and the arguments which he advances will repay a careful perusal by those who believe that it is possible to frame a system of written law which shall meet and solve all the problems which may possibly arise.

IN the entire realm of scientific research nothing is more absorbing and full of interest than microscopical investigation. "No one," says Rev. J. C. Wood in his "Common Objects of the Microscope," "who possesses even a pocket microscope of the most limited powers can fail to find amusement and instruction even though he was in the midst of the Sahara itself." To the unscientific as well as the scientific reader, "the MICROSCOPE, an illustrated Monthly Journal devoted to Microscopical Science," cannot fail to afford a rich monthly treat. It is attractively printed, well illustrated, and contains a vast fund of valuable information. Ably edited as it is by Dr. Alfred C. Stokes, its success should be greater than ever before.

BOOK NOTICES.

A TREATISE ON THE LAW OF TRUSTS AND TRUSTEES. By JAIRUS WARE PERRY. Fourth edition, embodying Relevant Cases down to date, by FRANK PARSONS. Little, Brown & Co., Boston, 1889. Two volumes. Law Sheep. $12.00.

Perry on Trusts has long been recognized as a standard authority upon all questions of law and equity pertaining to its subject-matter. That this fact is fully appreciated by the legal profession, has been demonstrated by the steady demand for the various editions which have been issued, and this new edition will be equally welcomed. Mr. Parsons' work displays the same care and learning which characterized his editing of Morse on "Banks and Banking," and Blackwell on "Tax Titles;" and in the selection of additional cases embodied in the text, he has shown much judicious discrimination. About eleven thousand cases are now cited in the work, the new ones being distinguished by a dash before each in the table of cases. The section indices at the heads of the chapters have been much improved by grouping the references under subheads, and the main index has been bettered in the same way, and also somewhat enlarged.

The work deserves and will undoubtedly receive the continued support and commendation of the profession. It certainly is invaluable to every lawyer.

THE STATUTE OF LIMITATIONS, AND ADVERSE POSSESSION. By HENRY F. BUSWELL. Little, Brown & Co., Boston, 1889. Law Sheep. $6.00.

In the preparation of a work upon this subject, the author has had a formidable difficulty to contend with in the fact that the ground has already been thoroughly and comprehensively covered by well-known legal writers. Upon a careful examination of the book, however, we feel that Mr. Buswell has proved himself equal to the occasion, and has given the profession a really valuable work, and one which compares favorably with its predecessors. The general principles governing the subject of limitations in law and equity are fully treated, and the

effect of new promises and acknowledgments to avoid the limitation. Exceptions to the operation of the statute however arising; application of the statute to actions of contract and tort, including trover and replevin; adverse possession generally; limitations of real actions and of actions involving the matter of trust; and process, parties and pleading, — are severally discussed. Between four and five thousand cases are cited, and the index is full and clear. An Appendix contains the English Acts of Limitation.

We can conscientiously recommend this work as one of the best yet written upon this important subject, and it should meet with a hearty reception from the profession.

QUESTIONS AND ANSWERS TO ANSON ON CONTRACT. By JAMES R. JORDAN (Librarian of the Law School of the Cincinnati College). W. H. Anderson & Co. Cincinnati, 1889. $2.00.

This is a work designed especially for the use of students and others who desire to impress upon their minds the principles of the subject directly under study. There can be no doubt that by this method one learns more rapidly, and is also able to acquire accurate and enduring knowledge of the subject. Anson on Contract is made the basis of this book, and the questions and answers are clearly stated. To both teacher and student it will prove a most valuable aid, and by its means the latter should readily and understandingly grasp and retain the whole subject of the principles of the Law of Contract.

A BRIEF ON THE MODES OF PROVING THE FACTS MOST FREQUENTLY IN ISSUE ON THE TRIAL OF CIVIL OR CRIMINAL CASES. By AUSTIN ABBOTT of the New York Bar. Diossy & Co., New York, 1889. $2.50.

To get in our legal evidence and keep out illegal evidence of the adversary, is the great art of trying causes; and armed with this book of Mr. Abbott's, the practitioner will find himself fully prepared to meet any question which may arise as to the rules of evidence governing the admission of facts. The work is adapted to use in both Civil and Criminal Cases, and is prepared in that careful, painstaking manner which is evident in all of Mr. Abbott's works. The index is a complete guide to the contents, and so arranged that the practitioner can at once turn to any desired point. The book is tastefully gotten up by the publishers; good paper, good print, and attractive binding.

AN APPEAL TO PHARAOH: THE NEGRO PROBLEM AND ITS RADICAL SOLUTION. Fords, Howard & Hulbert, Publishers. New York, 1889. $1.00.

Although the institution of slavery was long since abolished in the United States, the "Negro problem" is by no means yet solved. While many of the race have risen from their bondage and become worthy and in some instances distinguished citizens, there is still in the South a vast, ignorant, ubiquitous element, neither possible nor desirable to be assimilated. How to deal with this element is a question which must be answered by this generation. The solution proposed by the author of this book is a gradual and induced voluntary emigration of the negro to some selected fertile region, there to live and thrive with all the help our Government can give him. The work is evidently the result of much thought and careful study of the subject, and will repay a perusal by all who are interested in this most perplexing of problems.

THE HUMAN MYSTERY IN HAMLET: AN ATTEMPT TO SAY AN UNSAID WORD. By MARTIN W. COOKE, A.M. Fords, Howard & Hulbert, Publishers. New York, 1889. $1.00.

"Hamlet" always has been, and will undoubtedly continue to be for time to come, a much discussed play. Mr. Cooke believes that the writer of "Hamlet" had a definite end in view; that in it he sought to embody the thought that without and above man is a power which has relation to him, and whose mandates constitute the law of his being. Mr. Cooke's views are certainly original, and he pleads for his theory with great skill and earnestness. The book is full of interest, and will be eagerly sought by all lovers of Shakspeare.

A TREATISE ON THE LAW OF COMMERCIAL PAPER. By CHRISTOPHER G. TIEDEMAN. F. H. Thomas Law Book Co., St. Louis, 1889. Law Sheep. $6.00 net.

Mr. Tiedeman is so well known to the legal profession through his work on "Real Property" that any new book from his pen is sure to be cordially received. The present work is a full and comprehensive treatment of the whole subject of Commercial Paper, — not only Bills and Notes, but also Guaranties, Checks, Bank Notes, United States Treasury Notes, Government and Municipal Bonds, Certificates, Receipts, and in fact everything which can be included under the head of Commercial Paper. Thus in a single volume the lawyer has all these subjects at his command, instead of being obliged to refer to two or three different works, as has heretofore been the case. Mr. Tiedeman, it is hardly necessary to say, has produced a treatise which is exhaustive upon the subject, and it will be found to supply a real and substantial want. No lawyer can afford to be without it, and we predict that it will be in great demand by the profession.